

V A R G H E S E S U M M E R S E T T

CRIMINAL DEFENSE | PERSONAL INJURY | FAMILY LAW

Practitioner's Guide to

FAMILY MEMBER OFFENSES

IN TEXAS

Statutory Framework, Evidentiary Strategy,
and Courtroom Tactics for Defense Counsel

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1. Introduction: The Landscape of Family Violence Prosecution in Texas

Texas has one of the most aggressive statutory frameworks in the nation for prosecuting offenses committed against family members and members of a household. For the criminal defense attorney, this landscape presents unique dangers at every phase of litigation—from the initial arrest through punishment. This guide is designed to equip the practitioner with a comprehensive understanding of the statutory definitions, enhanced penalties, evidentiary traps, and procedural safeguards that define family member offense litigation in Texas courts.

The stakes in these cases cannot be overstated. What might otherwise be a Class A misdemeanor assault becomes a third-degree felony with a single prior family violence finding. A conviction triggers collateral consequences that follow a client for life: federal firearms disabilities under 18 U.S.C. § 922(g)(9), immigration consequences, protective order exposure, and a permanent mark on a criminal history that dramatically amplifies future sentencing ranges. The defense attorney must understand not only the substantive law, but the strategic evidentiary framework that governs these prosecutions.

PRACTITIONER'S NOTE

This guide is organized to mirror the chronological arc of a family violence case: from statutory definitions and charging decisions, through the evidentiary minefield of trial, and into the punishment phase. Each section includes case law authority, strategic warnings, and concrete litigation tactics.

2. Statutory Definitions: Who Qualifies as a “Family Member”

Before any strategic analysis can begin, the practitioner must master the statutory definitions that determine whether the enhanced family violence framework applies. The State’s ability to invoke family violence penalties hinges entirely on the relationship between the accused and the complainant. These definitions are found in the Texas Family Code and are incorporated by reference into the Penal Code.

2.1 Family Code § 71.003: “Family”

The Texas Family Code § 71.003 defines “family” to include individuals related by consanguinity or affinity as determined under Government Code §§ 573.022–573.024, individuals who are

former spouses, and individuals who are the parents of the same child, regardless of whether they have ever been married or lived together.

2.2 Family Code § 71.004: “Family Violence”

Section 71.004 is the definitional engine of the enhanced penalty framework. “Family violence” means an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault. Critically, the definition also encompasses abuse as defined by Family Code §§ 261.001(1)(C)–(E) directed against a child of the family or household, as well as dating violence as defined by § 71.0021.

2.3 Family Code § 71.005–71.006: “Household” and “Member of a Household”

A “household” under § 71.005 is a unit composed of persons living together in the same dwelling, regardless of whether they are related. Section 71.006 further expands this to include persons who previously lived together, creating an indefinite temporal window. This broad reach means former roommates who have not shared a residence in years may still fall within the statutory definition.

LITIGATOR’S WARNING

The State will frequently attempt to stretch the “member of a household” definition to encompass casual or transient cohabitation. Challenge the factual basis of this relationship element aggressively. Demand proof of a genuine shared living arrangement—not merely an overnight visit or occasional presence at a residence. If the relationship element fails, the enhanced penalties collapse.

2.4 Family Code § 71.0021: Dating Violence

Section 71.0021 defines “dating violence” as an act by an individual against another with whom they have or have had a “dating relationship.” A “dating relationship” is defined as a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature, determined by the length, nature, frequency, and type of interaction. Casual acquaintanceship or ordinary fraternization in a business or social context is explicitly excluded.

3. The Charging Landscape: Offenses and Enhanced Penalties

The primary battleground in family member offense litigation is the penalty enhancement structure. Texas law layers enhancements upon enhancements, transforming routine misdemeanor conduct into felony exposure. The defense attorney must map the client's exposure from the outset and identify every potential enhancement the State might invoke.

3.1 Assault – Family Violence (Tex. Penal Code § 22.01)

Assault under § 22.01(a) is ordinarily a Class A misdemeanor when it involves bodily injury. However, when the assault is committed against a person whose relationship to the defendant falls within Family Code §§ 71.0021, 71.003, 71.005, or 71.006, and the defendant has a previous conviction or deferred adjudication for a family violence offense, the charge is elevated to a third-degree felony under § 22.01(b)(2)(A).

The Impeding-Breathing Enhancement

Under § 22.01(b)(2)(B) and § 22.01(b-3), an assault against a family or household member or dating partner that involves impeding normal breathing or circulation by applying pressure to the throat or neck, or blocking the nose or mouth, is a third-degree felony on the first offense—no prior conviction required. This enhancement was enacted in recognition of the lethal danger of strangulation and has become one of the most commonly charged felony-level family violence offenses in Texas.

STRATEGIC NOTE: CHALLENGING THE “IMPEDING BREATHING” ALLEGATION

The State's evidence for impeding breathing often rests solely on the complainant's subjective testimony. Challenge the absence of objective medical evidence: no petechiae, no bruising to the throat, no documented voice changes. Demand the State produce medical records, 911 audio, and body camera footage. The absence of corroborating physical evidence is a powerful tool for reasonable doubt.

3.2 Aggravated Assault – Family Violence (Tex. Penal Code § 22.02)

Aggravated assault under § 22.02 is a second-degree felony. When committed against a family or household member or dating partner, it becomes a first-degree felony under § 22.02(b)(1). The punishment range is 5 to 99 years or life, and a minimum term of imprisonment may apply under certain circumstances.

3.3 Continuous Violence Against the Family (Tex. Penal Code § 25.11)

Section 25.11 is one of the most dangerous charges in the family violence arsenal. It criminalizes a pattern of conduct: two or more acts of assault against a family member, household member,

or dating partner within a twelve-month period. It is a third-degree felony, and critically, it does not require a prior conviction for the enhancement—the two predicate assaults can both be uncharged, unadjudicated acts.

LITIGATOR'S WARNING: JURY UNANIMITY AND § 25.11

Continuous violence charges raise significant jury unanimity concerns. Under *Cosio v. State*, the jury must unanimously agree that at least two assaults occurred within the twelve-month window, but they need not unanimously agree on which specific assaults. This creates a due process flashpoint. Preserve your appellate record by objecting to jury instructions that fail to require unanimity as to the specific predicate acts and by requesting special verdict forms.

3.4 Violation of a Protective Order (Tex. Penal Code § 25.07)

A violation of a protective order is ordinarily a Class A misdemeanor. However, under § 25.07(g), a second or subsequent violation, or a violation committed by committing an assault or stalking, is a third-degree felony. The practitioner must review the underlying protective order meticulously: was it properly served? Are the conditions specific enough to support a violation allegation? Was the contact truly prohibited, or was it initiated or consented to by the protected party?

3.5 Penalty Enhancement Summary

Offense	Base Classification	FV Enhanced	Enhancement Trigger
Assault – Bodily Injury (§ 22.01)	Class A Misd.	3rd Degree Felony	Prior FV conviction/deferred
Assault – Impeding Breathing (§ 22.01)	N/A	3rd Degree Felony	No prior required
Aggravated Assault (§ 22.02)	2nd Degree Felony	1st Degree Felony	FV relationship
Continuous Violence (§ 25.11)	N/A	3rd Degree Felony	2+ assaults in 12 months
Protective Order Violation (§ 25.07)	Class A Misd.	3rd Degree Felony	2nd+ violation or with assault

4. The Affirmative Finding of Family Violence: Art. 42.013

Article 42.013 of the Texas Code of Criminal Procedure requires the trial court to enter an affirmative finding of family violence in the judgment if the court determines that the offense

involved family violence as defined by Family Code § 71.004. This finding is not merely administrative—it is a weapon that follows the defendant permanently and triggers cascading collateral consequences.

4.1 When the Finding Attaches

The affirmative finding attaches upon a conviction for any offense that the court determines involved family violence. This includes offenses that do not carry an explicit “family violence” label in the Penal Code, such as criminal mischief, terroristic threat, or even interference with an emergency telephone call, if the underlying conduct meets the Family Code § 71.004 definition. The State is not required to charge a family violence enhancement for the affirmative finding to be entered.

4.2 Collateral Consequences

- **Federal Firearms Disability (18 U.S.C. § 922(g)(9)):** A conviction with an affirmative finding of family violence triggers a lifetime federal prohibition on possessing firearms or ammunition. This prohibition has no exception for law enforcement officers or military personnel, and there is no mechanism to restore firearms rights under federal law absent an expungement or pardon that fully restores civil rights.
- **Penalty Enhancement for Future Offenses:** The affirmative finding converts any subsequent family violence assault from a Class A misdemeanor to a third-degree felony under § 22.01(b)(2).
- **Deferred Adjudication Limitations:** Under Art. 42A.102, a defendant who receives deferred adjudication for a family violence assault is not eligible for subsequent deferred adjudication for another family violence assault. The one-bite rule applies.
- **Immigration Consequences:** Family violence convictions are classified as deportable offenses under 8 U.S.C. § 1227(a)(2)(E) and may constitute crimes involving moral turpitude or aggravated felonies depending on the offense level.
- **Non-Disclosure Ineligibility:** Under Government Code § 411.0725, an offense involving family violence is categorically excluded from eligibility for an order of non-disclosure, regardless of whether the defendant received deferred adjudication.

CRITICAL DEFENSE OBJECTIVE

The single most important outcome in many family violence cases is avoiding the affirmative finding itself—not merely avoiding a conviction. Where plea negotiations are necessary, explore resolution to a non-family-violence offense (such as Class C assault by contact) to prevent the Art. 42.013 finding and its permanent collateral consequences.

5. The Evidentiary Minefield: Admissibility of Relationship History

Family violence cases are uniquely dangerous because of the expanded evidentiary rules that allow the State to introduce the history of the relationship between the accused and the complainant. These rules create a backdoor for propensity evidence that would be inadmissible in virtually any other criminal prosecution.

5.1 Article 38.371: The Nature of the Relationship

Article 38.371 of the Code of Criminal Procedure permits the introduction of testimony or other evidence regarding “the nature of the relationship between the actor and the alleged victim” in prosecutions of offenses involving family or dating violence. This broad statutory authorization allows the State to present evidence of prior violent incidents, patterns of abuse, controlling behavior, and the overall dynamic of the relationship.

The Critical Safety Valve: Art. 38.371(c)

Article 38.371(c) explicitly provides that the statute does not permit the introduction of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence. This is the litigator’s shield. The State cannot use Art. 38.371 as a blank check to introduce any and all prior bad acts; it must still comply with the relevance requirements of Rule 401, the balancing test of Rule 403, and the propensity prohibition of Rule 404.

LITIGATION TACTIC: THE 38.371(c) MOTION IN LIMINE

File a pretrial motion in limine specifically invoking Art. 38.371(c) and demanding that the State articulate the non-character purpose for each piece of relationship history it intends to offer. Force the court to rule on each item individually before the jury hears it. Do not allow the State to introduce evidence of prior incidents under the general umbrella of “relationship history” without satisfying the Rules of Evidence.

5.2 Extraneous Offenses Under Rule 404(b)

In addition to Art. 38.371, the State may seek to introduce extraneous family violence acts under the “other purposes” framework of Rule 404(b). The most commonly invoked purposes in family violence cases include motive (demonstrating the emotional dynamic that led to the charged offense), intent (rebutting claims of accidental injury), and absence of mistake or accident (negating the defense narrative that the complainant’s injuries were self-inflicted or resulted from a fall).

The Daggett Warning: Repetition Is Not a Plan

Prosecutors frequently attempt to characterize repeated acts of family violence as a “plan” under Rule 404(b). As the Court of Criminal Appeals held in *Daggett v. State*, a legitimate plan involves identifiable preparatory steps directed toward the charged offense. Simply repeating the same type of offense over time does not establish a plan—it establishes propensity, which is the very inference Rule 404(a) prohibits. Object immediately when the State attempts to repackaging repetition as strategy.

5.3 Rule 403 Remains the Ultimate Safeguard

Regardless of the statutory authorization under Art. 38.371 or the “other purposes” claimed under Rule 404(b), the Rule 403 balancing test remains a mandatory check on admissibility. Under *Hitt v. State*, even evidence that “shall be admitted” under a CCP article remains subject to exclusion if its probative value is substantially outweighed by the danger of unfair prejudice.

When invoking Rule 403 in family violence cases, emphasize the following factors to the trial court:

- The strength of the evidence to prove the non-character purpose claimed by the State.
- The potential for the evidence to impress the jury in some irrational but indelible way.
- The time needed to develop the evidence and whether it will distract from the core issues.
- The proponent’s need for the evidence—can the non-character purpose be established by less prejudicial means?

6. Confrontation Clause and Hearsay in Family Violence Prosecutions

Family violence cases are among the most frequent settings for Confrontation Clause litigation. Complainants in these cases are often reluctant witnesses—or unavailable altogether—leading the State to rely heavily on out-of-court statements, 911 recordings, and prior statements to law enforcement. The defense attorney must master the distinctions drawn by the Supreme Court in *Crawford v. Washington*, *Davis v. Washington*, and their progeny.

6.1 The Testimonial vs. Non-Testimonial Distinction

Under *Crawford*, the Confrontation Clause bars the admission of “testimonial” statements unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine. The question of whether a statement is testimonial depends on the primary purpose of the interrogation.

911 Calls: The Davis Framework

In *Davis v. Washington*, the Supreme Court held that statements made during a 911 call are non-testimonial when the primary purpose of the call is to enable police to meet an ongoing emergency. However, once the emergency has passed and the purpose of the questioning shifts to investigation, subsequent statements become testimonial. Defense counsel must analyze every 911 recording with precision, identifying the exact moment the emergency arguably resolved and the investigation began. Statements made after that inflection point are subject to a Confrontation Clause objection.

Statements to Responding Officers: The Hammon Analysis

In *Hammon v. Indiana*, the Court found that statements made to officers at the scene after the emergency had been resolved—particularly written statements or affidavits—are testimonial. In the family violence context, this directly implicates the common police practice of separating the parties and taking detailed statements from the complainant. If those statements were made under circumstances objectively indicating that the primary purpose was to establish or prove past events for later criminal prosecution, they are testimonial and barred absent the declarant's testimony at trial.

LITIGATION TACTIC: THE FORFEITURE-BY-WRONGDOING TRAP

Be aware that under the forfeiture-by-wrongdoing doctrine (Tex. R. Evid. 804(b)(6); *Giles v. California*), the State may argue that the defendant procured the complainant's unavailability through threats, intimidation, or coercion. If the court finds by a preponderance of the evidence that the defendant engaged in wrongdoing intended to prevent the witness from testifying, the Confrontation Clause protection is forfeited. Advise your client in unequivocal terms: no contact with the complainant, directly or through third parties. Any post-arrest communication that can be construed as witness tampering hands the State a devastating weapon.

6.2 Hearsay Exceptions Commonly Invoked

Even when the Confrontation Clause does not bar a statement (because it is non-testimonial), the State must still establish a hearsay exception. The most commonly invoked exceptions in family violence prosecutions are:

- **Excited Utterance (Rule 803(2)):** Statements made under the stress of a startling event. In family violence cases, the State will argue the complainant was still under the stress of the assault when making statements to officers. Challenge the temporal gap between the event and the statement, and argue that the declarant had time to reflect and fabricate.
- **Present Sense Impression (Rule 803(1)):** Statements describing an event made while or immediately after perceiving it. The contemporaneity requirement is strict; any significant delay undermines the exception.

- **Medical Diagnosis or Treatment (Rule 803(4)):** Statements made for purposes of medical diagnosis. In family violence cases, this often includes statements to SANE nurses or emergency room personnel identifying the assailant. Challenge whether the statement was truly made for medical purposes or was elicited for law enforcement investigation.

7. The Recanting Complainant: Strategic and Ethical Considerations

Perhaps no feature of family violence litigation is more common—or more fraught—than the recanting complainant. Studies consistently show that a significant percentage of family violence complainants recant, refuse to cooperate with prosecution, or affirmatively seek dismissal. The defense attorney must navigate this terrain with both strategic precision and ethical awareness.

7.1 The State's Response: "Evidenced-Based" Prosecution

Modern prosecution offices have adopted "evidence-based" or "victimless" prosecution strategies specifically designed to proceed without the complainant's cooperation. These strategies rely on 911 recordings, body camera footage, photographs of injuries, medical records, statements to officers at the scene, and prior consistent statements. The defense attorney should never assume that a recanting complainant equals a dismissal.

7.2 Impeachment with Prior Inconsistent Statements

If the complainant testifies inconsistently with prior statements, the defense may use those prior statements for impeachment under Rule 613(a). However, counsel must be cautious: introducing the complainant's prior statements to police may inadvertently bolster the State's case by placing the original allegations before the jury with the apparent imprimatur of a sworn statement.

7.3 The Affidavit of Non-Prosecution

Complainants frequently approach defense counsel seeking to file an "affidavit of non-prosecution." While such affidavits can be submitted to the prosecutor's office, the defense attorney must counsel the complainant that the decision to prosecute rests solely with the State. An affidavit of non-prosecution does not guarantee dismissal, and the prosecutor may view it as evidence of the defendant's ongoing influence over the complainant.

8. Protective Orders and Bond Conditions

Protective orders and bond conditions in family violence cases create a web of restrictions that can ensnare even a well-intentioned client. The defense attorney must ensure the client understands every condition imposed and the consequences of even inadvertent violations.

8.1 Emergency Protective Orders (Art. 17.292)

An emergency protective order under Art. 17.292 may be issued by a magistrate at the time of arrest, without a hearing and without the defendant's presence. These orders are effective for 31 to 91 days and typically prohibit contact with the complainant, require a minimum distance from the complainant's residence, and may prohibit possession of firearms. Because these orders are issued *ex parte*, the defense attorney often encounters them as a *fait accompli* at the initial appearance.

8.2 Magistrate's Order of Emergency Protection (Art. 17.292)

In cases involving serious bodily injury or the use or exhibition of a deadly weapon, the magistrate is required to issue an emergency protective order. The mandatory nature of this provision eliminates judicial discretion in the most serious cases. The order must be issued regardless of the wishes of the complainant.

8.3 Bond Conditions Under Art. 17.40 and Art. 17.49

Article 17.40 authorizes conditions of bond designed to protect the community, including GPS monitoring. Article 17.49 specifically addresses family violence cases, allowing the magistrate to impose conditions including maintaining a specified distance from the complainant, prohibiting communication, requiring participation in a battering intervention and prevention program (BIPP), and prohibiting the consumption of alcohol or controlled substances.

PRACTITIONER'S NOTE: THE GPS MONITOR TRAP

GPS monitoring as a bond condition is increasingly common in family violence cases. Advise your client that any incidental proximity to the complainant—at a grocery store, a child's school event, or even passing on a highway—may trigger an alert and a motion to revoke bond. If the client and complainant share children, move immediately for a modification of conditions that establishes a protocol for custody exchanges to prevent inadvertent violations.

9. Defense Strategies and Affirmative Defenses

Effective defense of family member offenses requires more than reactive litigation. The defense attorney must develop an affirmative theory of the case and deploy specific defensive strategies tailored to the unique dynamics of family violence prosecutions.

9.1 Self-Defense (Tex. Penal Code § 9.31–9.32)

Self-defense remains the most commonly asserted justification in family violence cases. Under § 9.31, a person is justified in using force against another when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force. The defense must establish both the subjective belief of the defendant and the objective reasonableness of that belief.

The Duty to Retreat and the Castle Doctrine

Under § 9.32(c), there is no duty to retreat before using force if the person has a right to be present at the location. In shared residences—the most common setting for family violence—both parties may have an equal right to be present, creating a complex factual question for the jury. The Castle Doctrine presumption under § 9.31(a)(1)(A) may apply when the complainant entered or was attempting to enter the defendant's habitation by force.

9.2 Defense of a Third Person (Tex. Penal Code § 9.33)

Section 9.33 extends justification to the use of force in defense of a third person when the actor reasonably believes force is immediately necessary to protect the third person. In family violence cases, this defense arises where the defendant intervened to protect a child or another family member from the complainant's violence.

9.3 Challenging the Complainant's Credibility

In many family violence cases, the outcome turns on credibility. The defense must investigate the complainant's motive to fabricate: pending divorce proceedings, custody disputes, immigration benefits, and financial incentives all provide potential motives for false or exaggerated allegations. Under Rule 613(b), evidence of the complainant's bias, interest, or motive to fabricate is always relevant and admissible.

9.4 The “Mutual Combat” Defense

Where the evidence shows both parties engaged in mutual combat, the defense may argue that the complainant was an equal participant and that the defendant's conduct was a proportional response. This defense is particularly effective when combined with evidence of the

complainant's injuries being inconsistent with the alleged one-sided assault—or when the defendant's injuries are more severe than those of the complainant.

10. Punishment Phase Considerations

If a family violence conviction cannot be avoided, the punishment phase presents the final opportunity to mitigate the sentence. Under Art. 37.07, the evidentiary standard broadens to admit “any matter the court deems relevant to sentencing,” including the defendant's background, character, and circumstances of the offense.

10.1 Batterer's Intervention and Prevention Program (BIPP)

Texas courts frequently require participation in a BIPP as a condition of probation for family violence offenses. Under Art. 42A.504, the court must require a defendant placed on community supervision for a family violence offense to attend a BIPP if the offense involved family violence. If the client has already enrolled in or completed a BIPP program prior to sentencing, present this evidence to the court as a demonstration of accountability and rehabilitation.

10.2 Community Supervision Conditions

Community supervision for family violence offenses carries enhanced conditions under Art. 42A.504 and Art. 42A.505, including mandatory BIPP completion, prohibition of firearms possession, no-contact orders with the complainant, and in some cases, substance abuse treatment and GPS monitoring. Counsel should negotiate conditions that are realistic for the client's circumstances—overly restrictive conditions set the client up for revocation.

10.3 Presenting Mitigation Evidence

Effective mitigation in family violence cases should address the circumstances that contributed to the offense while avoiding any suggestion that the defendant minimizes responsibility. Key areas for mitigation include: the defendant's history of trauma or abuse, substance abuse history and treatment, mental health diagnoses and treatment compliance, employment stability and community ties, the impact of incarceration on the defendant's children, and evidence of genuine remorse and behavioral change.

STRATEGIC REMINDER

At punishment, the State may introduce unadjudicated bad acts under Art. 37.07, but they must be proven beyond a reasonable doubt. Demand the jury charge include the mandatory instruction that the jury cannot consider unadjudicated acts unless they find beyond a

reasonable doubt that the defendant committed them. This instruction is a constitutional requirement, not a discretionary one.

11. Pretrial Defense Checklist

The following checklist summarizes the critical pretrial actions for family member offense cases:

1. **Verify the relationship element:** Confirm the complainant's relationship to the defendant falls within the statutory definitions of Family Code §§ 71.003–71.006 or § 71.0021. Challenge any factual insufficiency.
2. **Map all prior family violence history:** Identify all prior convictions, deferred adjudications, and affirmative findings that may trigger penalty enhancements. Obtain complete criminal history records.
3. **Review and challenge protective orders:** Scrutinize the factual basis and service of any emergency protective order. Move to modify conditions that are overly restrictive or that create unworkable custody exchange scenarios.
4. **File motion in limine on extraneous conduct:** Invoke Art. 38.371(c) and demand the State identify each piece of relationship history it intends to offer, along with the specific non-character purpose for each.
5. **Demand 404(b) notice:** File a timely request under Rule 404(b)(3) for notice of all extraneous acts the State intends to introduce in its case-in-chief.
6. **Request Michael Morton Act disclosures:** Ensure the State has complied with its continuing duty to disclose under Art. 39.14.
7. **Obtain and review all 911 recordings and body camera footage:** Analyze for Confrontation Clause issues, identifying the transition from emergency to investigation.
8. **Investigate complainant's motive to fabricate:** Subpoena records related to pending divorce, custody, immigration, and financial proceedings.
9. **Secure medical records:** Obtain all records documenting the complainant's injuries—and the absence of injuries—including SANE reports, ER records, and follow-up treatment.
10. **Prepare self-defense or justification theory:** If applicable, gather evidence supporting self-defense, defense of third person, or mutual combat, including photographs of the defendant's injuries and witness testimony.

12. Conclusion

Family member offenses represent some of the most consequential cases a Texas criminal defense attorney will handle. The statutory framework is designed to expand the State's power—broadening definitions of “family,” lowering evidentiary thresholds, and stacking penalty enhancements—while the collateral consequences of conviction extend far beyond the sentence imposed. The effective practitioner must be equally fluent in the Penal Code, the Family Code, the Code of Criminal Procedure, and the Rules of Evidence, deploying each as both a sword and a shield.

The guiding principle throughout is that no matter how aggressively the State pursues these cases, procedural safeguards remain. The Rule 403 balancing test, the Confrontation Clause, the Art. 38.371(c) safety valve, and the propensity prohibition of Rule 404(a) are not suggestions—they are constitutional and statutory mandates that the defense attorney must enforce at every stage. The attorney who masters these tools does not merely defend clients; they defend the integrity of the process itself.

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