

WHEN SURVIVING LOOKS LIKE A CRIME:

REACTIVE ABUSE, RECORDED “EVIDENCE,” AND THE WOMEN SERVING TEXAS PRISON SENTENCES FOR FIGHTING BACK

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August 19, 2026

There is a woman I want you to picture. She is a composite, drawn from the files that reach my desk, with the details changed and blended to protect the real women behind them. The pattern is untouched, because the pattern is the point. She is serving a long Texas prison sentence. Before her arrest, she spent years living with a man who hurt her, a man with a hundred pounds on her and a temper everyone around him had learned to manage. The violence happened where no one could see it: behind closed doors, in a parked car, in the pauses between his apologies. What a jury eventually saw was none of that. What the jury saw was the moment she finally responded.

That is the part that still stops me when I review files like hers. The evidence that convicted her was, in a very real sense, curated by the man who abused her. He knew what she looked like at her breaking point because he had spent years engineering it. When it mattered, he was calm, composed, and believable. She was frantic, loud, and “crazy.” One of them looked like a victim that day. It was not her.

Her case is not unusual. It has a name now, one you may have seen all over the news and social media this year: reactive abuse. This article is about what that term means, why America suddenly started talking about it, what the research shows, and, most importantly for the families I work with, how Texas criminal law treats a victim who reacted. It is written for women who are serving Texas sentences for conduct that grew out of their own abuse, for the families trying to help them, and for anyone trying to understand how a victim ends up as a defendant. It is not a substitute for legal advice about a specific case. But it will help you understand the landscape.

What “Reactive Abuse” Actually Is

The National Domestic Violence Hotline describes it this way: “Reactive abuse happens when people being abused by their partners defend themselves. This typically happens after the victim has been pushed to the limit by the abusive partner.” The Hotline is emphatic about the correct framing: “defending yourself from an abusive partner is not abuse. Defending yourself is a normal response to being attacked.”

The pattern is depressingly consistent. One partner, in heterosexual relationships most often the man, sustains a long campaign of abuse: physical violence, threats, degradation, control over money and movement and sleep. The other partner absorbs it, adapts to it, and tries to manage it, sometimes for years. Then one day the accumulated terror comes out. She screams. She throws something. She scratches, slaps, or shoves. She grabs a knife because he is between her and the door.

Men can be the reacting partner too, and this dynamic occurs in every kind of relationship. For example, studies of dual arrest find that police arrest both partners far more often when the couple is same-sex, though there are other systematic factors that likely contribute to this statistic. I write about women here because that is who the research, and my own caseload, mostly describe.

To anyone who saw only that moment, she is the aggressor. And that is precisely the point, because abusers have learned to make sure that moment is the only one anyone sees.

I should note that many advocates dislike the term “reactive abuse” itself. Organizations like The

MEND Project prefer “reactive defense,” and DV educators have argued the phrase “shifts the blame onto the victim” by putting the word “abuse” on the reacting party. Researchers who study domestic violence typologies, most prominently the sociologist Michael P. Johnson, use the term “violent resistance” and distinguish it sharply from “intimate terrorism,” the coercive-control violence used predominantly by men. I use “reactive abuse” in this article because it is the term the public now knows, but the terminology debate matters, and the critics have a point: what we are describing is usually self-defense, or something very close to it.

There is one more reason the framing matters, and it goes beyond vocabulary. Courtrooms and communities reserve their sympathy for the perfect victim: the woman who never screams back, never hits back, never drinks, never looks anything but afraid. A survivor’s reaction is precisely what disqualifies her from that role, and the stigma that follows does the abuser’s work for him. In my experience this is one of the most common and least understood consequences of reactive abuse: it costs survivors the benefit of the doubt long before a jury is ever sworn.

The Tactic: Provoke, Record, Stay Calm

Here is the part that has changed with technology, and the part I now see in case after case: the recording.

Dr. Lisa Aronson Fontes, a researcher at the University of Massachusetts Amherst who studies coercive control, has documented what she calls “provoke and record”: “Some domestic abusers provoke their target, inciting a strong response. They secretly record the victim’s reaction.” The abuser needles, threatens, blocks the doorway, hurts her quietly, sometimes for hours, with the phone already recording or ready in his pocket. When she erupts, he captures it. He stays calm on camera, sometimes theatrically calm, and later shows what Fontes describes as “carefully edited clips” to family and friends, and, in the cases she documents, to police and courts.

The clip does exactly what it was designed to do. As Fontes puts it: “A ten-second recording of a survivor behaving defensively or ‘badly’ should not be enough to alter her life course and the lives of her children.” But it often is.

This is not a new manipulation; the recording is just its newest tool. Psychologist Jennifer Freyd of the University of Oregon named the underlying strategy in 1997: DARVO, which stands for Deny, Attack, and Reverse Victim and Offender. When confronted, the perpetrator denies the abuse, attacks the credibility of the person confronting him, and “assumes the victim role and turns the true victim... into an alleged offender.”

What makes DARVO frightening is that it demonstrably works, and not just on the victim. In a 2020 experimental study, Sarah Harsey and Freyd exposed observers to a perpetrator’s DARVO response and found that those observers rated the victim as less believable, more responsible for the violence, and more abusive, and rated the perpetrator as less abusive and less responsible. The reversal succeeds with neutral third parties. Judges, jurors, and responding officers are neutral third parties.

There is even research on who reaches for this tactic. A 2024 study in *PLOS ONE* by Harsey, Adams-Clark, and Freyd found that people who use DARVO-style responses are more likely to hold victim-blaming beliefs and more likely to report perpetrating sexual harassment themselves. The reversal is not a misunderstanding. It is a strategy, used by the kind of person who needs one.

And law enforcement has known about the offline version of this for decades. A 2013 study by Melissa Dichter, published under a title that says everything, “They Arrested Me—And I Was the Victim,” collected the accounts of women arrested for domestic violence who were themselves being abused. Dichter’s work cites Susan Miller’s earlier research documenting “men self-inflicting wounds so that police would view the women as assaultive and dangerous, men being the first ones to call 911 to proactively define the situation, and men capitalizing on the outward calm they display once

police arrive (his serenity highlights the hysterical woman).”

His serenity highlights the hysterical woman.

That single sentence explains more convictions than any statute I will cite in this article. One woman in Dichter’s study described watching her partner stage the scene: “that’s when he scratched himself up... I looked over at [my abuser] and he’s sitting calmly on the couch, smiling at me. I think he had done this before because he did this very calmly and smoothly.”

Why Everyone Is Suddenly Talking About This

If you have heard the phrase “reactive abuse” this year, it is probably because of Taylor Frankie Paul.

Paul is the star of Hulu’s reality series *The Secret Lives of Mormon Wives*, and in September 2025 she was announced as the lead of ABC’s *The Bachelorette*. In March 2026, days before her season was set to premiere, TMZ published a short video from a 2023 altercation between Paul and her then-boyfriend, Dakota Mortensen, recorded by him on his phone. The clip showed Paul screaming and throwing barstools while her young daughter cried nearby; according to the police report from the incident, the child was struck and left with a knot on her head. ABC pulled the season the same day.

What happened next is why the story matters here. Paul’s representatives said that she had spent “years of silently suffering extensive mental and physical abuse as well as threats of retaliation.” Her ex denied her allegations “categorically,” and to be fair to the full record: he was never charged and she had entered a plea over the 2023 incident. Notably, this incident happened before *Secret Lives* premiered in September of 2024 and production was fully aware of the situation. It was even used as the cliffhanger for the first episode of the series to keep the audience engaged and tuned in for episode two.

There have been new allegations this year from both Paul and Mortensen, but prosecutors have declined to file charges. However, a Utah court ultimately issued mutual protective orders. No one outside that relationship, including me,

knows what the truth of it is. Commentators made the same point from both directions. As Refinery29 noted, “the 2023 clip only shows a few minutes of footage. Meaning we don’t know exactly what occurred before or after” the recording began. But that is exactly the lesson. Millions of people watched forty-five seconds of video and confidently sorted two strangers into “abuser” and “victim.”

At first, the discourse surrounding the situation between Paul and Mortensen was reminiscent of the 2022 trial that occurred between Amber Heard and Johnny Depp. When men are the victims of abuse and domestic violence, they are often dismissed and not believed. In recent years, when it comes to cases such as this one that are in the public eye, we have seen a reset and people react strongly, almost to a point of what could be categorized as an overcorrection, when it comes to the concept of a man as a victim of abuse at the hands of a female partner. When the trial began, the internet was flooded with memes about Amber Heard. She was ridiculed without question as the trial went on. It was on every social media platform and to even question the narrative was unthinkable. The discourse hammered in that men can be victims too, which is true, but it also became clear that people were able to empathize more with a male victim, especially one in the form of an 80s teen heartthrob who they have adored for years, than the overwhelming amount of women who face abuse on a daily basis. It also brought out droves of men who seemed giddy at the opportunity to completely degrade Heard and talk about the horrible things that should happen to her, which, later on, as it was revealed that horrible things had happened to her, the narrative changed to she deserved it.

As more information came out, it became clear that Depp had hired a legal team whose intentional strategy was to smear Heard online and make this a case that was more important in the court of public opinion than how the allegations related to the law. They strategically picked Virginia as a venue due to how the laws regarding defamation are drafted to give Depp the legal advantage. As it turned out, this was not the first court proceeding for this case, and

for all intents and purposes, Depp lost the first one. In 2020, the case was heard by the Royal Courts of Justice in London, England where it was found that 12 of 14 allegations of abuse made by Heard against Depp were credible. Text messages and audio recordings were revealed showing Depp's abuse of Heard, including messages that graphically describe how he wants to murder Amber and how he will "fuck" her corpse to confirm she is deceased. Even though all of this is public knowledge, if you bring up this trial in casual conversation it is likely the person you are speaking with will start talking about how ridiculous the trial was, how horrible it was that Johnny was abused, and how crazy Amber is. It was one of the most-watched trials in recent memory, and forced a very complicated topic into the mainstream consciousness, people wanted an easy answer, and the simple answer did not scratch the surface of the full story.

Another recent example is the case of Gabby Petito, and her case deserves more than a passing mention, because it shows the same dynamic playing out with police instead of a phone. In August 2021, officers in Moab, Utah stopped the van Petito shared with her boyfriend, Brian Laundrie, after a 911 caller reported seeing a man slap a woman. On the officers' body-camera footage, Petito is sobbing, hyperventilating, apologizing, taking the blame; Laundrie is calm, smiling, joking with the officers. The officers read the scene exactly the way the calm party framed it: they treated Petito as the aggressor and considered citing her for domestic violence before ultimately separating the couple for the night. The independent review Moab later commissioned found that the officers had made several unintentional mistakes, and it concluded that although Petito appeared to be the aggressor in that single incident, it was "very likely" she was a long-term victim of domestic violence. About two weeks after the stop, Laundrie murdered her. It is just as Dichter stated above, "*his serenity highlights the hysterical woman*", which was published eight years before that traffic stop. The Petito bodycam footage is that sentence on video, with the highest stakes imaginable.

In my practice, that question is not a media debate. It is the difference between an acquittal and a twenty-year sentence. Because the same forty-five-second logic that played out on social media plays out in Texas courtrooms, except there the audience wears a badge or a robe, and the consequences are permanent.

The Numbers: Most Women in Prison Are Survivors

The statistics on this are not close.

The federal Bureau of Justice Statistics found decades ago that 57 percent of women in state prisons reported past physical or sexual abuse, and that among abused women in state prison, 61 percent reported the abuser was a current or former husband or boyfriend. A large multisite Department of Justice study of women in jails (Lynch and colleagues, 2012, widely cited by the Vera Institute) found that 86 percent had experienced sexual violence in their lifetime and 77 percent had experienced intimate partner violence.

For women convicted of the most serious crimes, the connection to abuse is even more direct. Stanford Law School's 2024 "Fatal Peril" study surveyed roughly 650 people serving homicide sentences in two California women's prisons and found that nearly three-fourths had experienced intimate partner violence in the year before their offense. Stanford's companion report on parole, "Great Weight," found that approximately 23 percent of women incarcerated for homicide in California are serving time for a crime directly linked to their experience of intimate partner violence, and that those survivors serve, on average, more than two decades before being found suitable for parole.

The arrest data shows how survivors get pulled into the system in the first place. A National Institute of Justice study of roughly 577,000 assault incidents found that dual arrests (both parties arrested) were nearly five times more common in intimate partner cases than in stranger cases, and that arrest rates in intimate partner cases were 97 percent higher in states with mandatory arrest laws than in states where arrest is discretionary. Notably, dual arrest

was more common in intimate partner cases when the listed “primary offender” was female. And a striking line from the Bureau of Justice Statistics: between 1990 and 1996, nearly 90 percent of the increase in women convicted of violent felonies in state courts was accounted for by a single offense, aggravated assault, a trend the Bureau itself suggested might reflect “increased prosecution of women for domestic violence.” That is the charge a reacting victim gets.

All of this happened during an era in which the female prison population exploded. The Sentencing Project reports that the number of incarcerated women nationally grew from 26,326 in 1980 to 186,244 in 2023, an increase of more than 600 percent, with female imprisonment growing at twice the rate of male imprisonment since 1980.

Texas is at the center of this story. The Texas Tribune, analyzing Texas Department of Criminal Justice data, reported that from 1980 to 2018 the number of incarcerated women in Texas grew 874 percent, more than double the growth rate for men. As of August 2024, the Texas Department of Criminal Justice held 10,663 women. In a survey of incarcerated Texas women by the Texas Criminal Justice Coalition, 82 percent reported they had been victims of domestic violence. Meanwhile, the scale of family violence in this state is staggering: Texas law enforcement recorded 250,048 family violence offenses in 2024, and the Texas Council on Family Violence documented 161 Texans killed by intimate partners that year, 137 of them women.

Read those numbers together and the picture is hard to escape. The women’s prison system in Texas is, to a very large degree, a warehouse for survivors of violence. Some of them are there for conduct that had nothing to do with their abuse. But many are there for the reaction their abuser spent years manufacturing, and in the worst cases, documenting.

How Texas Law Turns a Reacting Victim Into a Felon

Now for the law. I want to walk through this carefully, because the mechanics matter and

because families are usually shocked at how quickly the charges escalate.

Texas does not have an offense called “domestic violence.” What it has is assault under Texas Penal Code section 22.01, plus a set of family violence enhancements layered on top. Basic assault causing bodily injury is a Class A misdemeanor, punishable by up to a year in county jail and a fine of up to \$4,000. “Bodily injury” is a low bar; a scratch or a bruise qualifies. A red mark from a thrown phone qualifies.

From there, the enhancements do the work:

A prior family violence conviction makes the second case a felony. Under section 22.01(b)(2)(A), assault against a family member, household member, or dating partner becomes a third-degree felony, two to ten years in prison, if the defendant has previously been convicted of a family violence offense. And here is the trap that catches reactive abuse victims: under section 22.01(f), a deferred adjudication counts as a prior conviction for this purpose, even if she successfully completed the probation and the charge was dismissed. I have seen this pattern repeatedly. A woman is arrested during an incident her abuser staged or provoked. Her lawyer tells her deferred adjudication is a good deal: plead, do probation, and the case goes away. Nobody explains that in Texas, for family violence purposes, that “dismissed” case counts as a conviction forever. The next time he provokes and records her, she is not facing a misdemeanor. She is facing prison.

Strangulation allegations are felonies immediately, no prior required. Assault by “impeding the normal breathing or circulation of the blood” of a family or household member or dating partner is a third-degree felony under section 22.01(b)(2)(B), and a second-degree felony (two to twenty years) under section 22.01(b-3) if there is a qualifying prior. Pay attention to how this interacts with a struggle. When a woman claws at the arms of a man choking her, or pushes her forearm against his throat to get him off of her, the marks on his neck become “evidence” of her impeding his breath. In a swearing contest between a calm man with red marks and a sobbing woman with none

(strangulation often leaves no immediate visible injury on the person strangled), the felony charge can land on her.

A weapon makes it aggravated. Aggravated assault under section 22.02 applies when an assault causes serious bodily injury or when the person “uses or exhibits a deadly weapon.” It is a second-degree felony, two to twenty years. The kitchen knife a terrified woman picks up so he will finally stay back can be treated as a deadly weapon “exhibited” during an assault (a threat is itself an assault under section 22.01(a)(2)). She never has to touch him. The statute books do provide an answer here, and it is too often overlooked. Under Penal Code section 9.04, a threat of force is justified whenever the use of force itself is justified, and producing a weapon, so long as the purpose is limited to creating an apprehension that you will use it if necessary, “does not constitute the use of deadly force.” The Court of Criminal Appeals applied exactly this rule in *Gamino v. State* (2017), holding that a man charged with aggravated assault for displaying, but never firing, a gun was entitled to an ordinary self-defense instruction. In other words, the woman who shows the knife but never swings it may need to justify only ordinary defensive force, not deadly force, a meaningfully easier standard. But a defense that is never raised does not exist, and in my experience this one is raised far less often than the facts support. If a deadly weapon is used and a family member suffers serious bodily injury, aggravated assault becomes a first-degree felony: five to ninety-nine years, otherwise referred to as life.

Repeated incidents can be aggregated. Under section 25.11, two or more bodily injury assaults against family or household members or dating partners within twelve months is “continuous violence against the family,” a third-degree felony, and the jury does not have to agree unanimously on which specific incidents occurred or when. For a woman whose abuser has called the police on her more than once, curating each incident, this statute lets a prosecutor stack his provocations into a felony.

And if he dies, it is murder. Murder is a first-degree felony, five to ninety-nine years or life.

Texas abolished the old “crime of passion” version of voluntary manslaughter; what remains is “sudden passion,” which I will come back to, because it operates only at the punishment stage.

One more piece of the machine: the family violence finding. Under Texas Code of Criminal Procedure article 42.013, if the court determines that an offense under Title 5 of the Penal Code involved family violence, the court *shall* enter an affirmative finding of family violence in the judgment. Not may. Shall. That finding is what sets up the felony enhancement for any future arrest. The conviction it documents carries firearm consequences too: under Texas Penal Code section 46.04(b), a person convicted of even a Class A misdemeanor assault involving a member of her family or household cannot possess a firearm until five years after release from confinement or community supervision, and federal law imposes its own separate, broader ban on people convicted of misdemeanor crimes of domestic violence. And the finding follows a person through custody disputes, housing applications, and immigration proceedings. Prosecutors understand this. When a victim who reacted takes “just a misdemeanor” with a family violence finding, she has handed the State the felony enhancement that will be used against her the next time he provokes and records.

Here is the bitter irony written directly into the statute. The Texas Family Code’s definition of family violence, section 71.004, defines it as an act “intended to result in physical harm, bodily injury, assault, or sexual assault,” and then says, in so many words, that it “does not include defensive measures to protect oneself.” The dating violence definition in section 71.0021 contains the same carve-out: an act “other than a defensive measure to protect oneself.” Texas law, on its face, already recognizes that a victim’s defensive reaction is not family violence. The entire problem, the one this article exists to describe, is that the system so often gets the roles backwards, and applies these statutes to the wrong person in the room.

Self-Defense in Texas: Strong on Paper, Fragile in a Reactive Abuse Case

Texas has one of the more robust self-defense frameworks in the country. Penal Code section 9.31 justifies force “when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other’s use or attempted use of unlawful force.” Section 9.32 extends this to deadly force where the actor reasonably believes it immediately necessary to protect against unlawful deadly force or certain violent felonies, including sexual assault. Texas famously imposes no duty to retreat: a person who has a right to be present, has not provoked the other person, and is not engaged in criminal activity “is not required to retreat,” and the jury “may not consider whether the actor failed to retreat.”

So why do abused women with legitimate self-defense claims keep getting convicted? Four pressure points, each of which maps exactly onto the reactive abuse dynamic.

First: “verbal provocation alone” is never enough. Section 9.31(b)(1) says force is not justified “in response to verbal provocation alone.” An abuser who is skilled at this, and they are skilled at it, can inflict an hour of threats, taunts, and psychological torment, all of it invisible and inaudible to the recording that starts just before she snaps. If all the jury sees is her hitting him while he talks calmly, her force looks like a response to mere words. The law’s requirement that the threat be “immediate” was written for bar fights between strangers, not for a woman who knows from a hundred prior beatings exactly what his tone of voice means about the next ten minutes.

Second: the “provoked the difficulty” doctrine can be weaponized in reverse. Under section 9.31(b)(4), self-defense is lost if the actor “provoked the other’s use or attempted use of unlawful force” (unless she abandoned the encounter, or clearly communicated that she was abandoning it when she reasonably believed she could not safely do so, and he kept attacking anyway). Prosecutors in these cases argue that the

reacting woman started it: she yelled first, she shoved first, she threw his phone. But the Court of Criminal Appeals in *Smith v. State* set a demanding three-part test before a jury may even be instructed on provocation: there must be evidence that the defendant did some act or used some words that provoked the attack, that the act or words were “reasonably calculated to provoke the attack,” and that they were done “for the purpose and with the intent that the defendant would have a pretext for inflicting harm upon the other.” Provocation forfeits self-defense only when it was a deliberate pretext for violence. A victim’s frayed-nerve outburst after years of abuse is not a calculated pretext to hurt anyone. Notice something else about *Smith*: the person in the relationship who actually satisfies that test, who deliberately engineers a confrontation so he can play the injured party, is the abuser running a provoke-and-record operation. The doctrine describes him, not her.

Third: alcohol hands the State its story. Many of these confrontations happen after both partners have been drinking, and an abuser running the provoke-and-record playbook is perfectly capable of making sure of it. Texas law is unforgiving here. Under Penal Code section 8.04, voluntary intoxication is not a defense to any crime; at most, evidence of temporary insanity caused by intoxication can be offered in mitigation at the punishment stage. Intoxication does not legally bar a self-defense claim, but the practical damage runs deeper than the doctrine. Her drinking gives the State a complete, jury-friendly explanation for the violence that has nothing to do with his years of abuse: she was drunk and out of control. It corrodes her credibility as the only witness to what he did before the recording started. And it invites jurors to discount the reasonableness of her fear. A sober, composed man and an intoxicated, screaming woman is exactly the tableau this manipulation is built to produce, and juries punish it.

Fourth: the reasonableness of her belief is judged by people who have never lived her life. Self-defense turns on what the actor “reasonably believes” is immediately necessary. Jurors evaluate that belief through their own experience, and most

jurors have never had to calibrate, in half a second, whether tonight's version of his anger is the survivable kind. This is where the evidence rules become everything, and it is where trial lawyers in these cases most often fall short.

The Evidence That Wins These Cases (and What Happens When Your Lawyer Never Offers It)

Texas law actually provides the tools to put the full relationship in front of the jury. Whether they get used is another matter.

In murder cases, Code of Criminal Procedure article 38.36 is explicit. Both sides may offer evidence of “the previous relationship existing between the accused and the deceased” and the defendant’s state of mind. More importantly, article 38.36(b) says that a defendant who raises self-defense “shall be permitted” to offer evidence that she “had been the victim of acts of family violence committed by the deceased,” and, critically, “relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense.”

That expert provision codifies a line of Texas cases going back to *Fielder v. State* (1988), where the Court of Criminal Appeals held that expert testimony on the psychological effects of an abusive relationship is admissible to support self-defense, precisely because the average juror has no basis for understanding the conduct of a woman who endures intimate partner violence. A qualified expert can explain to a jury why she did not leave, why she knew the threat was real before he raised a hand, why her reaction was survival and not aggression, and why the calm man on the video is the one to be afraid of. This is the testimony that translates her life into terms twelve strangers can understand.

In non-homicide prosecutions, article 38.371 allows each party in a family violence case to offer evidence of “the nature of the relationship between the actor and the alleged victim.” Prosecutors routinely use this statute against defendants. Defense lawyers representing a reacting victim

should be using it just as aggressively in the other direction: the history of his violence toward her is exactly the context that reframes the recording.

Now the hard truth. In case after case that reaches me on appeal or habeas review, this evidence was never developed. No expert was retained or even consulted. The abuse history was mentioned in passing or not at all. Counsel treated the video as unanswerable and pushed a plea. The jury deliberated on the recording because the recording was all anyone gave them. When that happens, the conviction may not just be tragic. It may be constitutionally infirm, and that is where my work begins.

Sudden Passion: The Difference Between Life and Twenty Years

One more trial-stage doctrine deserves its own section, because it applies in the most serious cases. In a Texas murder trial, after conviction, the defendant may raise at the punishment stage the issue of “sudden passion arising from an adequate cause” under Penal Code section 19.02(d). If she proves it by a preponderance of the evidence, the offense is punished as a second-degree felony: two to twenty years instead of five to ninety-nine or life.

The statute defines “adequate cause” as cause that “would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection,” and “sudden passion” as passion “directly caused by and arising out of provocation by the individual killed,” which “arises at the time of the offense and is not solely the result of former provocation.” That last clause is the hard part for a battered defendant, and I will not pretend otherwise: the State will argue that years of abuse are “former provocation,” so the defense must tie the terror to what he did in the final confrontation itself. For a woman who killed her abuser in a final, terror-filled confrontation, sudden passion is often the fallback position when self-defense fails, and the difference it makes is measured in decades. Here too, the family violence evidence and expert testimony authorized by article 38.36 are what give

the claim its force. A punishment jury that never hears the history cannot find the terror adequate.

After the Conviction: What Can Still Be Done in Texas

Most of the women I represent come to me after all of this has already gone wrong. The recording was played, the context was never presented, the plea was taken under pressure, or the sentence was unthinkable. Texas provides a few post-conviction paths. None of them are easy. All of them are real. And I owe families honesty about the odds: most post-conviction applications are denied, including sympathetic ones, and nothing in this section is a promise. What separates the applications that succeed is almost always the same thing: evidence, developed early, and thoroughly.

Direct appeal. The deadlines are unforgiving: a motion for new trial must be filed within 30 days of sentencing, and a notice of appeal within 30 days (extended to 90 if a motion for new trial was timely filed). An appeal reviews errors in the trial record, such as the exclusion of family violence evidence, the refusal of a self-defense or sudden passion instruction, or an improper provocation instruction that gutted a valid self-defense claim. If you or your loved one was just convicted, do not wait. These deadlines expire while families are still in shock.

The Article 11.07 writ of habeas corpus. For a final felony conviction, the writ of habeas corpus under Code of Criminal Procedure article 11.07 is the main vehicle for challenges based on matters outside the trial record. It is filed in the convicting court and decided by the Court of Criminal Appeals. There is no fixed statutory deadline, though unreasonable delay can hurt (the courts apply a doctrine called laches), and the bar on second applications is strict, which makes it critical to do the first one right.

One more warning that too few families hear: the absence of a Texas deadline does not stop the federal clock. A federal habeas petition generally must be filed within one year of the conviction becoming final, and while a properly filed state application pauses that clock while it is pending, the time that passed before the state application was

filed is gone for good. Waiting years to start the 11.07, means you can lose the option to file federally without ever knowing the filing window closed. The brutal strategic choices that the one-year deadline forces on Texas prisoners deserve an article of its own.

For reactive abuse convictions, the most common and most powerful claim is ineffective assistance of counsel: trial counsel failed to investigate the history of abuse, failed to consult or call a family violence expert of the kind *Fiedler* and article 38.36 expressly permit, failed to offer the relationship evidence article 38.371 allows, or advised a plea, including a “harmless” deferred adjudication, without explaining the family violence finding and its permanent consequences. A habeas application can also present the abuse evidence itself: affidavits, medical records, protective order files, prior police reports, witness accounts, the parts of the story the recording was engineered to hide.

The changed science writ, Article 11.073. Texas has a specific statute allowing habeas relief when the scientific understanding underlying a conviction has changed. It applies where relevant scientific evidence was not available at trial or contradicts the State’s trial evidence, and the statute directs courts to consider whether “the field of scientific knowledge, a testifying expert’s scientific knowledge, or a scientific method” has changed since trial. The Court of Criminal Appeals has granted relief under this statute where a forensic field evolved after conviction. The science of coercive control, trauma responses, and victim behavior has advanced dramatically over the past two decades; DARVO itself has now been validated experimentally. I will be candid: no published Texas appellate decision has yet squarely applied article 11.073 to family violence science, so this is an argument at the frontier, not settled law. But for women convicted years ago, when juries heard nothing about the psychology of abuse or heard outdated characterizations of it, it is an argument worth making, and it is exactly the kind of claim that requires appellate counsel who understand both the science and the statute.

Clemency and commutation. The Governor may grant clemency on the written

recommendation of a majority of the Board of Pardons and Paroles. A commutation reduces the sentence, but Texas requires the written recommendation of a majority of the trial officials in the county of conviction, stating that the penalty now appears excessive, based on facts that existed at the time of trial but were not available to the judge or jury (or a change in the statutory penalty). It is a narrow gate. It has opened for criminalized survivors in other states, and building the record of abuse (the same record the trial lawyer never built) is what a credible commutation application looks like.

What Texas has not done. New York passed the Domestic Violence Survivors Justice Act, which lets courts resentence survivors when their abuse was a significant contributing factor in their offense. Texas has no equivalent. In 2025, the Legislature considered a bill (SB 1278) whose original version would have created an affirmative defense for victims of felony family violence who acted under coercion or duress; the family violence provision was stripped out before passage, and even the narrowed bill was vetoed. A replacement enacted in a special session created an affirmative defense only for victims of human trafficking and compelled prostitution. Even narrower “second look” bills, which would have allowed earlier parole review for people whose crimes were committed before they turned 18, have died in the Legislature session after session. Until that changes, the courtroom remedies described above, and clemency, are what Texas survivors have. Families who care about this issue should know that the gap is legislative, and filling the gap will require pressure from the public.

If Someone You Love Is Living This Right Now

A few practical things I wish every family knew, drawn from the DV advocacy literature and from too many files.

The pattern is provable, but only if it is preserved. Advocates at DomesticShelters.org and elsewhere urge survivors to document everything: photographs of injuries, medical visits, police

reports even when no charges follow, protective order applications, texts and voicemails, dated journals, and the names of anyone who saw or heard anything. In a reactive abuse prosecution, the case is won or lost on context. His one curated clip against her four years of documentation is a very different trial than his clip against her word.

Assume the phone is out. Dr. Fontes’s warning to survivors is blunt: the abuser will use anything you do or say against you, and the situation may be recorded. A person who understands that the provocation is a performance for a future audience is better equipped to survive it, legally as well as physically.

Do not accept a “harmless” plea without appellate-informed advice. Deferred adjudication on a family violence charge is not harmless in Texas. It counts as a conviction for future enhancement, it carries the family violence finding, and it strips defenses from the next case, the one he is already planning to engineer.

If the conviction has already happened, the story is not over. Gather everything now: the trial file, the recording itself (unedited, if it exists; what was cut is often more important than what was kept), medical and CPS and protective order records, and the names of witnesses to his violence. Post-conviction review runs on evidence, and evidence gets harder to find every year.

The Woman the Jury Never Met

Return to the woman I asked you to picture at the beginning, the composite drawn from so many real files. Her jury heard about a woman who “snapped.” They saw the version of her that her abuser had spent years constructing and one afternoon recording. They never met the woman who called a hotline twice and hung up, who slept in her car in the H-E-B parking lot, who went to work with makeup over the bruises, who stayed because he told her, in detail, what would happen if she left. No single client of mine did all of those things. Every one of them lived some version of that list.

The research now has names for everything that happened to her: coercive control, violent resistance, DARVO, provoke and record. The culture is finally catching up; it took a reality TV scandal to do it, but millions of people spent this spring learning that a video of a woman's worst moment is not the whole story. Texas law, in scattered places, already agrees: in a Family Code definition that excludes defensive measures, in an evidence article written for battered defendants, in a provocation doctrine that requires pretext, in a changed-science writ that can reopen old convictions.

What the law knows and how the system works are not yet aligned. Closing that gap, case by case,

woman by woman, is post-conviction work. If someone you love is serving a Texas sentence for surviving her abuser, the time to start is now.

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