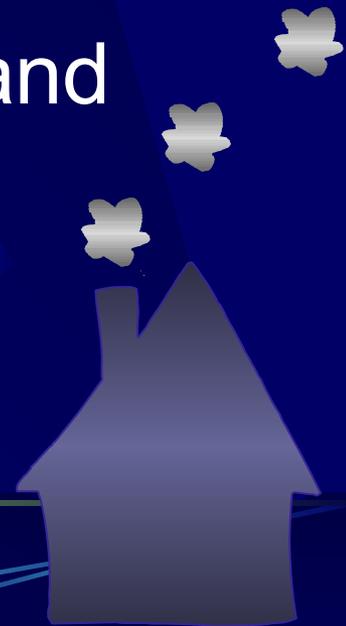


DUAL ARRESTS:
Travesty or Justice?

Sgt. Sandy Kline
Houston Police Department
Family Violence Unit

FOUR CHOICES OF A VICTIM

- **Leave** the abusive relationship
- **Stay** in the abusive relationship and become *passive*
- **Stay** in the abusive relationship and become *combative*
- **Kill** the batterer



GOALS

- **Reduce the inappropriate dual arrests that occur at the scene of family violence crimes**
- **Provide a clear definition of**
 - *Probable Cause*
 - *Primary Aggressor*
 - *Self-Defense*

BLACK'S LAW DICTIONARY

PROBABLE CAUSE



“A suspicion founded upon circumstances sufficiently strong to warrant a reasonable man in belief that the charge is true.”

PROBABLE CAUSE

- Did a crime happen?
- Can you determine who it was that committed the crime?
- Uses a “reasonable man” consideration





*welcome to
my office...*

Examples of PC

- Overturned furniture
- Broken items
- Items thrown about
- Witness statements
- Children statements
- Excited utterances
- *Res gestae*
- Observable behaviors of all parties
- Use of weapons
- Physical description of all parties

Non-PC examples

- Does the victim want to prosecute
- Has the victim cooperated with the police on past investigations
- Marital status or domestic relationship of batterer and victim
- Existence or lack of protective orders
- Victim's preference that an arrest be made
- Occupation, community status, and/or potential financial consequences of arrest

More Non-PC examples

- Complainant's history of prior complaints
- Verbal assurances the violence will cease
- Non-visible injuries
- Victim's emotional state
- Location of the incident (public or private)
- Speculation that the victim may not follow through with the prosecution
- Speculation that the case may not result in a conviction

NON PC EXAMPLES

- Assumptions that violence is **more acceptable** in certain cultures
- Language abilities or barriers and/or **immigration status**
- **Sexual preference or orientation** of the parties
- **Victim remaining** in the abusive relationship

POSITIVE CONSEQUENCES OF DETERMINING *PRIMARY AGGRESSOR*

- Keeps the children with one parent
- Removes the person who is abusing power in the relationship
- Removes the person who is the serious threat in the home
- Stops the re-victimization of the victims of family violence

Three **P**'s of determining *Who is the batterer?*



● **PRINCIPAL**



● **PRIMARY**



● **PREDOMINANT**

Primary Aggressor consider the following:

- Who poses the **most danger** to the other?
- Who is at most risk of **future harm/injury**?
- Was the amount of force used **appropriate and reasonable**?
- What is the relative **severity** of the injuries inflicted on each person?
- Did one person act in **self-defense**?
- Have there been **prior complaints** of family violence with the involved parties?

Who is afraid of Whom?

- Is he afraid of her?
- Is she afraid of him?



DECISION TREE

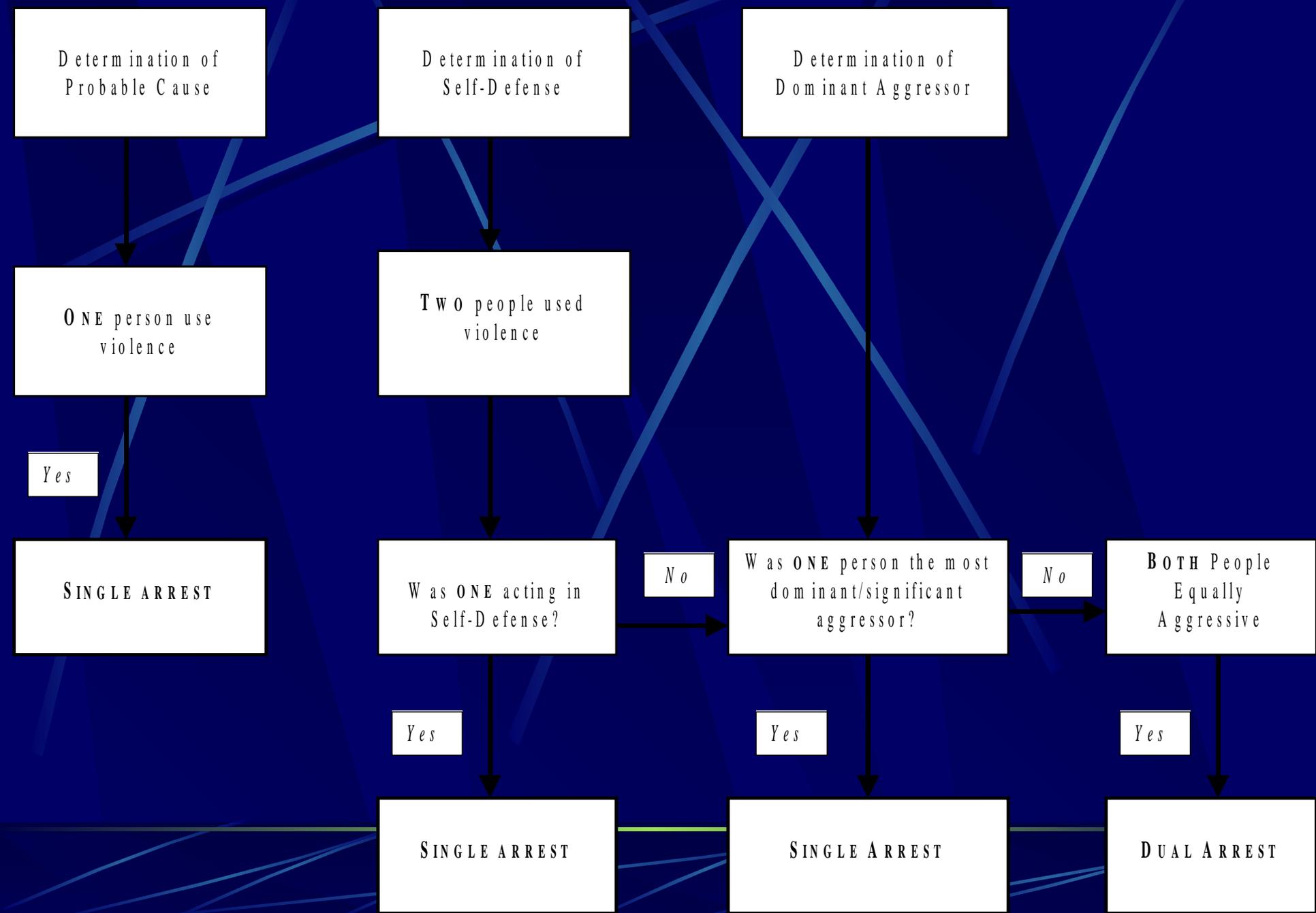


Officers must immediately assess
THREAT level

Once scene is secured, officers
must determine **PROBABLE
CAUSE**

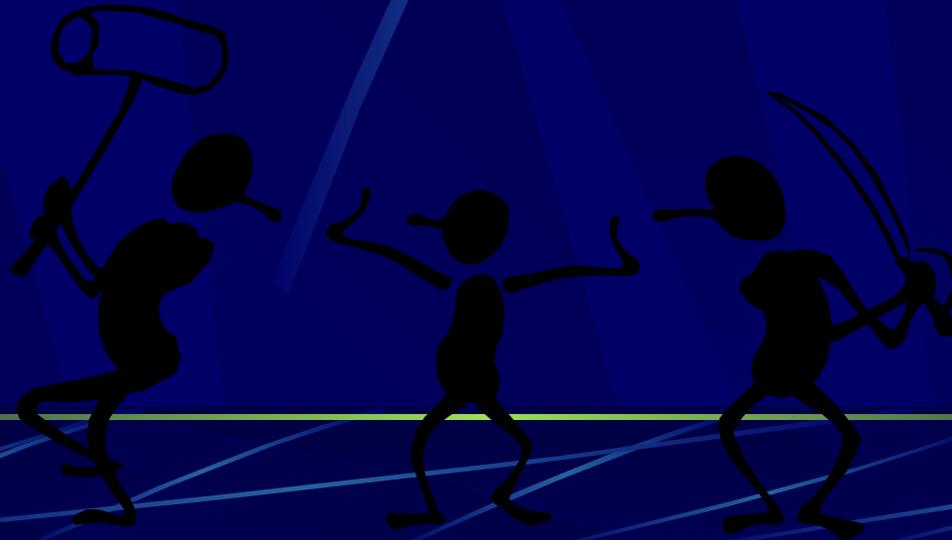
If a crime has occurred and there
are dual injuries, officers should
attempt to **IDENTIFY THE
DOMINANT AGGRESSOR**

FAMILY VIOLENCE INCIDENT DECISION TREE



Use of Self-Defense

- An individual is justified in using force against another to protect himself or herself



**So....How do we
know if it is self-
defense??**



Black's Law Dictionary

4th edition

- “The **law of self defense** justifies an act done in the *reasonable* belief of **immediate danger**, and, if an injury was done by defendant in justifiable self defense, he can never be punished criminally or held responsible for damages in civil action.”

To be considered self-defense, it must be

Reasonable

and

Necessary



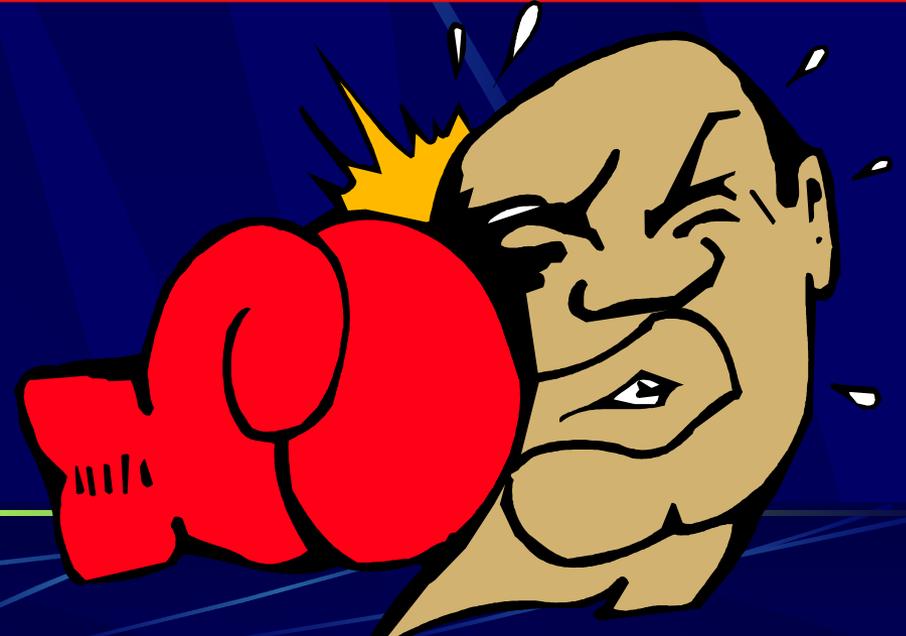
Reasonable

- Must have a reasonable belief that they are in danger of death or great harm



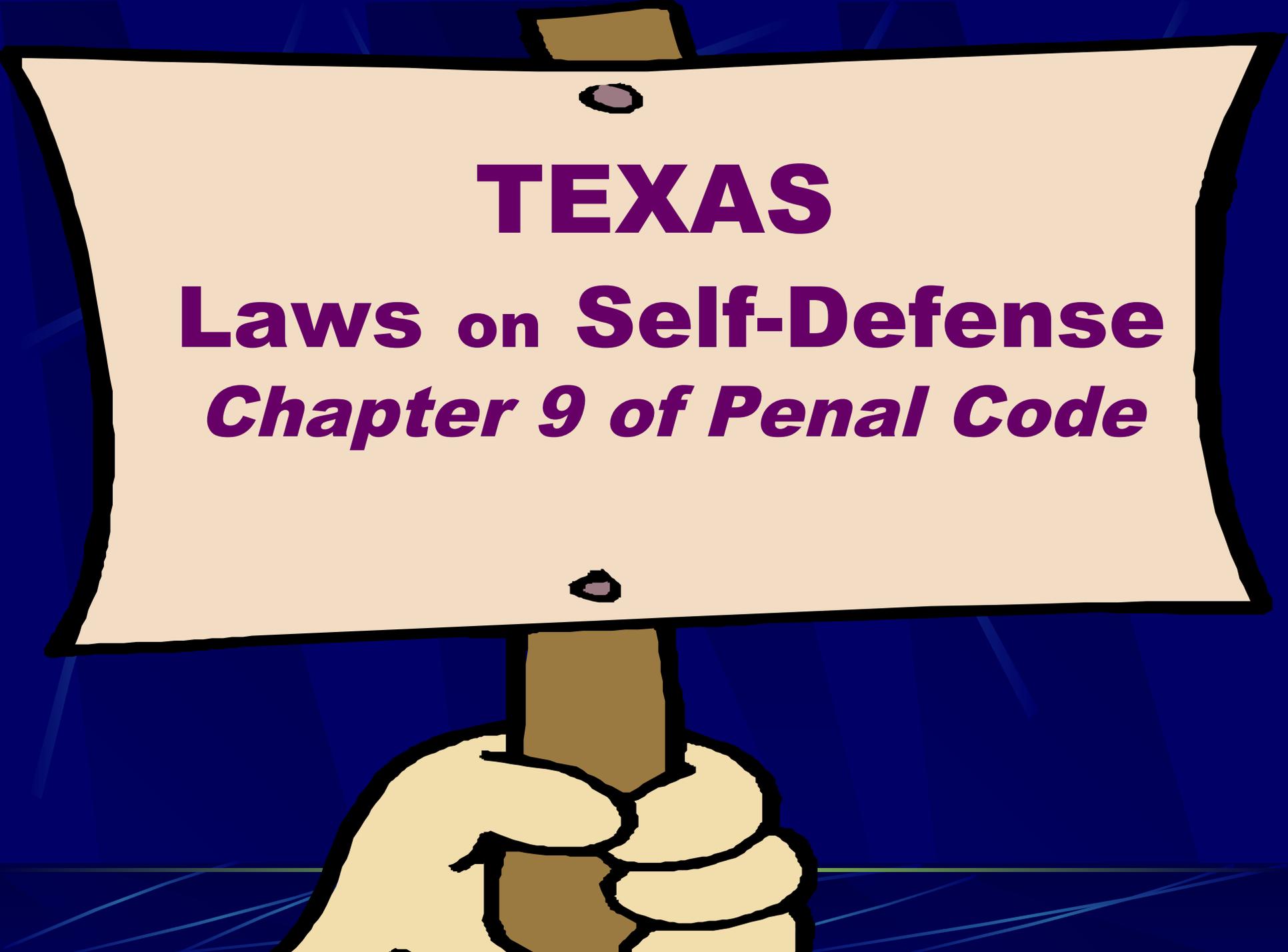
NECESSARY

● It is *necessary* for the person to use force to prevent harm to himself or



When force is used:

- Must be no greater than that **necessary** to prevent personal harm.

A hand holding a sign with text about Texas laws on self-defense. The sign is yellow with a black border and is held by a hand with a brown sleeve. The background is dark blue with light blue lines.

TEXAS

Laws on Self-Defense
Chapter 9 of Penal Code

Self-defense *Versus* Mutual violence



A person is **justified**
in **using force** against another

When and to the degree he **reasonably** believes
the force is **immediately necessary**

To protect himself against the other's use or
attempted use of **unlawful** force

Defensive Injuries

- Scratches to the back of hands, wrists, arms, or back
- Scratches to the face or neck
- Bite marks on inside of arms, chest, or neck
- Indications of hair being pulled
- Groin or kicking injuries
- Injuries caused by hard object or weapon (*an equalizer*)
- Injuries predominantly on back, buttocks, and back of legs (*indicates fetal position*)
- Injury on top/back of head

When use of force against another is NOT JUSTIFIED...

- In the response to **verbal provocation alone**
- if the person consented to the exact force used or attempted by the other



Force **NOT JUSTIFIED** when

- The suspect **provoked** the other's use or attempted use of unlawful force unless
 - the suspect **abandons the encounter** or **clearly communicates** his intent to abandon the encounter AND
 - the **other nevertheless continues** or attempts to use unlawful force against the suspect

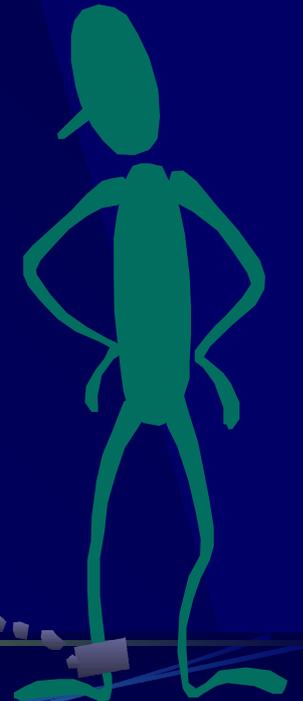
Force **NOT JUSTIFIED** if

- the suspect sought an explanation from or discussion with the other person concerning the suspect's differences with the other person while the suspect was:
 - **carrying a weapon** in violation of the Penal Code
 - **possessing or transporting a weapon** in violation of the Penal Code



Confinement as JUSTIFIABLE FORCE

- Confinement is justified when force is justified
 - actor should take *reasonable measures* to *terminate the confinement* as soon as he knows he safely can



THREATS as JUSTIFIABLE FORCE

- **Threat** of force is *justified* when the use of force is justified
- A **THREAT** to cause death or serious bodily injury by the *production of a weapon* does **NOT** constitute deadly force as long as the purpose is limited to *creating an apprehension* that he will use deadly force if necessary.

Some other things to consider

- Both parties will tell their “story”
 - Make sure the facts of each story match the evidence at the scene
 - If both stories are conflicting, ask yourself, *“Who has the most to gain from lying?”*
 - Victim will lie to protect the batterer
 - The batterer will lie to protect him or herself

POLICE LINE DO NOT CROSS POLICE LINE DO NOT CROSS POLICE

POLICE LINE DO NOT CROSS POLICE LINE DO NOT CROSS PO

- Look for **disparity of force** between the two parties
 - One pushes, the other punches
- **Injuries should match** the story being told of how they occurred

POLICE LINE DO NOT CROSS POLICE LINE DO NOT CROSS POLIC



What happens when an inappropriate arrest is made (*or NOT made*)?

- Victim won't call the police again
- Lethality will increase for the batterer
- Increased harm and punishment will be in store for the victim
- Hopelessness and isolation may increase
- Victim may become suicidal, may abuse substances, or become depressed.

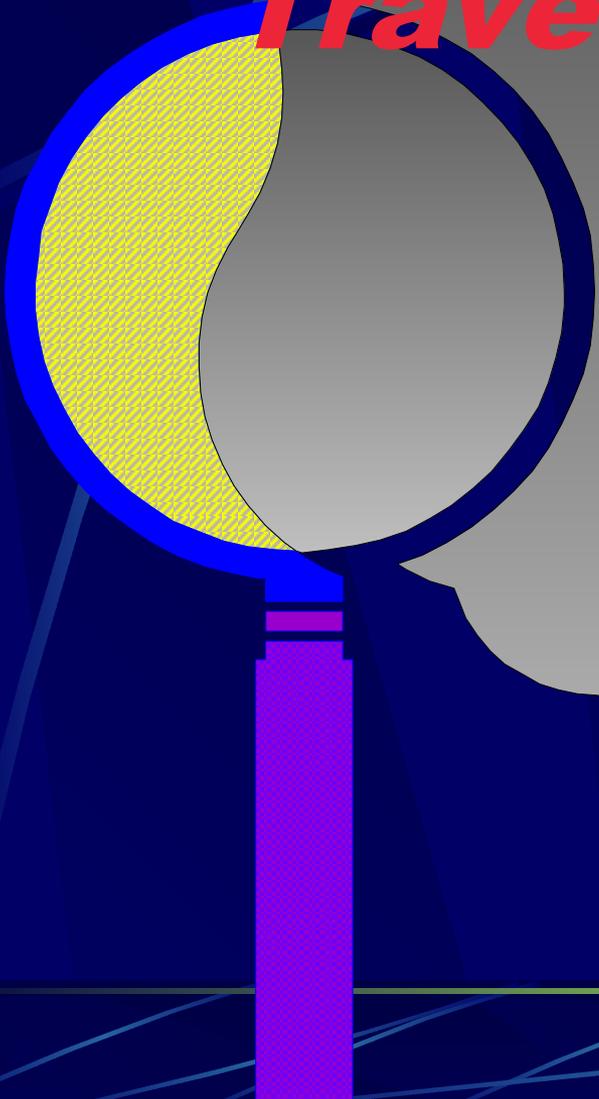


Conducting a thorough investigation is **vital** to family violence incidents



Failure to do so can result in long-term repercussions to the family and society





DUAL ARRESTS:
Travesty or Justice?

Sgt. Sandy Kline
Houston Police Department
Family Violence Unit
1200 Travis, Suite 1101
Houston, Texas 77002
713-731-5960

e-mail:
Skline@policeone.com