It is an affirmative defense to prosecution for a person charged with intentionally or knowingly by omission causing serious bodily injury that there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child and failed to report the incident; and the person was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with (OFFENSE), which is an offense under Title 5 of the Texas Penal Code against the child, and the person did not cause the serious bodily injury; and the person did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child from committing the offense would have an effect.

The term “family violence” means:

1. 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 sexual assault or that is a threat that reasonably places the family member in fear of imminent harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

OR

1. dating violence;

"Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

(a.) is committed against a victim or applicant for a protective order:

(i.) with whom the actor has or has had a dating relationship; or

(ii.) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(b.) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

"Dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(1) the length of the relationship;

(2) the nature of the relationship; and

(3) the frequency and type of interaction between the persons involved in the relationship.

(4) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship".

The defendant must prove the affirmative defense by a preponderance of the evidence.

By the term "preponderance of the evidence" is meant the greater weight of the credible evidence.

Now, if you find from the evidence beyond a reasonable doubt that the defendant did commit the offense of Injury to a Child as alleged in the indictment, but you further find by a preponderance of the evidence that:

(1) there is no evidence that, prior to on or about the (DATE OF OFFENSE), the defendant was aware of an incident of injury to the child, (NAME OF COMPLAINANT), and failed to report the incident; and

(2)(NAME OF DEFENDANT) was a victim of family violence, as hereinabove defined, committed by (NAME OF CO-DEFENDANT) a person who is also charged with an offense against the child, (NAME OF COMPLAINANT); and

(3) you further find by a preponderance of the evidence that (NAME OF DEFENDANT) did not cause the serious bodily injury; and

(4) did not reasonably believe at the time of the omission that an effort to prevent (NAME OF CO-DEFENDANT) from committing the offense would have an effect, then you will acquit the defendant and say by your verdict "not guilty".

However, if you find that the defense has failed to prove the above by a preponderance of the evidence, then you should not consider the above instruction for any purpose whatsoever.