

# CHILD ABUSE: FOUR CASE PATHS

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## HYPOTHETICAL

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You are sitting in your office and the phone rings. Person on other end says they are being **accused of punching their child in the gut**. They ask for your help.

# THE ROAD AHEAD

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**Criminal**



**Civil**

**Family**

**Juvenile**

**Assault**

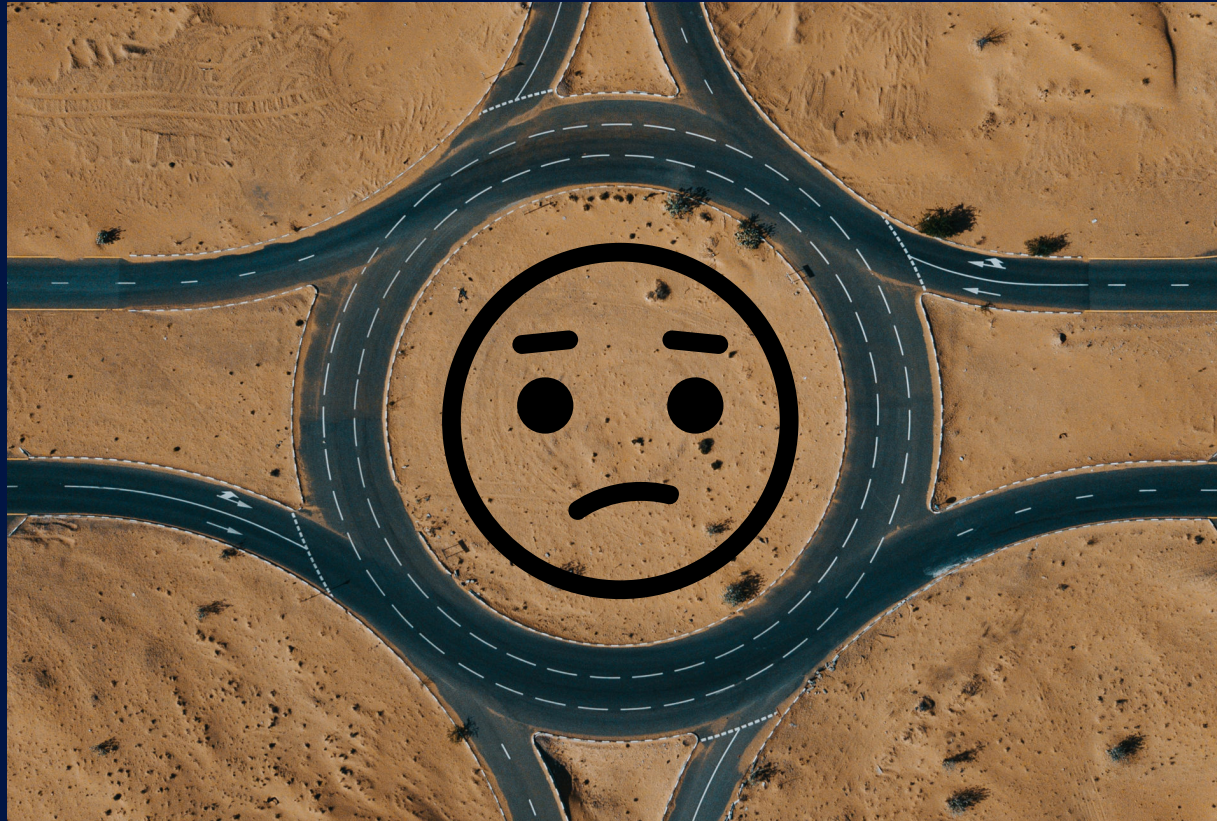


**OFP**

**Custody**

**CHIPS**

**Assault**

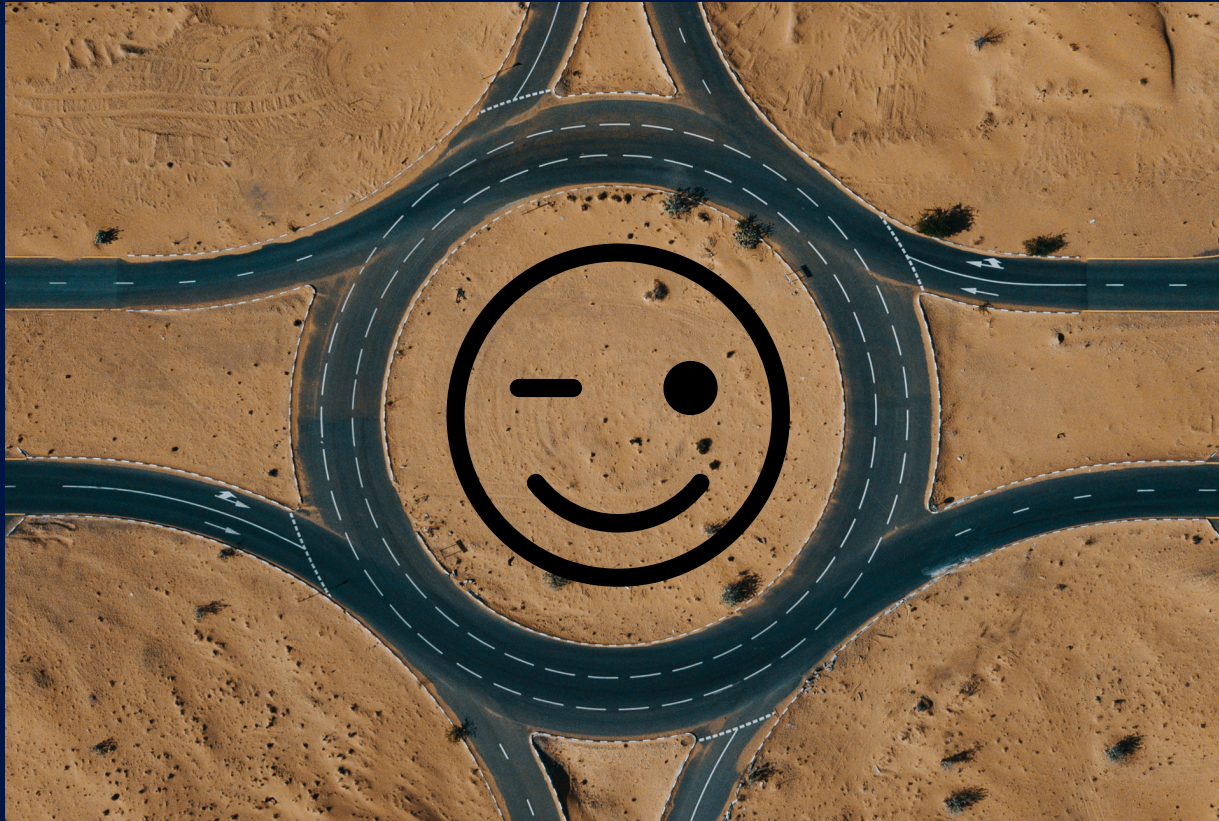


**OFP**

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**OFP**

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CIVIL : ORDER FOR PROTECTION

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**Minnesota Domestic Abuse Act:**  
**Minn. Stat. sec. 518B.01**



## CIVIL : ORDER FOR PROTECTION

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Makes it an **enhanceable crime** for someone to engage in certain otherwise legal behaviors, such as:  
(1) having contact; (2) being in presence.

## CIVIL : ORDER FOR PROTECTION

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**Bases for OFP: (1) family or household member; (2) existence of domestic abuse.**

CIVIL : ORDER FOR PROTECTION

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**Preponderance** of the evidence  
standard.

## CIVIL : ORDER FOR PROTECTION

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**Domestic abuse: (1) physical harm;**  
**(2) infliction of fear of imminent**  
**physical harm; (3) sexual**  
**misconduct; (4) interference with**  
**911 call.**

## CIVIL : ORDER FOR PROTECTION

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**Fear** of imminent physical harm  
must be both **timely** and **reasonable**.

## CIVIL : ORDER FOR PROTECTION

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Act of **assault** need **not be timely**,  
but **totality of the circumstances** will  
be considered.

## CIVIL : ORDER FOR PROTECTION

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**Action commenced by **filing petition** with the court by reputable adult over age 25 or a mature 16+ minor.**

## CIVIL : ORDER FOR PROTECTION

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**Venue** rests in county of residence of either party, county of pending or completed family court action, or county where act of domestic abuse occurred.



## CIVIL : ORDER FOR PROTECTION

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Cases get docket **priority**, **waiver** of filing and service fees, simplified **forms** and clerical **assistance**.

## CIVIL : ORDER FOR PROTECTION

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Petition is **filed ex parte**. Court either grants temporary OFP and sets hearing or denies temporary OFP and sets hearing.

## CIVIL : ORDER FOR PROTECTION

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Available relief: (1) **restrain** further acts; (2) **exclude** from dwelling and area; (3) temporary **custody**; (4) temporary **support**; (5) **no contact**; (6) **counseling**; (7) **restitution**; (8) **insurance**; and (9) **pets**.

## CIVIL : ORDER FOR PROTECTION

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**Duration is not to exceed **two years**,  
unless court deems otherwise.**

## CIVIL : ORDER FOR PROTECTION

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**Extensions** available if: (1) violation of OFP; (2) reasonable fear of safety; (3) harassment; or (4) pending release.

## CIVIL : ORDER FOR PROTECTION

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**Firearm possession** precluded if appropriate VAWA findings. Must turn over to another with proof of transfer.

## CIVIL : ORDER FOR PROTECTION

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Respondent's testimony is **inadmissible** in a trailing **criminal** proceeding. However, the **family and juvenile** court **must take it into account**.

## CIVIL : ORDER FOR PROTECTION

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Seeking an OFP is **not a substitute for a family court action**. Some file a meritless OFP in an effort to circumvent normal processes and judges don't like it.



## FAMILY : CUSTODY PROCEEDING

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All family court proceedings utilize a **preponderance** of the evidence standard.

## FAMILY : CUSTODY PROCEEDING

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Proceedings include an **initial custody determination** (divorce or paternity action) or custody **modification** motion (divorce or paternity action).

## FAMILY : CUSTODY PROCEEDING

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Initial custody determinations invoke the **12 best interest of the child factors**. One of those factors involves domestic abuse.

## FAMILY : CUSTODY PROCEEDING

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**Factor #4:** whether domestic abuse, per 518B.01, has occurred...the **nature and context**; and the implications...for the child's safety, well-being, and developmental needs.

## FAMILY : CUSTODY PROCEEDING

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Relief may be sought by filing an **emergency** ex parte motion, **standard** motion for temporary relief or **final trial** on the merits.

## FAMILY : CUSTODY PROCEEDING

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**Trial **witnesses** may include eyewitnesses, responding officers, treating doctors, a custody evaluator, or guardian ad litem.**

## FAMILY : CUSTODY PROCEEDING

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**Parenting time options** include: (1) suspension; (2) phone or video; (3) safety center; (4) supervised by third-party; or (5) time in public location.

## FAMILY : CUSTODY PROCEEDING

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**Custody modification** proceedings invoke a four-factor test in a two-step process.



## FAMILY : CUSTODY PROCEEDING

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Do I **have to abide** by the existing order?

## FAMILY : CUSTODY PROCEEDING

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**Four-factor test** to modify: (1) change in circumstance; (2) best interest; (3) endangerment; and (4) burden v. benefit.

## FAMILY : CUSTODY PROCEEDING

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**Two-step process:** (1) file motion with affidavits. If accepted as true, prima facie basis? If so, (2) appoint guardian ad litem and set for evidentiary hearing. If not, done.

## FAMILY : CUSTODY PROCEEDING

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**Responsive pleadings** can only be used by court to put moving party's claims into **context**.

## FAMILY : CUSTODY PROCEEDING

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**Evidentiary hearing** (trial) will generally involve the same witnesses as an initial custody determination.

## FAMILY : CUSTODY PROCEEDING

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**Consequences for making **false claims** of domestic abuse in family court are serious.**

## CRIMINAL : ASSAULT CHARGES

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The burden of proof in criminal cases is **beyond a reasonable doubt.**

## CRIMINAL : ASSAULT CHARGES

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**Assault is an **enhanceable** offense.**



## CRIMINAL : ASSAULT CHARGES

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**Fifth degree** assault involves intent to cause fear of bodily injury or death, or intentionally inflicting, or attempting to inflict, **bodily harm**.

## CRIMINAL : ASSAULT CHARGES

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**Third degree** assault involves inflicting **substantial bodily harm** (temporary but significant disfigurement, including fracture or loss of function).

## CRIMINAL : ASSAULT CHARGES

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**Second degree** assault involves inflicting substantial bodily harm by using a **dangerous weapon**.

## CRIMINAL : ASSAULT CHARGES

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**First degree** assault involves inflicting **great bodily harm** (high probability of death or causes serious disfigurement or loss or impairment of function or organ).

## CRIMINAL : ASSAULT CHARGES

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**Malicious punishment** charges balance right to discipline against **standard of reasonableness** and take into the account the severity of the act and age of the child.

## CRIMINAL : ASSAULT CHARGES

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**What is reasonable?** Spanking?  
Wooden spoon? The belt? Clothed  
or unclothed? Bruising? Bleeding?  
Number of strikes? Nature of strike?

## JUVENILE : CHIPS PROCEEDING

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**Child in need of protective services (CHIPS) cases involve a **clear and convincing** evidence standard.**

## JUVENILE : CHIPS PROCEEDING

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The **mission** of the state is to address circumstances involving a child's health, safety and welfare and correct them.



## JUVENILE : CHIPS PROCEEDING

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**Anyone can report** a concern to protective services. **Mandated reporters** are required to do so. The identity of one who reports is to remain **confidential**.

## JUVENILE : CHIPS PROCEEDING

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**Immediate investigation** takes place through protective services, with the hope that the parent(s) will **voluntarily** enter into a safety plan. Some do so, address the situation, and matters come to close.

## JUVENILE : CHIPS PROCEEDING

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Others **do not address** the situation informally, leaving protective services to determine whether a **Petition** will be filed in juvenile court.

## JUVENILE : CHIPS PROCEEDING

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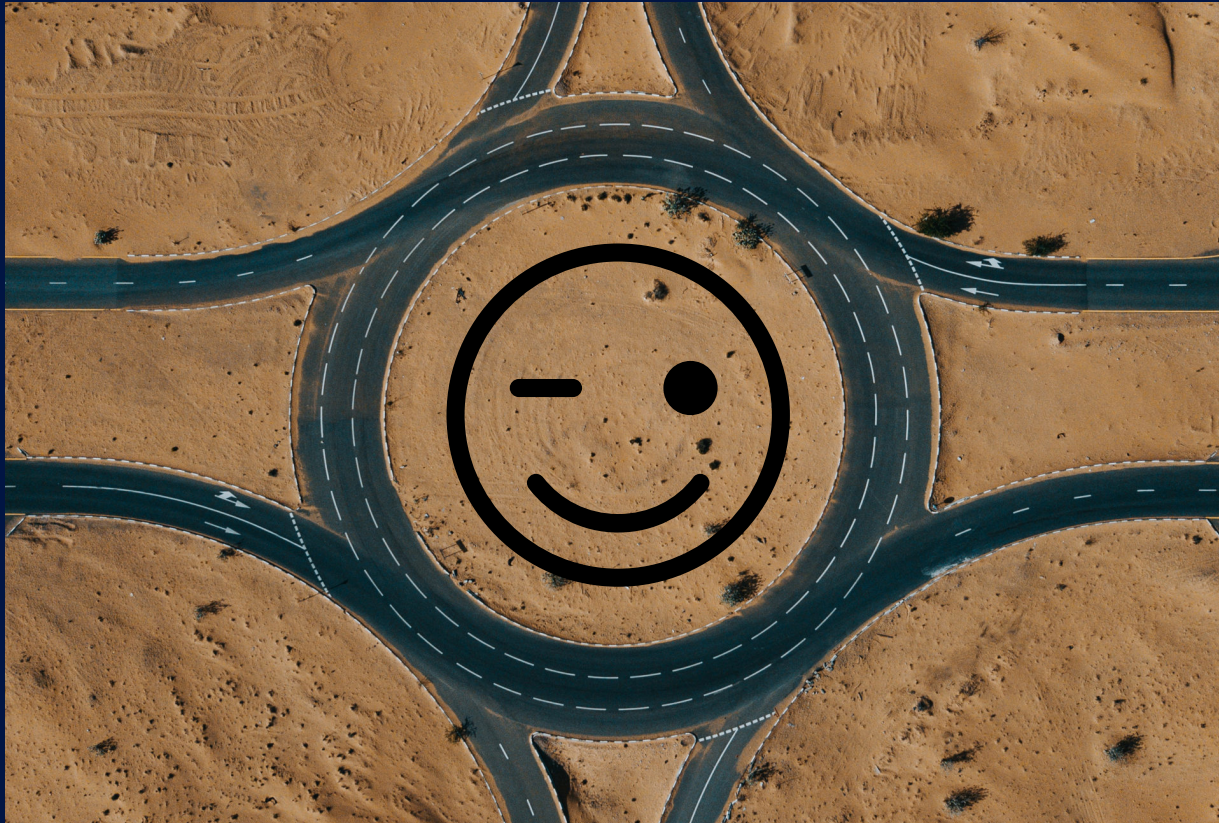
If parents **remain unable to remedy** the issue(s) leading to a protective services case, a **termination** of parental rights case **may follow.**

## JUVENILE : CHIPS PROCEEDING

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The **obligation of the state** is to make reasonable, **active efforts** to address matters for **one year** before termination may occur.

**Assault**

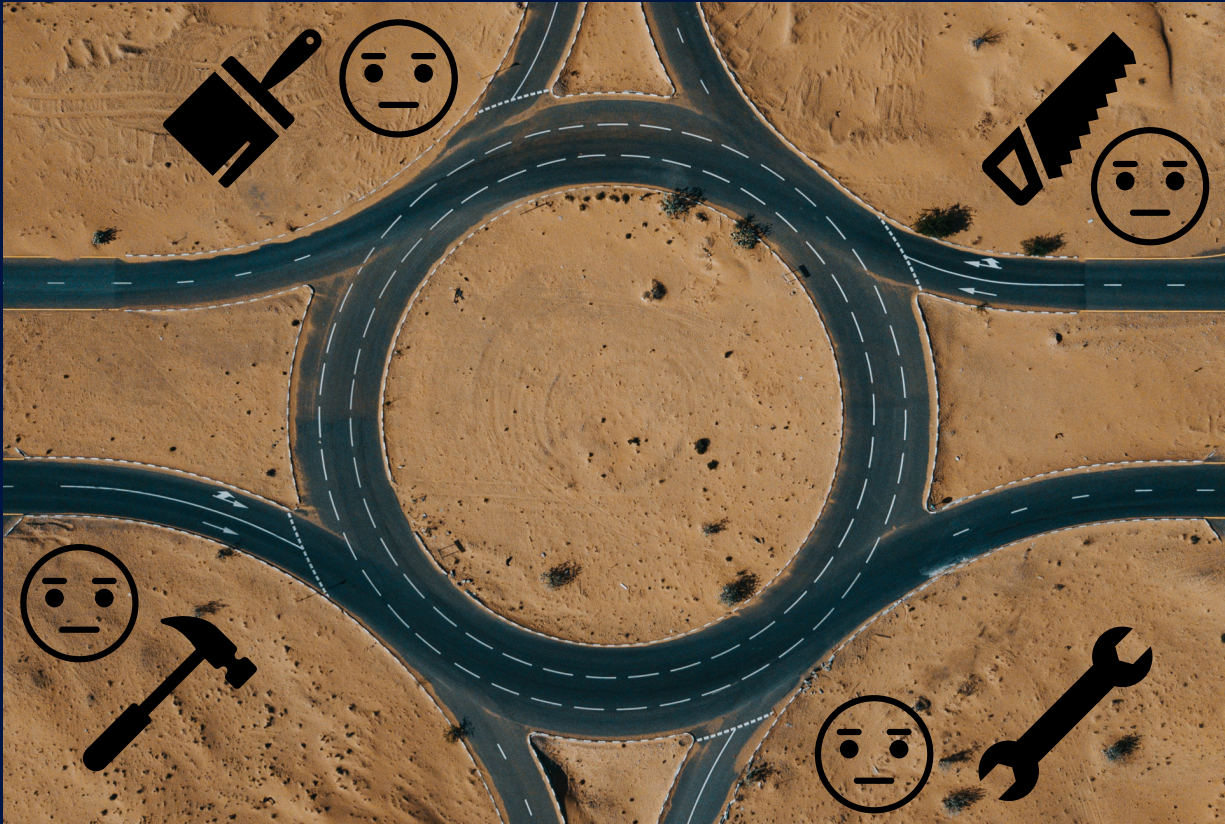


**OFP**

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Assault



OFFP

Custody

CHIPS

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