

# STATE OF NEW HAMPSHIRE



## OFFICE OF THE ATTORNEY GENERAL:

### A MODEL PROTOCOL FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE CASES

<https://www.doj.nh.gov/criminal/victim-assistance/protocols.htm>

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## DOMESTIC VIOLENCE INVESTIGATION CHECKLISTS

These checklists are meant to bring attention to several priority responsibilities for law enforcement's response to a domestic violence incident. They are not intended to exclude any responsibilities that may be identified due to unique circumstances presented during a specific report. These checklists are to be utilized as best practice guidelines.

<b>VICTIM (interview separate from defendant)</b>	
<input type="checkbox"/> Describe the victim's location upon arrival.	<input type="checkbox"/> Conduct LAP screen.
<input type="checkbox"/> Record victim's name, DOB, address, home and work phone numbers.	<input type="checkbox"/> Note any protective/court orders in effect.
<input type="checkbox"/> Note time dispatched, time arrived.	<input type="checkbox"/> Advise and provide victim with written notice of rights and services available.
<input type="checkbox"/> Record any spontaneous statements (excited utterances) made by the victim.	<input type="checkbox"/> Ask victim about the presence and location of any firearms and ammunition that the suspect has access to.
<input type="checkbox"/> Describe the victim's physical and emotional condition (i.e., demeanor, impairment or lack thereof).	<input type="checkbox"/> Ask victim about the presence and location of any deadly weapons that were used, may have been used or threatened to be used by the suspect.
<input type="checkbox"/> Note victim's relationship to suspect (married, boyfriend/girlfriend/significant other, family member, etc.)	<input type="checkbox"/> Obtain statement from victim ( <b>audio or video is best practice</b> ). If using a body worn camera, ensure express consent is obtained before recording interview with victim.
<input type="checkbox"/> Document the victim's injuries in detail (size, location and coloration).	<input type="checkbox"/> Ask victim if any aspect of crime was facilitated by use of any technological devices (cell phone, computer, instant messaging, text, social networking, etc.)
<input type="checkbox"/> If victim received or may receive any medical attention, complete medical records release form and have victim sign it.	<input type="checkbox"/> Discuss options available for protective orders.

<b>SUSPECT (interview separate from victim)</b>	
<input type="checkbox"/> Note suspect's location upon arrival.	<input type="checkbox"/> Ask suspect about the presence, location, type of firearms and ammunition, in suspect's control, ownership or possession.
<input type="checkbox"/> Record suspect's name, DOB, address, home and work phone numbers.	<input type="checkbox"/> Ask suspect about the presence and location of any deadly weapons that <u>were used, may have been used or threatened to be used</u> during incident.
<input type="checkbox"/> Record any spontaneous statements (excited utterances) made by the suspect.	<input type="checkbox"/> <b>If arrested</b> , issue Miranda rights, ask suspect if they wants to make a statement, knew of restraining order, and/or understood order.
<input type="checkbox"/> Describe the suspect's physical and emotional condition (i.e. demeanor, impairment or lack thereof).	<input type="checkbox"/> Obtain audio, video or written statement from suspect. Audio or video is preferred.
<input type="checkbox"/> Describe the suspect's injuries in detail (size, location and coloration).	<input type="checkbox"/> If an arrest is affected for a violation of a protective order, seize all firearms and ammunition in the defendant's control, ownership or possession and any deadly weapons which may have been used, or threatened to be used during the violation.
<input type="checkbox"/> Complete medical records release form and have suspect sign it.	<input type="checkbox"/> If probable cause exists to believe abuse has occurred as outlined in 173-B:1, seize all firearms and ammunition in the defendant's control, ownership or possession and any deadly weapons involved in the abuse.
<input type="checkbox"/> If arrested, request criminal protective order as condition of bail.	

<b>CHILDREN</b>	
<input type="checkbox"/> <b>If children are present, a determination should be made as to whether or not an interview is necessary on scene. If you MUST interview a child, do it away from the offender. KEEP THIS INTERVIEW TO A MINIMAL FACTS INTERVIEW. In a felony level dv case, refer to CAC for forensic interview of child.</b>	<input type="checkbox"/> Describe each child's physical and emotional condition.
<input type="checkbox"/> Interview each child alone. Special efforts should be made to minimize the impact on the child even if it includes not taking a statement.	<input type="checkbox"/> Describe and document each child's injury, if applicable.

<input type="checkbox"/> Every report should include if children live in the home, whether or not they are present, and child's relationship to each person present at scene.	<input type="checkbox"/> Record any spontaneous statements (excited utterances) made by the children.
<input type="checkbox"/> List names, ages, and school attended for each child present.	<input type="checkbox"/> Make report to DCYF within 24 hours if children were present at the incident.

<b>WITNESSES</b>	
<input type="checkbox"/> Interview the reporting party.	<input type="checkbox"/> Identify treating physician and hospital.
<input type="checkbox"/> Identify all witnesses and take an audio, video or written statement. Audio or video statement is preferred.	<input type="checkbox"/> Obtain audio or written statements from medical personnel. Medical release form required.
<input type="checkbox"/> Record all witnesses' addresses and phone numbers.	<input type="checkbox"/> Record any spontaneous statements (excited utterances) made by the witness.
<input type="checkbox"/> Record names and addresses of emergency personnel who are present or responded to the call.	

<b>EVIDENCE</b>	
<input type="checkbox"/> Record the "911" number and incident number.	<input type="checkbox"/> Obtain copies or photographs of any text messages, e-mails, phone messages or other social networking materials.
<input type="checkbox"/> Obtain recording of "911" call.	<input type="checkbox"/> Complete preservation orders and follow up with grand jury subpoena or search warrant if necessary.
<input type="checkbox"/> Photograph the victim's injuries.	<input type="checkbox"/> Obtain copies or all medical records from doctors, and responding emergency service personnel.
<input type="checkbox"/> Photograph the suspect's injuries.	<input type="checkbox"/> Obtain copies of any civil protective orders or criminal bail orders in effect.
<input type="checkbox"/> Impound and take into evidence all deadly weapons <u>used or threatened to be used.</u>	<input type="checkbox"/> Follow-up with victim within 48 hours and re-photograph additional bruising.
<input type="checkbox"/> Photograph and take into evidence any objects thrown, broken, or otherwise used in incident.	<input type="checkbox"/> If applicable, listen to the defendant's jail calls.

# TABLE OF CONTENTS

**DOMESTIC VIOLENCE INVESTIGATION CHECKLISTS..... i**

**NEW HAMPSHIRE DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL  
COMMITTEE..... vi**

**PREFACE ..... 1**

**POLICY ..... 2**

**VAWA FUNDING STATEMENT ..... 2**

**DOMESTIC VIOLENCE INVOLVING LAW ENFORCEMENT..... 3**

*LIABILITY ISSUES..... 3*

**VICTIM RESPONSES..... 5**

*VICTIM REACTIONS..... 5*

*REASONS FOR VICTIM RELUCTANCE..... 5*

**CULTURAL CONSIDERATIONS: SPECIAL VICTIM POPULATIONS..... 7**

*CHALLENGES..... 7*

*CULTURAL AND RELIGIOUS CONSIDERATIONS..... 7*

*IMMIGRANT VICTIMS..... 7*

U VISAS AND T VISAS ..... 8

*VICTIMS WITH DISABILITIES..... 9*

*USE OF INTERPRETERS..... 10*

*LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, INTERSEX (LGBTQ+) AND NONBINARY  
VICTIMS..... 10*

*RURAL VICTIMS..... 11*

*HOMELESS VICTIMS..... 11*

*MALE VICTIMS..... 11*

*TEENAGE VICTIMS..... 12*

*ELDERLY VICTIMS..... 13*

**CRISIS CENTER VICTIM SERVICES ..... 16**

**ROLE OF THE DISPATCHER AND CALL TAKERS..... 17**

**USE OF BODY-WORN CAMERAS ..... 19**

*FIRST RESPONDER CONTACT WITH A VICTIM..... 19*

*INTERVIEWING THE VICTIM..... 20*

<b>ROLE OF THE FIRST RESPONDER.....</b>	<b>21</b>
<i>OFFICER SAFETY CONCERNS.....</i>	<i>21</i>
<i>EXIGENT CIRCUMSTANCES .....</i>	<i>22</i>
<i>IDENTIFYING THE PREDOMINANT PHYSICAL AGGRESSOR .....</i>	<i>23</i>
FACTORS .....	23
DOCUMENTATION .....	24
<i>ON-SCENE INVESTIGATION.....</i>	<i>25</i>
INTERVIEWS .....	25
COLLECTING PHYSICAL EVIDENCE .....	27
PHOTOGRAPHS .....	27
<i>DOMESTIC VIOLENCE LETHALITY ASSESSMENT PROGRAM .....</i>	<i>28</i>
<b>CHILDREN .....</b>	<b>32</b>
<i>GATHERING INFORMATION AND ASSESSING SAFETY OF CHILDREN.....</i>	<i>33</i>
<i>WHEN A CHILD IS LOCATED.....</i>	<i>34</i>
<i>TALKING WITH CHILDREN ABOUT THE INCIDENT .....</i>	<i>35</i>
<i>CONDUCTING A MINIMAL FACTS INTERVIEW .....</i>	<i>35</i>
<i>CHILD ADVOCACY CENTERS.....</i>	<i>35</i>
<i>INTERVIEWING WITNESSES IN THE PRESENCE OF CHILDREN.....</i>	<i>36</i>
<b>THE ARREST DECISION .....</b>	<b>37</b>
<i>MANDATORY ARREST.....</i>	<i>37</i>
<i>WARRANTLESS ARREST.....</i>	<i>38</i>
<i>PROCEDURE WHEN ARREST IS NOT POSSIBLE.....</i>	<i>39</i>
<i>PROTECTION BY LAW ENFORCEMENT .....</i>	<i>40</i>
<i>CONFIDENTIALITY OF VICTIM’S LOCATION/ADDRESS .....</i>	<i>40</i>
<i>EMERGENCY CARE, LIMITATIONS AND LIABILITY RSA 173-B:12 .....</i>	<i>40</i>
<b>VICTIM RIGHTS AND NOTIFICATION.....</b>	<b>41</b>
<b>BAIL ISSUES .....</b>	<b>42</b>
<i>MANDATORY DETENTION .....</i>	<i>42</i>
<i>GUIDELINES FOR ISSUING BAIL AND CRIMINAL PROTECTIVE ORDERS PENDING</i> <i>ARRAIGNMENT .....</i>	<i>42</i>
FIREARMS .....	43
<i>PREVENTIVE DETENTION .....</i>	<i>44</i>
<i>WHEN A DEFENDANT VIOLATES A CONDITION OF BAIL.....</i>	<i>45</i>
<b>CHARGING AND SENTENCING DECISIONS .....</b>	<b>47</b>

<i>CHARGING</i> .....	51
<i>PRIOR CONVICTIONS AND THE IMPACT ON CHARGING</i> .....	53
<i>IF NO CHARGES ARE FILED</i> .....	53
<i>SENTENCING</i> .....	54
<b>PROTECTIVE ORDERS</b> .....	<b>56</b>
<i>DOMESTIC VIOLENCE PROTECTIVE ORDERS UNDER RSA 173:B</i> .....	56
EMERGENCY/TELEPHONIC PROTECTIVE ORDERS .....	58
TEMPORARY CIVIL PROTECTIVE ORDERS .....	59
FINAL CIVIL PROTECTIVE ORDERS .....	59
SERVICE OF CIVIL DOMESTIC VIOLENCE (173-B) ORDERS .....	59
ENFORCEMENT OF CIVIL DOMESTIC VIOLENCE (RSA 173-B) PROTECTIVE ORDERS	
.....	61
<i>OTHER PROTECTIVE ORDERS</i> .....	62
CRIMINAL BAIL PROTECTIVE ORDERS .....	62
STALKING PROTECTIVE ORDERS - RSA 633:3-a .....	62
MARITAL ORDERS OF PROTECTION - RSA 458:16 .....	63
PARENTING ORDERS OF PROTECTION- RSA 461-A:10.....	63
CHILD PROTECTION ACT (RSA 169-C) ORDERS OF PROTECTION .....	64
EQUITY ORDERS OF PROTECTION - RSA 491 .....	65
<i>CIVIL STANDBYS</i> .....	66
VICTIM .....	66
DEFENDANT .....	66
<b>FULL FAITH AND CREDIT FOR DOMESTIC VIOLENCE PROTECTION ORDERS</b> .....	<b>67</b>
<b>FIREARMS ISSUES</b> .....	<b>68</b>
<i>DEFINITIONS</i> .....	69
<i>RELINQUISHMENT OR SEIZURE IN ACCORDANCE WITH CIVIL DOMESTIC VIOLENCE</i>	
<i>PROTECTIVE ORDERS</i> .....	69
<i>EMERGENCY/TELEPHONIC ORDERS</i> .....	69
TEMPORARY ORDERS .....	69
FINAL ORDERS .....	69
<i>VIOLATION OF CIVIL PROTECTIVE ORDERS UNDER RSA 173-B (MANDATORY SEIZURE)</i> .....	70
<i>MANDATORY RELINQUISHMENT UPON ARREST</i> .....	70
<i>FIREARMS, AMMUNITION AND DEADLY WEAPONS INVENTORIES</i> .....	70
<i>STORAGE</i> .....	71
<i>RETURN OF FIREARMS AND AMMUNITION</i> .....	71



	<i>PENALTY FOR ATTEMPTING TO BUY FIREARMS ILLEGALLY</i> .....	71
<b>STRANGULATION</b> .....		<b>72</b>
	<i>STRANGULATION INVESTIGATION QUESTIONS</i> .....	73
<b>TECHNOLOGICAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES</b> .....		<b>74</b>
	<i>DEFINITIONS</i> .....	74
	<i>ELECTRONIC EVIDENCE COLLECTION</i> .....	75
<b>MANDATORY REPORTING</b> .....		<b>77</b>
	<i>CHILD ABUSE AND NEGLECT</i> .....	77
	<i>ELDER AND INCAPACITATED ADULT ABUSE</i> .....	77
<b>VICTIMS' COMPENSATION PROGRAM</b> .....		<b>78</b>
<b>ADDRESS CONFIDENTIALITY PROGRAM</b> .....		<b>79</b>
<b>APPENDIX A</b>	<b>SAMPLE POLICY BASED ON IACP MODEL POLICY AND BEST PRACTICES FOR NEW HAMPSHIRE</b> .....	<b>80</b>
<b>APPENDIX B</b>	<b>DOMESTIC VIOLENCE RESOURCES</b> .....	<b>90</b>
<b>APPENDIX C</b>	<b>OTHER RESOURCES</b> .....	<b>104</b>
<b>aAPPENDIX D</b>	<b>VICTIM NOTIFICATION FORM</b> .....	<b>105</b>
<b>APPENDIX E</b>	<b>QUALIFYING DOMESTIC VIOLENCE RELATIONSHIPS</b> .....	<b>107</b>
<b>APPENDIX F</b>	<b>SAMPLE DOMESTIC VIOLENCE COMPLAINTS</b> .....	<b>108</b>
<b>APPENDIX G</b>	<b>A GUIDE TO ENFORCING PROTECTIVE ORDERS</b> .....	<b>112</b>
<b>APPENDIX H</b>	<b>SAMPLE PAPERWORK TRACKING SHEET</b> .....	<b>115</b>
<b>APPENDIX I</b>	<b>COMPARISON OF FEDERAL VS. STATE FIREARMS PROHIBITIONS..</b> .....	<b>116</b>
<b>APPENDIX J</b>	<b>STRANGULATION QUICK REFERENCE GUIDE</b> .....	<b>117</b>
<b>APPENDIX K</b>	<b>PRESERVATION ORDERS</b> .....	<b>118</b>
<b>APPENDIX L</b>	<b>SEARCH WARRANT TIP SHEET FOR COMMUNICATION DEVICES...</b> .....	<b>120</b>
<b>APPENDIX M</b>	<b>TECHNOLOGY SAFETY PLANNING FOR VICTIMS</b> .....	<b>122</b>

## NEW HAMPSHIRE DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL COMMITTEE

**Chair: Danielle Snook, Administrator**  
Office of Victim/Witness Assistance  
Attorney General's Office

<b>Linda Douglas, Trauma Specialist</b> New Hampshire Coalition Against Domestic and Sexual Violence	<b>Detective Sergeant Aimee Moller</b> Plymouth Police Department
<b>Detective Robert Frechette</b> Rochester Police Department	<b>Lynda Ruel, Director</b> Office of Victim/Witness Assistance Attorney General's Office
<b>Amanda Grady, Public Policy Director</b> New Hampshire Coalition Against Domestic and Sexual Violence	<b>Lieutenant Paul Thompson</b> Manchester Police Department
<b>Lieutenant Pete Marr</b> Manchester Police Department	

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April Aucoin  
Kelsey Brandon  
Sara Fox, JD  
Sarah Freeman, JD  
Kate Giaquinto  
Sara Hennessey  
Hershey Hirschkop  
John Kennedy, JD

Melissa Kowalewski, JD  
Patricia Lafrance, JD  
Sean Locke, JD  
Sunny Mulligan-Shea  
Kerry Steckowhych, JD  
Donald Sullivan  
Allison Vachon

## PREFACE

Domestic violence is distinguishable from other crimes by the fact that it has, as a component, an intimate relationship between the victim and perpetrator. Domestic violence cases are typically progressive – the abuse is likely to get worse over time, becoming more dangerous for the victim and for responding law enforcement.

Domestic violence has a strong correlation to other forms of violence and crime. According to the 2019 report issued by *Everytown For Gun Safety*, **the majority of mass shootings in the U.S. are related to domestic or family violence**. In at least 54 percent of mass shootings the perpetrator shot an intimate partner or family member, and nearly three-fourths of children and teens killed in a mass shooting died in an incident connected to domestic violence<sup>1</sup>.

It is widely accepted that it is better to effectively address what may be a misdemeanor now than by addressing a homicide later on. In an effort to more accurately identify domestic violence, New Hampshire established domestic violence as a crime in 2014. [RSA 631:2-b](#), (also referred to as Joshua’s Law) represents in statute the recognition of calling domestic violence what it is – a crime. The intent of the statute is to make New Hampshire law more compatible with federal laws relative to firearms prohibitions and to make it easier to identify domestic violence offenders for use in bail arguments and sentencing. The law does not replace the protections available under RSA 173-B, (Protection of Persons from Domestic Violence), and does not change the ability of law enforcement to make an arrest under RSA 173-B.

In order to ensure that criminal justice system interventions are effective in holding offenders accountable and protecting victims from harm, the context in which each act of domestic violence must be understood<sup>2</sup>. The goals of this protocol are to:

- Reduce the incidence and lethality of domestic violence;
- Promote the use of the New Hampshire Lethality Assessment Program (LAP) by law enforcement agencies statewide;
- Outline how Joshua’s Law should be used to charge cases of domestic violence;
- Provide guidance on the use of Body Worn Cameras to interview victims of domestic violence;
- Promote law enforcement safety by ensuring that officers are as fully prepared as possible to respond to domestic violence calls;
- Ensure that victims of domestic violence are informed of their rights and the services available to them and that they are connected, when appropriate, to crisis center services; and
- Hold offenders accountable by keeping the investigation focused on the offender’s behaviors and actions.

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<sup>1</sup> “Ten Years of Mass Shootings in the United States” <https://everytownresearch.org/reports/mass-shootings-analysis/>

<sup>2</sup> Loretta Frederick and Julie Tilley, *Effective Interventions in Domestic Violence Cases: Context Is Everything* (Minneapolis, MN: Battered Women’s Justice Project, 2001).

## POLICY

The purpose of this protocol is to provide consistent guidelines and procedures to standardize the response by law enforcement in domestic violence cases. This protocol represents a model - an ideal - for the handling of domestic violence cases within New Hampshire. This protocol was developed with the recognition that an individual law enforcement agency's ability to adhere to the guidelines outlined within this protocol will depend, to some degree, on the resources of the department. This protocol defines a standard to which law enforcement agencies involved in the handling of these cases should strive. It is not intended to create substantive rights for individuals. **Consistent compliance with the procedures set forth in this protocol will greatly increase the effectiveness of departments' response to domestic violence cases.**

**This protocol establishes a presumptive arrest policy.** Whenever an officer has probable cause to believe that a crime of domestic violence has been committed, for which arrest is not mandated by statute the officer should nonetheless arrest unless there are compelling reasons for not doing so. **If an arrest is not made, the reasons for that decision should be documented in a report.**

## VAWA FUNDING STATEMENT

Since the mid 1990's, the New Hampshire Attorney General's Office has been the recipient of significant amounts of federal grant funding each year from the Violence Against Women Act (VAWA). This money has been distributed statewide to provide direct services to victims, to law enforcement agencies, prosecutors, and to the courts, to assist in the efforts to end violence against women. VAWA guidelines discourage states from requiring victims to incur costs associated with the criminal prosecution (fees for filing charges; issuance, modification or service of warrants or witness subpoenas etc.) of any misdemeanor or felony level domestic or dating violence, sexual assault or stalking offense or the filing, issuance, registration, modification, enforcement, dismissal, petition for or service of, a protective order. Failure to abide by this policy may result in New Hampshire losing valuable VAWA funding.

## DOMESTIC VIOLENCE INVOLVING LAW ENFORCEMENT

Members of the law enforcement profession are not immune from committing domestic violence against their intimate partners. All departments should have a policy in place on dealing with domestic violence involving law enforcement officers. The International Association of Chiefs of Police (IACP) has developed a model protocol for handling acts of domestic violence committed by law enforcement and for implementing prevention strategies. The IACP policy provides best practice in addressing incidents of reported domestic violence where either the perpetrator, victim or both, is an employee, whether sworn or civilian, of any rank in any law enforcement agency.

See [Appendix A](#) for a sample policy for law enforcement agencies.

When handling a domestic violence incident involving a law enforcement officer, the responding officer should:

- Handle it like any other domestic violence case;
- Notify a supervisor in accordance with department policy; and
- Seize all firearms and ammunition to include department issued and any deadly weapons used or threatened to be used ([RSA 173-B:10](#)).

***New Hampshire law, unlike federal law, has no exception for law enforcement or military personnel to carry or possess firearms and ammunition while on duty or otherwise after being served with a protective order that specifically prohibits possession of firearms and ammunition.***

***Anyone found to be in possession of a firearm or ammunition contrary to a court order must be arrested for a violation of a protective order as outlined in [RSA 173-B:9](#).***

### LIABILITY ISSUES

An appropriate and effective law enforcement response to domestic violence calls is the best mechanism for enhancing the safety of victims. The response is also the means by which law enforcement departments can minimize liability for the agency and officers. Therefore, it is imperative that officers receive appropriate training and guidance in the handling of domestic violence complaints.

**The ten major areas of domestic violence lawsuits against law enforcement are<sup>3</sup>:**

1. Failure to take proper actions to protect citizens;

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<sup>3</sup> Adapted from information developed by Stephen P. Hogan, Assistant Counsel, New York State Police, presented to the National College of District Attorneys, 2000.

2. Failure to appropriately enforce a court order of protection of a victim of domestic violence;
3. Failure to respond at all or in a timely manner;
4. Failure to provide notification information to a victim as required by law enforcement;
5. Arresting a citizen without establishing probable cause or not following primary determination as required by law enforcement;
6. Establishing a pattern of differential treatment of application of the law to domestic violence cases;
7. Retention of abusive officers within the department;
8. Negligence in hiring officers with past domestic violence convictions and not investigating the incident; and
9. Not having policies, not training on the policies, not enforcing the policies.
10. Lack of supervision.

## VICTIM RESPONSES

### VICTIM REACTIONS

A victim of domestic violence who calls law enforcement often **just wants the violence to stop**. The victim may use a variety of strategies that may have worked in the past to avoid another physical assault, such as:

- Agreeing with the perpetrator's denial or minimization of the violence in public;
- Accepting promises that it will never happen again;
- Requesting that the court dismiss the protective order; and
- Not showing up for court hearings.

### REASONS FOR VICTIM RELUCTANCE

The reasons given by victims of domestic violence who are or become reluctant to cooperate with law enforcement are often the same as those given by victims of other types of violent crime, such as:

- Fear of retaliation by the perpetrator;
- Unwilling to face the perpetrator again in the courtroom;
- Afraid of the perpetrator's anger for involving the justice system;
- A feeling of shame or guilt; and
- Denial, ambivalence, withdrawal, and emotional swings as a result of being a victim of severe trauma.

*Domestic violence was a causal factor in 77% of the murder/suicides in New Hampshire during 2009-2019.*

[New Hampshire Domestic Violence Fatality Report, 2018-2019](#)

In domestic violence cases, the above reasons are often heightened for the victim because of the following realities:

- The perpetrator may be living with the victim, be familiar with the victim's daily routine, and have on-going access to the victim at home, work, or at the home of relatives or friends;
- The intimate relationship between the perpetrator and the victim creates a unique vulnerability resulting from the perpetrator's knowledge of details about the victim's life not found in cases in which they are strangers;
- Even when formal separations are initiated, the perpetrator often has access to the victim through child visitation arrangements;
- The victim may have genuine concern or love for the perpetrator. The victim may want the violence to end, but not the relationship;

- The victim may not have a place to stay safe from the perpetrator. Leaving home can mean becoming hunted or homeless. A victim may decide life with the perpetrator is better than the unknown;

*There were an average of nearly 600,000 unreported nonfatal domestic violence victimizations each year between 2006 and 2015. In about a third (32%) of unreported victimizations, victims cited the personal nature of the incident as a reason for not reporting it. About a fifth of victimizations were not reported because the victim wanted to protect the offender (21%), felt the crime was minor or unimportant (20%), or feared reprisal from the offender or others (19%).*

*“Police Response to Domestic Violence, 2006-2015”, US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2017.*

- The victim has learned that the perpetrator will follow through with threats of retaliation because of the victim’s previous efforts to leave or seek help from the justice system which caused retaliation;
- The victim and the perpetrator may have children together, and the victim may have received threats that the children will be kidnapped or harmed if the victim cooperates;
- The victim and children may be dependent on the perpetrator for economic support. This concern may be even greater when the victim is not eligible for public benefits;
- The victim may be under religious, family, or social pressures to support the perpetrator;
- The victim may have a past experience in which the system failed to prevent violence. A domestic violence victim knows that law enforcement cannot provide constant protection. The victim may know that even if convicted the perpetrator will someday be released from custody and may find the victim, the victim’s children or family; and
- **Due to the impact of the trauma which has occurred, memories may be fragmented, out of sequence, and filled with gaps. This can make it difficult for victims to recall details of the assault. They may recall some specific details and be unable to remember others. Victims fear that law enforcement may not believe them or become frustrated with the victim because of this.**

For more information and resources regarding the dynamics of domestic violence, please see [Appendix B](#).



## CULTURAL CONSIDERATIONS: SPECIAL VICTIM POPULATIONS

### CHALLENGES

The tactics of power and control used by abusers are surprisingly similar across demographic lines, age, race, ethnicity, economic status, education, employment status or occupation, religious affiliation, urban, suburban or rural residency, immigration status, sexual orientation, gender identity and expression, physical and mental disabilities, and marital status.

Law enforcement officers must approach cultural competency with open mindedness toward learning about cultures other than one's own, exploring one's own biases, and the willingness to see each person, regardless of what community they come from, as an individual.

There are specific ways the criminal justice system can address the challenges faced by particular cultural and demographic groups. Professionals within all aspects of law enforcement must have some understanding of the barriers faced by groups that are marginalized within today's society in order to better understand how to create policies and procedures that help to eliminate many of the obstacles.

Some victims may belong to more than one type of group. In these instances law enforcement needs to have a heightened awareness regarding the unique challenges faced by each community in order to respond in a culturally competent manner. The most successful way to address the needs of all victims is to listen to each victim's experience and individual needs, and ensure that resources are available.

For more information regarding the special populations contained in this section, see [Appendix B](#).

*The way in which a domestic violence victim experiences abuse can be greatly impacted by what barriers they face, and what resources are available to them.*

### CULTURAL AND RELIGIOUS CONSIDERATIONS

Many cultural and religious groups hold strong values around family and community integrity, and may also hold to strict gender roles. However, being a member of a particular cultural or religious group can also be a great strength for many victims, providing understanding supports or personal values that help them maintain a sense of self. Social service agencies that specialize in working with particular cultural or religious groups will often take into account particular community values when offering services, safety, and support.

### IMMIGRANT VICTIMS

Immigrant victims of domestic violence face numerous barriers when reaching out to law enforcement and courts for safety from domestic violence, making abusers within these communities far less likely to be held accountable for their crimes. These barriers include a lack of knowledge about and fear of law enforcement, language barriers, fear of deportation for self or for the abuser, cultural, religious and gender barriers, and economic barriers. The abuser's intimidation tactics have likely included threats of disclosure of any documentation that is not in order, of deportation without the victim's children, and of dishonoring their ethnic family values.

The fear and distrust immigrant women feel towards law enforcement may also be because law enforcement in their home country were abusive and corrupt. These barriers keep victims from accessing law enforcement that could lead to greater safety in their lives (*Pendleton, 2003*). With such a magnitude of barriers, when a victim does reach out to law enforcement, it is generally because the situation has become quite severe, making a culturally competent response essential.

Immigrant victims of domestic violence face unique challenges when trying to escape their abusers. They often feel trapped in their relationships because of immigration laws, language barriers, social isolation, and a lack of financial resources. Despite recent changes in federal laws, domestic violence remains a significant problem for immigrant women.

Other unique challenges that immigrant victims face include:

- Abusers use their victim's immigration status as a tool to force the victim to remain in the relationship;
- Many victims come from cultures that accept domestic violence;
- Immigrant victims have less access to legal and social services than U.S. citizens;
- Immigrant batterers and victims may believe that the penalties and protections of the U.S. legal system do not apply to them; and
- For non-English victims there can be a lack of access to bilingual shelters, financial assistance, or food. It is also unknown whether or not they will have the assistance of a certified interpreter during their interactions with the legal system (court, police, 9-1-1, acquiring information about the legal system).

## ***U VISAS AND T VISAS***

Law enforcement agencies should be aware of the resources available to immigrant victims of crime and human trafficking offered by U.S. Citizenship and Immigration Services (USCIS).

The U and T visas are dual purpose programs. They provide immigration relief for victims of crime but they also can assist law enforcement. It is recognized that victims of crimes are less willing to come forward and report a crime or cooperate with law enforcement when they do not have legal immigration status. These programs allow immigrant victims to gain lawful immigration status, which increases their cooperation with law enforcement. When law enforcement informs a victim that they can apply for legal status if they are helpful to the investigation/ prosecution it encourages more victims to come forward.

The **U visa** is for immigrant victims of crime who have been, are being or will likely be helpful in the investigation or prosecution of the crime. Qualifying crimes include abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, being held hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, sexual assault, sexual exploitation, slave trade, torture, human trafficking, unlawful criminal restraint, witness tampering, and other related crimes.

An immigrant victim must obtain a certification from a law enforcement official (I-918 Supplement B). This certification does not grant any immigration benefit. By signing the

certification the law enforcement agency is stating that the immigrant is a victim of a qualifying crime who has been, is being, or will likely be helpful to the investigation or prosecution of the crime. An immigrant victim is not eligible for this relief without this certification.

A **T visa** is for immigrant victims of a severe form of human trafficking who assist law enforcement in the investigation and prosecution of human trafficking cases. Severe form of human trafficking is defined as sex trafficking or labor trafficking that involves force, fraud or coercion. Victims must provide evidence they are assisting law enforcement which can include a certification from a law enforcement agency (I-914 Supplement B).

Signing a certification in either case does not grant any immigration benefit. Only USCIS has authority to grant or deny any benefit.

Additional information can be obtained on the USCIS website [www.uscis.gov](http://www.uscis.gov). They also offer trainings to law enforcement. Information can be obtained on their website or by contacting [T-UVAWATraining@dhs.gov](mailto:T-UVAWATraining@dhs.gov).

Victims may also self-petition under VAWA without their abusive family member's knowledge or consent. More information on the self-petition process can be found at <https://www.uscis.gov/green-card/green-card-vawa-self-petitioner>.

*To ensure impartiality and no conflict of interest, it is important that extended family members (including children) of the victim or the batterer not be allowed to interpret for the victim.*

## **VICTIMS WITH DISABILITIES**

People with physical, intellectual, or psychiatric disabilities can be particularly vulnerable to domestic violence. They may have fewer options for escape, and may have difficulty getting help from law enforcement. Someone with psychiatric disabilities may be disbelieved, a deaf person may need an interpreter to communicate, or a person with an intellectual disability may be unable to access referral systems without assistance. Law enforcement officers must be prepared to make available the supports needed to communicate with and assist a victim with disabilities.

The Americans with Disabilities Act (ADA) was enacted by Congress to protect the employment and accessibility rights of persons with disabilities and to remove barriers to employment, transportation, telecommunications, as well as public accommodations and services for persons with disabilities. The ADA applies to all public entities and to all government agencies regardless of size and a person with a disability cannot be denied access to services, programs, or activities associated with all public entities and governmental agencies.

For questions regarding available services for individuals with disabilities call 2-1-1, or the Disabilities Rights Center at 1-800-834-1721 (Voice or TTY) or [www.drcnh.org](http://www.drcnh.org).

For more information see *All Walks of Life: Responding to Victims with Disabilities* <http://www.awol-texas.org/articles/article8.htm>

## USE OF INTERPRETERS

According to the VAWA funded publication, *Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims*, while all victims of domestic and sexual violence must navigate complex legal systems – those with limited English proficiency (LEP) and those who are deaf or hard of hearing face additional challenges.

Language access policies that implement the provision of spoken and sign language interpretation by professional, culturally competent interpreters are critical to ensuring equal access to safety and justice. Interpreters fulfill a critical duty, to place individuals with limited English proficiency on an equal footing with those who understand English. To ensure meaningful access, LEP victims must have trained and qualified interpreters.

For more information see resources in [Appendix C](#).

## LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, INTERSEX (LGBTQ+) AND NONBINARY VICTIMS

Understanding the terminology regarding sexual orientation, gender identity and gender expression is a very important component in having a culturally competent response. [Appendix B](#) contains a glossary from the Human Rights Campaign that was written to help define the words and meanings to make conversations easier and more comfortable for everyone involved.

LGBTQ+ people experience domestic violence at similar rates as heterosexual (straight) and cisgender people (people who are still the same gender as they were assigned at birth). However, LGBTQ+ victims may find law enforcement and the courts less accessible and may be fearful of calling law enforcement or reaching out to the courts for assistance. LGBTQ+ people find that their relationships are often misunderstood and may be taken less seriously by many within these systems. They also fear exposure to homophobia, genderism, and insensitivity.

*It is very important to ask victims how they would like to be referred to – not just what name - but their personal pronouns (she/her/hers, he/him/his, they/them/theirs).*

This concern about law enforcement and the criminal justice system can be heightened or exacerbated if the victim has other demographic identifiers that include fear of law enforcement, such as immigration status or race. For example, the experience, needs, and risk to a Black LGBTQ+-identified female may be different than a Black female or an LGBTQ+-identified White female.

Domestic violence amongst LGBTQ+ people offer special challenges to law enforcement to identify the aggressor within the relationship, leading to a greater likelihood that the victim may be arrested rather than the perpetrator. Within the LGBTQ+ community, victims of domestic violence may find a lack of understanding of domestic violence. They may also encounter the belief that it is a heterosexual issue and the belief that domestic violence does not exist in the LGBTQ+ community. Compounding challenges for LGBTQ+ victims, could be the fear of being “outed.” LGBTQ+ victims who have not told family, friends, employers, and others in their lives of their sexual orientation or gender identity may be extremely fearful of the consequences and discrimination they might experience upon revelation of a law enforcement report or court case.

If an LGBTQ+ victim is unable to cooperate because of concerns of being “outed,” then the officer may not have enough evidence to prove the relationship which a material element of the offense of domestic violence under [RSA 631:2-b](#). Depending on the circumstance, the provisions of RSA 173:B may still apply, to include the 12 hour arrest and the option for the victim to obtain a protective order. Law enforcement may be able to charge the predominant aggressor with a non-domestic violence related offense.

## **RURAL VICTIMS**

Rural victims of domestic violence face additional barriers to seeking safety when experiencing domestic violence. Issues such as poverty, lack of public transportation and limited access to resources and services make escape from an abusive relationship particularly difficult for rural victims.

Cultural values such as strong allegiances to the land, kinship ties, and traditional gender roles, as well as geographic isolation, add to the barriers. Additional risks and danger are present with the increase in the likelihood that weapons, such as firearms and hunting knives, are present in rural households. The victim and abuser are more likely to know law enforcement and other professionals, making confidentiality and objectivity difficult.

## **HOMELESS VICTIMS**

It is not uncommon for victims of domestic violence to flee the abuser and find themselves and their children homeless. The abuser’s efforts at isolating the victim can leave few, if any, options for support and housing from friends or family. Some victims go to domestic violence shelters, but because beds can be limited and there are accessibility issues for many victims, many end up in homeless shelters. People who are chronically homeless are at greater risk of being victims of domestic violence, and domestic violence in any population may be a cause of homelessness.

Domestic violence programs often have a hard time differentiating between the two and know that they do not have the resources, skills and knowledge to affect change in the lives of those who are chronically homeless because of additional issues. The issues causing homelessness often create obstacles to being successful in a shelter for domestic violence victims, and some homeless shelters do not accept victims of domestic violence because of the security issues involved. This can cause a dilemma for law enforcement in finding a safe place for victims.

## **MALE VICTIMS**

Men, as well as, women are victimized by violence. The abuse can be physical violence, sexual violence, stalking, verbal, emotional, mental/psychological, and economic abuse. The warning signs and barriers that keep male victims from leaving their abusers are similar in both genders.

However, men are less likely to report intimate partner violence and less likely to ask for services because of:

- The stigma of being a male victim;
- The perceived failure to conform to the idealized male stereotype;

- The fear of not being believed;
- The denial of victim status;
- For gay male victims, the fear of being “outed”; and
- The lack of support from society, family members, friends.

Men experience many of the same psychological reactions to interpersonal violence as women, including:

- Guilt, shame, humiliation;
- Anger and anxiety;
- Depression; and
- Withdrawal from relationships.

Because men are often more financially independent than women, and their fear is not solely based on physical harm, they are less likely to ask for help. However, they may **NOT** have more financial independence, and they may have much less power in the relationship than their partner.

Their reasons for not leaving may be similar to a woman’s (not wanting to leave children, fear for pets, loss of residence, loss of security) and may be complicated by societal expectations, personal expectations and a perceived lack of support.

Interpersonal violence is a crime, regardless of gender, and it is never the victim’s fault. Male victims may avail themselves of the same services as a woman, including protective orders and the services of a crisis center advocate.

Adapted from [www.nhcadsv.org](http://www.nhcadsv.org)

*Gay male victims may also encounter the belief that domestic violence does not occur within the LGBTQ+ community.*

## TEENAGE VICTIMS

It is imperative that law enforcement be attuned to domestic violence relationships among teenagers. When law enforcement is called to respond to a school for an incident between young people, or when they are summoned to a home for a 911 hang-up call and discover only young teenagers in the home, or when they see young people shouting in the street as they drive by in their cruisers, the circumstances should be looked at. These events should not be rapidly dismissed as tiffs between adolescents. Critical questions should be posed, the nature of the event considered, and close attention should be paid to observing any signs of physical injury that may have resulted from violence that should not necessarily be explained away as accidental by the youth involved.

*Among high school students who dated, 21% of females and 10% of males experienced physical/and or sexual dating violence.*

Vagi KJ, Olsen EOM, Basile KC, Vivolo-Kantor AM. Teen dating violence (physical and sexual) among US high school students: Findings from the 2013 National Youth Risk Behavior Survey. JAMA Pediatrics 2015; 169(5):474-482.

Teenage victims of domestic violence face additional barriers that are often not factors for adults. Teenagers have authority figures in their lives at home, school, and possibly work. They may fear the reactions of these individuals, whether that is fear of getting in

trouble for dating or trying to explain away behavior changes that these authority figures are witnessing. They also have peers that play an integral part in how they act or what they do.

A teenager may be bullied into silence or may be congratulated for the relationship which enforces they should continue it. The problem is that these peers may not be aware of what is happening when the dating couple is alone. Teenagers also tend to be more shortsighted when it comes to the future. They tend to minimize the impact of abuse. It is also important to note that teens have most likely shared different parts of their relationship with different people in their life. These people may have a piece of the story but talking to many of them may help to build a better understanding of this teen's relationship.

## ELDERLY VICTIMS

New Hampshire law **mandates** the reporting of any suspected incident of abuse, neglect, self-neglect or exploitation involving an elderly, disabled or incapacitated adult to the Bureau of Elderly and Adult Services (BEAS). A person is incapacitated of his or her physical, mental or emotional ability as such that they are unable to manage personal, home or financial affairs in their best interest, or they are unable to delegate responsibility to a responsible caretaker or caregiver ([RSA 161-F:46](#)). Both [RSA 161-F:11](#) and [RSA 631:8](#) define an elderly adult as any person who is 60 years of age or older.

There is a significant growing elder population in New Hampshire and the nation. According to the United States census, in July, 2017 the population in the United States over the age of 65 accounted for 14.9% of the population and it is projected that by 2060, that will increase to 25%. In New Hampshire by 2030 it is expected that one third of the population will be over 65.

*It is recommended that investigators talk with the elderly person alone and in private since they may be too ashamed or too fearful to disclose information in front of family or caregivers.*

Approximately 1 in 10 Americans aged 60 and older have experienced some form of elder abuse. Abusers are both women and men and in almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. Two-thirds of perpetrators are adult children or spouses. One study estimated that only 1 in 14 cases of elder abuse are reported<sup>4</sup>. Unfortunately, this leaves abuse of the elderly extremely under reported and hard to identify, therefore the recognition of signs of abuse is critical.

Domestic violence of the elderly may be manifested in many ways to include physical, sexual, emotional or psychological abuse, financial abuse or exploitation or neglect. Many of the same motivations that apply to domestic violence in younger victims (power and control) also apply to elder abuse. General signs may include frequent arguments between a caregiver and an elderly person. There may be a change in personality or behavior in the elder. Domestic violence does not stop because of age. ***Do not disregard domestic violence because of age.***

Specific indicators for elder abuse to look for when responding to a call for service include:

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<sup>4</sup> National Council on Aging

### Signs of Physical Abuse

- Unexplained signs of injury, such as bruises, welts or scars especially if they appear symmetrically on two sides of the body;
- Broken bones, sprains or dislocations;
- Report of drug overdose or apparent failure to take medication regularly;
- Broken eye glasses or frame;
- Signs of being restrained such as rope marks on wrists; and
- Caretakers refusal to let law enforcement see the elder person.

*38% of domestic violence homicide victims are over the age of 50.*

[New Hampshire Domestic Violence Fatality Report, 2018-2019](#)

### Signs of Emotional Abuse

- Witnessing threatening, belittling, or controlling caregiver behavior; and
- Behaviors from the elder that mimics dementia, such as rocking, sucking or mumbling to oneself.

### Signs of Financial Abuse

- Withholding of funds that limits independence or ability to leave a situation and allows the perpetrator power and control.

More subtle and difficult to detect, elder abuse may also involve withholding medications or treatments. For more information on spotting the warning signs of elder abuse refer to [Elder Abuse and Neglect: Spotting the Warning Signs and Getting Help](#).

If sexual assault is suspected, refer to the Attorney General's [Attorney General's Protocol for Response to Adult Sexual Assault Cases \(2018\)](#).

Many barriers for elder abuse victims to come forward are consistent with other types of violence but can be nuanced and include:

- Dependence on the partner for financial or physical care;
- No transportation;
- No control of money;
- Fear of further violence;
- Embarrassment; and
- Unawareness of resources.

With this population there are a growing number of citizens with Alzheimer's. In 2020, it is reported that New Hampshire has 26,000 citizens with Alzheimer's and it is anticipated that the number will grow to 32,000 by 2025. Relationships can change when one partner has dementia. There may be reluctance from the victim to report due to embarrassment or confusion as to what has happened. Dementia and the inherent confusion can also lead to a partner becoming violent. It is not uncommon for caretakers and spouses to become violent towards their partner out of



frustration. Because of the nature of dementia, warning signs may be difficult to interpret. Do not disregard the possibility of domestic violence because of the dementia.

Reports must be made to BEAS from 8:00 to 4:30, Monday through Friday at (603) 271-7014 or (800) 949-0470 (NH only).

**Tips for interviewing the elder victim:**

- *Do not approach the elder with an expectation of physical or mental impairment;*
- *Have a heightened awareness of the individual's possible limitations and adjust the interview accordingly;*
- *Ask permission to enter the home;*
- *Let them know law enforcement is there to help;*
- *Speak with the elder at eye level;*
- *Be aware of the positioning of a service weapon (i.e. don't want it at eye level of the elder);*
- *Be courteous and patient;*
- *Use titles unless invited to do otherwise, (Mr., Mrs., military rank);*
- *Speak clearly and allow them time to process and answer in their own words. Do not interrupt;*
- *Avoid leading questions;*
- *Eliminate background noise and distractions; and*
- *Be aware of physical and emotional reactions to questions.*

## CRISIS CENTER VICTIM SERVICES

There are 13 crisis center programs throughout the state that provide services and support to victims of domestic violence, sexual assault, stalking and sexual harassment. Their services are free and are available to everyone regardless of age, gender, race, religion, sexual orientation, physical ability or financial status. Crisis center advocates are specially trained to provide victims with free, nonjudgmental, emotional support, information, and resources.

**Confidential Communication:** Under [RSA 173-C:2](#), any communication between a crisis center advocate (staff or volunteers who have completed the required standardized training) and a victim is confidential unless a third party is present during that communication. Only the victim can release that information or sign a crisis center document for the advocate to release it. **The inability of advocates to disclose any information must be respected, including whether the victim is staying in a domestic violence shelter.** If the crisis center has a confidential address, law enforcement should partner with the crisis center to develop a way to contact victims they believe to be living in the shelter.

Crisis center services include:

- 24-hour toll free crisis line;
- Access to emergency shelter and transportation;
- Legal advocacy in obtaining restraining orders against abusers;
- Hospital and court accompaniment;
- Information about and help in obtaining public assistance and other resources; and
- Safety planning with the victim, as well as non-offending family members.

*During 2018-2019, over 20,000 domestic violence victims received services from New Hampshire's crisis centers.*

[New Hampshire Domestic Violence Fatality Report, 2018-2019](#)

A list of all the crisis centers in the state can be accessed through the New Hampshire Coalition Against Domestic and Sexual Violence at [www.nhcadsv.org](http://www.nhcadsv.org).

## ROLE OF THE DISPATCHER AND CALL TAKERS

A law enforcement dispatcher plays a vital and key role in the apprehension and prosecution of a domestic violence suspect. They are the essential link between a victim and a public safety response. Law enforcement officers rely on dispatchers/call takers to describe in as much detail as possible what has and what is occurring throughout a call.

**Domestic violence calls should be given a high priority.** Whenever possible the dispatcher/call taker should assign a back-up unit. The dispatcher/call taker receiving a domestic violence call should attempt to keep the caller on the telephone, if safety permits. Dispatchers should ask the caller if they are safe and encourage them to seek safety.

To minimize confusion or frustration by the caller, the dispatcher/call taker should explain to the caller why the following information is needed and clarify that asking this information will not delay the dispatch of an officer to the incident location.

The information obtained should include:

- Name of caller;
- The telephone number where the caller can be called back and whether it is safe to do so;
- The exact location of the incident;
- The exact nature of the incident, when it happened and was anyone injured;
- Name of victim and suspect;
- Suspect's relationship to victim;
- Whether firearms or other deadly weapons were involved or were threatened to be used and the type of weapon;
- The precise location of any firearms and/or other weapons;
- The precise location of the victim;
- The precise location of the suspect;
- The precise location of the children, or other individuals present at the scene, if applicable;
- The location of the entryways; and
- In trying to determine the suspect's state of mind, the caller should be asked about:
  - Alcohol and/or other drug use; and
  - Mental illness, including depression.

The dispatcher/call taker should determine:

*It is important to get as much information as possible from caller, the victim and other household members to provide to the responding officer(s).*

*Recorded information can be an essential tool for the investigating officer.*

- Whether an ambulance is needed;
- If there are any warrants in effect for any party present;
- Whether an active protective order is in effect and if so, the conditions of the order; and
- Whether bail restrictions are in effect.

When the officer indicates that they are in position to meet with the caller, the dispatcher/call taker should instruct the caller to meet the officer at the entrance (providing it is safe for the caller to leave their location).

All domestic violence calls for service should be coded as such for data collection purposes.

**If the caller has hung up, the dispatcher/call taker should call back to maintain contact, ensure the safety of the caller and determine the best and safest way for the officer to gain entry.**

## USE OF BODY-WORN CAMERAS

[RSA 105-D](#), which regulates the use of body worn cameras by law enforcement, became effective January 2017. This statute does not mandate the acquisition of Body Worn Cameras (BWCs). Rather it requires any New Hampshire law enforcement agency that chooses to implement BWCs as a tool for policing to adopt policies and procedures relating to their use and the **retention** and **destruction** of data ([RSA 105-D:2](#)). There are currently several national resources available to assist law enforcement with the development of policies and protocols and curriculum for officer trainings. [Appendix C](#) contains additional resources on Body Worn Camera policies.

Agencies are strongly encouraged to develop policies that are victim-centered, trauma informed and compliant with both RSA 105-D and RSA 91-A (Right to Know) requirements. Around the country, policy decisions are being made without sufficient evidence-based research regarding BWC use and its effects on law enforcement interactions with crime victims, including building trust, potential privacy issues and how BWC footage will be used.<sup>5</sup>

Agency policies and protocols should specifically address the use of BWCs when responding to a domestic violence victim and provide clear guidelines to officers as to when it is permissible to capture audio and video recordings.

### FIRST RESPONDER CONTACT WITH A VICTIM

Responding to a domestic violence incident is dynamic. In the course of a response, officers need to constantly evaluate officer safety concerns along with the safety of the victim and witnesses. A well-documented response and evaluation of the scene is important, but also comes with some challenges if the agency utilizes Body Worn Cameras.

Upon initial contact with a victim, an officer should ensure that the victim is safe, and treated with dignity and respect. Be aware of a BWC that is activated when interacting with the victim. Determine as early as possible if deactivation of the BWC should occur. If the victim denies consent or the officer observes articulable reasons that the victim's privacy is greater than the benefit of having the documentation then the officer shall turn the BWC off and document the reasons they had to do so. This can be done by announcing while recording that deactivation will follow. The reason why the camera was deactivated **SHALL** be documented in the subsequent police report ([RSA 105-D:2-V](#)).

**Example:** When a victim is in a compromised state of dress (partially dressed, naked, has ripped or torn clothing), this should be considered an exigent circumstance and deactivation of the BWC is allowed pursuant to [RSA 105-D:2-V](#).

**Example:** When an officer is responding to a healthcare facility, the BWC should be turned off due to patient privacy rights<sup>6</sup>, ***unless the officer is responding to a 911 call at that facility.***

**Example:** In a location where there is a reasonable expectation of privacy, officers shall inform the individual of their option to decline being recorded. If the individual declines, the

<sup>5</sup> Maryland Network Against Domestic Violence (MNADV) *Guidance on the Use of Body-Worn Cameras (BWC) During the Administration of the Lethality Assessment Program (LAP)*, Issued June 2016, pg. 7.

<sup>6</sup> Pub.L., 104-191

officer shall deactivate the BWC. In such cases, any images shall, as soon as practicable, be permanently distorted or obscured. The officer shall document in their report the reason why the camera was not activated ([RSA 105-D:2-IX](#)).

## INTERVIEWING THE VICTIM

[RSA 105-D:2-VII\(d\)](#) states a BWC **SHALL NOT** be used to record an interview with a crime victim *unless his or her express consent* has been obtained before the recording is made. The statute specifically directs agencies that choose to implement BWCs to the New Hampshire Attorney General's protocols for guidance.

Once the determination of a primary physical aggressor has been made, express consent shall be obtained before continuing to record the interview with the victim. Express consent can be obtained verbally and should be recorded.

There are several considerations when obtaining **express consent** for the recording of a BWC from a domestic violence victim who is experiencing trauma. Obtaining express consent must take into consideration a victim-centered approach that incorporates the victim's wishes, safety and well-being in all matters and procedures.

Officers should also keep in mind that the purposeful recording of minor children must be at the consent of their parent or guardian. For more information regarding interviewing children, refer to [Children](#), page 32.

### **When the First Responder Has Obtained Express Consent from the Victim:**

Continue the investigation as recommended following this protocol, including conducting a Lethality Assessment Program (LAP) screen (see [Domestic Violence Lethality Assessment Program](#), page 28). Since the LAP is a supplemental measure taken by the officer to assess for victim safety, law enforcement should turn off their BWC or other recording devices that may have been in use during the interview with the victim. Additionally, the conversation that occurs between the victim and the crisis center is privileged under [RSA 173-C](#) and therefore it is critical that none of that conversation is audio recorded or it will compromise that privilege.

### **When Consent Is Not Obtained from the Victim:**

The victim's decision must be honored and all recordings must be deactivated. The reason for deactivation **SHALL** be documented in the associated police report ([RSA 105-D:2-V](#)). Continue the investigation as recommended following this protocol. Communicate with fellow officers on scene that the victim did not provide express consent for recording.

*If an officer fails to activate the body worn camera, fails to record the entire contact, interrupts the recordings or if the BWC malfunctions, the officer shall document why a recording was not made, was interrupted or was terminated as part of the associated police report (RSA 105-D:2-XI).*

# ROLE OF THE FIRST RESPONDER

## OFFICER SAFETY CONCERNS

*In a 2016 study conducted by the National Law Enforcement Officers Memorial Fund, calls related to domestic disputes and domestic-related incidents represented the highest number of fatal types of calls for service for law enforcement.*

- Be mindful that in the majority of cases the parties know that law enforcement is responding;
- **If possible, a minimum of two officers should respond to a domestic violence call;**
- Obtain all available information from the dispatcher before arriving at the scene and notify dispatch upon arrival;
- **Avoid the use of sirens and emergency lights while responding unless it is believed that the victim is in imminent danger of serious bodily injury;**
- Be alert to vehicles and people leaving the immediate area;
- Keep in mind that the threat to law enforcement safety **may be waiting outside the scene;**

- Pause outside the scene and attempt to determine what is taking place inside;
- **STOP, LOOK AND LISTEN;**
- Unless exigent circumstances require forced entry, such as the necessity to stop what officers believe to be an ongoing physical assault or a felony, the officers should seek to have one of the parties admit them to the residence. **In the absence of exigent circumstances, the officer has no right to enter, but shall make reasonable efforts to ascertain the wellbeing of those present.** See [Exigent Circumstances](#), page 22 for more information; and
- Remain until it is believed that there is no immediate threat of physical harm, and appropriate measures have been taken to ensure the safety of those present, or an arrest is made and a criminal investigation has begun.

Officers should establish control by:

- **Separating the victim and the suspect;**  
**NOTE:** If responding alone, keep both parties in view. Position the victim so the officer can keep the suspect in view and the suspect cannot visually intimidate the victim.
- **NEVER** lose sight of the parties involved;
- Removing the parties from areas of the home that pose the most threat, e.g., kitchen;
- Identifying and taking physical control of any weapons, including but not limited to firearms, knives, etc.;

*Statistically, the first minutes after arrival at the scene is the most dangerous for law enforcement.*

**NOTE:** A parent or legal guardian DOES NOT NEED to be present when interviewing a child as a potential witness. Parents and legal guardians are only required to be present during an interview if the minor is a **SUSPECT** in a crime.

- Assessing injuries, administering first aid, and requesting medical services; and
- Establishing locations of children in the home. If children are present refer to [Children](#), page 32.

## EXIGENT CIRCUMSTANCES

Exigent circumstances exist when “the delay caused by obtaining a search warrant would create a substantial threat of imminent danger to life or public safety or likelihood that evidence will be lost or destroyed”.

If the officers are unable to raise a person within the residence or the residents refuse entry, the officer should consider **whether or not entering** would create a threat to a person’s safety.

**The following is a list of factors and situations that an officer should consider when determining if exigent circumstances exist:**

- Who was the original complainant? Was it a resident or an involved party (i.e. victim, child of victim)?
- Did the original call for service make mention of hearing a disturbance, a person calling for help, or sounding as if they were being assaulted?
- Did a canvass of the area or neighbors locate a witness that heard any of the above circumstances? Did anyone see the residents leave prior to police arrival?
- Is there a prior history or calls for service to this address for domestic violence related issues?
- What did the officer hear or observe upon arrival (i.e., hearing a disturbance within, threats being made)?

Officers should attempt to contact residents via phone. If the call originated through E911, have dispatch contact E911 to obtain more information if possible.

**NOTE:** The 911 call itself may, in some instances support a determination of exigent circumstances or include permission to enter. The dispatch tape may also be admissible evidence in court proceedings as excited utterances (especially if the victim’s trauma response is triggered and they are unable to participate in the criminal justice process).

In most circumstances when responding to a domestic violence call, an officer will be able to develop probable cause and be able to articulate exigency to force entry. In the minority of cases when an officer is unable, the officer should document the incident and all attempts made to contact the residents. The officer should also make another attempt later in their shift or make arrangements for another officer to attempt to contact the residents.



## IDENTIFYING THE PREDOMINANT PHYSICAL AGGRESSOR

*The International Association of Chiefs of Police defines predominant aggressor as “the individual who poses the most serious, ongoing threat”. This person may not necessarily be the person who committed the first act of assault or aggression in a specific incident.*

Although the New Hampshire statute refers to the “predominant” aggressor as the “primary” physical aggressor, **officers should attempt to identify the predominant physical aggressor as opposed to who committed the first act of assault.**

When an officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both parties, but **SHOULD ARREST the person whom the officer believes to be the predominant physical aggressor (173-B:10 (II)).**

This may appear difficult, as there may be conflicting accounts. Officers should not focus on what appears to be the obvious but instead establish the facts and use the totality of information gained from their investigation to determine the predominant physical aggressor.

### **FACTORS**

When making the determination of predominant physical aggressor, an officer **shall** consider the following in accordance with **RSA 173-B:10 (II)**:

- The intent of [RSA 173-B:10](#) is to protect victims of domestic violence;
- The relative degree of **injury or fear** apparent or exhibited by either party; and
- Any history of domestic abuse between these persons if that history can be reasonably attained.

**Other factors that can assist officers in making a determination of predominant physical aggressor include:**

- The strength and size of each of the persons involved;
- Were the injuries defensive or offensive in nature (try to determine if self-defense was used);
- Severity and extent of injuries;
- Criminal records/history of the parties;
- Prior law enforcement contact with the parties;
- Active or prior protective orders with either party;
- Observations and locations of crime scenes;
- Information from witnesses;
- Who called the police;
- Which party utilizes threats, intimidation and coercion in the relationship;
- Which party controls the money and finances or uses them as a means to control the other party; and

**NOTE:** *The Lethality Assessment Program (LAP) screen **should never be used** to determine the predominant aggressor. The LAP screen is a safety planning tool that should be used with the victim once the predominant physical aggressor has been identified.*

- Which person’s statement appears to be most consistent with the officer’s observation.

For more information and resources regarding the dynamics of domestic violence, which may be helpful in determining the predominant physical aggressor, please see [Appendix B](#).

## **DOCUMENTATION**

If the officer decides not to arrest the person believed to be the predominant aggressor in a domestic violence incident, where such an arrest is lawful, the officer should document in the incident report a detailed explanation of the reasons an arrest was not made.

Likewise, if the officer determines that there is probable cause to arrest both parties, the officer should write and file a separate report for each arrest and include a detailed explanation as to the probable cause for each arrest.

### ***Consequences for Arresting the Wrong Party***

- *Perpetrators are rewarded for manipulating the system;*
- *Perpetrators are empowered to continue or escalate their behavior due to lack of consequences;*
- *Victims are more vulnerable to manipulation by perpetrators who may threaten to:*
  - *have them re-arrested;*
  - *report them for a probation violation; and*
  - *use the arrest against them in child custody or other court proceedings.*
- *Victims may mistrust the system which increases the likelihood that they won’t call the police again resulting in experiencing more serious harm and possible death;*
- *Victims’ employment, custody of children, housing rights or immigration status may be impacted by having a criminal history;*
- *Victims may not be able to access services such as shelter or other state assistance after being arrested as a perpetrator; and*
- *Victim experience deep shame after being arrested in front of their children and their relationship with their children could be impacted.*

## ON-SCENE INVESTIGATION

In order to intervene effectively in domestic violence cases, it is important that officers understand the complex issues of violence within intimate relationships including the (1) intent of the offender, (2) the meaning of the act toward the victim, (3) the effect of the violence on the victim, and (4) the context within which any given act of violence occurred<sup>7</sup>.

Responding officers should make detailed observations of the scene and persons present, including children. Observations should include the victim's physical and emotional condition. (See [Domestic Violence Investigation Checklists](#), page i)

- Be alert to possible incriminating statements by the suspect and **excited utterances** from the victim, suspect and witnesses;
- If injuries are visible or verbally conveyed by the victim, encourage the victim to seek medical care; and
- If the officer believes strangulation occurred, refer to [Strangulation](#), page 72, for additional information and resources.

*Officers should request the victim to sign a medical release form, allowing access to the medical records relating to this specific incident. **If a medical records release is granted obtain this information AS SOON AS POSSIBLE because the victim can withdraw this permission at any time.** Names of medical personnel who dealt with or treated the victim should be noted, because they may be critical prosecution witnesses.*

## INTERVIEWS

After the scene is deemed safe, the parties have been separated and the victim, witness(es) and suspect have been identified, secure a verbal statement from the victim and witnesses before leaving the scene.

Due to the dynamics of domestic violence relationships, victims face many barriers to cooperate with the criminal investigation and prosecution (see [Victim Responses](#), page 5). Therefore, it is imperative that officers fully document their observations and verbal statements made on scene, whether the interview is recorded or not. **A lack of cooperation should not be interpreted to mean that someone is not a victim.** Officers should be aware of and use trauma-informed interviewing techniques that help the victim feel safe and stable, increasing the victim's ability to provide needed information. Questions should be tailored to the victim's emotional and physical state.

When obtaining statements, officers should consider the following:

- If feasible, obtain an **audio or video-recorded interview** in order to obtain the most accurate account of the incident. **Written statements are not considered best practice.** The impact of trauma may affect the victim's memory and the ability to give details of their experience. Some victims may find it difficult, if not impossible, to write down

<sup>7</sup> Loretta Frederick and Julie Tilley, *Effective Interventions in Domestic Violence Cases: Context Is Everything* (Minneapolis, MN: Battered Women's Justice Project, 2001).

what happened to them. A verbal statement, whether recorded or not, is still a statement and should be considered for the establishment of probable cause;

- The interviewing officer shall obtain express consent to record in accordance with state law and such consent should be documented by audio/visual recording or written consent. For more information on the use of Body Worn Cameras refer to page [Use of Body Worn Cameras](#), page 19;
- For safety and privacy purposes, interview the victim in an area away from the perpetrator, witnesses and bystanders;
- Ask the victim about **previous abuse, frequency and severity**, including any acts of intimidation that prevented them from calling the police or seeking other assistance or recent stalking behaviors. For example, do **not ask if this is the first such incident, but rather how many times it has happened in the past**;
- Ask the victim if there is a protective order in effect and, if so, make an attempt to verify. Note carefully the restrictions imposed by the order so that it can be determined whether there is probable cause to believe the order has been violated. **If any of the protective provisions have been violated the officer SHALL arrest the suspect and detain until arraignment (RSA 173-B:9(a))**;
- Ask the victim if the perpetrator is currently out on bail. If so, then confirm the conditions through dispatch. If any of the no contact provisions have been violated **by purposely, knowingly, or recklessly engaging in a single act of conduct that both violates the provisions of the order and is listed 633:3-a,II(a)**, it is considered stalking and the suspect should be charged with stalking ([RSA 633:3-a,I\(c\)](#));
- **The officer may rely upon a copy of any protective order (For various reasons, not every order is entered into NCIC)**;

*If the victim does not give expressed consent to record the interview then a recording of the interview shall not be made.*

**NOTE:** A protective order from one state is valid in every other state. The victim only needs to apply for a protective order once, which can be enforced throughout the country without informing the defendant of the victim's location. See [Full Faith and Credit for Domestic Violence Protection Orders](#), page 67.

- **If the officer reasonably believes a victim to be truthful, the officer may rely on the victim's word that there is a protective order in place and can take appropriate action, including arresting or detaining a suspect;**
- If the perpetrator has been arrested prior to the interview, they must be given Miranda warnings before being questioned. If the suspect is not in custody, any admissions made to officers, including the suspect's knowledge that a protective order is in effect may be admissible in court. **Officers should note these and any other excited utterances made by the suspect;**

- If the suspect has fled the scene, solicit information from the victim and witnesses as to the possible locations of the suspect (place of employment, relatives, friends, etc.); and
- Interview any witnesses as soon as circumstances allow. **If time allows, secure statements because witnesses may recant at a later date.** Ask the victim if they made any other calls or had contact with anyone prior to the officer arriving on scene that could be considered a disclosure witness. Ask witnesses to provide information about prior incidents. The officer should document this information to establish a pattern.

## ***COLLECTING PHYSICAL EVIDENCE***

- Collect and preserve all physical evidence present to support a prosecution, including evidence of the victim's injuries, and physical evidence that substantiates an assault **or other domestic violence crime**, such as weapons, torn clothing, etc.;
  - **If the defendant is incarcerated, jail calls can provide additional information to support the underlying case and additional charges.**
- Collect evidence to support the nature of the relationship between the parties. This could include things such as bills with names of both parties on them, pictures in the residence of both parties together or items in the bathroom to indicate co-habitation by both parties. This is critical in order to charge a crime of domestic violence under [RSA 631:2-b](#);
- All physical evidence should be collected, noted in reports, and processed as in other criminal investigations. The presence of such evidence may lead to successful prosecution of the suspect even if the victim becomes unavailable by the time of trial; and
- It may be necessary to obtain a search warrant in order to collect evidence if written consent to search is not obtained. If the investigating officer is unsure if a search warrant is necessary, the officer should request advice from the department prosecutor or County Attorney representative on call.

*It is important to document and record all contacts with the suspect. Part of ensuring the victim's safety is to observe the obvious (and not so obvious) behavior of a suspect. When serving a protective order, answering a call for service and/or doing a criminal investigation, law enforcement is encouraged to document:*

- *The suspect's body language;*
- *The suspect's tone of voice;*
- *The suspect's statements/emotions/mood swings/demeanor; and*
- *Whether the suspect appears to be under the influence of alcohol or other drugs.*

## ***PHOTOGRAPHS***

**Taking evidentiary photographs of the victim, suspect and scene IS STRONGLY ENCOURAGED. The following should be considered:**

- If available, a department issued digital camera should be utilized to document any evidence;

- Consider very closely if there is significant visible physical trauma to the victim which photographic representation would clearly and accurately depict;
- Make a special effort to minimize the potential damaging effect that photography could have on the victim. Do not surprise the victim with the use of a camera. Let the victim know in advance that photographs will be taken and for what purpose;
- A trained police photographer should take the photographs if possible. **Photographs taken by medical personnel become part of the medical record and cannot be released to investigators without proper releases.** The officer taking photographs should submit them as evidence consistent with departmental policies;
- Each police department should have a policy relative to how photographs are documented and identified. At a minimum the policy should require the following information: Photographer, Date, Time, Location Where Photo was Taken, Incident Case Number and Description;
- **If photographs are being taken of an individual's injury, an initial photo needs to be taken showing the individual's face for identification purposes.** Overall distance photos should be taken to identify the injury in relation to the rest of the body, while close up shots will detail the injuries;
- The injured areas should be photographed with and without a comparative object. In order to show the size of the injury and relative location, use a measuring device like a six-inch photographic gray card ruler. It is important to keep the measuring device on the same plane as the injury, or in close proximity in order to depict an accurate representation of the injury. If a ruler is not available, use a common item (i.e. quarter, pen, ruler) to provide scale of the injury;
- Other than the initial overall photograph, document only visible injuries, such as bruises, cuts, lacerations, bite marks, etc. Take care to avoid embarrassing the victim. If possible, when photographing intimate areas, use a photographer the victim feels comfortable with (i.e. photographer of the same gender). Any non-affected, private areas should be covered. **A re-victimization may occur if photographing is not handled appropriately, and may be almost as traumatic as the abuse itself;**
- Injuries such as red marks and scratches may dissipate quickly, whereas bruising can take time to fully develop. Ideally, photographs should be taken at the scene, the next day and **48 hours after the initial assault.** All photographs should be documented per department policy; and
- Photographs of the home or crime scene should also be taken close in time to the incident.

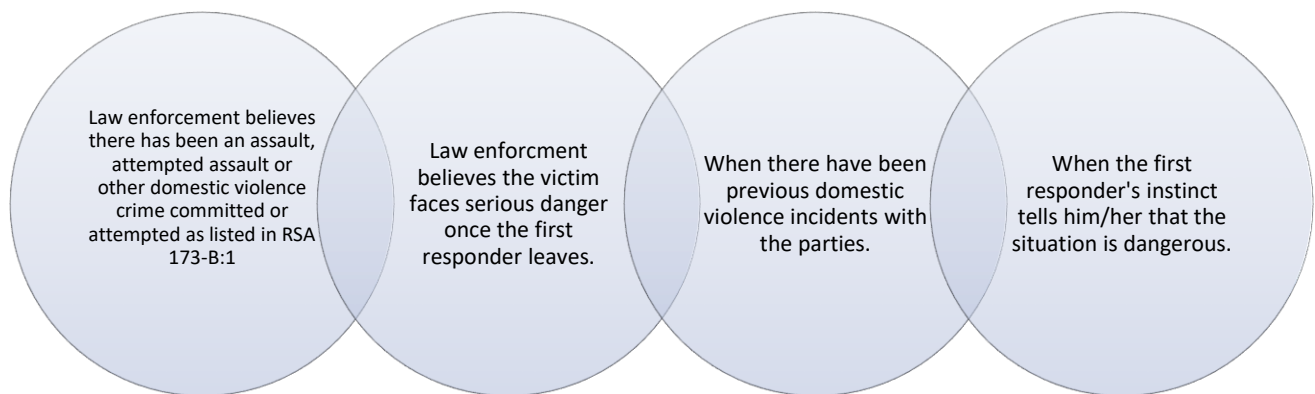
## DOMESTIC VIOLENCE LETHALITY ASSESSMENT PROGRAM

The New Hampshire Attorney General's Office has adopted the evidence based Lethality Assessment Program (LAP), as a best practice response for domestic violence cases and strongly recommends its use by all law enforcement agencies statewide.

The LAP is an easy-to-use process that features a brief lethality screening tool designed to **identify domestic violence victims who are at the greatest risk of being seriously injured or**

**killed and to immediately connect them with crisis center services** for safety planning, information and resources. The goal of LAP is to prevent domestic violence homicides, serious injury and re-assault by encouraging more victims to use the shelter, counseling, advocacy and support services of domestic violence crisis centers.

A LAP screen is **NOT** intended to be used in ALL domestic violence calls – it should only be used in calls involving intimate relationships, when a first responder believes that if **IMMEDIATE INTERVENTION** does not take place it is likely that the victim will be seriously injured or killed and when any one of the following occur:



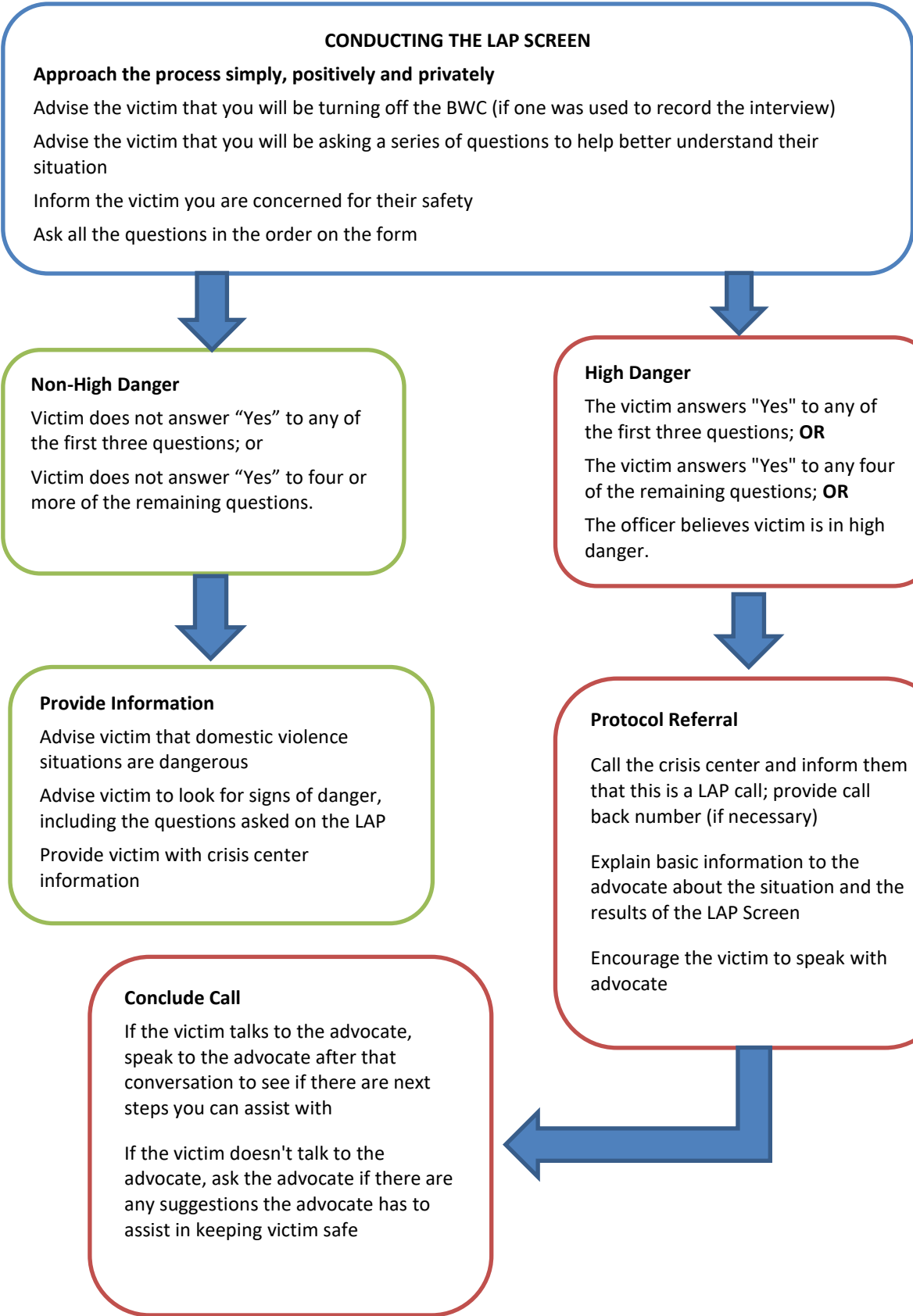
If the situation meets one of the four criteria listed above, then the LAP screen should be used. Officers should initiate the LAP screen near the conclusion of the on-scene investigation when the scene has been secured, the predominant physical aggressor has been identified, the victim has been interviewed and evidence has been collected.

Since the LAP is a supplemental measure taken by the officer to assess for victim safety, law enforcement **should turn off** their body worn camera or other recording devices that may have been in use during the interview with the victim. Additionally, the conversation that occurs between the victim and the crisis center is privileged under 173-C and it is imperative that none of that conversation is audio recorded or it will compromise that privilege.

*The LAP screen should not be administered to both parties or used in order to determine the predominant aggressor. It should only be used with the victim, once the predominant aggressor has been identified.*

If during the course of the LAP, the victim shares information that the officer may want to further investigate, the officer may turn back on the recording device only after the conversation between the victim and crisis center advocate has concluded and the victim provides consent to begin recording again.

The process for initiating the LAP is as follows:





To help evaluate the efficacy of the LAP in New Hampshire, the Attorney General’s Office is requesting that law enforcement agencies provide basic data on their department’s use of the LAP on a quarterly basis. Specifically: how many LAP screens were completed during the quarter, how many victims screened in as in high danger, and how many victims spoke with a crisis center advocate. The data can be submitted online through the [Lethality Assessment Program](#) webpage.

**NOTES:**

- If a LAP screen is completed and the victim **does not** “screen in” as High Danger there is no requirement to immediately call the crisis center but the victim should still be given immediate and written notice of their rights and of the remedies and services available as defined in [RSA 173-B:10 I\(d\)](#). (See [Appendix D](#), for **Law Enforcement Victim Notification Form** template). The remainder of the investigation should be conducted and completed as the officer would normally do with any other domestic violence investigation in accordance with departmental policy;
- If a victim is intoxicated, **but not incapacitated**, a LAP screen should still be initiated when the circumstances warrant it;
- The LAP Screen is **discoverable in a criminal case** and should be included as a part of the incident report; and
- The LAP screen is designed to be one component of a domestic violence investigation and should not be considered a substitute for a complete and thorough investigation of the facts or crime scene.

**The Lethality Assessment Program (LAP) should be utilized only if the law enforcement agency has been trained on its use. Utilizing the LAP screen without first attending and completing the “first responder” training can, in some instances, be dangerous for victims. If your agency has not been trained contact the Attorney General’s Office – LAP Steering Committee at 603-271-6817 to arrange for training.**

## CHILDREN

**If children are present, a determination should be made as to whether or not an interview is necessary on scene.**

**Prior to interviewing a child, the officer should ask the following questions:**

- **What must we know to make decisions about immediate action? If information is not necessary don't ask the child; and**
- **Is there another source for the information such as adult witnesses (including disclosure witnesses) or physical evidence?**

**If officers MUST interview a child, do it away from the suspect. KEEP THIS INTERVIEW TO A MINIMAL FACTS INTERVIEW (See [Conducting a Minimal Fact Interview](#) below). When possible, a minimal facts interview should be audio recorded. For felony cases, a CAC should be utilized for anything more than a minimal facts interview. For misdemeanor cases, consult with the prosecutor to determine if a CAC forensic interview is appropriate.**

Law enforcement response to domestic violence incidents will impact every member of the family including the children who are at the scene. A trauma informed response by law enforcement to children present is essential.

**The goals of an effective law enforcement response to children include:**

- Assessing whether children have been harmed;
- Minimizing the impact and repercussions to children who are present;
- Empowering children within the process as much as possible;
- Enhancing adult victim and child safety;
- Promoting offender accountability; and
- Expanding the community response to domestic violence.

**Children can be exposed to domestic violence in a number of ways:**

- Directly witnessing violence;
- Intervening in an assault to protect a parent;
- Overhearing violence;
- Seeing the injuries or bruises on a parent; and
- Being harmed intentionally or unintentionally in the course of an assault.

**There are many variables which influence/mitigate the effects of domestic violence on children, including:**

- The severity and frequency of the violence;
- The age of the child;
- The resiliency and temperament of the child;
- The child's relationship with the parent who is battered; and
- The child's relationship with the offender.

Children exposed to violence can experience a range of effects including, **but not limited to:**

- Sleep disturbances;
- Eating problems;
- Developmental delays;
- Psychosomatic disorders;
- Acting out violently;
- Withdrawing;
- Problems in school;
- Depression; and
- Anxiety.

*The impact of exposure to domestic violence on children can occur across a wide continuum. Some children experience a mild level of anxiety while other children are severely traumatized.*

## **GATHERING INFORMATION AND ASSESSING SAFETY OF CHILDREN**

Law enforcement should determine and document whether there are any children present during the incident or past incidents, including their names, ages, demeanor, their relationship to the parties, and whether the child/ren have been injured or otherwise harmed.

- In addition to information provided by the police dispatcher regarding children, officers should look for physical evidence that may indicate the presence of child/ren (i.e., toys, clothes, etc.);
- Ask the parties about child/ren, their whereabouts, and whether the child/ren were present during the incident;
- Ask the parties whether the child/ren have been present during past incidents and how they reacted;
- If child/ren were present ask the parties if the child/ren were injured in the incident;
- Explain to the parent/guardian why it is important for officers to check on the child/ren; and
- If the parties are not able to respond to questions about the child/ren's welfare and there is some reason to believe that child/ren may be present, officers should locate them.

When law enforcement looks for children, officers should consider:

- That the purpose of searching the house for child/ren should be to determine their presence and welfare;
- Asking the non-offending parent/guardian to go with the officer to locate the child/ren;
- The age and developmental level of the child/ren which can affect where they may hide;
- Not waking child/ren who appear to be sleeping in the absence of other compelling reasons to do so; and
- That the search should be limited to locating the child/ren and not an opportunity to circumvent a search warrant.

## WHEN A CHILD IS LOCATED

When law enforcement locates child/ren on the scene, officers should determine whether the child/ren may be physically hurt by both visually observing and by asking the child/ren. Officers should make every attempt to comfort the child/ren.

### **If a child was present during this incident or a previous incident:**

- Report the incident to **DCYF Central Intake at 1-800-894-5533 or 603-271-6556**. This report should be made immediately if the child/ren is in imminent danger. For more information refer to [Mandatory Reporting](#), page 77;
- Explain to the non-offending parent that a report must be made and why; and
- Refer the adult victim to a domestic violence crisis center.

### **In addition to the above, if child/ren have been injured, law enforcement should also:**

- Determine whether the child/ren needs medical treatment and if so, make arrangements to get it. Engage the non-offending parent/guardian in that process if possible. Attempt to get a medical release at this time;
- Follow the Attorney General's [Child Abuse and Neglect Protocol](#); and
- Document the child/ren's injuries in the incident report.

### **Tips for Talking With the Non-Offending Parent About the Report to DCYF:**

- *Be prepared for the person to have a range of emotions;*
- *Express concern for the safety of the victim and their children;*
- *Be clear as to why the report is being made – name specific concerns;*
- *Let the victim know that this is not a punishment but rather a doorway to supportive services;*
- *Let the victim know that DCYF's role is to find ways to support the family, protect the children and provide services that can eventually provide stability; and*
- *Refer the victim to the local crisis center so that safety plans and additional services can be put in place.*

## TALKING WITH CHILDREN ABOUT THE INCIDENT

**NOTE:** If child/ren make “excited utterances” about the incident, the officer should document them, verbatim, along with observations about the child/ren’s demeanor in the officer’s report.

When talking to a child at the scene keep in mind the following:

- The potential trauma to the child/ren that could result from an interview; and
- Comfort level of the child and non-offending parent:
  - The age and developmental level of the child/ren;
  - The emotional state of the child/ren;
  - Whether the child/ren are expressing an interest in speaking with an officer; and
  - The non-offending parent/guardian's preferences as to whether and how to talk with the child/ren.
- **Officers should constantly be looking at other corroborative evidence sufficient to make the arrest decision without interviewing the child/ren on scene.**

## CONDUCTING A MINIMAL FACTS INTERVIEW

In general, **child/ren should be interviewed outside the presence of parents/guardians to avoid the child being influenced by their presence.** However, there may be some occasions where child/ren, because of their age, developmental level, and/or emotional state, should be interviewed in the presence of a non-offending parent/guardian in order to minimize the impact on the child/ren. **In all cases, the preferred method of a comprehensive interview is for a forensically trained investigator to conduct the interview at a CAC.**

The purpose of a minimal facts interview is to obtain very basic facts concerning the incident and to assess for everyone’s safety. The goal is to establish what occurred without conducting a full interview with the child while maintaining the integrity of the pending investigation.

### Questions to consider

- *What happened?*
- *Who was there when it\* happened?*
- *Where were you when it\* happened?*
- *What did you hear?*
- *What did you see?*

*\*Use the child’s language (i.e. when daddy hit mommy).*

## CHILD ADVOCACY CENTERS

Based on a nationally recognized model, New Hampshire’s Child Advocacy Centers (CAC) are community partnerships dedicated to pursuing the truth in child abuse cases and coordinating social services for child victims. CACs are community-based facilities that bring together law enforcement, DCYF, County Attorney’s Offices, victim advocate services and

medical and mental health professionals utilizing a collaborative team approach to child abuse investigations and necessary follow-up services for victims and their families.

New Hampshire's CACs provide safe, neutral, child friendly locations for interviewing child victims. Children are interviewed by a forensic interviewer. The forensic interviewer has special training and is experienced in talking with children. The interviewer's goal is to make the child as comfortable as possible while gathering information.

A list of all the CACs in the state can be accessed through the Granite State Children's Alliance at [www.cac-nh.org](http://www.cac-nh.org).

## **INTERVIEWING WITNESSES IN THE PRESENCE OF CHILDREN**

Avoid interviewing parties in the presence of the child/ren. To ensure impartiality and no conflict of interest, it is important that children and extended family members of the victim or of the batterer not be allowed to interpret for the victim. See [Use of Interpreters](#), page 10, for more information.

***Investigators should realize that each child is different and some may wish to be part of the process. If law enforcement encounters a child who wants to talk let the child speak openly, but do not ask questions beyond those necessary to establish minimal facts (i.e. who, what, where, when).***

***A CAC should be utilized for anything more than a minimal facts interview.***

# THE ARREST DECISION

## MANDATORY ARREST

If law enforcement has probable cause to believe that a defendant has violated either a **temporary or a permanent protective order as listed below**, they **must** arrest that person, even if the victim does not want the defendant arrested. In this instance, the officer should emphasize to the victim and to the suspect as well, that the criminal action is being initiated by the State, not the victim. These arrests may be made within **12 hours after a violation** without a warrant upon probable cause **whether or not the violation is committed in the presence of a peace officer**.

This mandatory arrest provision applies to a violation of any of the following types of protective orders:

- Domestic violence protective orders issued or enforced under RSA 173-B ([RSA 173-B:9](#));
- Stalking protective orders issued or enforced under RSA 633:3-a, ([RSA 633:3-a,V](#));
- Protective orders contained in a divorce decree under RSA 458:16 ([RSA 458:16, III](#));
- Protective orders contained as part of a parenting plan under RSA 461-A ([RSA 461-A:10](#)); and
- Protective orders issued by another state, territorial, or tribal court ([RSA 173-B:13](#) and [18 USC 2265](#)).

Additionally, [RSA 633:3-a, V](#), mandates that an officer **SHALL ARREST** when the officer has probable cause to believe that a person has committed the offense of stalking when the stalking involves a violation of a protective order issued pursuant to **RSA 173-B, RSA 458:16 or 633:3-a III(a)**.

**NOTE:** *Violations of protective orders issued under the child protection act ([RSA 169-C:7-a](#), [RSA 169-C:16](#) or [RSA 169-C:19, II\(a\)](#)) also qualify for a mandatory arrest. If the violation occurred within **6 hours**, the arrest may be made without a warrant.*

### NOTES:

- *The time for the 12 hour warrantless exception begins at the time of the offense, **NOT THE TIME THE OFFENSE IS REPORTED**. The warrant shall be entered into NCIC or the Instate Misdemeanor Warrant File;*
- *The 12 hour warrantless arrest provision still applies whether or not the crime falls under Joshua's Law ([RSA 631:2-b](#)); and*
- ***Before the 12 hour period expires the officer should get a warrant if the suspect has not been arrested.***

## WARRANTLESS ARREST

In addition to the warrantless arrest provisions listed above for protective order violations, an arrest by an officer without a warrant on a charge of a misdemeanor is lawful whenever:

- The officer has probable cause to believe that the person has committed abuse as defined in [RSA 173-B:1, I](#), against a person eligible for protection from domestic abuse as defined in [RSA 173-B:1](#), within the past **12 hours** ([RSA 594:10, I\(b\)](#)); and
- The officer has probable cause to believe that the person has violated stalking provisions under [RSA 633:3-a](#) within the last **12 hours** ([RSA 633:3-a, V](#)).

When no protective order is in place, it is the officer's decision whether an arrest should be made based on probable cause obtained during the course of the investigation. The officer should not rely on the victim's opposition to arrest and should explain to the victim and emphasize to the accused, that the criminal charge is initiated by the officer and not by the victim.

In all cases of domestic violence in which an arrest is **not mandated** by statute, officers **SHOULD ARREST**, with or without a warrant, if probable cause exists to support an arrest. If an officer decides not to arrest in a domestic violence incident, where such an arrest is lawful, **the officer must include in the report of the incident a detailed explanation of the reasons an arrest was not made.**

**REMINDER: If there is a protective order in place, law enforcement MUST arrest in all instances where they have probable cause to believe that the protective order was violated.** The officer may rely upon a copy of any protective order provided by any source or may rely on the statement by the protected party that the order remains in effect.

The officer should take the suspect into custody as soon as the officer determines that a warrantless arrest is appropriate. If the suspect has fled the scene, the officer should initiate procedures to pursue and apprehend the suspect as soon as possible; arrange for the safety of the family, and take reasonable measures to safeguard the property. If a warrant is necessary, the officer **should** obtain and execute the warrant as soon as possible.

Subsequent to an arrest for the violation of the protective order (issued under [RSA 173-B](#), [RSA 633:3-a](#), [RSA 169-C:7-a](#), [RSA 169-C:16](#) or [169-C:19, II\(a\)](#)), or whenever an officer has probable cause to believe abuse has occurred as defined in [RSA 173-B:1](#), officers **SHALL SEIZE** any firearms and ammunition in the control, ownership, or possession of the defendant. Officers shall also seize any other deadly weapons in the control, ownership or possession of the defendant which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency **SHOULD** maintain possession of the firearms,

*Protective orders are civil orders designed to protect the victim from the defendant. **The prohibited actions in a protective order only apply to the person that the order is addressed to and NOT to the victim.** It is therefore not possible for the victim to be in violation of the order and **under no circumstances should an officer threaten, or actually arrest the victim for violating a protective order.***

*Temporary reconciliation **shall not** revoke the order. **IF** the victim indicates a desire to initiate contact with the defendant, however, the officer should suggest that the victim contact the issuing court to amend the protective order.*



ammunition, or deadly weapons until the court issues a written order for return. ([RSA 173-B:9, I\(b\)](#)) (see [Firearms Issues](#), page 68).

When a person violates an order pursuant to [RSA 597:2](#) that prohibits contact with a specific individual, by purposely, knowingly, or recklessly engaging in a single act of conduct that both violates the provisions of the order and is listed in paragraph [RSA 633:3-a,II\(a\)](#) it is considered stalking and best practice if for officers to arrest.

## PROCEDURE WHEN ARREST IS NOT POSSIBLE

- When arrest is not possible, officers are still obligated to advise victims of their rights under [RSA 173-B:10\(d\)](#), and should always discuss safety options. It is highly recommended that law enforcement encourage victims to call their local crisis center (**1-866-644-3574**) where housing and safety plans can be formulated and assessed by a trained advocate;
- The officer should discuss the possibility of alternative housing with the victim and encourage the victim to contact law enforcement again if necessary. The victim's perception of the willingness of law enforcement to assist and protect the victim is often the determining factor in the victim's decision to seek further assistance from the criminal justice system;
- Even when an arrest is not made the issuance of a protective order may be appropriate. Officers may assist the victim by requesting a judge to issue an emergency telephonic protective order during hours when the court is closed (*See [Emergency/Telephonic Orders](#) page 69, for more information*) or directing that person to the court during business hours. Officers should be mindful of the statutory protection provided to victims by [RSA 173-B:10](#);
- In addition, [RSA 173-B:11](#) states that “all officers shall give victims of abuse immediate and adequate notice of their right to go to the district or superior court in their county to file for a petition asking for a protective order against the abusive person”; and
- Consider using the [LAP Screen](#) to help determine risk factors and assist with safety planning with the victim.

***Remember: If an officer decides not to arrest in a domestic violence incident, the officer must include in the report of the incident a detailed explanation of the reasons an arrest was not made***

## PROTECTION BY LAW ENFORCEMENT

According to [RSA 173-B:10](#), whenever law enforcement has probable cause to believe that a person has been abused, as defined in [RSA 173-B:1](#), officers **SHALL** use all means to prevent future abuse, including, but not limited to:

- **Confiscating any firearms and ammunition in the defendant’s control, ownership or possession;**
- **Confiscating any deadly weapons used or threatened to be used in the domestic violence incident;**
- Transporting or obtaining transportation for the victim and any child to a designated place to meet with a crisis center advocate, family member or friend;
- Standing by while the victim removes toiletries, medication, clothing, business equipment and other items as determined by the court, from the residence or business. (See [Civil Standbys, page 66](#)); and
- Giving the victim immediate and written notice of the rights, remedies and services available to victims of domestic violence as defined in [RSA 173-B:10,I\(d\)](#). (See [Appendix D](#), for *Law Enforcement Victim Notification Form* template.)

## CONFIDENTIALITY OF VICTIM’S LOCATION/ADDRESS

It is important for the officer to determine if the perpetrator knows where the victim lives. If the perpetrator does not know and the victim does not want the perpetrator to know, the officer should not include any reference to the victim’s address in the body of the report, the incident arrest sheet or other police documents. The criminal complaint should just identify the city (i.e. Dover NH) as the location of the incident without reference to the specific street. Defendants have purposely violated protective orders to obtain victim’s address from the criminal complaint.

## EMERGENCY CARE, LIMITATIONS AND LIABILITY [RSA 173-B:12](#)

“Any act or omission of any peace officer rendering emergency care or assistance to a victim of domestic violence including, **but not limited to** transportation, **shall not impose** civil liability upon the peace officer or the peace officer’s supervisors or employer if the care and assistance is rendered in good faith, **unless the act or omission is a result of gross negligence or willful misconduct**”.

## VICTIM RIGHTS AND NOTIFICATION

Victims of domestic violence are entitled to all the rights granted under the New Hampshire Victims' Bill of Rights which was established under [RSA 21-M:8 \(RSA 173-B:9,V\)](#). This includes being treated with dignity and respect throughout the criminal justice process, the right to be informed about the criminal justice system process and how it progresses and the right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.

According to [RSA 173-B:10\(d\)](#) Law Enforcement **SHALL** give domestic violence victims immediate and written notice of the rights of victims and of the remedies and services available to victims of domestic violence. This includes referring all victims to crisis center services. The written victim notification form shall include a statement substantially as follows:

"If you are a victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency telephonic order of protection.

"You may also request that the officer assist you in obtaining from your premises or curtilage, toiletries, medication, clothing, business equipment and any other items as determined by the court, and in locating and taking you to a local safe place, including but not limited to, a designated meeting place to be used as a crisis center, a family member's or friend's residence or similar place of safety.

"If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining an ambulance.

**"You may request a copy of the report filed by the peace officer, AT NO COST, from the law enforcement department."**

To assist law enforcement agencies in meeting this requirement in a consistent manner, the Attorney General's Office created the *Law Enforcement Victim Notification Form*. It is available in this protocol as [Appendix D](#) and on the Attorney General's website at <http://doj.nh.gov/criminal/victim-assistance/publications.htm>. Individual agencies are encouraged to duplicate and use the template.

If requested, law enforcement agencies **must** provide copies of domestic violence police reports to victims **at no cost**. A copy of the dispatch log indicating that a report was made to law enforcement that includes both parties information can be given out at any time, as the full investigative report may not be immediately available.

Additionally, [RSA 173-B:11](#) requires that all law enforcement officers **SHALL** give victims of abuse immediate and adequate notice of their right to go to the circuit court of their county to file a petition asking for protective orders against the abusive person and to seek a private criminal complaint. Best practice would indicate officers to review these rights and services verbally with victims, in addition to providing written notification.

## BAIL ISSUES

### STATUTORY REFERENCES:

[RSA 173-B:9](#) (Violation of Protective Order)  
[RSA 597](#) (Bail and Recognizance)

***NOTE:** Upon request, the law enforcement officer shall provide to the judge a copy of the defendant's criminal record including: New Hampshire criminal record check; New Hampshire license check; motor vehicle history; domestic violence protective order history, if known; and Triple Interstate and FBI criminal check.*

*When determining bail in a domestic violence case the officer should make the judge or bail commissioner aware of the relationship of the parties and any facts that help provide for the safety of the victim.*

***NOTE:** If a Lethality Assessment Program (LAP) Screen was completed at the time of the defendant's arrest the results of that LAP Screen should also be provided to the Bail Commissioner and/or the Judge.*

### VICTIM NOTIFICATION OF BAIL ORDERS

It is important that victims of domestic violence be made aware of all outstanding orders of protection, including bail orders and bail status. Victims are not usually present when the bail order is issued and may be unaware of what conditions the order contains. Because the court system is often not aware of the victim's location, the prosecuting agency should make all reasonable attempts to notify victims of the bail orders.

### MANDATORY DETENTION

When a defendant is arrested for violation of a protection order issued under [RSA 173-B](#) or [RSA 633:3-a](#) the defendant **must be detained** until arraignment pursuant to [RSA 173-B:9 I \(a\)](#) and [RSA 597:2, VI](#). In these cases a judge must set bail. **A bail commissioner SHOULD NOT be called.**

### GUIDELINES FOR ISSUING BAIL AND CRIMINAL PROTECTIVE ORDERS PENDING ARRAIGNMENT

In general, a person is entitled to pretrial release, the conditions of which will be dependent upon the court's assessment of whether the defendant poses a risk of flight or danger to self or others. The Domestic Violence/Stalking Criminal Order of Protection Including Orders and Conditions of Bail (CBPO) is a specialized form of bail order that was developed for use in criminal cases involving "intimate partners" as defined under federal statute. While often

utilized in cases involving domestic violence, sexual assault or stalking, it may be appropriate for a whole range of charges.

The form explicitly addresses restrictions on personal contact, possession of firearms, and use of alcohol and drugs and was designed so that it can be entered into NCIC as a criminal order of protection.

The Criminal Bail Protective Order (CBPO) should be requested when:

1. The parties are “intimate partners” **as defined under federal law**; and
2. Appropriate **bail conditions include restraints on:**
  - Threatening or committing acts of abuse, harassing, stalking or threatening a victim, **OR**
  - Engaging in other conduct that would place the victim in reasonable fear of bodily injury.

The decision of whether to use the CBPO is based on the **relationship** and the **type of protection order**. It may be appropriate in a variety of criminal circumstances.

**Reminder:** CBPOs capture those defendants that are subject to *Brady* firearms prohibitions. In order for this to be effective, CBPOs **must be issued** in compliance the federal definition of “intimate partner.” For more information see [Criminal Bail Protective Orders, page 62](#) and [Appendix E Qualifying Relationships](#).

A defendant who is subject to a protective order prohibiting that person from “harassing, stalking, or threatening an intimate partner...or child of such intimate partner” is subject to federal firearms prohibition. The use of a CBPO ensures that state and federal law enforcement have the information necessary through NCIC to enforce those prohibitions. CBPOs are not used when the defendant is the child or step-child of the victim.

## ***FIREARMS***

(See [Firearms Issues, page 68](#))

“Intimate partners” for the purposes of a CBPO are defined **under federal law** which is **more narrow than the definition under New Hampshire RSA 173-B or 631:2-b**. The bail statute, RSA 597, is silent on the relationship between the parties.

For the purposes of the **CBPO** the defendant’s relationship to the victim must be at least one of the following:

- Married to victim;
- Divorced/Separated from victim;
- Cohabits/cohabitated with victim (intimate relationship required);
- Has child in common with victim;
- Parent/Stepparent (current or former stepparent) of victim; or
- Child or children of the intimate partner (even where the child is not a child in common).

## PREVENTIVE DETENTION

In cases where there is clear and convincing evidence presented at arraignment that the defendant poses a significant danger to himself, or another, the officer should request that the judge order preventive detention without bail, or impose alternative restrictive conditions, such as electronic monitoring.

A preventive detention should be considered whenever the defendant has made threats of suicide at the time of arrest, while in custody or during the domestic incident.

A preventive detention request should be done by written motion alleging as many of the following acts or conduct as evidence that the defendant poses a danger:

- Threats or attempts of suicide;
- Depression or sudden lifting of moods;
- History of violating protective orders;
- Recent acquisition or change in use of weapons;
- Homicidal ideation, threats or attempts;
- Threats of imprisonment of the victim, or possessiveness toward another;
- Interference with help seeking attempts on the part of the victim. (e.g., pulling a phone jack out of the wall);
- Stalking as defined in [RSA 633:3-a](#) or other surveillance/monitoring behavior;
- Cruelty to or violence directed towards animals;
- Escalation of physical violence;
- Escalation of other forms of abuse;
- Sexual abuse of the victim;
- Change in alcohol or other drug use/abuse;
- Mental health concerns connected with violent behavior;
- A change in types or doses of Mental Health medications;
- Other criminal behavior or injunctions (e.g., resisting arrest);
- Increase in personal risk taking (e.g., violation of a protective order);
- Centrality of the victim to the perpetrator (“the victim is all I have”);
- Jealousy/obsessiveness about, or preoccupation with, the victim;
- Symbolic violence including destruction of the victim’s property;
- Pending separation, divorce or custody proceedings;
- Recent termination from employment;

*When a person is charged with an offense listed in 173-B:1, I or a violation of a protective order under 458:16, or if after an arrangement for a violation of a protective order issued under 173-B, the court may order preventative detention without bail or may order other restrictive conditions ([RSA 597:2, IV\(a\)](#)).*

- Victim’s attempt to flee the perpetrator or to terminate the relationship; and
- Perpetrator’s access to the victim or the victim’s family.

## WHEN A DEFENDANT VIOLATES A CONDITION OF BAIL

**NOTE:** *Some of the examples listed here are outlined in [RSA 597:2](#). While others are taken from the New Hampshire Batterers Intervention Standards, 2002, and from recommendations from the Domestic Violence Fatality Review Committee. Much of this information can also be derived from a LAP Screen.*

*While research has shown that each of these factors may be a strong indicator of lethality or future violence, a high lethality risk may exist even in the absence of these factors.*

*Also, as can be noted by the phrasing of some of these items, a **change** in factors may be equally as important as the **presence** of those factors (e.g., owning a weapon is not as relevant as recently purchasing that weapon). Increased monitoring with the perpetrator may also be indicated.*

In cases where there is clear and convincing evidence that the defendant has violated one or more of the terms of bail or has been arrested on a warrant for a new criminal offense, the prosecuting officer should request the court to revoke the defendant’s bail. A motion to revoke bail should be filed in all cases where the defendant has breached a “no contact” condition of bail.

In cases where the defendant has violated a “no contact” provision of bail, by purposely, knowingly, or recklessly engaging in a single act of conduct that both violates the provisions of the order and is listed in [RSA 633:3-a, II\(a\)](#), **best practice requires the officer to charge the defendant with Class A misdemeanor of stalking under [RSA 633:3-a, I\(c\)](#)** if the alleged conduct occurred in their jurisdiction. However a Class A misdemeanor of breach of bail conditions under [RSA 597:7-a](#) can also be charged. The arresting officer has the option of holding the defendant without bail until the defendant can see a judge.

A request to revoke bail must be filed in the court that ordered the defendant’s release and bail conditions, regardless of where the violation occurred. **If this court is outside the jurisdiction of where the new offense occurred, the arresting officer should immediately notify the prosecuting jurisdiction of new offense prior to the defendants’ release.**

### Case Example:

**November 27, 2020:** Manchester Court issues bail and orders of release, including an order of no contact with the victim.

**December 7, 2020:** In Auburn, the defendant is found with the victim in violation of the “no contact” order of release from the Manchester Court.

**December 7, 2020:** Auburn should charge the defendant with stalking or breach of bail; should call Manchester Police Department to ascertain if they want the defendant held for a Motion to Revoke bail in the Manchester Court.

**December 7, 2020:** Manchester police should file a written Motion to Revoke Bail to the Manchester Court.

The request to revoke bail should be done by written motion. If, however, the defendant has been arrested on a court-issued arrest warrant for the new offense, the State may stand on the warrant as written notice of the request to revoke bail.

[RSA 597:7-a](#) allows the State to detain the defendant until the defendant can be brought before the issuing Court. The detention, however, must not exceed 48 hours. Any request to revoke bail should establish the following:

1. **Either** there is probable cause to believe that the person has committed a federal, state, or local crime while on release; **or** there is clear and convincing evidence that the person has violated any other condition of release- such as a “no contact” provision; and
2. **Either** there is no condition or combination of conditions of release that will assure that the person will not flee or that the person will not pose a danger to the safety of himself or any other person or the community; **or** that the person is unlikely to abide by any condition or combination of conditions of release.

**NOTE:** *If it is alleged that the defendant has committed a federal or state felony while released on bail and the Court finds probable cause to believe that the defendant committed the felony, there is a rebuttable presumption that no condition or combination of conditions will assure that the person is not a danger to the safety of any other person or the community ([RSA 597:7-a](#)).*



## CHARGING AND SENTENCING DECISIONS

### STATUTORY REFERENCES

[RSA 173-B:9, III](#)  
[RSA 625:9, IV and VII](#)  
[RSA 631:2-b](#)

[RSA 631:2-b](#), establishing the crime of Domestic Violence, went into effect on January 1, 2015. The intent of the statute was to make New Hampshire law compatible with federal laws relative to firearms prohibitions and to make it easier to identify domestic violence offenders for use in bail arguments and sentencing. The law does not replace the protections available under RSA 173-B, and does not change the ability of law enforcement to make an arrest under 173-B.

All offenses under [RSA 631:2-b](#) specify the relationship between the defendant and the victim, as is either **family or household member**, or an **intimate partner**.

**“Family or household member”** is defined as:

- The actor's spouse or former spouse;
- A person with whom the actor is cohabiting as a spouse, parent, or guardian;
- A person with whom the actor cohabited as a spouse, parent, or guardian but no longer shares the same residence;
- An adult with whom the actor is related by blood or marriage; or
- A person with whom the actor shares a child in common.

**“Intimate partner”** is defined as:

- A person with whom the actor is currently or was formerly involved in a romantic relationship, regardless of whether or not the relationship was sexually consummated.

For more information see [Appendix E, Qualifying Relationships](#).

**Best practice is to charge under Joshua’s Law whenever possible but there may be instances when Joshua’s Law ([RSA 631:2-b](#)) can’t be utilized (i.e. the relationship status is unclear or the physical force component is missing). Keep in mind that in those circumstances, charges should be made under the appropriate non-Joshua’s law related crimes. Below is a side by side comparison of the domestic violence statutes.**

**Joshua’s Law includes more qualifying relationships than the federal statute. A violation of Joshua’s Law does not automatically qualify somebody for a CBPO.**

Joshua's Law	Non-Joshua's Law Domestic Violence related charges
<p><b>RSA 631:2-b, I(a)</b> - Purposely or knowingly causes bodily injury or unprivileged physical contact against another <b><u>by use of physical force</u></b>;</p>	<p><b>631:2-a Simple Assault. –</b>  I. A person is guilty of simple assault if he:  (a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another;</p>
<p><b>RSA 631:2-b, I(b)</b> - Recklessly causes bodily injury to another <b><u>by use of physical force</u></b>;</p>	<p><b>631:2-a Simple Assault. –</b>  I. A person is guilty of simple assault if he: . . .  (b) Recklessly causes bodily injury to another; or</p>
<p><b>RSA 631:2-b, I(c)</b> - Negligently causes bodily injury to another <b><u>by means of a deadly weapon</u></b>;</p>	<p><b>631:2-a Simple Assault. –</b>  I. A person is guilty of simple assault if he: . . .  (c) Negligently causes bodily injury to another by means of a deadly weapon.</p>
<p><b>RSA 631:2-b, I(d)</b> - <b><u>Uses or attempts to use physical force, or by physical conduct threatens to use a deadly weapon</u></b> for the purpose of placing another in fear of imminent bodily injury;</p>	<p><b>631:4 Criminal Threatening. –</b>  I. A person is guilty of criminal threatening when:  (a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact;</p>
<p><b>RSA 631:2-b, I(e)</b> - <b><u>Threatens to use a deadly weapon</u></b> against another person for the purpose to terrorize <b><u>that</u></b> person;</p>	<p><b>631:4 Criminal Threatening. –</b>  I. A person is guilty of criminal threatening when:  (d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person.</p>
<p><b>RSA 631:2-b, I(f)</b> - Coerces or forces another to submit to sexual contact <b><u>by using physical force or physical violence</u></b>;</p>	<p><b>632-A:4 Sexual Assault. –</b>  I. A person is guilty of a class A misdemeanor under any of the following circumstances:  (a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.</p> <p><b>632-A:2 Aggravated Felonious Sexual Assault. –</b></p>

	<p>I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:</p> <p>(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.</p>
<p><b>RSA 631:2-b, I(g)</b> - Threatens to <u>use physical force or physical violence</u> to cause another to submit to sexual contact and the victim believes the actor has the present ability to execute the threat;</p>	<p><b>632-A:4 Sexual Assault. –</b></p> <p>I. A person is guilty of a class A misdemeanor under any of the following circumstances:</p> <p>(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.</p> <p><b>632-A:2 Aggravated Felonious Sexual Assault. –</b></p> <p>I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:</p> <p>(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.</p>
<p><b>RSA 631:2-b, I(h)</b> - Threatens to use a <u>deadly weapon</u> to cause another to submit to sexual contact and the victim believes the actor has the present ability to carry out the threat;</p>	<p><b>632-A:4 Sexual Assault. –</b></p> <p>I. A person is guilty of a class A misdemeanor under any of the following circumstances:</p> <p>(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.</p> <p><b>632-A:2 Aggravated Felonious Sexual Assault. –</b></p> <p>I. A person is guilty of the felony of aggravated felonious sexual assault if such</p>

	<p>person engages in sexual penetration with another person under any of the following circumstances:</p> <p>(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.</p>
<p><b>RSA 631:2-b, I(i)</b> - Confines another unlawfully, as defined in RSA 633:2, <b><u>by means of physical force or the threatened use of a deadly weapon</u></b>, so as to interfere substantially with his or her physical movement;</p>	<p><b>633:3 False Imprisonment.</b> – A person is guilty of a misdemeanor if he knowingly confines another unlawfully, as defined in RSA 633:2, so as to interfere substantially with his physical movement.</p>
<p><b>RSA 631:2-b, I(j)</b> - Knowingly violates a term of a protective order issued pursuant to RSA 173-B:4, I <b><u>by means of the use or attempted use of physical force or the threatened use of a deadly weapon</u></b>;</p>	<p><b>173-B:9 Violation of Protective Order; Penalty.</b> –</p> <p>III. A person shall be guilty of a class A misdemeanor if such person knowingly violates a protective order issued under this chapter.</p>
<p><b>RSA 631:2-b, I(k)</b> - Uses <b><u>physical force or the threatened use of a deadly weapon</u></b> against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:</p> <p>(1) The report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or</p> <p>(2) A request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.</p>	<p><b>642:10 Obstructing Report of Crime or Injury.</b> –</p> <p>I. A person shall be guilty of an offense under this section who . . . uses physical force or intimidation to block access to any telephone, radio, or other electronic communication device with a purpose to obstruct, prevent, or interfere with: . . .</p> <p>(b) The report of any bodily injury or property damage to any law enforcement agency; or</p> <p>(c) A request for ambulance or emergency medical assistance to any governmental agency, or any hospital, doctor, or other medical service provider.</p>

## CHARGING

In some New Hampshire communities, police prosecutors are responsible for the prosecution of misdemeanor cases. Given the increasing complexity of domestic violence cases, police prosecutors with this responsibility should be experienced with domestic violence cases and have specialized training in domestic violence prosecution. Prosecutors should understand the issues surrounding domestic violence and be familiar with the available resources in the community.

In deciding to bring a specific charge, the prosecutor must determine whether there is sufficient admissible evidence to sustain a guilty finding and a reasonable probability of conviction.

The prosecutor should review all the facts in the case and carefully consider the following:

- The elements of the offense, including physical force and relationship of the parties;
- The extent and seriousness of injuries and/or threats;
- The use or threatened use of a deadly weapon (including furniture or other household objects);
- The results of a LAP screen, if conducted;
- The defendant's criminal history and history of violence toward the victim. (See [Identifying the Predominant Physical Aggressor](#), page 23). The language "**mutual combat**" **should not be used in the complaint**;
- The defendant's use of alcohol or other drugs insofar as the propensity for violence may be enhanced when impaired; and
- The victim's or caller's statements to the 911 operator.

In domestic violence there are specific statutory provisions that must be taken into account when charging a perpetrator:

### **Reminder:**

*For the purposes of charging under the criminal domestic violence statute [631:2-b](#) the relationship of the parties needs to be documented as either a "**Family or household member**" or "**Intimate Partner**".*

*"Family or household member" is defined as:*

- *The actor's spouse or former spouse;*
- *A person with whom the actor is cohabiting as a spouse, parent, or guardian;*
- *A person with whom the actor cohabited as a spouse, parent, or guardian but no longer shares the same residence;*
- *An adult with whom the actor is related by blood or marriage; or*
- *A person with whom the actor shares a child in common.*

*"Intimate partner" is defined as:*

- *A person with whom the actor is currently or was formerly involved in a romantic relationship, regardless of whether or not the relationship was sexually consummated.*

- Under [RSA 173-B:9, III](#) a charge of violation of a protective order, which is a Class A misdemeanor, **cannot be reduced** to a Class B misdemeanor, as is permitted in other instances under [RSA 625:9](#);
- Any misdemeanor offense that is not designated by statute is presumed to be a Class B. A prosecutor has the discretion to charge any such offense as a Class A. In domestic violence cases, they should be filed as Class A and in that event, the prosecutor **must complete** a *Notice of Intent to Seek Class A Misdemeanor Penalties* form and file it at arraignment; and
- In general, the prosecutor has the discretion to reduce a Class A misdemeanor to a Class B. However, an offense designated as a Class A misdemeanor, **may not be reduced** to a Class B if the elements of the offense involve a threat of violence or an act of violence. ([RSA 625:9](#) IV and VII);

Domestic violence cases should be charged as class A misdemeanors. Suspended and deferred jail sentences are useful in enforcing court-imposed requirements for treatment and participation in other rehabilitation programs. When the victim’s safety is a primary concern, charging the defendant with a violation level offense may prevent meaningful interventions for the perpetrator. Charge reductions designed to preclude court appointed counsel are not appropriate.

If the criminal charges involve a relationship between the parties that fits within the federal definition of “intimate partner”, which is more narrow than the definitions under RSA 173-B and RSA 631:2-B, then the charging officer should request a *Criminal Orders of Protection Including Orders and Conditions of Bail (CBPO)*. (*See [Bail Issues](#), page 42*) If the relationship and the force component do not meet the federal definitions the officer should request the same protections provided under a CBPO using a standard bail order.

For sample complaints for Domestic Violence offenses under RSA 631:2-b, [Appendix F, Sample Complaints](#).

*A violation of Joshua’s Law is a Class A misdemeanor by statute. If a deadly weapon, as defined in [RSA 625:11, V](#), is used in the commission of an offense under Joshua’s Law, it shall be charged as a Class B felony.*

**NOTE:** *A Qualifying Misdemeanor Crime of Domestic Violence (QMCDV) is a crime that is a misdemeanor under New Hampshire law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon and which was committed by a current or former spouse, parent or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting or has cohabited with the victim as a spouse, parent or guardian, or a person similarly situated to a spouse, parent or guardian of the victim ([18 USC 921\(a\) 33,A](#)).*

## PRIOR CONVICTIONS AND THE IMPACT ON CHARGING

An officer should review a defendant's complete criminal history prior to making a charging decision. Under New Hampshire law, prior domestic violence offenses can be grounds for enhancing the charge for the current offense.

[RSA 173-B:9](#) allows for an enhancement for subsequent domestic violence related crimes for any person convicted of violating a protective order - except when the subsequent crime is the violation of a protective order. Refer to [RSA 173-B:9, IV](#) for the specific crimes that can be enhanced.

Charges under [RSA 631:2-b](#) and subsequent violations of protective orders cannot be enhanced. Prosecutors should consult the statute to make the best charging decision for each individual case.

If the defendant has a prior conviction of stalking within the last 7 years, a **felony level stalking charge** can be filed for a subsequent stalking charge, which includes a violation of protective order issued under [RSA 633:3-a](#), [RSA 458:16](#) or [RSA 173-B](#).

**NOTE:** Due to the nature of domestic violence cases, they should be adjudicated in the most expeditious manner possible. There should not be multiple continuances.

[RSA 173-B:9](#) includes the following schedule for possible enhancement:

- There is no enhanced charge under this section if the subsequent offense is a Class A felony or an unclassified felony;
- If the subsequent offense would otherwise constitute a Class B felony, it may be charged as a Class A felony;
- If the subsequent offense would otherwise constitute a Class A misdemeanor, it may be charged as a Class B felony;
- If the subsequent offense would otherwise constitute a Class B misdemeanor, it may be charged as a Class A misdemeanor; or
- If the subsequent offense would otherwise constitute a violation, it may be charged as a Class B misdemeanor.

## IF NO CHARGES ARE FILED

If the prosecutor determines that **the facts are not** sufficient to file charges then the prosecutor should:

- Keep a record of the case and document the reasons no charges were filed;
- Explain clearly to the victim **why criminal charges were** not appropriate;
- Refer the victim to the local crisis center or other appropriate social service or legal organizations; and
- Inform the victim of options other than criminal charges, such as civil protective orders. (See [Protective Orders](#), page 56 for more information).

# SENTENCING

## STATUTORY REFERENCES

[RSA 173-B:9, III](#)  
[RSA 631:2-b](#)  
[RSA Chapter 651](#)

Upon a conviction for a domestic violence-related crime, a deferred or suspended jail sentence, with appropriate conditions, may be effective in promoting deterrence, rehabilitation and treatment.

*Example: 6 months in the House of Corrections deferred for one year pending meaningful participation in a batterer's intervention program and completion of alcohol and/or other drug counseling.*

Incarceration, together with a period of probation, may also be effective, especially when the defendant presents a higher risk of re-offending.

*Example: 6 months incarceration with all but fifteen days deferred pending meaningful participation in a batterer's intervention program.*

The prosecutor should also consider the following when crafting a sentence or negotiated plea:

- Batterers Intervention Programs are designed specifically to hold batterers accountable. Current best practices indicate that Batterer's Intervention Programs are more effective in changing behavior than personal counseling or anger management;
- **Personal counseling should be recommended with caution** as a means of rehabilitation because it is not designed around batterer accountability;
- **Joint counseling (the offender attending counseling with the victim) is not appropriate in domestic violence cases and should not be recommended;**
- No-contact orders are an appropriate condition of a sentence if requested by the victim;
- Determine the victim's position regarding the defendant's ability to possess firearms and ammunition and the federal limitations on firearms and ammunition possession;
- Domestic violence cases are not appropriately placed on **file unless there is a mechanism in place for monitoring compliance** with conditions of treatment, no contact orders or good behavior; and
- In addition to the penalties outlined for a conviction of RSA 631-2:b, the court shall levy a fine of \$50 for each conviction under this section. The court shall not reduce or suspend any sentence or portion of any fine under this section. If the Court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments of the fine. Fines imposed under this section shall not be subject to an additional penalty assessment. Fines imposed under this section shall not be subject to the provisions of RSA 618:8 or 618:9. Defendants, therefore, are prohibited from

**NOTE:** Since victims of domestic violence are afforded rights under the New Hampshire Victims' Bill of Rights, the prosecutor should consult with the victim and obtain input when crafting a negotiated disposition. However, the ultimate decision on a negotiated plea rests with the prosecutor.



using House of Correction or Prison time to pay any fine imposed under this section. The mandatory \$50 penalty per conviction will also apply to the following offenses if the State has established that the defendant and the victim are intimate partners or household or family members as defined by RSA 631-2:b, III (a)-(b):

- First Degree Assault pursuant to [RSA 631:1, III](#);
- Second Degree Assault pursuant to [RSA 631:2, III](#);
- Reckless Conduct pursuant to [RSA 631:3, IV](#);
- Aggravated Felonious Sexual Assault pursuant to [RSA 632-A:2, V](#);
- Felonious Sexual Assault pursuant to [RSA 632-A:3, V](#);
- Sexual Assault pursuant to [RSA 632-A:4, IV](#);
- Kidnapping pursuant to [RSA 633:1, III](#); and
- Stalking pursuant to [RSA 633:3-a, III](#).

## PROTECTIVE ORDERS

**STATUTORY REFERENCES:**    [RSA 173-B:1](#) (Definitions)  
   [RSA 173-B:5](#) (Relief)  
   [RSA 173-B:7](#) (Minority not a Preclusion for Services)  
   [RSA 173-B:9](#) (Violation of Protective Order: Penalty)  
   [RSA 173-B:10](#) (Protection by Peace Officers)  
   [RSA 173-B:11](#) (Notice to the Victim)  
   [RSA 458:16](#) (Divorce Decree)  
   RSA 491 (Equity Protective Order)  
   [RSA 597:7-a](#) (Criminal Bail Protective Order)  
   [RSA 633:3-a](#) (Stalking)

A protective order is an injunction issued by a court for the purposes of preventing violence, stalking, harassment or other forms of abuse against an individual. Protective orders can be a very useful part of a victim's overall safety plan. This section will outline the various protective orders available to victims, the protections that apply and law enforcement's role and responsibility for serving and enforcing such orders. [Appendix G, A Guide to Enforcing Orders](#), is a quick reference.

### DOMESTIC VIOLENCE PROTECTIVE ORDERS UNDER RSA 173:B

Under 173-B, domestic violence is generally defined by the act of abuse committed as well as by the relationship between the perpetrator and victim.

In order for the court to issue a final domestic violence protective order (DVP) the following three criteria must be met:

- Finding of Abuse;
- Relationship of the Parties; and
- Finding of Credible Threat.

[RSA 173-B:1](#) provides the definitions of abuse under this statute. As of the date of this rewrite of the protocol, the following definitions are current. The reader of this protocol is encouraged to check updates to the statutes as may be appropriate.

#### **FINDINGS OF ABUSE**

- Assault or reckless conduct as defined in [RSA 631:1](#), [RSA 631:2](#), [RSA 631:2-a](#), [RSA 631:2-b](#) and [RSA 631:3](#);
- Criminal threatening as defined in [RSA 631:4](#);
- Sexual assault as defined in [RSA 632-A:2](#), [RSA 632-A:3](#), [RSA 632-A:4](#) and [RSA 632-A:5](#);
- Interference with freedom as defined in [RSA 633:1](#), [RSA 633:2](#) and [RSA 633:3](#);
- Stalking as defined in [RSA 633:3-a](#);
- Destruction of property as defined in [RSA 634:1](#) and [RSA 634:2](#);

- Unauthorized entry as defined in [RSA 635:1](#) and [RSA 635:2](#);
- Harassment as defined in [RSA 644:4](#); and
- Cruelty to animals as defined in [RSA 644:8](#).

**RELATIONSHIP OF PARTIES**

- **Current or former spouse;**
- **Current or former sexual partner;**
- **Current or former intimate partner**, such as individuals who are dating, or who have dated, regardless of whether the relationship was ever consummated sexually and regardless of the age of the parties;
- **Parent of an adult child;**
- **Adult child of the perpetrator;**
- **Persons who cohabit or cohabited;**
- **Persons “related by blood or birth” (a.k.a. consanguinity)** including siblings and siblings that share only one parent, grandparents and the brothers and sisters of one’s parents; and
- **Persons “related by marriage” (a.k.a. affinity)** including sister and brothers-in-law, mother and fathers-in-law, step-siblings and step-children.

**FINDING OF CREDIBLE THREAT**

- This not defined by New Hampshire statute.

**NOTES:**

- *These relationships are not dependent on the sexual orientation of the parties;*
- **ROOMMATES OR INDIVIDUALS SHARING LIVING SPACE DO NOT FALL INTO A DOMESTIC RELATIONSHIP;**
- *The minority of a party does not preclude the court from issuing a RSA 173-B protective order such that a 16 year old victim may petition for an order against his or her boyfriend or girlfriend. It is not necessary for a parent or guardian to accompany the minor to the court;*
- *Minor children cannot seek a protective order under RSA 173-B against a parent/guardian with whom they live with;*
- *Victims of a stranger sexual assault do not fall into a domestic relationship and may not apply for protection under RSA 173-B; and*
- *A victim who does not qualify for a 173-B protective order may qualify for a stalking order under 633:3-a.*

## ***EMERGENCY/TELEPHONIC PROTECTIVE ORDERS***

Circuit and superior court judges may issue emergency/telephonic protective orders in emergency domestic violence cases outside of regular business hours ([RSA 173-B:4](#)).

**This process should not be used as a substitute for arresting a suspect in a domestic violence situation and establishing a “no contact with the victim” provision as a condition of bail or the issuance of a Criminal Protective Bail Order. Emergency/telephonic protective orders only remain in effect until the close of the next court business day.**

### **Procedure For Law Enforcement To Obtain An Emergency/ Telephonic Protective Order:**

- Have the victim complete and sign the allegation of abuse section of the *Emergency Order of Protection Form*. Ask the victim to detail specific dates, times and events;
- Contact the afterhours judge for the court where the emergency matter would be heard. The Circuit Court has provided a “*After Hours Roster of Judges*” to law enforcement agencies throughout the state. Officers should contact their supervisor to ensure they have a current copy of the roster;
- Identify yourself to the judge and read the victim’s allegation of abuse. The victim should, if possible, be in the same room to answer any inquiries the judge may have;
- If the judge makes a finding of domestic violence, check the appropriate box on the order and proceed to read to the judge each of the listed protections and check off each protection that the judge orders. If so ordered, make sure that firearms box is checked;

**NOTE:** *Officers should not make the determination whether or not a petitioner is eligible for an emergency/telephonic protective order. This is solely a judicial decision.*

- At the conclusion of the conversation with the judge, sign the order where indicated;
- Provide the victim with a copy of the order. Explain that the defendant will also receive a copy of the order;
- **Explain to the victim that the order remains in effect only until the close of the next court business day. Inform the victim that they must apply for a new order by the close of the next court business day if the victim wishes the order to continue;**
- Provide the victim with information regarding the local crisis center and the location of the appropriate court;
- Follow all departmental procedures for service of the defendant’s copy upon the defendant;
- Fax the emergency protective order to the **Department of Safety at (603) 271-1153** and the court of jurisdiction. The Department of Safety shall make available information regarding protective orders issued telephonically to police and sheriff departments statewide; and
- File the return of service at the opening of the next business day at the court in the jurisdiction where the victim resides.

## **TEMPORARY CIVIL PROTECTIVE ORDERS**

Temporary civil protective orders may be obtained at all circuit and superior courts during court business hours. A final hearing on the order is to be held within 30 days of the filing of the petition. A duly served temporary protective order has the same force and effect as a final order of protection, with the exception that a temporary order is **never Brady qualifying**.

The victim begins the procedure by filing a petition containing the allegations of abuse, the nature of the relationship and the reason the other individual poses an “immediate and present danger of abuse.” The victim files the petition ex-parte, which means the individual against whom the order is sought is not notified.

If the court approves the petition, it will issue a temporary protective order and a notice of hearing date, both of which must be served on the defendant before any enforcement of the order may occur. In some instances, the service of the temporary protective order is the first notice the defendant has of the victim’s intentions to leave the relationship.

The defendant may request an expedited hearing.

## **FINAL CIVIL PROTECTIVE ORDERS**

A final civil protective order is issued only after a public hearing on the victim’s petition. At the final hearing the victim must establish by a preponderance of evidence that the defendant abused the victim within the meaning of [RSA 173-B:1](#), and that the defendant poses “a credible threat to the victim’s safety.” If the final order is granted, it will be in effect for up to one year. The defendant is given an opportunity to be heard and to present evidence.

## **SERVICE OF CIVIL DOMESTIC VIOLENCE (173-B) ORDERS**

Emergency and temporary protective orders **SHALL BE PROMPTLY SERVED** on the defendant. In most cases the responsibility for service of protective orders will fall upon the local police department where the defendant resides.

The *Defendant Information Sheet* is completed by the victim and is sent to law enforcement. This information will allow law enforcement to better assess the potential for violence at the time of service. **The Defendant Information Sheet should NEVER be shared with the defendant.**

**All attempts to serve the defendant shall be documented** and should be included in the police file. If law enforcement is unable to make service, the report should indicate why (i.e. defendant has moved; no response at door). All returns of service including service of emergency orders must be sent to the issuing court. For a sample paperwork tracking log, see [Appendix H](#).

**NOTE:** Although service of a final order on a defendant is not required to charge a violation of the protective order, every effort should be made to serve the defendant quickly and seize any firearms in their possession or control especially if the relinquishment of firearms were not seized pursuant to the temporary order.

*If law enforcement has probable cause to believe that a defendant has not relinquished firearms, ammunition or other deadly weapons referenced in the protection order, the officer should seek a search warrant authorizing the seizure of these items ([RSA 173-B:5,II](#)).*

Once issued, the protective order will be available to law enforcement through NCIC and the state database. NCIC has strict data requirements and only orders that contain all the required information can be entered. If the Return of Service is incomplete and this information is not obtained by law enforcement, the protective orders do not get entered into NCIC correctly and may not be available.

Law enforcement is responsible for entering the service of the protection order into SPOTS. Once the protective order is served the system is updated.

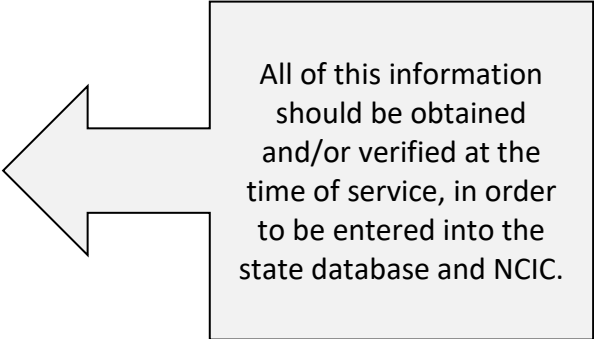
When serving the order the officer:

- **MUST:**

- Verify defendant's full name;
- Obtain and/or verify the defendant's date of birth. **This must be obtained. Without this information the order will not be entered into SPOTS;** and
- Relationship status.

- **SHOULD:**

- Obtain and/or verify the defendant's:
  - Address;
  - Height;
  - Weight;
  - Eye color; and
  - Hair color.
- Thoroughly explain the order's content and the potential penalties for violating the order;
- Confirm that the defendant understands the order;
- Ensure that the defendant is aware of the hearing date listed at the bottom of the order;
- Notify the defendant that an earlier hearing can be requested in writing at the court where the order was issued;



All of this information should be obtained and/or verified at the time of service, in order to be entered into the state database and NCIC.

**NOTE:** *New Hampshire statute states that victims shall not be charged a fee for filing for, or the service of, a protective order issued under 173-B ([RSA 173-B:3,III](#)).*

- Observe and document the defendant's response to service including statements made, body language, level of sobriety, etc.;
- **If the court order requires relinquishment then ask for relinquishment of firearms. If the defendant refuses to relinquish firearms and there is probable cause to believe that the defendant is in possession of firearms, secure the premises and obtain a search warrant;**
- **Ensure that the victim's address or the location of any domestic violence shelter is not divulged to the defendant;** and

- Deliver return of service form to the court of issuance **IMMEDIATELY**.

**All efforts should be made by law enforcement to notify the victim that the protective order has been served on the defendant.**

### ***ENFORCEMENT OF CIVIL DOMESTIC VIOLENCE (RSA 173-B) PROTECTIVE ORDERS***

If law enforcement has probable cause to believe that a person has violated the *Protective Orders* portion (i.e. not the *Further Orders*\*) section of either an emergency, temporary or final domestic violence protective order an arrest **SHALL** be made. The arrest may be made **without a warrant** if there is probable cause to believe the violation occurred within the last **12 hours** **whether or not the violation is committed in the presence of the officer**. The arresting agency **SHALL** seek an arrest warrant if the defendant is not arrested within **12 hours** of the incident. The officer should verify that the order was served on the defendant.

Subsequent to the arrest, law enforcement **SHALL** seize any firearms and ammunition in the control, ownership or possession of the defendant and any deadly weapons that may have been used or threatened to be used during the violation of the protective order. (See [Firearms Issues](#), page 68)

**Law enforcement should not return the seized items to the defendant without an order from the court.** Unless there are exigent circumstances, this rule of mandatory seizure does not authorize a law enforcement officer to enter the person's home for the purpose of seizing the weapons. **A search warrant must be obtained unless the officer is given consent to enter.**

**The violation of a protective order is a Class A misdemeanor, for which arrest and detention is statutorily mandated (RSA 173-B:9,I(a)).** An individual arrested for a violation of a protective order **MUST** be detained until arraignment. A Bail Commissioner may not set bail on the defendant. If extreme conditions exist that prevent the defendant from being safely detained, the arresting agency may request alternate orders from a judge. **Detention is mandatory regardless of whether or not the arrest was made under the 12 hour provision or under an arrest warrant.**

\*If there is a violation of the Further Order section of the protective order, it is a contempt action and not subject to arrest under RSA 173-B.

*Protective orders are designed to protect the victim from the defendant. **The prohibited actions in a protective order only apply to the person that the order is addressed to and NOT to the victim. Therefore it is the defendant's responsibility to remove themselves from a situation that is prohibited by a situation or location to avoid contact with the victim.***

## OTHER PROTECTIVE ORDERS

There are several other types of protective orders that may be found in a domestic violence situation.

### ***CRIMINAL BAIL PROTECTIVE ORDERS***

Criminal bail protective orders (CBPO) can be issued by the bail commissioner or judge in a criminal case where there is a qualifying relationship between the defendant and victim (See Guidelines for Issuing a CBPO for more information. There is a specific CBPO order form that should be used in these cases. (See [Bail Issues](#), page 42)

CBPOs do not apply while the offender is incarcerated. Therefore, officers should recommend that victims also seek a civil protective order in these cases because such orders provide additional protection even when the defendant is incarcerated.

Unlike other protective orders, the criminal protective order may be requested and issued without the protected party's (victim) consent. All efforts should be made by the prosecuting officer to notify the victim of the criminal order of protection.

The judge can alter conditions of bail at any point and officers should read the NCIC hit to confirm that the conduct is in violation.

#### **Enforcement Of Criminal Bail Protective Orders**

Violations of these orders should be charged as a Breach of Conditions under [RSA 597:7-a](#) and may be charged with stalking under [RSA 633:3-a](#).

### ***STALKING PROTECTIVE ORDERS - [RSA 633:3-a](#)***

Stalking protective orders are issued by the circuit court. A victim may obtain a stalking protective order in the circuit court in the area in which either party resides.

No specific relationship is required to qualify for the issuance of a stalking protective order. The victim must prove, however, that the defendant engaged in a **course of conduct** as defined by statute.

The types of relief, methods of notice and service, enforcement and penalties for violation of stalking orders **are the same as those a domestic violence civil protective order** issued under RSA 173-B ([RSA 633:3-a,III-a](#)). See [Service of Domestic Violence Protective Orders](#), page 59, for more information.

#### **Enforcement of Stalking Protective Orders**

If law enforcement has probable cause to believe that a person has violated one or more of the protective orders contained in a temporary or final stalking order, the officer **SHALL** make an arrest. The arrest may be made **without a warrant** if there is probable cause to believe the violation occurred within the last **12 hours whether or not the violation is committed in the presence of the officer**. The arresting agency **SHALL** seek an arrest warrant if the defendant is not arrested within **12 hours** of the incident. No arrest should be made when a violation of a condition listed under the *Further Orders* section is alleged to have been violated.

*In 2018-2019, 7,501  
CBPOs were issued in  
New Hampshire.*

[New Hampshire Domestic  
Violence Fatality Report,  
2018-2019](#)



Since the enforcement and penalties for a violation of a stalking order are the same as those as a protective order issued under RSA 173-B, **subsequent to an arrest for violation of a stalking order**, law enforcement **shall seize** any firearms and ammunition in the control, ownership or possession of the defendant and any other deadly weapons, which have been used or were threatened to be used, during the violation of the protective order. Unless there are exigent circumstances, this rule of mandatory seizure does not authorize a law enforcement officer to enter the person's home for the purpose of seizing the weapons. A search warrant must be obtained unless the officer is given consent to enter.

### ***MARITAL ORDERS OF PROTECTION - [RSA 458:16](#)***

After a party files for divorce, annulment or separation, the court may include temporary or permanent protective orders in the marital order that:

- Direct the offending party to refrain from abusing or interfering in any way with the liberty of the other party;
- Direct the offending party to refrain from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result;
- Direct the offending party to refrain from contacting the other party at, or entering, the other party's place of employment or school; and
- Direct the offending party to refrain from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.

#### ***Enforcement of a 458:16 Protective Orders***

When someone violates a protective order issued under [RSA 458:16](#), by committing assault, criminal trespass, criminal mischief, stalking or another criminal act, law enforcement **SHALL** arrest the offending party. A warrantless arrest for violation of the order may be made within **12 hours** of the incident, when supported by probable cause, whether or not the violation is committed in the presence of a peace officer ([RSA 458:16,III](#)).

A violation of these protective orders is a misdemeanor.

These orders do not routinely provide for the relinquishment of firearms or ammunition.

These orders do not provide the same level of protection afforded by a civil domestic violence protective order (RSA 173-B). These orders are not entered into a state database or NCIC because they do not meet the entry criteria.

### ***PARENTING ORDERS OF PROTECTION- [RSA 461-A:10](#)***

As part of parenting situation, a party may petition the court to seek the following relief concerning a minor child:

- Direct the offending party to refrain from abusing or interfering in any way with the liberty of the other party;
- Direct the offending party to refrain from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result;

- Direct the offending party to refrain from contacting the other party at, or entering, the other party's place of employment or school; and
- Direct the offending party to refrain from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.

**Enforcement of a 461-A Protective Orders**

When someone violates a protective order issued under [RSA 461-A:10](#), by committing assault, criminal trespass, criminal mischief, stalking or another criminal act, law enforcement **SHALL** arrest the offending party. A warrantless arrest for violation of the order may be made within **12 hours** of the incident, when supported by probable cause, whether or not the violation is committed in the presence of a peace officer ([RSA 461-A:10,II](#)).

A violation of these protective orders is a misdemeanor.

These orders cannot prohibit someone from possessing firearms and ammunition.

These orders do not provide the same level of protection afforded by a civil domestic violence protective order (173-B). These orders are not entered into a state database or NCIC because they do not meet the entry criteria.

***CHILD PROTECTION ACT (RSA 169-C) ORDERS OF PROTECTION***

There are two different orders of protection that may be issued under the Child Protection Act. While the parties requesting the protection, the relief awarded and the service of the orders may differ, enforcement procedures are the same and are found in [RSA 169-C:21-a](#).

**Juvenile Abuse/Neglect Orders of Protection Pursuant to RSA 169-C:16 or 169-C:19**

Orders issued under [RSA 169-C:16](#) or [RSA 169-C:19, II\(a\)](#) may be issued by the Circuit Court – Family Division, at the request of DCYF, CASA or another party to the case, when there is an open abuse and neglect case.

If the person against whom the order is issued, is present at the abuse and neglect proceeding, the order will be served at that time. If the person is not present, the order **shall be served by law enforcement**.

**Juvenile Abuse Order of Protection Pursuant to RSA 169-C:7-a (aka Jade’s Law)**

Orders issued under [RSA 169-C:7-a](#) may be filed by a parent or guardian on behalf of a minor child, alleging abuse by a member of the child’s family or household. A child’s parent may not file a petition against the other parent.

While the process is similar to that of a domestic violence order under RSA 173-B, in that there is a petition for a temporary order, there are no emergency or telephonic protective orders available for [RSA 169-C:7-a](#) orders. If a temporary order is granted, the court will schedule a hearing for 30 days, however the respondent may request a hearing within 5 days.

**Enforcement of RSA 169-C Orders of Protection**

For both types of orders, if an officer has probable cause to believe a person has violated an order an arrest **SHALL** be made. The arrest may be made without a warrant if there is probable cause to believe the violation occurred within **6 hours of the arrest** ([RSA 169-C:21-a](#)).

The provisions of RSA 169-C do not authorize the court to order the seizure of weapons or firearms when the protective order is issued. However, subsequent to an arrest for the violation of a RSA169-C Order of Protection, officers **SHALL SEIZE** any firearms and ammunition in the control, ownership, or possession of the defendant. Officers shall also seize any other deadly weapons in the control, ownership or possession of the defendant which may have been used, or were threatened to be used, during the violation of the protective order ([RSA 169-C:21-a](#)).

An individual arrested for a violation a 169-C Order must be detained until arraignment and cannot be released on bail. Any criminal complaint brought for a violation of a RSA169-C Order must be filed as a class A misdemeanor; it cannot be reduced to a lesser charge.

### **Reporting to DCYF**

When law enforcement makes and arrest for a violation of a Juvenile Abuse/Neglect Orders of Protection Pursuant to **RSA 169-C:16 or 169-C:19** order, they must immediately notify DCYF Central Intake by telephone at **1-800-894-5533**, which is available 24 hours a day. This report should contain:

- The parties involved;
- The nature of the violation (threats via text; showing up at the child’s school);
- When and where the violation occurred;
- Who was present;
- What other charges the defendant may be charged with; and
- Whether firearms, ammunition or deadly weapons were seized.

Central Intake may ask additional questions and request that law enforcement submit a written report as follow-up.

### ***EQUITY ORDERS OF PROTECTION - RSA 491***

Equity orders can only be issued by the superior court. They are issued for the purpose of requiring one individual to stay away from another person.

### **Enforcement of Equity Orders**

**The orders are not enforceable by law enforcement.** However, a violation of an equity order should be investigated as a potential stalking charge under RSA 633:3-a. If a person violates an equity protective order, the protected party must return to the issuing superior court to file a motion for contempt.

As outlined above, there are several types of protective orders that may be issued for victims of abuse. All of these orders, except for equity protective orders, are enforceable by law enforcement. **Not all orders are entered into SPOTS or NCIC so law enforcement should not rely solely on SPOTS or NCIC when enforcing orders.**

If law enforcement is confronted with conflicting protective orders, the officer should contact the judge that signed the most recent order for clarification.

## CIVIL STANDBYS

Law enforcement is required by statute to conduct civil standbys for the purpose of allowing a defendant or victim to retrieve personal property. A protective order does not necessarily need to be in place for officers to assist victims in this manner ([RSA 173-B:10 I\(c\)](#)).

### *VICTIM*

[RSA 173-B:10 I\(c\)](#) requires a law enforcement officer to assist “the victim in removing toiletries, medication, clothing, business equipment, and any other items determined by the court.”

If the victim has left the residence, this statute does not require notification to, or permission from, the defendant to remove the items specified. Nor does it require that the defendant be present.

If there is a court order allowing a large amount of personal property, such as furniture, to be removed from the residence and it is apparent that it will take a prolonged period of time, the law enforcement agency may seek guidance from the court relative to cost reimbursement or any other alternative plan the court may recommend or dictate.

**NOTE:** *The provisions of the protective order remain in effect while the civil standby is taking place.*

Best practice indicates that whenever a victim of domestic violence asks for a standby, the law enforcement agency should grant the request, within reason, regardless of whether or not there is a protective order in place.

### *DEFENDANT*

Both [RSA 173-B:4 I\(a\)\(2\)](#) and [RSA 173-B:5,I\(a\)\(2\)](#) restrain the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is **accompanied by a peace officer and is allowed entry by the plaintiff for the sole purpose of retrieving personal property specified by the court.**

The defendant must make arrangements through the local law enforcement agency to retrieve any property specified by the court. The law enforcement agency should contact the victim and arrange for a convenient time for the defendant and the law enforcement officer to proceed to the residence to retrieve only the items designated.

Should the victim deny access to the items specified by the court, the law enforcement officer should notify the court of the refusal. Disputed property needs to be addressed by the court and should be left at the residence until so ordered. **UNDER NO CIRCUMSTANCES SHOULD THE DEFENDANT BE ALLOWED ACCESS TO THE RESIDENCE WITHOUT THE SPECIFIC CONSENT OF THE VICTIM AND THE PHYSICAL PRESENCE OF AN OFFICER.**

For the personal safety of law enforcement and the victim, the officer should physically remain in the presence of the defendant while the victim is retrieving the items.

## FULL FAITH AND CREDIT FOR DOMESTIC VIOLENCE PROTECTION ORDERS

**STATUTORY REFERENCES:**     [RSA 173-B:13](#)(Orders Enforceable)  
[18 UC 2265](#)     (Full faith and credit given to orders)

Law enforcement officers should enforce orders of protection that appear valid, even if they are from another jurisdiction. An officer should presume a protection order is valid when the order:

- Gives the names of the parties;
- Contains the date the order was issued;
- Contains an expiration date;
- Is signed by a judge; and
- Specifies the terms and conditions against the defendant.

Full Faith and Credit enables a victim to travel safely, without having to obtain a new protective order in each location. A protective order from one state is valid throughout the country. The victim need apply only once for a protection order, which can then be enforced throughout the country without informing the defendant of the victim's whereabouts.

The laws of the *issuing jurisdiction* govern the following:

- The persons who are eligible for a protection order;
- The terms and conditions of the order;
- How long the order is in effect; and
- The relief that may be granted.

***NOTE:*** New Hampshire does not permit the granting of mutual protection orders [RSA 173-B:5\(V\)\(a\)](#).

The *enforcing jurisdiction* only determines how a violation will be enforced (i.e. arrest, detention, penalty).

For an order issued in another jurisdiction to be entitled to full faith and credit in New Hampshire the order must be a "valid protection order".

A Foreign Protection Order (i.e. a protective order issued by a jurisdiction other than New Hampshire) must be enforced as written. The Foreign Protection Order does not need to be registered in New Hampshire to be enforced in New Hampshire.

Foreign orders will not be entered into NCIC by New Hampshire. No jurisdiction has authority to enter another jurisdiction's order into NCIC.

A mutual protection order issued by a foreign jurisdiction against a person who has received a protection order shall be accorded full faith and credit only if:

- A cross or counter petition, complaint, or other written pleading was filed seeking such protection order; and
- The court made specific findings of domestic or family violence by both parties and that each party was entitled to such order.

## FIREARMS ISSUES

### STATUTORY REFERENCES

[RSA 159:3](#)  
[RSA 159:11](#)  
[RSA 159-D:3](#)

[RSA 173-B:1](#)  
[RSA 173-B:4](#)  
[RSA 173-B:11](#)  
[RSA 173-B:9](#)

[RSA 173-B:10](#)

[RSA 173-B:11](#)  
[RSA 625:11\(v\)](#)  
[RSA 629:1](#)  
[18 USC 922](#)

(Convicted Felons)  
(False Information)  
(Penalty for Attempts to Purchase Firearms Illegally)  
Definitions  
(Temporary Relief)  
(Relief)  
(Violation of Protective Orders)  
(Protection by Peace Officers)  
(Notice to Victims)  
(Deadly Weapons)  
(Attempt)  
(Federal Law)

Under federal law there are a number of categories of individuals who are prohibited from purchasing or possessing firearms and ammunition including:

- Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- Persons who are Fugitives from Justice;
- Persons who are unlawful users of or addicted to any controlled substance;
- Persons who have been adjudicated as a mental defective or have been committed to any mental institution;
- Persons who are illegal aliens or legal non-immigrants who do not meet certain exceptions;
- Persons who have received a dishonorable discharge from the Armed Forces;
- Persons who having been citizens of the United States, have renounced their U.S. Citizenship;
- Persons who are subject to a protective order;
- Persons who have been convicted of a domestic violence misdemeanor - specifically defined under federal law; or
- Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year.

*Firearms were the cause of death in 48% of the domestic violence homicides in New Hampshire from 2018-2019.*

[New Hampshire Domestic Violence Fatality Report, 2018-2019](#)

For more information see [Appendix I Comparison of Federal vs. State Firearms Prohibitions.](#)

## DEFINITIONS

For the purposes of the domestic violence statutes, firearms and deadly weapons are defined separately as there are different mandates regarding the relinquishment, confiscation or seizure of these items. These specific definitions and statutory authority are as follows:

- “**Firearm**” is defined in [RSA 173-B:1, XI](#) as "any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive."
- “**Deadly weapons**” are defined as any "firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury" ([RSA 625:11, V](#)).

## RELINQUISHMENT OR SEIZURE IN ACCORDANCE WITH CIVIL DOMESTIC VIOLENCE PROTECTIVE ORDERS

### ***EMERGENCY/TELEPHONIC ORDERS***

A judge has **discretion** to order relinquishment of firearms, ammunition and other deadly weapons at the time an emergency/telephonic protective order is issued. The judge should consider input from law enforcement when deciding whether to order relinquishment.

*It is important that a law enforcement officer convey any concerns regarding firearms or other deadly weapons to the judge when an emergency telephonic order is being sought or contemplated.*

### ***TEMPORARY ORDERS***

When issuing a temporary order, the judge has **discretion** to order relinquishment of firearms, ammunition and other deadly weapons. The defendant **may** be ordered to surrender any and all firearms and ammunition in the defendant's control, ownership or possession or any other person on behalf of the defendant for the duration of the protective order. If ordered, the items **SHALL** be relinquished to a police officer. All firearms the defendant owns **MUST** be seized regardless of where the firearms are located.

The judge may also order the defendant to relinquish any other deadly weapons that are in the possession of the defendant or any other person on behalf of the defendant, if any were specified in the petition ([RSA 173-B:4, I\(a\)\(9\)](#)).

The judge may also prohibit the defendant from purchasing, receiving or possessing any deadly weapons, including any and all firearms and ammunition for the duration of the order ([RSA 173-B:4, II](#)).

**If law enforcement has probable cause to believe that a defendant has not relinquished firearms, ammunition or other deadly weapons referenced in the protection order, the officer should seek a search warrant authorizing the seizure of these items.**

### ***FINAL ORDERS***

When issuing a final protective order, it is **mandatory that the judge order the defendant to relinquish all firearms and ammunition in their control, ownership or possession or any other person on behalf of the defendant**, for the duration of the protection order. The judge

**SHALL** also prohibit the defendant from purchasing, receiving or possessing any deadly weapons, including firearms and ammunition, for the duration of the order. The judge **MAY** order the relinquishment of any and all other deadly weapons specified in the protection order.

**If a defendant does not voluntarily relinquish firearms, ammunition and other specified deadly weapons, law enforcement should seek a search warrant authorizing the seizure of these items.**

## **VIOLATION OF CIVIL PROTECTIVE ORDERS UNDER RSA 173-B (MANDATORY SEIZURE)**

[RSA 173-B-9, I\(b\)](#) states that if a defendant violates a protective order (emergency, temporary, final or foreign) law enforcement **SHALL** seize any firearms and ammunition in the control, ownership or possession of the defendant. Additionally law enforcement **MUST** seize any deadly weapons that may have been used or threatened to be used during the violation.

This rule of mandatory seizure **does not** authorize law enforcement to enter the person's home, **without consent**, for the purpose of seizing these items. A search warrant should be obtained to seize the weapons.

Law enforcement shall maintain possession of all firearms, ammunition and deadly weapons seized, until the court issues an order that they be relinquished.

***NOTE:** Law enforcement officers and military personnel are not exempt from this statute. Any law enforcement officer or member of the military who has, at any time, been convicted of a qualifying misdemeanor crime of domestic violence **may no longer possess a firearm for any purpose**, including the performance of official duties.*

## **MANDATORY RELINQUISHMENT UPON ARREST**

In accordance with [RSA 173-B:10, I](#), whenever a peace officer has probable cause to believe that a person has been abused, as defined in [RSA 173-B:1](#), that officer **SHALL** use all means within reason to prevent further abuse including but not limited to:

- Confiscating any deadly weapons involved in the alleged domestic abuse; **and**
- **Any firearms and ammunition in the defendant's control, ownership or possession.**

If an officer makes an arrest for **ANY** domestic violence crime defined in [RSA 173-B:1](#), any firearms and ammunition in the control, ownership or possession of the defendant **MUST BE CONFISCATED** whether or not they were used or threatened to be used. **A civil protective order does not need to be in place at the time. If consent is not given, law enforcement should seek a search warrant authorizing the seizure of these items.**

For more information on seizing firearms relative to the issuance or violation of a protective order, see [Appendix G, A Guide to Enforcing Orders](#).

## **FIREARMS, AMMUNITION AND DEADLY WEAPONS INVENTORIES**

Firearms, ammunition and other deadly weapons seized, shall be documented and inventoried consistent with individual departmental policies.



## STORAGE

The seizing law enforcement agency is responsible for storage of all firearms, ammunition and deadly weapons seized unless otherwise specified by the court.

**No law enforcement agency or federally licensed firearms dealer may release any firearm, ammunition or other deadly weapons without a court order.**

**NOTE:** Friends, relatives or other third parties **should not be permitted** to store firearms and ammunition during the term of the protection order.

## RETURN OF FIREARMS AND AMMUNITION

Return of firearms should be done through court order. The process and standard for obtaining the order is different in civil and criminal cases.

Firearms seized in a **criminal domestic violence case** where no civil order existed, **should be returned only with a court order and consistent with departmental policies and practices**. The prosecutor should seek a court order prior to releasing the firearms **provided the firearms are not contraband, the State does not have “good cause” to deny the return of the firearms, and the defendant is not prohibited by federal law from possessing firearms and ammunition.**

Firearms seized or held **pursuant to a civil domestic violence protective order shall** be returned to the defendant only upon a court order after a hearing. The process a defendant must follow to obtain such an order is set out in [RSA 173-B:5, X](#). Law enforcement and the victim will receive notice of this hearing but need not be present.

If the defendant is convicted of a qualifying misdemeanor crime of domestic violence under federal law they are forever prohibited from purchasing or possessing firearms and ammunition.

## PENALTY FOR ATTEMPTING TO BUY FIREARMS ILLEGALLY

Any person who completes and signs an application for purchase of a firearm and knowing that such purchase is illegal because they are subject to a protective order shall be guilty of a Class A misdemeanor for a first offense and a Class B felony for a second or subsequent offense.

For circumstances giving rise to a potential prosecution under federal law contact the ATF (603) 471-1283 or the US Attorney’s Office (603) 225-1552.

## STRANGULATION

*In 10% of New Hampshire Domestic Violence homicides, strangulation was the cause of death.*

[New Hampshire Domestic Violence Fatality Report, 2018-2019](#)

Strangulation, commonly referred to as “choking,” is a life threatening traumatic event that can result in death in the hours, or even days, after the initial assault<sup>8</sup>. The injuries caused by strangulation are often not visible externally, even in fatal cases. Only minimal pressure applied to the neck can cause potentially serious injury<sup>9</sup>. Batterers commonly use strangulation as an effective means to control their victims. Non-fatal strangulation has a high risk of future lethality and has been recognized as a predictor of future serious assault and homicide<sup>10</sup>.

The lack of external signs of injury often causes victims, law enforcement and members of the medical community to overlook the potential lethality of an incident of strangulation. **It is highly recommended that law enforcement request EMS response to all strangulation assaults**, regardless of whether or not the victim wishes to have EMS respond. It is also recommended that law enforcement agencies adopt a policy of automatic EMS dispatch in strangulation cases.

Victims of strangulation often experience new or changing symptoms in the hours and days following the assault. For this reason, law enforcement should obtain a medical records release from the victim even if the victim declines EMS transport to the hospital or indicates that they will not be seeking medical attention. As a result of evolving symptoms, victims will often seek medical care at a later time, and these medical records will be an important component of the case. Accordingly, the medical records release should have an end date that is 6 months to 1 year after the assault.

Victims of strangulation should be contacted, in person, 24-48 hours after the assault to check their welfare, ascertain if signs and/or symptoms are changing, worsening or improving and to obtain follow-up photos of evolving or resolving injuries.

Due to the dangerous and complex nature of strangulation, it is recommended that law enforcement receive specialized training on strangulation and familiarize themselves with [RSA 631:2,II\(c\)](#) which specifically addresses assault by strangulation. This statute defines strangulation as pressure being applied to the throat or neck or the blocking of the person’s nose or mouth that results in **ONE** of the following three conditions:

- **Impeded breathing** – i.e. the victim feels as though they cannot breathe or take in air due to physical obstruction applied by the suspect or the lips or fingers turn blue in color;

<sup>8</sup> Anscombe, A. M., Knight, B. H. (1996). Delayed death after pressure on the neck: Possible causal mechanisms and implications for mode of death in manual strangulation discussed. *Forensic Science International*, 78(3), 193-197

<sup>9</sup> McClane, G. E., Strack, G. B., & Hawley, D. (2001). A review of 300 attempted strangulation cases part II: Clinical evaluation of the surviving victim. *The Journal of Emergency Medicine*, 21(3), 311-315. doi:10.1016/s0736-4679(01)00400-0

<sup>10</sup> Glass, N., Laughon, K., Campbell, J., Block, R., Hanson, G., & Sharps, P. (2008). Strangulation is an important risk factor for attempted and completed femicides. *Journal of Emergency Medicine*, 35, 329-335.

- **Impeded blood circulation** – i.e. the victim feels dizzy, light-headed, passes out (syncope), has visual disturbances, ringing in the ears or feels increasing pressure or pain in their head during the application of pressure to their neck. Headache after the assault is also commonly reported and is consistent with a brain injury due to impeded blood circulation; or
- **Change in voice** – This may not be noticeable to the victim. Even if the victim says no, ask a family member or friend if the victim’s voice sounds different. Obtain audio of the victim’s voice (i.e. 911 call or audio/video statement).

**NOTE:** Only **one** of the three conditions listed needs to be alleged in the complaint, **not all three**. The examples with each condition are examples only and are by no means the only evidence of those conditions.

## STRANGULATION INVESTIGATION QUESTIONS

The following is a list of suggested questions to ask a victim in a strangulation case. For more information, see [Appendix J, Strangulation Quick Reference Guide](#).

- How, when and where was the victim strangled?
- How long did it last?
- Did it involve one hand, two hands, forearm, knee, foot, ligature or something else?
- Were there multiple attempts and/or multiple methods?
- Was smothering involved?
- Is the perpetrator right or left handed?
- What did the perpetrator say before, during and after the strangulation?
- Was the victim shaken, straddled or held against something while strangled?
- Was the victim’s head struck against a wall, floor, ground or other object?
- What did the victim think was going to happen?
- How or why did the perpetrator stop strangling the victim?
- What was the perpetrator’s demeanor?
- Describe what the perpetrator looked like during the strangulation?
- Have there been prior incidents of strangulation, domestic violence or threats?

*Remember that victims and other lay people will often refer to this event as “choking” and law enforcement should consider using the terms with which that person is comfortable.*

Are there any visible injuries on the victim? Look for injuries behind the ears, all around the neck, under the chin and jaw, eyelids, shoulders and upper chest area (as appropriate).

Photograph injuries and entire area. Photograph the lack of injury and any areas the victim feels pain. Photograph any object used and described by the victim and seize as evidence.

# TECHNOLOGICAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES

Technology plays a significant role in today's society and this is particularly relevant when investigating domestic violence cases. It is important for law enforcement officers to understand the prevalence of the use of cell phones/smartphones, the Internet, email, other digital electronic communication devices and other electronic technology (i.e. GPS, EZ Pass) to annoy, alarm, threaten, stalk or harass a victim.

The anonymity and reach of the Internet, and the difficulties in capturing, recording, and verifying digital evidence combine to create new challenges for law enforcement agencies trying to prevent and detect crime and apprehend criminals. In particular, the "expectation of privacy" and anonymity afforded to all participants engaged in on-line communication often makes it difficult to connect the actual perpetrator with his/her cyber activity. However, technology often captures evidence of criminal behavior that is helpful in the investigation and as such, should be properly identified, seized and searched in a timely manner.

*It is crucial that victims are connected to crisis centers where they can receive safety planning specifically around a perpetrator's misuse of technology.*

It is important for law enforcement to ask the victim what access the perpetrator has had to the victim's cell phone, computer and vehicle. This may identify additional evidence to support the crime of domestic violence or lead to other potential crimes such as stalking (for more information on investigating stalking cases refer to the Attorney General's *Stalking Protocol: A Model For Law Enforcement*). It is also important to assess for potential safety risks to the victim such as the perpetrator finding out the victim calls a crisis center by tracking the victim's phone calls.

## DEFINITIONS

Perpetrators use various methods of Internet communication to harass their victims. Some of the more common methods of electronic communications that law enforcement need to recognize and document in their investigations include:

1. **E-mail:** A method of communication that allows an individual to transfer text, picture, video, and audio files to another person's electronic mailbox;
2. **Text messages/SMS/iMessage:** A written communication between users' cell phones/smartphones can also include picture messages (MMS);
3. **Social Networking:** An online service platform or site that focuses on building and reflecting of social networks or social relationships among people, who, for example, share interests and/or activities (for example Facebook, Instagram, Twitter, etc.);
4. **"Apps" (Application):** Typically a small, specialized program downloaded onto mobile devices, these can often be hidden from law enforcement (for example Kik, TextNow, Whatsapp, ooVoo, Snapchat, Instagram, YouTube, Mapquest);

5. **Hand held/Communication devices:** Smartphones, tablets, iPods, iPads, and any other wireless device **with Internet** capabilities;
6. **Classified Advertisement:** A website with sections devoted to jobs, housing, personals, for sale, items wanted, services, community, gigs, resumes, and discussion forums (for example Craigslist and Backpage);

*Whenever possible, every step should be taken to enable victims to keep their devices.*

7. **Internet sites:** A method of communication that involves posting information to a unique uniform resource locator (URL). Internet users later can retrieve this information by directing their Web browser to the corresponding URL. An Internet site becomes the method of harassment when an abuser posts information or images on a Web page about an individual that causes the individual to become alarmed or frightened;

8. **Chat rooms:** A method of communication that enables real-time text, audio and video-based group interaction. Chat rooms, or chat channels, usually are organized around specific topics of conversation. These are not as common as in years past, but they still exist; and

9. **Instant messaging:** A method of communication that enables real-time text, audio, and video based interaction between two individuals over the Internet or a computer network. Users program their instant messenger software to notify them when designated individuals log on to the network.

## ELECTRONIC EVIDENCE COLLECTION

Computers and cell phones are a significant source of evidence in many contemporary domestic violence cases. Officers should determine best practice with their prosecutors and also follow department policy in the collection of this type of evidence (i.e. one option could be to take photographs of the devices and its contents versus digital download of the device). Preservation orders must be used to preserve relevant data and information ([Appendix K](#)) and followed up with the appropriate legal process, such as an administrative subpoena issued under

**NOTE:**  
[www.Search.org](http://www.Search.org) is a great resource for law enforcement regarding digital and cell phone evidence requests.

7:6-b, a Grand Jury subpoena, or a search warrant ([Appendix L](#)) to capture data and content. Important pieces of evidence may include subscriber information, IP addresses, call logs, text/email content, user names and passwords, cell tower and location data. It is important to be aware of company retention periods. Consultation with the County Attorney's Office, the Attorney General's Office or the US Attorney's Office for guidance is appropriate.

Law enforcement can seize any electronic device that contains potential evidence including text messages, emails and videos, either by consent or search warrant. When seizing these devices they should be placed in Airplane Mode and not powered off, if possible. Whenever possible, Cellebrite or Paraben may be used to extract this data from the device by seeking assistance from a trained forensic examiner. It should be noted however, that data is not always able to be extracted by using Cellebrite and Paraben and officers should be prepared to retrieve the data manually if necessary. They should also communicate with their prosecutors regarding what evidence will be required regarding these types of technology related cases.

**Before seizing a computer and collecting evidence from a computer or other electronic device, it is important to have an understanding of how forensic science is applied to computers or other devices.** Law enforcement should collect, document, and preserve digital evidence in a way that will facilitate prosecution. They should become intimately familiar with all available digital evidence, in order to be able to know what to look for in such cases.

The New Hampshire State Police Forensic Laboratory (603) 223-8354 may be contacted for assistance if there are specific questions about digital evidence collection.

For more information on technology safety planning for victims, see [Appendix M](#).

## MANDATORY REPORTING

New Hampshire has a mandatory reporting law for both **child abuse and neglect and elder and incapacitated adult abuse and neglect**. **Any person** who has reason to suspect the abuse and/or neglect of a child or an incapacitated adult over the age of 18 **MUST** report the abuse.

### CHILD ABUSE AND NEGLECT

New Hampshire law **mandates** the reporting of any suspected incident of child abuse and neglect ([NH RSA 169-C:29](#)). Information regarding the suspected abuse or neglect of a child is not protected by confidentiality and **must** be reported to the Division for Children Youth and Families (DCYF).

Reports should be made **immediately by telephone** to 1-800-894-5533 or (603) 271-6556. DCYF has intake staff available **24 hours a day, 7 days a week** to take reports.

The initial report must be followed within 48 hours by a written report which can be submitted by facsimile to (603) 271-6565 or via e-mail to **Central Intake at DCYF**: [DCYF.CentralIntake@dhhs.nh.gov](mailto:DCYF.CentralIntake@dhhs.nh.gov).

**When emailing police reports, please note that the information sent to DCYF will be used in their civil hearing which will most likely occur before the criminal hearing.**

### ELDER AND INCAPACITATED ADULT ABUSE

New Hampshire law **mandates** the reporting of any suspected incident of abuse, neglect, self-neglect or exploitation involving an elderly, disabled or incapacitated adult. A person is incapacitated of his or her physical, mental or emotional ability in such that they are unable to manage personal, home or financial affairs in their best interest, or they are unable to delegate responsibility to a responsible caretaker or caregiver ([RSA 161-F:46](#)).

Anyone who has reason to suspect abuse, neglect, self-neglect and/or financial exploitation of an individual over the age of 18 who is suspected to be incapacitated, **must** report to:

**Adult Protective Services (APS) Central Intake Unit**

**1-800-949-0470 or 603-271-7014**

Email at [apscentralintake@dhhs.state.nh.us](mailto:apscentralintake@dhhs.state.nh.us)

Central Intake Business Hours

Monday-Friday 8:00 am- 4:30 pm

## VICTIMS' COMPENSATION PROGRAM

Victims of domestic violence may be eligible to apply to the **New Hampshire Victims' Compensation Program** for compensation of medical/dental expenses, mental health therapy expenses, lost wages or other out-of-pocket expenses not covered by insurance or other resources available to the victim. The expenses must be directly related to the victims' condition because of the crime. The program will not provide compensation for property losses or pain and suffering. **In order to qualify, the victim must report the crime to law enforcement and cooperate with law enforcement and prosecution.**

Collaboration between law enforcement and the Victims' Compensation Program is essential to the success of this program. In order to assist victims with crime-related expenses, law enforcement reports pertaining to the crime must be provided to the New Hampshire Victims' Compensation Program. The reports are necessary, in order to determine that the victim is eligible for compensation pursuant to the laws that govern this program. Delays in receiving the reports may affect a victim's eligibility. Additionally, failure to submit the law enforcement reports when requested by the Victims' Compensation Program could result in the program's inability to process a victim's claim for crime-related assistance. **Please note that all law enforcement reports remain confidential; the reports are not shared with the victim or offender and are not subject to the Right-to-Know laws.**

*Victims can now  
apply to the Victims'  
Compensation  
Program online at:  
<https://ccvcnh.org/>*

Law enforcement is encouraged to inform victims of crime about this program. Victim/witness and crisis center advocates can assist victims with the application process.

For more information go to: <http://doj.nh.gov/grants-management/victims-compensation-program/index.htm>.

**NH Victims' Compensation Program  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301  
1-800-300-4500 (in NH only)  
Or (603) 271-1284  
[victimcomp@doj.nh.gov](mailto:victimcomp@doj.nh.gov)**



## ADDRESS CONFIDENTIALITY PROGRAM

Frequently, victims attempting to escape from violent situations must move and establish a new address in order to prevent their abuser or assailant from locating them. Unfortunately, victims can be tracked by their abuser as a result of their address being part of a public record. The New Hampshire Address Confidentiality Program (ACP), administered by the Attorney General's Office, was designed to assist victims of domestic violence, sexual assault or stalking to maintain the secrecy of their home, work or school address.

The ACP allows victims who have permanently moved and want to keep their location confidential to receive a substitute address designated by the Attorney General. This address is used as if it were the victim's actual address when accessing state and local services. State and local agencies are mandated under the statute to accept the ACP address for a victim, therefore keeping their actual address from appearing in government and other public documents. The ACP address has no relation to the victim's actual physical address. Private companies, business and federal agencies do not have to accept the ACP address for a participant.

Victims in the ACP designate the Attorney General as their agent for service of process and receipt of mail. Any first class mail addressed to the victim through the ACP is accepted by the Attorney General and forwarded to the victim. This allows a victim to continue having mail service while maintaining the confidentiality of their actual residential address.

Victims interested in applying for the ACP need to be referred to their local crisis center by calling 1-866-644-3574 in order to apply. Advocates will help victims decide if the program will be of value in their individual situation and assist them with the application process.

## **APPENDIX A**

### **SAMPLE POLICY BASED ON IACP MODEL POLICY AND BEST PRACTICES FOR NEW HAMPSHIRE**

#### **A PREVENTION AND TRAINING**

The department will adhere to a zero-tolerance policy towards police officer domestic violence and will not tolerate violations of the policy. The department will provide ongoing training to every officer on domestic violence and the zero-tolerance policy throughout all phases of the police officer's career.

##### ***Prevention Through Collaboration***

Departments should develop ongoing partnerships with the New Hampshire Coalition Against Domestic and Sexual Violence and its member programs and should continually train officers on issues of domestic violence to enhance the agency's response to victims. Training topics should include: Understanding Domestic Violence, Identifying the Primary Aggressor, Warning signs of Domestic Violence by Officers, Victim Safety, Lethality Assessment Program (LAP) and Federal Domestic Violence Laws. To enhance the effectiveness of the training, departments should work with internal or external research resources to evaluate the training and its impact.

#### **B EARLY WARNING AND INTERVENTION**

##### ***Pre-Hire Screening and Investigation***

- ◆ Departments should conduct thorough background investigations of all potential new employees using address history, driver's record, protection order database and a criminal record check.
- ◆ All candidates should be asked if they have engaged in or been investigated for domestic violence and asked about any past arrests, suspended sentences, diversion programs, convictions, and protection orders related to elder abuse, child abuse, sexual assault, stalking, or domestic violence.
- ◆ Those candidates with a history of perpetrating violence (to include: elder abuse, child abuse, sexual assault, stalking, or domestic violence) should be screened out at this point in the hiring process.
- ◆ Candidates should be clearly informed of the department's position of zero tolerance concerning domestic violence by officers.

##### ***Post Conditional Offer of Employment***

- ◆ A psychological screening should be done of all viable candidates and should focus on indicators of abusive tendencies in their background.
- ◆ Departments should strongly consider a no-hire decision in the case of a candidate with tendencies indicative of abusive behavior.

##### ***Post-Hire Intervention***

- ◆ When new officers are hired, the department should reach out to their intimate partners/family members to introduce this policy and other relevant department policies.

- ◆ Departments should engage in periodic outreach to officers and their intimate partners/family members with information on this policy, the point of contact within the department and referrals for local crisis center services.

### ***Department Responsibilities***

- ◆ The department should develop policies to ensure timely notification of an incident involving an officer from another agency.
- ◆ The department should, either in response to observed warning signs or at the request of an officer, intimate partner, or other family member, provide non-punitive avenues of assistance before an act of domestic violence occurs.
- ◆ The department should inform officers of the procedure for seeking confidential referrals, either internally or externally, to confidential counseling services.
- ◆ A disclosure on the part of any officer, intimate partner or family member to any member of the department that an officer has personally engaged in domestic violence will be treated as an admission or report of a crime and should be investigated both administratively and criminally.

### ***Supervisor Responsibilities***

- ◆ Supervisors should be cognizant of and document any pattern of abusive behavior potentially indicative of domestic violence including but not limited to the following:
  - **Aggressiveness**
    - Excessive and/or increased use of force on the job
    - Stalking and inappropriate surveillance activities
    - Unusually high incidences of physical altercations and verbal disputes
    - Citizen and fellow officer complaints of unwarranted aggression and verbal abuse
    - Inappropriate treatment of animals
    - On- or off-duty officer injuries
  - **Domestic violence-related issues**
    - Monitoring and controlling any family member or intimate partner through such means as excessive phone calling
    - Stalking any intimate partner or family member
    - Discrediting and/or disparaging an intimate partner
  - **Deteriorating work performance**
    - Tardiness
    - Excessive absences
    - Alcohol and drug abuse
- ◆ When the supervisor notes a pattern of problematic behavior, the supervisor should:

- Address the behaviors through a review or other contact with the officer and document all contacts
- Forward written reports capturing the behaviors through the chain of command in a timely manner to determine discipline as warranted
- Prepare and submit a written request for a psychological exam/ counseling by a psychologist/psychiatrist who is knowledgeable about domestic violence.
- When warranted, request an officer be ordered to seek assistance from a certified program for batterers, and if such a program is not available, a counselor knowledgeable about domestic violence.

### ***Police Officer Responsibilities***

- ◆ Officers are encouraged to take personal responsibility in seeking confidential referrals and assistance from the department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.
- ◆ Officers who engage in the following actions should be subject to severe discipline up to and including dismissal:
  - Failure to report knowledge of abuse or violence involving a fellow officer
  - Failure to cooperate with the investigation of a police officer domestic violence case (except in the case where that officer is the victim)
  - Interference with cases involving themselves or fellow officers
  - Intimidation/coercion of witnesses or victims (i.e., surveillance, harassment, stalking, threatening, or falsely reporting)
- ◆ Officers who learn they are the subject of a criminal investigation, regardless of jurisdiction, should immediately make a report to their supervisors and provide notice of the court dates, times, appearances, and proceedings. Failure to do so may result in severe discipline up to and including dismissal.
- ◆ Officers who learn they are the subject of any protective order proceeding, whether or not the order is issued and regardless of jurisdiction, should immediately notify their supervisor and provide a copy of the order, if issued. If subject to a qualifying protection order, the officer should surrender all firearms. Failure to do so should result in severe discipline up to and including dismissal.

## **C INCIDENT RESPONSE PROTOCOLS**

### ***Department-wide Response***

- ◆ The department should accept, document, and preserve all calls or reports, including those made anonymously, regarding domestic violence as on-the-record information.
- ◆ All reports of possible criminal activity implicating police officers in domestic violence should be documented in accordance with the policies governing the handling of reports of domestic violence involving civilians.
- ◆ The on-scene supervisor should forward a copy of the report alleging domestic violence by

the officer through the chain of command.

- ◆ All such incident reports should be made available by the department to the victim without cost.

### ***Communications Response***

- ◆ Communications officers/dispatchers should be instructed to assign a high priority to all domestic violence calls, including those that involve or appear to involve a police officer of any department.
- ◆ Communications officers/dispatchers should immediately notify the supervisor on duty and the dispatch supervisor of any domestic violence call received that involves, or appears to involve, a police officer, regardless of the involved officer's jurisdiction.
- ◆ Communications officers/dispatchers should prepare and preserve documentation of the facts and circumstances of the call, including the 911 tape, for use in potential administrative or criminal investigations.
- ◆ Communications officers/dispatchers should have available current contact information for the local crisis center for on-scene supervisors to provide to victims.

### ***Patrol Response***

- ◆ Upon arrival on the scene of a domestic violence call or incident involving a police officer, the responding officer should immediately notify dispatch and request a supervisor of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.
- ◆ The responding officers should perform the following actions:
  - Obtain needed medical assistance
  - Address the immediate safety of all parties involved
  - Secure the scene and preserve evidence
  - Note all excited utterances, admissions and/or incriminating statements
  - If children are present to contact to DCYF
  - Make an arrest if probable cause exists

### ***On-Scene Supervisor Response***

- ◆ A supervisor of higher rank should report to the scene of all police officer domestic violence incidents including a police officer, regardless of the involved officer's jurisdiction.
- ◆ The on-scene supervisor should assume command and ensure that the crime scene is secured and that all evidence is collected. Photographic and/or video documentation of the parties involved and scene should be recorded where such resources are available.
- ◆ The supervisor should inquire as to the safety of all children present at the time of the incident and all children in the household. As appropriate and necessary, the children should be interviewed separately from other parties.
- ◆ In cases where probable cause exists, the on-scene supervisor should ensure an arrest is

made.

- ◆ If the alleged offender has left the scene and probable cause exists, the supervisor should perform the following actions:
  - Exhaust all reasonable means to locate the alleged offender
  - Ensure that an arrest warrant is sought, if unable to locate the alleged offender within 12 hours
  - Document all subsequent actions in a timely manner
- ◆ In the event that the victim has left the scene, the supervisor should make every effort to follow through on the investigation and attempt to locate the victim.
- ◆ Arrest of both parties involved in a domestic violence incident should be avoided. The primary aggressor should be arrested. The supervisor should ensure that a thorough investigation is conducted and an arrest of the primary aggressor is made in accordance with state law.
- ◆ Whenever an officer is arrested, the supervisor should relieve the accused officer of all service weapons regardless of whether the officer is a member of the responding department.
- ◆ All firearms owned or at the disposal of the accused officer should be seized for safety reasons at the time of arrest or service of a Domestic Violence Order of Protection.
- ◆ The command staff officer should inquire whether the victim wants any firearms removed from the home for safekeeping by the department and make arrangements as necessary.
- ◆ The on-scene supervisor should ensure the victim is informed of the following:
  - The judicial process and victim rights
  - The department's policy on police officer domestic violence, procedures and cross-jurisdictional responsibilities as they apply
  - The standard of probable cause for arrest
  - Procedures for obtaining protective orders
  - Victim compensation
  - The availability of confidential transportation to a location that can provide improved victim safety
  - Community resources and local domestic violence victim services
  - The option to remove firearms for safekeeping
- ◆ Whenever a police officer involved domestic violence call does not result in an arrest or a warrant is not sought, the on-scene supervisor should explain why in a written report.
- ◆ The on-scene supervisor should notify the head of the officer's agency and the accused officer's immediate supervisor as soon as possible. In the event that the officer is from another jurisdiction, the supervisor should ensure that the head of the accused officer's agency is notified. All notifications, and attempts to notify, should be fully documented.

### ***Additional Critical Considerations***

- ◆ When responding to a domestic violence complaint involving a police officer, follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from their own department.
- ◆ In the event that the reported incident involves the head of a law enforcement agency, the supervisor or highest ranking officer not on scene, should immediately notify the New Hampshire Attorney General.
- ◆ In responding to domestic violence incidents where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.
- ◆ In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence response and investigation procedures should be followed. After probable cause and primary aggressor are determined, an arrest should be made and all service weapons of the accused officer confiscated.

### ***Department Follow-Up***

- ◆ In a timely manner, the head of the investigating law enforcement agency should ensure that all officers who responded to a police officer domestic violence call are debriefed. The debriefing should include the following:
  - A review of department confidentiality guidelines
  - A direct order prohibiting discussion of the incident outside of the official inquiry
  - A clear delineation of assignments
- ◆ Follow-up investigators should proactively seek out information on existing protective orders and, if found, should enforce them and any applicable state and federal firearms laws and determine whether the officer violated department policy by failing to report the protective order.
- ◆ Arrest warrants charging police officers with domestic violence and protective orders issued at a later time should be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, firearms should be seized.
- ◆ In the event the protection order expires or the victim asks that it be discontinued, the department should still conduct a thorough administrative investigation.
- ◆ Following the reported incident, the department should designate a member of the command staff to perform the following duties:
  - Conduct an interview of the accused officer to determine the potential for further violence and inform the victim of the possibility of danger regardless of the outcome of the assessment
  - Act as a principal point of contact to keep the victim apprised of all developments
  - Ensure that safety planning is made available to the victim
  - Report the findings to the head of the accused officer's law enforcement agency who will make decisions concerning appropriate sanctions, administrative actions, and referrals for the accused officer

## **D VICTIM SAFETY AND PROTECTION**

- ◆ Departments should work with community resources and advocacy agencies to connect victims and their children with appropriate services.
- ◆ The command staff designated as principal contact for the victim, should inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.
- ◆ All officers should be aware of possible victim/witness intimidation or coercion and the increased danger when the victim leaves an abusive partner. The designated principal contact should assist the victim and children in safety planning and caution the victim to be alert to stalking activities. If an officer suspects intimidation or coercion of the victim/witness is occurring, the officer should prepare a written report to be delivered immediately to the investigator in charge of the case through the chain of command.
  - In order to determine whether the victim/witness is being intimidated or coerced, the investigator in charge should seek out secondary sources of information.
  - Given the possibility that a victim will recant or choose not to participate in court proceedings, supplemental evidence should be sought out and preserved.

## **E POST INCIDENT ADMINISTRATIVE AND CRIMINAL DECISIONS**

Departments should conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic violence in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case, the department should uphold all administrative decisions. If the facts of the case indicate that domestic violence has occurred or any department policies have been violated, administrative action should be taken independent of any criminal proceedings as soon as practicable.

The department will adhere to and observe all necessary protocols to ensure an accused officer's departmental, union, and legal rights are upheld during the administrative and criminal investigations.

### ***Administrative Investigations and Decisions***

The responsibility to complete the administrative investigation of a police officer involved domestic violence incident should rest with the Internal Affairs Division of the department, or in the event that no such unit exists, the head of the law enforcement agency should appoint an experienced investigator. The head of a law enforcement agency may ask an outside law enforcement agency to conduct the administrative investigation to protect and ensure the integrity of the investigation.

- ◆ Regardless of whether an arrest was made on scene, the investigating official should conduct an independent, comprehensive administrative investigation using standard elements of criminal investigations. Victims and witnesses can be re-interviewed, crime scene evidence, photographs, and medical records accessed; and 911 tapes requested. **All interviews should be recorded.**
- ◆ Where sufficient information/evidence exists, the department should take immediate administrative action against the accused officer that may include removal of badge and



service weapons, reassignment, sanctions, suspension, or termination.

- ◆ When an investigation of an incident uncovers officers who had knowledge of violence on the part of another officer but failed to notify the department or engaged in actions intended to interfere with the investigation, the department should investigate those officers and take disciplinary action and criminally charge as warranted.
- ◆ The head of the law enforcement agency should determine whether and when the accused officer should be issued an **Administrative Order of Protection**.
- ◆ If administrative policies and/or administrative orders of protection are violated or sufficient concern exists regarding a violation, the department should initiate an independent administrative investigation, seize firearms as allowed under department policy as soon as practicable, and take disciplinary action up to and including dismissal.
- ◆ In determining the proper course of administrative action, a department should consider factors including the level of danger an officer poses as indicated by the outcome of the Lethality Assessment of the officer, the officer's history of compliance with departmental rules, prior written or verbal threats, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.
- ◆ If the accused officer is assigned enforcement duties while the administrative and/or criminal investigations are under way, those duties should not include response to domestic violence calls.
- ◆ If the department determines through an administrative investigation that the officer violated department policy, regardless of whether the officer plead nolo contendere in response to criminal charges, the department may employ the full range of administrative sanctions. Any officer determined through an administrative investigation to have committed domestic violence shall be terminated from the department.

### ***Criminal Investigations and Decisions***

The responsibility to complete a criminal investigation of an incident of police officer domestic violence shall rest with the domestic violence unit of the department, or in the event that no such unit exists, the criminal investigations unit or detective division. The chief may ask an outside law enforcement agency to conduct the criminal investigation.

- ◆ The investigating official shall conduct criminal investigations as would be the case for any other criminal violation.
- ◆ In accordance with the officer's and victim's privacy rights, the investigating official or agency shall conduct sufficient interviews (**taped**) of family members, friends, neighbors, colleagues, and others who may have information regarding criminal charges.
- ◆ Even though an initial report may already exist concerning a police officer, reports of any subsequent or additional criminal or non-criminal incidents, which may include fellow officers engaging in surveillance or intimidation of the victim, shall be documented in separate incident reports, assigned a case number, cross-referenced with the original case number and investigated thoroughly.
- ◆ The department shall completely investigate the charges and where warranted seek prosecution even in cases where the victim recants.

- ◆ The department shall establish a liaison to work with the prosecuting attorney for each case. This officer shall present all the information to the prosecuting attorney for action and ask that decisions about the adjudication of the case be made in a timely manner.
- ◆ As with any other case for criminal prosecution, the investigating officer shall request filing of court papers/complaints.
- ◆ Any officer convicted through criminal proceedings of a domestic violence crime shall be terminated from the department.

### ***Termination Procedures***

- ◆ Upon the decision to terminate an officer, the head of the law enforcement agency shall do the following in accordance with department policy and state law:
  - Notify the officer, in writing, of the effective date of termination
  - Inform the officer of available support services, to include counseling
  - Ensure that the victim is notified in a timely manner and offered available assistance, to include safety planning
  - Notify the Police Standards and Training Council of the enforcement actions against the officer as soon as is practicable.
- ◆ Federal law prohibits anyone convicted of a misdemeanor domestic violence crime from possessing firearms. The department shall ensure compliance with federal law.

## **F ADMINISTRATIVE ORDERS OF PROTECTION**

Police officers who commit acts of domestic violence pose unique dangers to victims. In some cases the risk to victim safety escalates after the officer is arrested or suspended from duty. It is important for police supervisors to ensure victim safety remains a top priority through-out the criminal and internal affairs investigations.

Police Supervisors have at their disposal a valuable tool to increase victim safety – the ***Administrative Order of Protection***. An administrative order of protection is nothing more than a direct order from a police supervisor to refrain from particular conduct toward a particular person. This tool can be extremely effective in that compliance with lawful orders is an important conditions of a police officer’s employment.

If a complaint or investigation reveals that a police officer may have committed a domestic violence offense, police supervisor are generally free to order the officer to refrain from contact with the alleged victim. These orders should be preferably reduced to writing and issued by a superior officer.

### ***Terms and Conditions***

Terms of an order must be drafted to fit the needs of the particular circumstances and the relationships of the parties. The order should also be tailored to protect the interests of the department. In general, administrative orders of protections should be issued after speaking with the victim in order to ensure the terms of the order are appropriate for the victim’s situation, and not overly broad so as to render the order unlawful. If the parties are living separately, a comprehensive “no-contact order” can be issued, including indirect contact through a third party

(exceptions for a legal representative of the officer is advisable). If parties will continue to live together, an order specifying no threats, harassment, or physical duress of the victim or members of the household is advisable.

These orders should remain in effect whether or not the officer is on-duty, and should remain valid until rescinded by competent authority. A supervisor should deliver the order in person to the officer subject to it, and the officer should acknowledge receipt in writing at the bottom of the department's copy. The order may also contain language prohibiting witness tampering or witness intimidation. The order should include language advising the officer that failure to comply with the order will constitute independent grounds for disciplinary action, and may result in termination, regardless of the outcome of the underlying investigation.

### ***Benefits***

A law enforcement agency that routinely issues these orders in domestic violence cases should find that they promote victim safety and are easier to modify than orders issued by civil or criminal courts. Punishment for violation of the order can be swift, certain and severe and should generally be resistant to any legal challenge.

Another potential benefit of these orders is that administrative proceedings related to violations of these orders can often proceed more quickly than the underlying criminal case. Many administrative cases involving police domestic violence remain "on hold" for extended periods of time while the criminal case proceeds through its various stages, in order to avoid complicating the criminal prosecution. In contrast, departments can elect to proceed to adjudicate the administrative case for failure to obey a direct order without the fear of jeopardizing the related criminal case.

## **APPENDIX B**

### **DOMESTIC VIOLENCE RESOURCES**

*New Hampshire Coalition Against Domestic and Sexual Violence*  
[www.nhcadsv.org](http://www.nhcadsv.org)

*National Network to End Domestic Violence*  
<http://www.nsvrc.org/>

*National Center on Domestic and Sexual Violence*  
<http://www.ncdsv.org/index.html>

*National Online Resource Center on Violence Against Women (VAWnet)*  
<http://www.vawnet.org/>

*National Center for Victims of Crime*  
<http://www.victimsofcrime.org/>

*The National Center on Domestic Violence, Trauma and Mental Health*  
<http://www.nationalcenterdvtraumamh.org/>

*Ending Violence Against Women International*  
<http://www.nationalcenterdvtraumamh.org/>

## **WHAT IS DOMESTIC VIOLENCE?**

Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, threats, and emotional/psychological abuse. The frequency and severity of domestic violence varies dramatically.

## **DID YOU KNOW?**

- In the United States, an average of 20 people experience intimate partner physical violence every minute. This equates to more than 10 million abuse victims annually.<sup>1</sup>
- 1 in 4 women and 1 in 9 men experience severe intimate partner physical violence, intimate partner contact sexual violence, and/or intimate partner stalking with impacts such as injury, fearfulness, post-traumatic stress disorder, use of victim services, contraction of sexually transmitted diseases, etc.<sup>2</sup> This is commonly considered “domestic violence”.
  - 1 in 3 women and 1 in 4 men have experienced some form of physical violence by an intimate partner. This includes a range of behaviors and in some cases might not be considered “domestic violence”.<sup>3</sup>
  - 1 in 7 women and 1 in 25 men have been injured by an intimate partner.<sup>4</sup>
  - 1 in 10 women have been raped by an intimate partner. Data is unavailable on male victims.<sup>5</sup>
  - 1 in 7 women and 1 in 18 men have been stalked. Stalking causes the target to fear she/he/they or someone close to her/him/them will be harmed or killed.<sup>6</sup>
- On a typical day, domestic violence hotlines nationwide receive over 20,000 calls.<sup>7</sup>
- An abuser’s access to a firearm increases the risk of intimate partner femicide by 400%.<sup>8</sup>
- Intimate partner violence accounts for 15% of all violent crime.<sup>9</sup>
- Intimate partner violence is most common against women between the ages of 18-24.<sup>10</sup>
- 19% of intimate partner violence involves a weapon.<sup>11</sup>

## **WHY IT MATTERS**

Domestic violence is prevalent in every community, and affects all people regardless of age, socio-economic status, sexual orientation, gender, race, religion, or nationality. Physical violence is often accompanied by emotionally abusive and controlling behavior as part of a much larger, systematic pattern of dominance and control. Domestic violence can result in physical injury, psychological trauma, and even death. The devastating consequences of domestic violence can cross generations and last a lifetime.

## **SEXUAL ASSAULT**

- 1 in 5 women and 1 in 59 men in the United States is raped during his/her lifetime.<sup>12</sup>
- 9.4% of women in the United States experience intimate partner sexual assault in their lifetimes.<sup>13</sup>

## **STALKING**

- 19.3 million women and 5.1 million men in the United States have been stalked.<sup>14</sup>
- 66.2% of female stalking victims reported stalking by a current or former intimate partner.<sup>15</sup>

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If you are in crisis, contact The National Domestic Violence Hotline at 1-800-799-SAFE (7233) or [www.TheHotline.org](http://www.TheHotline.org).

Please visit the [National Coalition Against Domestic Violence's](http://www.ncadv.org) website at [www.ncadv.org](http://www.ncadv.org) for more fact sheets, membership information, and valuable resources.

### HOMICIDE

- 1 in 3 female murder victims and 1 in 20 male murder victims are killed by intimate partners.<sup>16</sup>
- A study of intimate partner homicides found 20% of victims were family members or friends of the abused partner, neighbors, persons who intervened, law enforcement responders, or bystanders.<sup>17</sup>
- 72% of all murder-suicides are perpetrated by intimate partners.<sup>18</sup>
- 94% of murder-suicide victims are female.<sup>19</sup>

### PHYSICAL/MENTAL EFFECTS

- Victims of intimate partner violence are at increased risk of contracting HIV or other STI's due to forced intercourse and/or prolonged exposure to stress.<sup>20</sup>
- Intimate partner victimization is correlated with a higher rate of depression and suicidal behavior.<sup>21</sup>
- Only 34% of people who are injured by intimate partners receive medical care for their injuries.<sup>22</sup>

### ECONOMIC EFFECTS

- Victims of intimate partner violence lose a total of 8,000,000 million days of paid work each year, the equivalent of 32,000 full-time jobs.<sup>23</sup>
- Intimate partner violence is estimated to cost the US economy between \$5.8 billion and \$12.6 billion annually, up to 0.125% of the national gross domestic product.<sup>24</sup>
- Between 21-60% of victims of intimate partner violence lose their jobs due to reasons stemming from the abuse.<sup>25</sup>
- Between 2003 and 2008, 142 women were murdered in their workplace by former or current intimate partners. This amounts to 22% of workplace homicides among women.<sup>26</sup>

<sup>1</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J. & Stevens, M. (2011). *The national intimate partner and sexual violence survey: 2010 summary report*. Retrieved from [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>2</sup> National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (n.d.). *Infographic based on data from the national intimate partner and sexual violence survey (nisvs): 2010-2012 state report*. <https://www.cdc.gov/violenceprevention/pdf/NISVS-infographic-2016.pdf>

<sup>3</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J. & Stevens, M. (2011). *The national intimate partner and sexual violence survey: 2010 summary report*. Retrieved from [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> National Network to End Domestic Violence (2017). *Domestic violence counts national summary*. Retrieved from [https://nnedv.org/mdocs-posts/census\\_2016\\_handout\\_national-summary/](https://nnedv.org/mdocs-posts/census_2016_handout_national-summary/).

<sup>8</sup> Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J., Frye, V. & Lauphon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*(7), 1089-1097.

<sup>9</sup> Truman, J. L. & Morgan, R. E. (2014). *Nonfatal domestic violence, 2003-2012*. Retrieved from <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J. & Stevens, M. (2011). *The national intimate partner and sexual violence survey: 2010 summary report*. Retrieved from [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

If you are in crisis, contact The National Domestic Violence Hotline at 1-800-799-SAFE (7233) or [www.TheHotline.org](http://www.TheHotline.org).

Please visit the **National Coalition Against Domestic Violence's** website at [www.ncadv.org](http://www.ncadv.org) for more fact sheets, membership information, and valuable resources.

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<sup>15</sup> Ibid.

<sup>16</sup> Bridges, F.S., Tatum, K. M., & Kunselman, J.C. (2008). Domestic violence statutes and rates of intimate partner and family homicide: A research note. *Criminal Justice Policy Review*, 19(1), 117-130.

<sup>17</sup> Smith, S., Fowler, K. & Niolon, P. (2014). Intimate partner homicide and corollary victims in 16 states: National violent death reporting system, 2003-2009. *American Journal of Public Health*, 104(3), 461-466. doi: 10.2105/AJPH.2013.301582.

<sup>18</sup> Violence Policy Center. (2012). *American roulette: Murder-suicide in the United States*. Retrieved from [www.vpc.org/studies/amroul2012.pdf](http://www.vpc.org/studies/amroul2012.pdf).

<sup>19</sup> Ibid.

<sup>20</sup> World Health Organization (2013). *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*. Retrieved from [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1).

<sup>21</sup> Ibid.

<sup>22</sup> Truman, J. L. & Morgan, R. E. (2014). *Nonfatal domestic violence, 2003-2012*. Retrieved from <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

<sup>23</sup> Rothman, E., Hathaway, J., Stidsen, A. & de Vries, H. (2007). How employment helps female victims of intimate partner abuse: A qualitative study. *Journal of Occupational Health Psychology*, 12(2), 136-143. doi: 10.1037/1076-8998.12.2.136.

<sup>24</sup> World Health Organization (2004). *The economic dimensions of intimate partner violence*. Retrieved from <http://apps.who.int/iris/bitstream/10665/42944/1/9241591609.pdf>.

<sup>25</sup> Ibid.

<sup>26</sup> Finkelhor, D., Turner, H., Ormrod, R. & Hamby, S. (2011). *Children's exposure to intimate partner violence and other family violence*. Retrieved from <https://www.ncjrs.gov/pdffiles1/ojdp/232272.pdf>.

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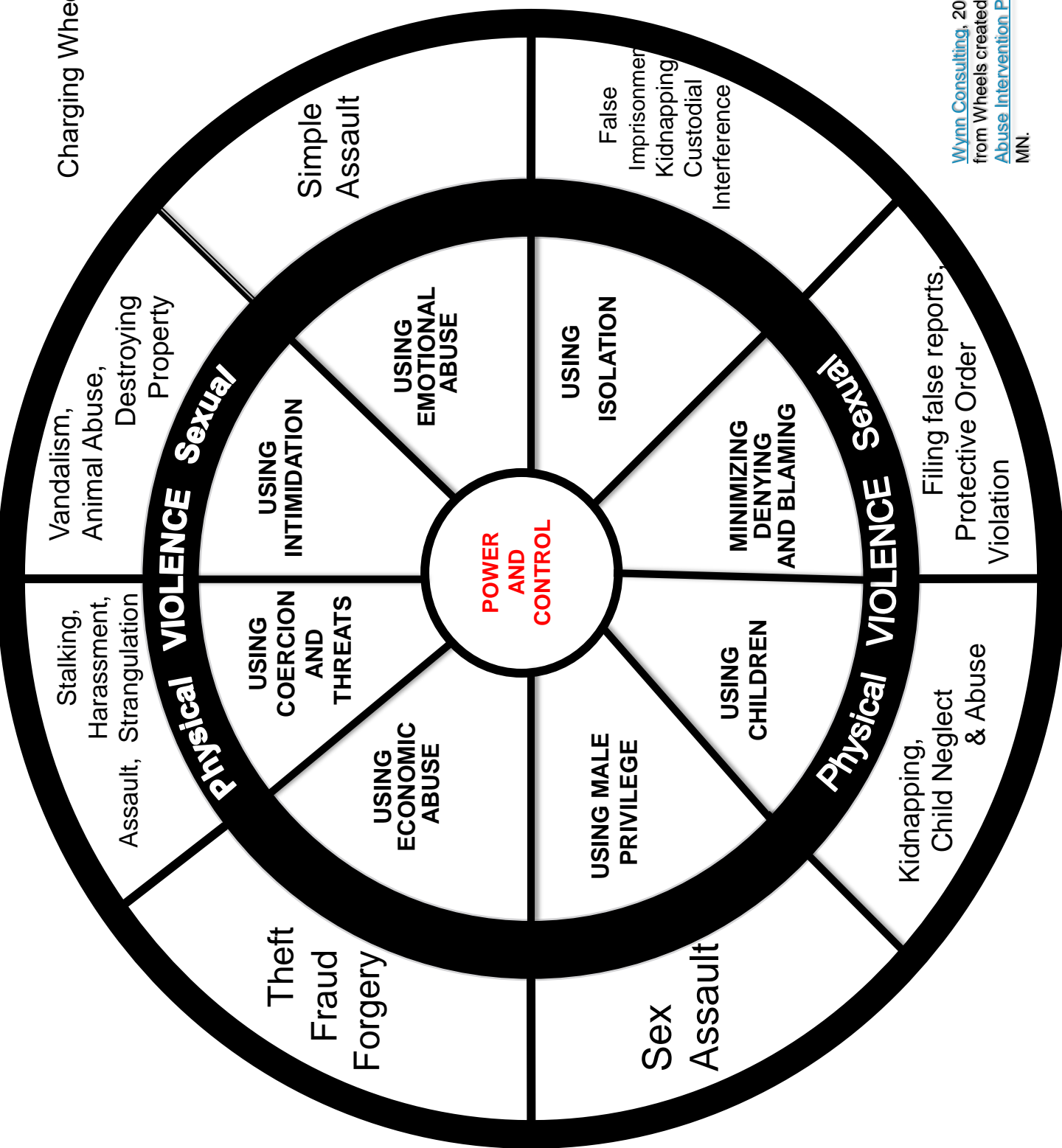
# POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.

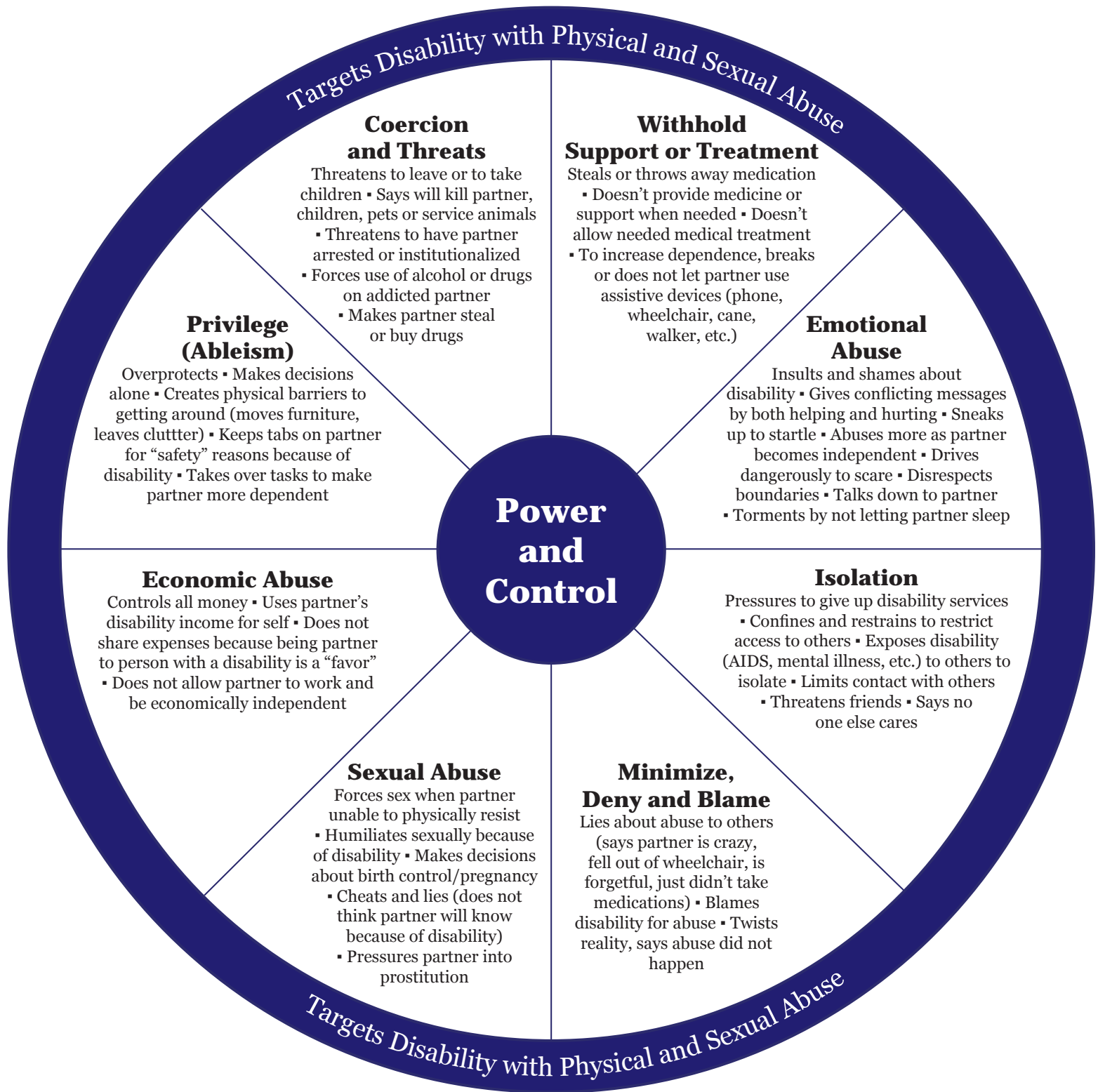






Wynn Consulting, 2007; adapted from Wheels created by: [Domestic Abuse Intervention Project](#), Duluth, MN.

# People with Disabilities in Partner Relationships



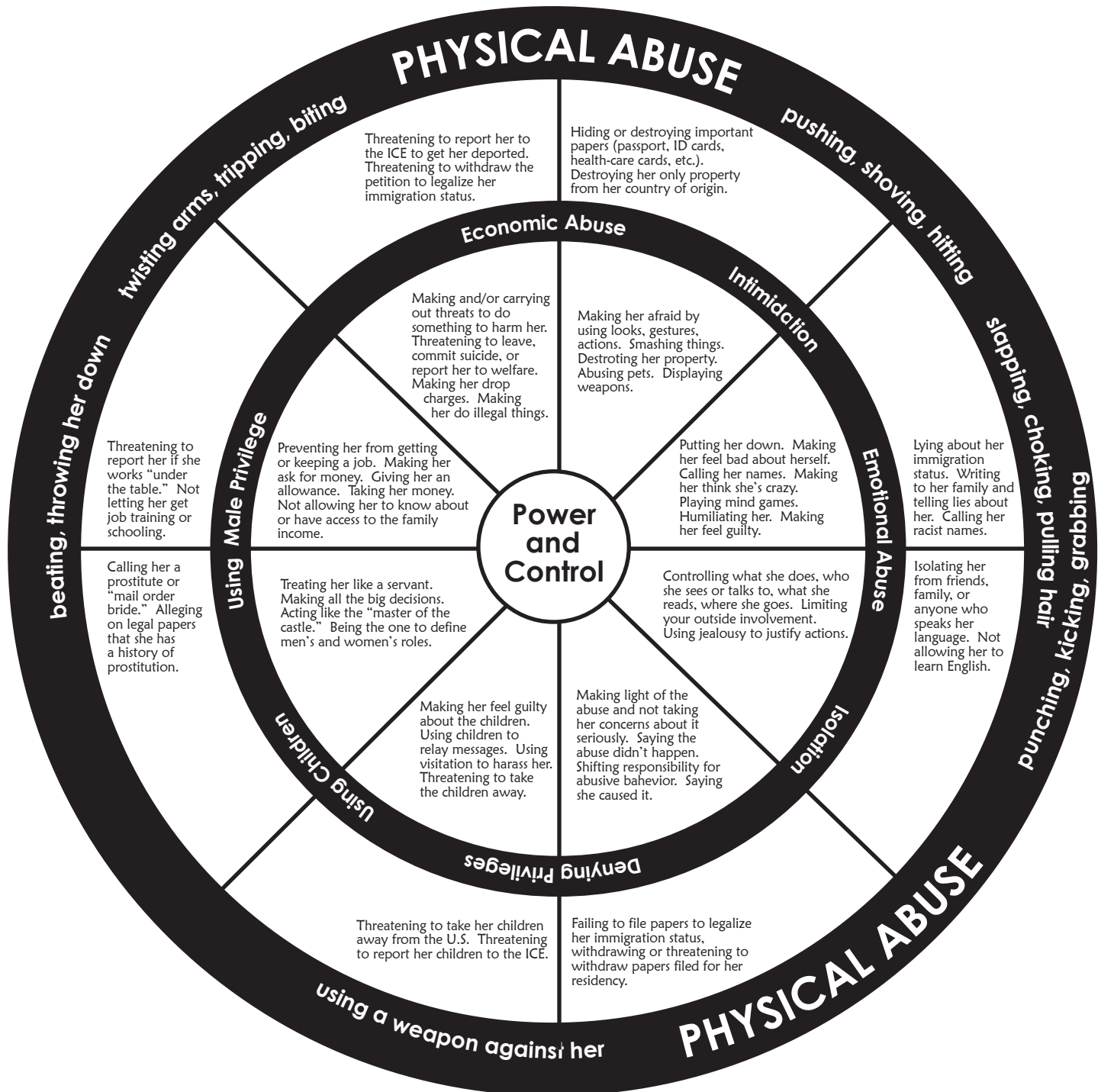
Created by



with in-depth input from people with disabilities.

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218.722.2781  
[www.theduluthmodel.org](http://www.theduluthmodel.org)

# IMMIGRANT POWER AND CONTROL WHEEL



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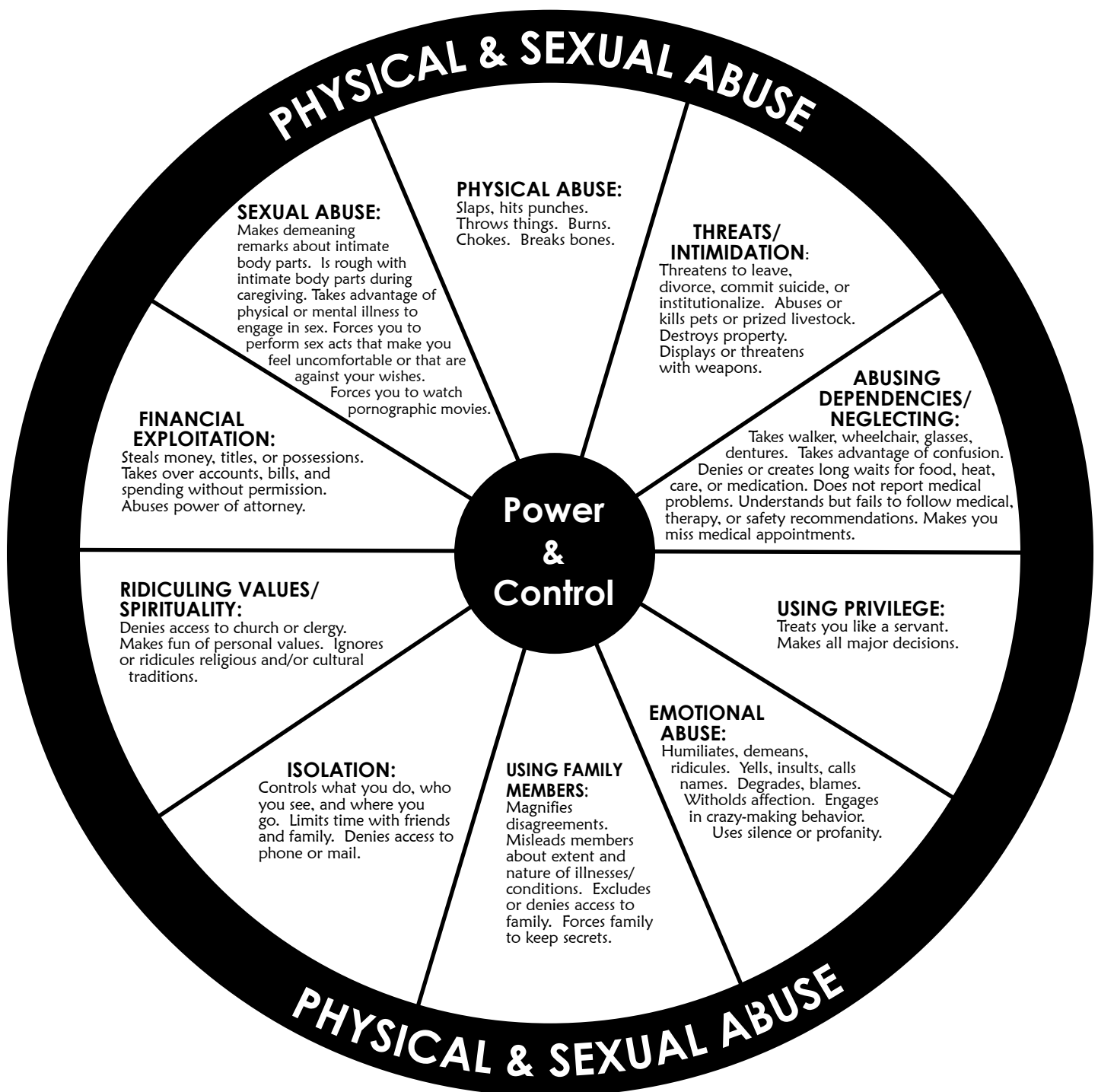
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# FAMILY VIOLENCE IN LATER LIFE



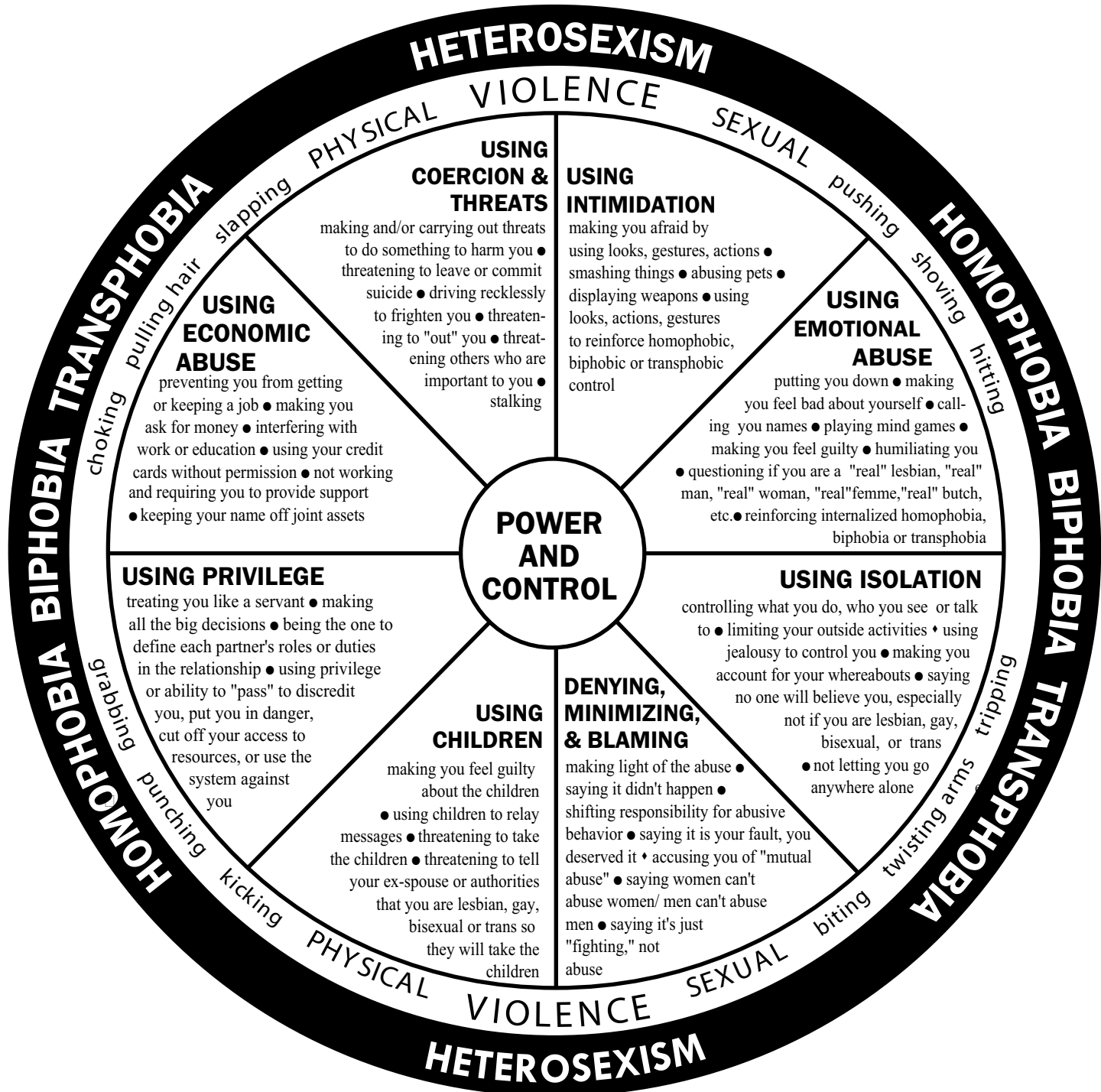
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# Gay, Lesbian, Bisexual and Trans Power and Control Wheel



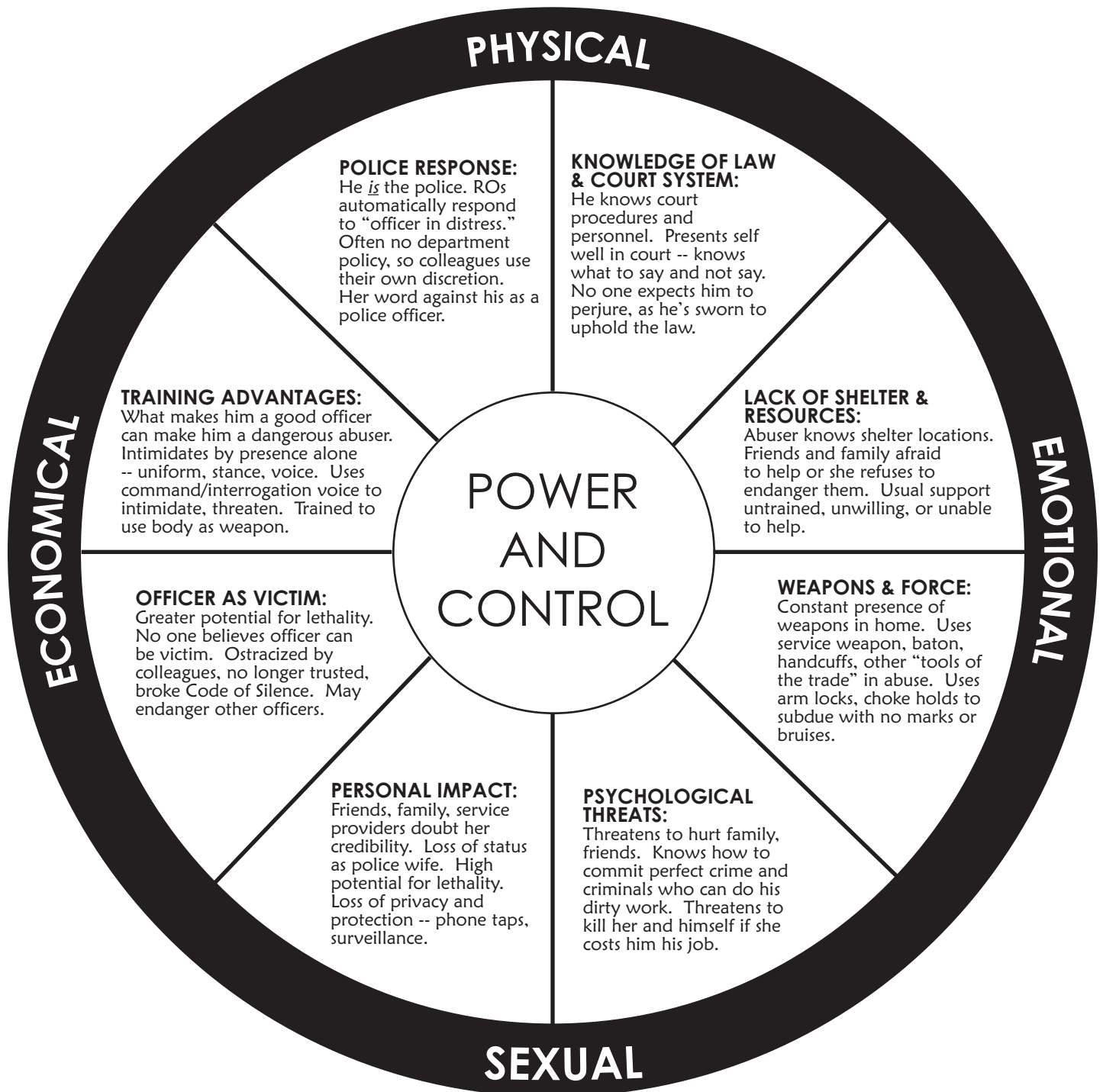
Developed by Roe & Jagodinsky

Adapted from the Power & Control and Equity Wheels developed by the Domestic Abuse Intervention Project • 206 West Fourth Street • Duluth, Minnesota 55806 • 218/722-4134

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# POLICE PERPETRATED DOMESTIC VIOLENCE



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## GLOSSARY OF TERMS

### FROM THE HUMAN RIGHTS CAMPAIGN:

[HTTPS://WWW.HRC.ORG/RESOURCES/GLOSSARY-OF-TERMS](https://www.hrc.org/resources/glossary-of-terms)

Many Americans refrain from talking about sexual orientation and gender identity or expression because it feels taboo, or because they're afraid of saying the wrong thing. This glossary was written to help give people the words and meanings to help make conversations easier and more comfortable.

**Ally** | A person who is not LGBTQ but shows support for LGBTQ people and promotes equality in a variety of ways.

**Androgynous** | Identifying and/or presenting as neither distinguishably masculine nor feminine.

**Asexual** | The lack of a sexual attraction or desire for other people.

**Biphobia** | Prejudice, fear or hatred directed toward bisexual people.

**Bisexual** | A person emotionally, romantically or sexually attracted to more than one sex, gender or gender identity though not necessarily simultaneously, in the same way or to the same degree.

**Cisgender** | A term used to describe a person whose gender identity aligns with those typically associated with the sex assigned to them at birth.

**Closeted** | Describes an LGBTQ person who has not disclosed their sexual orientation or gender identity.

**Coming out** | The process in which a person first acknowledges, accepts and appreciates their sexual orientation or gender identity and begins to share that with others.

**Gay** | A person who is emotionally, romantically or sexually attracted to members of the same gender.

**Gender dysphoria** | Clinically significant distress caused when a person's assigned birth gender is not the same as the one with which they identify. According to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM), the term - which replaces Gender Identity Disorder - "is intended to better characterize the experiences of affected children, adolescents, and adults."

**Gender-expansive** | Conveys a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system.

**Gender expression** | External appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

**Gender-fluid** | According to the Oxford English Dictionary, a person who does not identify with a single fixed gender; of or relating to a person having or expressing a fluid or unfixed gender identity.

**Gender identity** | One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

**Gender non-conforming** | A broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category.

**Genderqueer** | Genderqueer people typically reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation. People who identify as "genderqueer" may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.

**Gender transition** | The process by which some people strive to more closely align their internal knowledge of gender with its outward appearance. Some people socially transition, whereby they might begin dressing, using names and pronouns and/or be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions.

**Homophobia** | The fear and hatred of or discomfort with people who are attracted to members of the same sex.

**Intersex** | An umbrella term used to describe a wide range of natural bodily variations. In some cases, these traits are visible at birth, and in others, they are not apparent until puberty. Some chromosomal variations of this type may not be physically apparent at all.

**Lesbian** | A woman who is emotionally, romantically or sexually attracted to other women.

**LGBTQ** | An acronym for "lesbian, gay, bisexual, transgender and queer."

**Living openly** | A state in which LGBTQ people are comfortably out about their sexual orientation or gender identity – where and when it feels appropriate to them.

**Non-binary** | An adjective describing a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do.

**Outing** | Exposing someone's lesbian, gay, bisexual or transgender identity to others without their permission. Outing someone can have serious repercussions on employment, economic stability, personal safety or religious or family situations.



**Pansexual** | Describes someone who has the potential for emotional, romantic or sexual attraction to people of any gender though not necessarily simultaneously, in the same way or to the same degree.

**Queer** | A term people often use to express fluid identities and orientations. Often used interchangeably with "LGBTQ."

**Questioning** | A term used to describe people who are in the process of exploring their sexual orientation or gender identity.

**Same-gender loving** | A term some prefer to use instead of lesbian, gay or bisexual to express attraction to and love of people of the same gender.

**Sex assigned at birth** | The sex (male or female) given to a child at birth, most often based on the child's external anatomy. This is also referred to as "assigned sex at birth."

**Sexual orientation** | An inherent or immutable enduring emotional, romantic or sexual attraction to other people.

**Transgender** | An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

**Transphobia** | The fear and hatred of, or discomfort with, transgender people.

## **APPENDIX C OTHER RESOURCES**

### **NATIONAL POLICY/TRAINING RESOURCES**

*National Body Worn Camera Toolkit*, U.S. Department of Justice, Bureau of Justice Assistance (BJA) <https://www.bja.gov/bwc/>

*National Body Worn Camera Toolkit, Privacy FAQs: What concerns victims have regarding body-worn cameras?* <https://www.bja.gov/bwc/Topics-Privacy.html>

*National Body Worn Camera Toolkit, Law Enforcement Implementation Checklist*  
<https://www.bja.gov/bwc/pdfs/BWCImplementationChecklist.pdf>

*Model Policy: Body Worn Cameras*, International Chiefs of Police (IACP)  
<http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/BodyWornCamerasPolicy.pdf>

*International Association of Chiefs of Police*  
<https://www.theiacp.org/resources/policy-center-resource/domestic-violence>

*The Network/la Red*  
<http://tnlr.org/en/>

*Aequitas*  
<https://aequitasresource.org/>

### **NEW HAMPSHIRE RESOURCES**

*Crisis Centers (listing through New Hampshire Coalition Against Domestic and Sexual Violence)*  
<https://www.nhcadv.org/>

*Child Advocacy Centers (listing through Granite State Children's Alliance)*  
<https://www.cac-nh.org/>

*WORDS: Foreign Language Translation, Manchester NH*  
<http://www.wordsusa.com/services>

*Southern New Hampshire, Area Health Education Center, Raymond NH*  
<http://www.snhahec.org/flmi.cfm>

*New Hampshire Language Bank*  
<https://www.thelanguagebank.org/interpretation-and-translation>

## APPENDIX D VICTIM NOTIFICATION FORM

### IF YOU ARE A VICTIM OF DOMESTIC VIOLENCE INCLUDING THREATS OF VIOLENCE

According to NH law RSA 173 - B:10(d) "...If you feel that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency telephonic order for protection. You may also request that the officer assist you in obtaining from your premises and curtilage, toiletries, medication, clothing, business equipment, and any other items as determined by the court, and in locating and taking you to a local safe place including, but not limited to, a designated meeting place to be used as a crisis center, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment you have the right to request that the officer assist you in obtaining an ambulance. You may request a copy of the report filed by the peace officer, at no cost, from the law enforcement department."

- You have the right to go to the Circuit Court, Family Division or District Division to obtain a protective order against the person who abused or threatened you.
- Contact your local Domestic Violence Crisis Center for free, confidential support and assistance.
- The police officer has the responsibility to decide whether or not to make an arrest; an officer can arrest with or without your consent if the officer believes that a crime has been committed.

A victim of domestic violence shall be entitled to all rights granted to victims of crime under RSA 21-M:8-k (RSA 173-B:9(V))  
New Hampshire crime victim's Bill of Rights includes: **The right to be treated with dignity and respect throughout the entire criminal justice process.**

*\*For a complete list of victims' rights, go to:*

<http://doj.nh.gov/criminal/victim-assistance/bill-of-rights.htm>

### **CRIME VICTIMS' COMPENSATION PROGRAM**

*If you are a victim of a violent crime, or the family or dependent of a deceased victim, you may be eligible for compensation for hospital/medical expenses, lost wages, funeral expenses and/or mental health therapy expenses, not otherwise covered by insurance. Property crimes are not covered.*

**FOR MORE INFORMATION CALL:  
1-800-300-4500 (toll free in NH only) OR 603-271-1284 (out of state)**

**DOMESTIC VIOLENCE AND SEXUAL ASSAULT  
CRISIS SERVICES**

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**STATEWIDE DOMESTIC VIOLENCE HOTLINE 1-866-644-3574  
STATEWIDE SEXUAL ASSAULT HOTLINE 1-800-277-5570**

**New Hampshire Coalition Against Domestic and Sexual Violence [www.nhcadsv.org](http://www.nhcadsv.org)**

*The Coalition is comprised of 13 programs that provide services to victims of sexual assault, domestic violence and stalking. The services are FREE, confidential and include a 24-hour crisis line, emergency shelter and transportation, court advocacy in obtaining protective orders against abusers, hospital and court accompaniment for sexual assault survivors, support groups and information and help in obtaining public assistance.*

Berlin	1-866-662-4220	Lebanon	1-866-348-WISE
Concord	1-866-841-6229	Littleton	1-800-774-0544
Conway	1-800-336-3795	Manchester	603-668-2299
Claremont	1-800-639-3130	Nashua	603-883-3044
Durham/UNH	1-888-271-SAFE	Plymouth	603-536-1659
Keene	603-352-3782 or 1-888-511-MCVP	Portsmouth	603-994-SAFE
Laconia	1-866-841-6247		

**\*\* OFFICER: PLEASE CIRCLE CLOSEST  
PROGRAM TO VICTIMS' LOCATION\*\***

Name of Police Officer: \_\_\_\_\_

Police Department: \_\_\_\_\_

Case Number: \_\_\_\_\_

Court Location: \_\_\_\_\_

## APPENDIX E

### QUALIFYING DOMESTIC VIOLENCE RELATIONSHIPS

Defendant	Victim	173-B	631:2-b ("Joshua's Law")	CBPO <sup>11</sup> /Federal Statutes <sup>12</sup>
Spouse	Spouse	X	X (RSA 631-2:b, III(a)(1))	X
Former spouse (includes divorced or separated)	Former spouse (includes divorced or separated)	X	X (RSA 631-2:b, III(a)(1))	X
Cohabiting as spouse	Cohabiting as spouse	X	X (RSA 631-2:b, III(a)(2))	X
Cohabited as spouse	Cohabited as spouse	X	X (RSA 631-2:b, III(a)(3))	X
Boyfriend/girlfriend	Boyfriend/girlfriend	X	X (RSA 631-2:b, III(b))	
Former boyfriend/girlfriend	Former boyfriend/girlfriend	X	X (RSA 631-2:b, III(b))	
Share a child in common	Share a child in common	X	X (RSA 631-2:b, III(a)(5))	X
Related by Marriage	Related by Marriage	X	X RSA (631-2:b, III(a)(4))	
Related by blood	Related by blood	X	X RSA (631-2:b, III(a)(4))	
Parent	Adult Child of defendant	X	X (RSA 631-2:b, III(a)(4))	X
Parent	Minor Child of defendant		X RSA (631-2:b, III(a)(4))	X
Adult Child	Parent	X	X – (RSA (631-2:b, III(a)(4))	
Intimate partner of parent (i.e. mom's boyfriend)	Child of intimate partner (i.e. girlfriend's child)	X <sup>13</sup>	If living together RSA 631-2:b, III(a)(2)) If previously lived together (RSA 631-2:b, III(a)(3)) <sup>14</sup>	X

<sup>11</sup> The CBPO is based on federal law so the qualifying relationships will mirror federal law.

<sup>12</sup> The Federal Statutes referenced for this table are 18 §USC 922 (g)(8), 18 USC §922 (g)(9) and 18 USC §921 (a)(32).

<sup>13</sup> Only if the parent of the child is a victim as well.

<sup>14</sup> Would need to establish the defendant acted in the capacity as a parent or guardian to the victim.

## APPENDIX F

### SAMPLE DOMESTIC VIOLENCE COMPLAINTS

#### Sample Complaints for Offenses Under RSA 631:2-b, Domestic Violence

Every complaint charging an offense under RSA 631:2-b must include information to show that the victim and defendant were family or household members or intimate partners. Those terms are defined in RSA 631:2-b, III as follows:

“Family or household member” means:

- The actor’s spouse or former spouse;
- A person with whom the actor is cohabitating as a spouse, parent, or guardian;
- A person with whom the actor cohabitated as a spouse, parent, or guardian, but no longer shares the same residence;
- An adult with whom the actor is related by blood or marriage; or
- A person with whom the actor shares a child in common.

“Intimate partner” means a person with whom the actor is currently or was formerly involved in a romantic relationship, regardless of whether or not the relationship was sexually consummated.

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\*\*\* The statutory language for each criminal offense under RSA 631:2-b, I, is set out below, with certain phrases bracketed and underlined. The non-bracketed phrases indicate elements or words that generally should be included in the complaint. The bracketed phrases indicate elements for which the officer should provide some factual detail. \*\*\*

#### **RSA 631:2-b, I(a)**

[purposely or knowingly] caused [bodily injury or unprivileged physical contact] to [a family or household member or intimate partner] by use of [physical force]

- Sample Complaint: knowingly caused bodily injury to Susan Smith, the mother of his child, by punching her in the mouth, resulting in a cut lip.
- Sample Complaint: knowingly caused unprivileged physical contact to Michael Miller, a person with whom she is cohabitating as a spouse, by throwing a bowl at him, striking him in the arm.

#### **RSA 631:2-b, I(b)**

recklessly caused [bodily injury] to [a family or household member or intimate partner] by use of [physical force].

- Sample Complaint: recklessly caused bodily injury to Jim Sweet, her former husband, by pushing him backwards, causing him to fall over a table and strike his head on the floor, resulting in bruising to his head.

**RSA 631:2-b, I(c)**

negligently causes [*bodily injury*] to [*a family or household member or intimate partner*] by means of a [*deadly weapon*].

- Sample Complaint: negligently caused bodily injury to Abbie Connors, by holding the sharp edge of a knife against Ms. Connors' cheek, causing a laceration. The defendant and Ms. Connors were formerly involved in a romantic relationship.

**RSA 631:2-b, I(d)**

[*uses physical force OR attempts to use physical force OR by physical conduct threatens to use a deadly weapon*] for the purpose of placing [*a family or household member or intimate partner*] in fear of imminent bodily injury.

- Sample Complaint: held a knife, a deadly weapon, to Lisa Ball's neck for the purpose of placing her in fear of imminent bodily injury. Ms. Ball is the defendant's former spouse.
- Sample Complaint: held Jane Jones's hand above the lit burner on a stove for the purpose of placing Ms. Jones in fear of imminent bodily injury. The defendant and Ms. Jones are married.

**RSA 631:2-b, I(e)**

threatens to use a [*deadly weapon*] against [*a family or household member or intimate partner*] for the purpose to terrorize that person.

- Sample Complaint: threatened to shoot Jennifer Smith with his gun, a deadly weapon, if she tried to leave their house, with the purpose to terrorize her. The defendant and Ms. Smith were involved in a romantic relationship at the time.

**RSA 631:2-b, I(f)**

[*coerces or forces*] [*a family or household member or intimate partner*] to submit to sexual contact by using [*physical force or physical violence*].

- Sample Complaint: forced his niece, Amanda Clark, to engage in sexual contact by grabbing her hand and placing it on his penis.

**RSA 631:2-b, I(g)**

threatens to use [*physical force or physical violence*] to cause [*a family or household member or intimate partner*] to submit to sexual contact and the victim believes the actor has the present ability to execute the threat.

- Sample Complaint: caused Tom Ellis to touch her breasts by threatening to burn him with a cigarette if he refused, and Mr. Ellis believed that she had the present ability to carry out the threat. The defendant is Tom Ellis's guardian and they live together.

**RSA 631:2-b, I(h)**

threatens to use [*a deadly weapon*] to cause [*a family or household member or intimate partner*] to submit to sexual contact and the victim believes the actor has the present ability to execute the threat.

- Sample Complaint: caused Sally Mann to allow him to touch her genitals by threatening to stab her with a knife, a deadly weapon, and Ms. Mann believes that he had the present ability carry out that threat. Ms. Mann and the defendant were formerly in an intimate relationship.

**RSA 631:2-b, I(i)**

knowingly confines unlawfully [*a family or household member or intimate partner*] by means of [*physical force OR the threatened use of a deadly weapon*] so as to substantially interfere with his or her physical movement.

- Sample Complaint: knowingly and unlawfully confined Terry Plourde by pushing her into a closet and locking the closet door, so as to substantially interfere with Ms. Plourde's physical movement. Ms. Plourde and the defendant were formerly married.

**RSA 631:2-b, I(j)**

knowingly violates [*a term of a protective order issued pursuant to RSA 173-B:4, I*] by means of [*the use of physical force OR the attempted use of physical force OR the threatened use of a deadly weapon*] against [*a family or household member or intimate partner*].

- Sample Complaint: Pursuant to a protective order issued on September 15, 2014 under RSA 173-B:4, I, the defendant was prohibited from having any contact with his estranged wife, Kelly Todd. The defendant knowingly violated that order by grabbing her arms as she was attempting to get into her car.
- Sample Complaint: Pursuant to a protective order issued on October 1, 2014 under RSA 173-B:4, I, the defendant was prohibited from taking any property in which Mary Ladd had a legal interest. The defendant knowingly violated that order by taking the keys to her car after showing her a gun and threatening to shoot her if she did not give them to him. Mary Ladd had formerly been involved in an intimate relationship with the defendant.

**RSA 631:2-b, I(k)**

uses [*physical force or threatened use of a deadly weapon*] against [*a family or household member or intimate partner*] to block that person's access to [*a cell phone, telephone, or*]



electronic communication device] with the purpose of [preventing, obstructing, or interfering with] [the report of a criminal offense, bodily injury, or property damage to a law enforcement agency OR a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider].

- **Sample Complaint:** forcibly grabbed Judi Kane’s pocketbook out of her hands to prevent her from getting access to her cell phone with the purpose of preventing her from calling the police to report that he had assaulted her. Ms. Kane and the defendant cohabitate as spouses.

### **Sample Language for Other Domestic Violence Offenses**

The 2014 Senate Bill 318 provides that for certain offenses, if the state alleges in the complaint/ indictment and proves that the defendant and victim were family or household members or intimate partners, the criminal record will show that it was a domestic violence crime. This provision is applicable to the following offenses:

- First Degree Assault
- Second Degree Assault
- Reckless Conduct
- Aggravated Felonious Sexual Assault
- Felonious Sexual Assault
- Sexual Assault
- Kidnapping
- Stalking

The language of the complaint or indictment would be the same as for a non-domestic violence related offense. One additional sentence should be added, alleging the type of relationship between the defendant and the victim.

For example, a complaint for first degree assault would read:

The defendant knowingly caused bodily injury to Kristen Graham by striking her in the head with a baseball bat, a deadly weapon, causing her to sustain a skull fracture. The defendant and Ms. Graham were involved in an intimate relationship at the time.

**APPENDIX G**  
**A GUIDE TO ENFORCING PROTECTIVE ORDERS**

<b>Statute/ Name of Order</b>	<b>Issuing Court</b>	<b>Protected Party</b>	<b>Action taken when there is Probable Cause for a Violation</b>	<b>Firearms and Ammunition</b>	<b>Charging Decision</b>
<b>RSA 173-B</b>  DVP Orders: Emergency Order Temporary Order Final Order	Circuit Court- Family Division Superior Court	Family or household member, current or former sexual or intimate partner	<b>Shall arrest</b>  <b>12 hour</b> warrantless arrest exception (173-B:9)  <b>Shall</b> be detained until arraignment (173-B:9)	<b>Emergency and Temporary DVP Orders:</b> Judge’s discretion at time of issuing the order <b>Shall</b> confiscate at time of violation  <b>Final Orders:</b> <b>Shall</b> confiscate at time of service <b>Shall</b> confiscate at time of arrest for violation	Violation of a Protective Order  Underlying criminal charge(s) related to the violation, including <b>stalking</b> (if applicable)
<b>RSA 633:3-a</b>  Stalking Order	Circuit Court- District Division	No relationship required	<b>Shall arrest.</b> 12 hour warrantless arrest exception (633:a-III-a ,173-B:9)  <b>Shall</b> be detained until arraignment (633:a-III-a ,173-B:9)	<b>Temporary Stalking Orders:</b> Judge’s discretion  Final Orders: <b>Shall</b> confiscate at time of service or arrest	Violation of a Protective Order  Underlying criminal charge(s) related to the violation, including <b>stalking</b> (if applicable)
<b>RSA 458:16</b>  Marital Order	Circuit Court – Family Division	Parties involved in a divorce, annulment or separation	If violation includes assault, criminal trespass, criminal mischief, stalking or other criminal act - <b>shall arrest</b>  <b>12 hour</b> warrantless arrest exception (458:16,III)	N/A	Violation of a Protective Order  Underlying criminal charge(s) related to the violation, including <b>stalking</b> (if applicable)

			Violations that are not the result of a criminal act but merely a violation of a non-protective part of the order, protected party files motion for contempt in issuing Court		
<b>RSA 461-A:10</b> Parenting Order	Circuit Court – Family Division	Parties involved in parenting a child together	If violation includes assault, criminal trespass, criminal mischief, stalking or other criminal act - <b>Shall arrest</b>  <b>12 hour</b> warrantless arrest exception  Investigate for a charge of <b>Stalking 633:3-a(c)</b>  Violations that are not the result of a criminal act but merely a violation of a non-protective part of the order should be handled the same way as an Equity Order above	N/A	Violation of a Protective Order  Underlying criminal charge(s) related to the violation, including <b>stalking</b> (if applicable)
<b>RSA 597-7</b> Criminal Bail Protective Orders (CBPO) – Bail Conditions	Circuit Court-District Division (which includes Bail Commissioners)  Superior Court for felony cases	Orders issued against a defendant in a criminal case as a condition of release to bail to protect the victim	<b>Investigate</b> for a charge of <b>Stalking 633:3-a(c)</b>	<b>Shall</b> confiscate under 173-B:10	Investigate for a charge of <b>Stalking 633:3-a(c)</b>
<b>RSA 491</b> Equity Order	Superior Court only	<u>Examples:</u> Issued to disputing neighbors and other individuals not related	<b>NO arrest</b>  Document incident  Inform protected party to file motion for contempt in issuing Court	N/A	Investigate for a charge of <b>Stalking 633:3-a(c)</b>

<b>RSA 169-C:16 or 169-C:19</b>	Circuit Court – Family Division	Child involved in an abuse and neglect case	<b>Shall arrest</b> <b>6 hour</b> warrantless arrest exception (169-C:21)	<b>Shall</b> confiscate at time of arrest for violation	Violation of a Protective Order  Underlying criminal charge(s) related to the violation, including <b>stalking</b> (if applicable)
<b>RSA 169-C:7-a</b>	Circuit Court – Family Division	A minor who was abused by a member of their family or household	<b>Shall arrest</b> <b>6 hour</b> warrantless arrest exception. (169-C:21)	<b>Shall</b> confiscate at time of arrest for violation	Violation of a Protective Order  Underlying criminal charge(s) related to the violation, including <b>stalking</b> (if applicable)

# APPENDIX H SAMPLE PAPERWORK TRACKING SHEET

## COURT TRACKING SHEET

### Type of Service:

<input type="checkbox"/> Subpoena <input type="checkbox"/> Juvenile Petition <input type="checkbox"/> Protective Order	<input type="checkbox"/> Warrant <input type="checkbox"/> Abuse/Neglect Petition <input type="checkbox"/> Other
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Name \_\_\_\_\_ DOB \_\_\_\_\_  
 Address \_\_\_\_\_  
 Juvenile's Name \_\_\_\_\_ DOB \_\_\_\_\_  
 Offence \_\_\_\_\_  
 Date/Time \_\_\_\_\_ Due Date \_\_\_\_\_  
 Received \_\_\_\_\_  
 Source \_\_\_\_\_ Entered Tracking System \_\_\_\_\_

### Assigned To:

Officer _____	Sector _____	Date _____
Officer _____	Sector _____	Date _____
Officer _____	Sector _____	Date _____
Officer _____	Sector _____	Date _____
Officer _____	Sector _____	Date _____
Officer _____	Sector _____	Date _____

### Service Information:

Date/Time	Officer/Badge	No Answer	No Forw Address	CK PO	Served	Arrest	Comments

**OUT OF CITY SERVICE:**

Document Sent To \_\_\_\_\_ Date \_\_\_\_\_ By \_\_\_\_\_

**APPENDIX I**  
**COMPARISON OF FEDERAL VS. STATE FIREARMS**  
**PROHIBITIONS**

Federal Firearm Prohibitions under 18 U.S.C. 922	State Firearms Prohibitions
<ul style="list-style-type: none"> <li>Section 922 (g)(1) Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year</li> </ul>	<ul style="list-style-type: none"> <li>Felonious Use RSA 650-A:1</li> </ul>
<ul style="list-style-type: none"> <li>Section 922 (g) (2) Persons who are fugitives from justice</li> </ul>	<ul style="list-style-type: none"> <li>Negligent Storage of firearms RSA 650-C</li> </ul>
<ul style="list-style-type: none"> <li>Section 922 (g)(3) Persons who are unlawful users of or addicted to any controlled substance</li> </ul>	<ul style="list-style-type: none"> <li>Felon in Possession RSA 159:3 punishable by imprisonment for a term exceeding one year</li> </ul>
<ul style="list-style-type: none"> <li>Section 922 (g)(4) Persons who have been adjudicated as a mental defective or have been committed to any mental institution</li> </ul>	
<ul style="list-style-type: none"> <li>Section 922 (g)(5) Persons who are illegal unlawful aliens or legal non immigrant who do not meet certain exceptions</li> </ul>	
<ul style="list-style-type: none"> <li>Section 922 (g)(6) Persons who have received a dishonorable discharge from the Armed Forces</li> </ul>	
<ul style="list-style-type: none"> <li>Section 922 (g)(7) Persons who having been citizens of the United States, have renounced their U.S. Citizenship</li> </ul>	
<ul style="list-style-type: none"> <li>Section 922(g)(8) Persons who possess a firearm and/or ammunition while subject to a protection order that was issued after hearing and notice, and contains language referenced in the statute</li> </ul>	
<ul style="list-style-type: none"> <li>Section 922(g)(9) Persons who possess a firearm and/or ammunition after being convicted of a misdemeanor crime of domestic violence</li> </ul>	
<ul style="list-style-type: none"> <li>Section 922(n) Persons who are under indictment or information for a crime punishable by more than one year imprisonment who ship, transport or receive a firearm that passed through interstate or foreign commerce</li> </ul>	
<ul style="list-style-type: none"> <li>Knowingly transferring firearm/ammunition to persons federally prohibited – Section 922(d)</li> </ul>	

## APPENDIX J

### STRANGULATION QUICK REFERENCE GUIDE

Document All Findings in an Appropriate Report or Chart

Date/Time of Assault: \_\_\_\_\_ Date/Time of Exam: \_\_\_\_\_

Face	Eyes & Eyelids	Nose	Ears	Mouth
<input type="checkbox"/> Red/Flushed <input type="checkbox"/> Petechiae <input type="checkbox"/> Scratches	<input type="checkbox"/> Petechiae R/L eye <input type="checkbox"/> Petechiae R/L lid <input type="checkbox"/> Bloody Conjunctiva	<input type="checkbox"/> Nosebleed <input type="checkbox"/> Deformity <input type="checkbox"/> Petechiae (in or on)	<input type="checkbox"/> Petechiae (in or on) <input type="checkbox"/> Bleeding from ear canal	<input type="checkbox"/> Bruising <input type="checkbox"/> Swollen tongue/lips <input type="checkbox"/> Cuts/abrasions
Under Chin	Neck	Shoulders	Chest	Head
<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions <input type="checkbox"/> Edema (swelling) <input type="checkbox"/> Fingernail impressions <input type="checkbox"/> Ligature marks	<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratches <input type="checkbox"/> Bruising <input type="checkbox"/> Abrasions	<input type="checkbox"/> Petechiae <input type="checkbox"/> Missing Hair <input type="checkbox"/> Edema <input type="checkbox"/> Fractures <input type="checkbox"/> Concussion
Breathing Changes	Voice Changes	Swallowing Changes	Behavioral Changes	Other
<input type="checkbox"/> Difficulty Breathing <input type="checkbox"/> Hyperventilation <input type="checkbox"/> Unable to breathe	<input type="checkbox"/> Raspy voice <input type="checkbox"/> Hoarse voice <input type="checkbox"/> Coughing <input type="checkbox"/> Unable to or difficulty speaking	<input type="checkbox"/> Trouble swallowing <input type="checkbox"/> Painful swallowing <input type="checkbox"/> Neck Pain <input type="checkbox"/> Nausea/ Vomiting <input type="checkbox"/> Drooling	<input type="checkbox"/> Agitation <input type="checkbox"/> Amnesia <input type="checkbox"/> PTSD <input type="checkbox"/> Hallucinations <input type="checkbox"/> Combativeness	<input type="checkbox"/> Dizzy <input type="checkbox"/> Headaches <input type="checkbox"/> Fainted <input type="checkbox"/> Urination <input type="checkbox"/> Defecation

#### Strangulation Quick Reference Guide

- How and where was the victim strangled?
- One Hand (R or L), Two Hands, Forearm (R or L), Knee/Foot, Ligature (describe)
- How long? \_\_\_\_\_ seconds \_\_\_\_\_ minutes
- Was the victim smothered?
- From 1 to 10, how hard was the suspect's grip? (low) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (high)
- From 1 to 10, how painful was it? (low) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (high)
- Multiple attempts: \_\_\_\_\_ Multiple methods: \_\_\_\_\_
- Was the victim shaken simultaneously while being strangled? Straddled?
- Held against wall?
- Was the victim's head being pounded against wall, floor or ground?
- What did the victim think was going to happen?
- What caused the strangulation to stop?
- Any prior incidents of strangulation? Prior domestic violence? Prior threats?

*Prepared by Detective Bob Frechette – [www.refconsultant.com](http://www.refconsultant.com)*

# APPENDIX K PRESERVATION ORDERS



## NEW HAMPSHIRE OFFICE OF THE ATTORNEY GENERAL

Date:

To: \_\_\_\_\_, Legal Analyst

Company:

Address:

City/State/Zip:

Fax:

Master Case #

### ISP PRESERVATION ORDER

You are hereby requested to preserve, under the provisions of Title 18, United States Code, Section 2703(f)(1), the following records in your custody or control, including records stored on backup media:

- A. All information (not to include email), and other files, associated with the account that was assigned **IP Address** \_\_\_\_\_ **on (day)** \_\_\_\_\_, **(date)** \_\_\_\_\_ **at (time)** \_\_\_\_\_ **AM/PM Eastern Daylight Time (UTC offset of -4/-5)**.
- B. All connection logs and records of user activity for each such account, including:
  - (1) name;
  - (2) address;
  - (3) local and long distance telephone connection records, or records of session times and durations;
  - (4) length of service (including start date) and types of service utilized;
  - (5) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
  - (6) means and source of payment for such service (including any credit card or bank account number)
- C. \_\_\_\_\_ relating to the account assigned **IP Address** \_\_\_\_\_ **on (day)** \_\_\_\_\_, **(date)** \_\_\_\_\_ **at (time)** \_\_\_\_\_ **AM/PM Eastern Daylight Time (UTC offset of -4/-5)**.
- D. Any other records related to the above-referenced names and user names, including, without limitation, correspondence, billing records, records of contact by any person or entity about the above-referenced names and user names, and any other subscriber information.

You are requested to preserve for a period of 90 days the records described above currently in your possession. This request applies only retrospectively; it does not obligate you to capture and preserve new information that arises after the date of this request. **Failure to comply with this request could subject you to liability under 18 U.S.C. § 2707.**

You are also requested not to disclose the existence of this request to the subscriber or any other person, other than as necessary to comply with this request.

Please refer any questions to:

Detective : \_\_\_\_\_ . Telephone Number: \_\_\_\_\_

Thank you in advance for your cooperation

*Address, Town, NH Zip  
PHONE:/ FAX:*



CELL PHONE RECORD PRESERVATION

AGENCY LETTERHEAD

Custodian of Records

[Check www.Search.org for this information]

Phone Number:

Fax Number:

Email:

Date:

Case #

**PRESERVATION ORDER**  
**90 DAY**

The \_\_\_\_\_ police Department is investigating an allegation of \_\_\_\_\_. You are hereby requested to preserve, under the provisions of Title 18, United States Code, Section 2703(f)(1), the following records in your custody or control, including records stored on backup media:

Subscriber telephone number: \_\_\_\_\_ Time Period: From \_\_\_\_\_ To \_\_\_\_\_

1. Subscriber billing and account information-to include account notes;
2. Length of service;
3. Incoming and outgoing cell tower records;
4. Incoming and outgoing call detail records;
5. Cell tower location information;
6. The means and source of payment for such service (including any credit card or bank account number);
7. All stored photographic or video images;
8. All stored voice mail messages;
9. Incoming and outgoing test messages.

You are requested to preserve for a period of 90 days the records described above currently in your possession. This request applies only retrospectively; it does not obligate you to capture and preserve new information that arises after the date of this request.

You are also requested **not to disclose** the existence of this request to the subscriber or any other person, other than as necessary to comply with this request.

Please refer any questions to:

Detective \*\*\*\*\*

Your agency info here

## **APPENDIX L**

### **SEARCH WARRANT TIP SHEET FOR COMMUNICATION DEVICES**

This is not a comprehensive list but is a list of items that officers should consider including whenever they have a case that involves the use of technology:

#### **FOR THE SEARCH WARRANT FACE SHEET:**

- The person of (insert name here).
- We therefore command you to make a search of the above-mentioned location, vehicles, and person. The search is authorized to be conducted during the night time, or any time of the day, for the following property:
- Any cell phones or hand held communication devices.
- And to examine the cell phones for subscriber and electronic communication documentation specific to this case, in specifically requesting that the search warrant authorize any appropriate law enforcement agency access to the items referred to in the search warrant, the authority to open these items, view their contents, and copy and reproduce all data contained therein as necessary for the investigation and prosecution of this matter.

#### **FOR THE AFFIDAVIT:**

- I know through my training and experience<sup>15</sup> that cell phones store data to include text messages, calls records, photos, received contacts and other data pertinent to an investigation.
- I know from my training and experience that even if the files were deleted by a user, they still may be recoverable by a trained computer forensic examiner.
- I know from training and experience that computers used to access the Internet usually contain files, logs or file remnants which would tend to show ownership and use of the computer as well as ownership and use of Internet service accounts used for the Internet access.
- I know from training and experience that search warrants of residences usually reveal items that would tend to show dominion and control of the property searched, to include utility bills, telephone bills, correspondence, rental agreements and other identification documents.

#### **FOR THE SEARCH WARRANT APPLICATION:**

- Based upon the foregoing information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described as any cell phones or hand held communication devices is evidence used in the commission of a crime of

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<sup>15</sup> If you are not relying on your own training and experience, but instead are relying on another officer or expert's training and experience, please identify and articulate the source.

(insert type of crime here) as defined by (insert RSA here) and is the property of (insert name here), and may be found in the possession of (insert name here) at the residence of (insert address and town), New Hampshire.

- The property I intend to seize as a result of the issuance of a Search Warrant is the following:
  - Any cell phones or hand held communication devices.
  - And to examine the cell phones for subscriber and electronic communication documentation specific to this case, in specifically requesting that the search warrant authorize any appropriate law enforcement agency access to the items referred to in the search warrant, the authority to open these items, view their contents, and copy and reproduce all data contained therein as necessary for the investigation and prosecution of this matter.

## APPENDIX M

### TECHNOLOGY SAFETY PLANNING FOR VICTIMS

1. **Trust your instincts.** If you suspect the abusive person knows too much, it is possible that your phone, computer, email, driving or other activities are being monitored. Abusers, stalkers and perpetrators can act in incredibly persistent and creative ways to maintain power and control.

2. **Plan for safety.** Navigating violence, abuse, and stalking is very difficult and dangerous. Advocates at the National Domestic Violence Hotline have been trained on technology issues, and can discuss options and help you in your safety planning. Local domestic and sexual crisis center advocates can also help you plan for safety.

3. **Take precautions if you have a “techy” abuser.** If computers and technology are a profession or a hobby for the abuser/stalker, trust your instincts. If you think the abuser may be monitoring or tracking you, talk to hotline advocates or the police.

4. **Use a safer computer.** If anyone abusive has access to your computer, they might be monitoring your computer activities. Try to use a safer computer when you look for help, a new place to live, etc. It may be safer to use a computer at a public library, community center, or Internet café.

5. **Create new email or IM accounts.** If you suspect that anyone abusive can access your email or instant messaging (IM), consider creating additional email/IM accounts on a safer computer. Do not create or check this new email/IM from a computer the abuser could access, in case it is monitored. Look for free web-based email accounts, and strongly consider using non-identifying name & account information. (Example: [bluecat@email.com](mailto:bluecat@email.com) and not YourRealName@email.com)

6. **Check your cell phone settings.** If you are using a cell phone provided by the abusive person, consider turning it off when not in use. Also many phones let you to “lock” the keys so a phone won’t automatically answer or call if it is bumped. When on, check the phone settings; if your phone has an optional location service, you may want to switch the location feature off/on via phone settings or by turning your phone on and off.

7. **Change passwords & pin numbers.** Some abusers use victim’s email and other accounts to impersonate and cause harm. If anyone abusive knows or could guess your passwords, change them quickly and frequently. Think about any password protected accounts - online banking, voicemail, instant messaging, etc.

8. **Minimize use of cordless phones or baby monitors.** If you don’t want others to overhear your conversations, turn baby monitors off when not in use and use a traditional corded phone for sensitive conversations.

9. **Use a donated or new cell phone.** When making or receiving private calls or arranging escape plans, try not to use a shared or family cell phone because cell phone billing records and phone logs might reveal your plans to an abuser. Contact your local hotline program to learn about donation programs that provide new cell phones and/or prepaid phone cards to victims of abuse and stalking.

10. **Ask about your records and data.** Many court systems and government agencies are publishing records to the Internet. Ask agencies how they protect or publish your records and request that court, government, post office and others seal or restrict access to your files to protect your safety.

11. **Get a private mailbox and don't give out your real address.** When asked by businesses, doctors, and others for your address, have a private mailbox address or a safer address to provide. Try to keep your true residential address out of databases.

12. **Search for your name on the Internet.** Major search engines such as "Google" or "Yahoo" may have links to your contact information. Search for your name in quotation marks: "Full Name". Check phone directory pages because unlisted numbers might be listed if you gave your number to anyone.

### **SAFETY SUGGESTIONS**

There are a number of ways you can reduce your risk when using technology and social networking sites. You may want to consider the following:

- Always be aware of your surroundings...know what information about you that you are making available to others;
- On social networking sites:
  - Utilize privacy settings;
  - Be selective about who you "friend";
  - Be aware that social networking sites update their privacy policies, often without notice which might necessitate your updating your privacy/security settings. Check frequently;
  - Certain conversations may be more appropriate in a private conversation as opposed to "posting" for all to see current activities, etc.;
  - You can control who "tags" your photos through privacy settings; and
  - Social networking such as "Foursquare" or "Google Latitude" provide real time status updates and give information about your current location.
- Threatening calls should be reported to the police department and to the phone company;
- Always carry a cell phone. Cell phones have security settings where GPS tracking can be turned on, off or be set for 911 emergency calls only. Check your settings to ensure that the GPS tracking is set to 9-1-1 emergency only. Often, victims can be stalked via GPS on their cell phones;
- Be prepared to change cell phone numbers or email accounts and limit the amount of people to whom you provide this information;
- Save messages or caller ID numbers for evidence;
- Avoid calling 800 or 900 phone numbers as well as giving your number out on any sites that solicit phone numbers;
- Don't leave your cell phone unattended;

- Set the GPS in your cell phone so it is accessible only by 9-1-1. Contact your wireless provider for more information;
- Filtering capabilities of your email program can block email from certain addresses;
- Monitor your children's online computer usage to include social networking and emails;
- Remember that any photos you are posting online or sending cannot be retrieved or taken back;
- Computers can store a lot of private information about what you look at via the Internet, the emails and instant messages you send, internet-based phone and IP-TTY calls you make, web-based purchases and banking, and many other activities; and
- It might be safer to use a computer in a public library, at a trusted friend's house, or an Internet Café.