

# **MODEL DOMESTIC VIOLENCE PROTOCOL FOR LAW ENFORCEMENT**

## **INTRODUCTION**

This protocol is intended to act as a guide for Nevada law enforcement agencies in development or revision of departmental policies for investigation and enforcement of domestic violence crimes. This protocol is broad in scope and is intended as a resource document for an agency to utilize those sections that meet the specific needs of the agency.

This protocol is not intended to address every situation or every issue. It is not intended to substitute for individual officer discretion or individual departmental policies that are consistent with state law.

This protocol embodies a commitment to pursue effective intervention in domestic violence incidents. It is intended to serve as a guide in promoting victim and officer safety and abuser accountability. This policy recognizes that law enforcement response is a critical part of a coordinated and concerted community effort to address the problems of domestic violence.

## **Domestic Violence *Policy***

The purpose of this policy is to establish procedures for the investigation of domestic violence incidents as part of the law enforcement function. This policy will address investigative procedures, protocols, and tools for domestic violence incidents encountered by law enforcement personnel as part of their law enforcement duties.

The underlying philosophy of this policy is that active intervention by law enforcement in the form of a pro-arrest policy and thorough, evidence based investigations are the most effective means for law enforcement to address domestic violence situations.

Officers shall respond to domestic violence as they would to any other crime. However, the relationship between the victim and the accused creates additional responsibilities. Officers must provide special assistance, including efforts to protect and inform the victim of domestic violence services available to them.

Personnel must also be aware of the various protection orders, mandatory arrest rules and investigative procedures related to domestic violence. This policy was prepared to assist personnel with these tasks.

Officers must also be keenly aware of the high potential for danger and violence in domestic violence situations. Domestic violence presents officers with some of the most volatile situations they will encounter. These situations frequently involve

weapons, are emotionally charged and highly unpredictable. It is the policy of this agency that officer and victim safety shall be of the highest priority in domestic violence situations.

All actions shall be taken without regard to the victim's or suspect's profession, occupation, race, ethnicity, age or nationality.

It is the policy of this agency to ensure that all new officers are properly trained and veteran officers receive in-service training in the area of domestic violence enforcement in order to provide a consistent and effective agency response to domestic violence incidents. Agency training shall meet the minimum standards established by Nevada POST.

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## DEFINITIONS

### **ADVERSE PARTY**

The person named in the protection order who must refrain from contacting the person named as the applicant in the protection order. Other jurisdictions may use terms such as suspect, defendant, respondent, etc.

### **ADVOCATE**

A person that listens to victims of domestic violence and empowers them to make choices. This person supports the decisions made by the victim, offering resources and information to help facilitate those decisions. This person does not make decisions for or give legal advice to the victim.

### **APPLICANT**

Means the person named in the protection order as the party to be protected from the adverse party. Other jurisdictions may use terms such as protected party, plaintiff, petitioner, etc.

### **BATTERY**

Any willful and unlawful use of force or violence upon the person of another.

### **DOMESTIC VIOLENCE (NRS 33.018) (Definition Only)**

Occurs when a person commits one of the following against or upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of those persons or his minor child:

1. A battery
2. An assault
3. Compelling the other by force or threat of force to perform an act from which he has the right to refrain or to refrain from an act, which he has the right to perform.
4. A sexual assault
5. A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include but is not limited to:
  - a. Stalking
  - b. Arson
  - c. Trespassing
  - d. Larceny
  - e. Destruction of private property

6. Carrying a concealed weapon without a permit
7. A false imprisonment
8. Unlawful entry of the others residence or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other form of entry.

### **DATING RELATIONSHIP**

Dating relationship, means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

### **DUAL ARREST**

Occurs when the investigation determines that a separate, distinct battery has been committed by each party against the other and warrants the arrest of both parties.

### **FOREIGN PROTECTION ORDER**

Includes any protection order issued by any other state, Indian Tribe, territory or possession of the United States, Puerto Rico or the District of Columbia.

### **EVIDENCE BASED**

An investigative objective to develop an evidence based case that captures time sensitive evidence that may only be available at the crime scene. Investigators should not rely solely on the cooperation of the domestic violence victim when conducting an investigation.

### **HARRASSMENT**

Occurs when a person without lawful authority knowingly threatens to cause bodily injury to the person threatened or to any other person; to cause physical damage to the property of another person; to subject the person threatened or any other person to physical confinement or restraint; or to do any act which is intended to substantially harm the person threatened or any other person with respect to his physical or mental health or safety; and the person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.

### **MITIGATING CIRCUMSTANCES**

Circumstances where justice would not be served if an arrest were made. This allows for the RARE occasion when an arrest is not the most desirable action based on the totality of the situation and the circumstances concerning the event.

### **MUTUAL PROTECTION ORDER**

A single order that purports to restrict both parties. Officers should be aware that the adverse party, if named in the order, is entitled to relief only if:

1. The adverse party has filed a written request for a protection order; and
2. The court has made a specific finding that the adverse party was entitled to a protection order. (See NRS 33.020 and 18 USC, Sect. 2265)

### **OFFICER**

Any peace officer employed by a state or local police department, tribal police department or sheriffs office, in accordance with Nevada Revised Statute, chapter 289.

### **PRIMARY PHYSICAL AGGRESSOR (NRS 171.137)**

The person who is the most dominant aggressor, not necessarily the first aggressor.

### **PRO-ARREST POLICY**

This refers to an agency policy, which prioritizes arrest over any other type of enforcement action in regards to domestic violence cases.

### **PROTECTION ORDERS**

The term “protection order” includes any injunction or other order issued by judicial authority for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. There are two primary forms of protection orders against domestic violence, the temporary protection order and the extended protection order.

1. In Nevada the temporary protection order is generally valid for 30 days or until the scheduled court appearance indicated in the order.
2. In Nevada the extended protection order is effective for a maximum of one year and is issued at a court hearing prior to the expiration of a temporary order. Some foreign protection orders may have an indefinite expiration date.
3. Orders from other jurisdictions may not resemble Nevada protection orders in format and may be valid for varying periods of time.

NOTE: Officers should enforce a foreign protection order based upon the expiration date in the order.

### **STALKING (NRS 200.575)**

A course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated or harassed, and that actually causes the victim to feel terrorized, frightened, intimidated or harassed.

### **TEMPORARY STALKING PROTECTION ORDER (NRS 200.591)**

A protective order issued by judicial authority, which is effective not to exceed 30 days. The protection order directs the person who is allegedly committing the crime to refrain from any contact, threatening, intimidating or otherwise, with the victim. A violation of this order is a gross misdemeanor.

**EXTENDED STALKING PROTECTION ORDER (NRS 200.591)**

A protective order issued by judicial authority, which is effective not to exceed one year. The prohibitions are the same as a temporary order. A violation of this order is a category C felony.

## OPERATOR/DISPATCHER RESPONSES

- I. An operator/dispatcher who receives a domestic violence incident call will dispatch officers to every reported incident. The dispatcher will give a domestic violence incident call the same priority as any other life threatening call, whenever possible and warranted, dispatch two officers to the scene.
- II. During the initial call for assistance, the call taker should ask these questions (not necessarily in this order). The order in which questions are asked should be determined by the specific circumstances of the case. It is important that operator/dispatchers gather as much information as possible to ensure the safety of all involved.
  - A. Where is the emergency? What is the address? What is the apartment number? What is the gate code?
  - B. Has anyone been injured? Have you been injured? Is an ambulance needed? What are the injuries?
  - C. What has happened? (This is important to ask early in order to obtain excited utterances as evidence. Operator/dispatcher tapes are critical evidence in the prosecution of domestic violence cases.)
  - D. With whom am I speaking?
  - E. Are you the person who has been attacked? If no, are you a witness?
  - F. Is the attacker present? Is anyone else there?
  - G. Who is the attacker? What is the relationship? Who is hurting who?
  - H. Describe the attacker. Obtain identifiers for the attacker.
  - I. If the attacker is not present, do you know where he/she may be?
  - J. Are weapons involved? If yes, what kind? Where are they located? Are there weapons in the house?
  - K. Is the attacker under the influence of drugs or alcohol? If yes, what substance?
  - L. Are children present?
  - M. Have the police been to the address before? If yes, how many times?



- N. Do you have a protection order?
- O. Did anyone else see this happen?
- III. When speaking to a victim of domestic violence, no dispatcher or operator will discuss the victim's desire to "press charges", "drop charges", or "prosecute." Any comment or statement, which seeks to place the responsibility for enforcement actions with the victim, is inappropriate. Attempt to establish a rapport with the victim. Use single sentences and use simple words. Keep your voice inflection non-judgmental. Refrain from comments, which may be interpreted as minimizing the event or the credibility of the call or caller.
- IV. The safety of domestic violence victims, officers, children, and others involved, whether the threat of violence is immediate or remote, should be the primary concern of operators or dispatchers. Dispatchers or operators will advise the victim to ensure his/her safety including, but not limited to, waiting for officers at a friend's home or simply leaving the residence if the batterer returns.
- V. NRS 33.080: The terms and conditions of a protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court. This includes circumstances where the applicant has invited the adverse party to visit.
- VI. Under no circumstances will the dispatcher cancel a response to a domestic violence call because someone calls back from the scene tells the dispatcher to disregard the calls.

## PATROL OFFICER RESPONSE/INVESTIGATION

### I. ENFORCEMENT OF LAWS IN DOMESTIC VIOLENCE INCIDENTS:

- A. Domestic Battery and Protection Order Violation Mandatory Arrest Required: A peace officer will, whether or not a warrant has been issued, unless mitigating circumstances exist, arrest a person when he has probable cause to believe that the person to be arrested has, within the preceding 24 hours, committed a battery upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child (NRS 171.137). Additionally, an officer may, based upon probable cause, arrest a person for violation of a domestic violence protection order whether or not the violation occurred in the presence of the officer (NRS 33.070).
- B. Felony Arrests: If an officer has probable cause to believe that a felony has occurred, an arrest will be made.
- C. Misdemeanor Arrests other than Domestic Battery and Protection Order Violations: A pro-arrest policy will be implemented by this department if there is probable cause that any domestic violence offense, except a domestic battery or protection order violation has been committed (see above). A misdemeanor arrest can be achieved in any of the following ways:
  - D. Misdemeanor committed in officer's presence. A suspect should be arrested in the event that a misdemeanor domestic violence incident or other misdemeanor crime occurs in the officer's presence. Such situations include, but are not limited to an officer's witnessing an act of domestic violence as defined in NRS 33.018.
  - E. Misdemeanor committed outside officer's presence. If at all possible, a domestic violence offense should result in an arrest. The peace officer will make a written report with reference to the incident regardless if arrest is made.
- F. Domestic violence occurs when a person commits one of the following acts against or upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or his having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child:

1. A battery
  2. An assault
  3. Compelling the other by force or threat to perform an act from which he has the right to refrain or to refrain from an act, which he has the right to perform;
  4. A sexual assault
- G. A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to:
1. Stalking
  2. Arson
  3. Trespassing
  4. Larceny
  5. Destruction of private property
  6. Carrying a concealed weapon without a permit
  7. A false imprisonment
  8. Unlawful entry of the other's residence or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.
- H. Notification of Temporary/Extended Protective Orders: Pursuant to NRS 33.070, every temporary or extended order must include a provision ordering any law enforcement officer to arrest an adverse party if the officer has probable cause to believe that the adverse party has violated any provision of the order.
- I. If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and order, the officer will:
1. Inform the adverse party of the specific terms and conditions of the order;
  2. Inform the adverse party that he now has notice of the provisions of the order and that a violation of the order will result in his arrest; and

3. Inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order.
- J. Reporting Requirements: Pursuant to NRS 171.1227, if a peace officer investigates an act that constitutes domestic violence pursuant to NRS 33.018, he will prepare and submit a written report of his investigation to his supervisor or to another person designated by his supervisor, regardless of whether the peace officer makes an arrest. If the peace officer investigates a mutual battery that constitutes domestic violence pursuant to NRS 33.018 and finds that one of the persons involved was the primary physical aggressor, he will include in his report:
1. The name of the person who was the primary physical aggressor; and
  2. A description of the evidence, which supports his finding.

An officer will make no statements that tend to discourage a victim from reporting an act of domestic violence. The existence of the elements of the crime will be the sole factors that determine the proper method of handling the incident.

- K. Officer required to Provide Information: When investigating an act of domestic violence, a peace officer will make a good faith effort to explain the provisions of NRS pertaining to domestic violence and advise the victim of all reasonable means to prevent further abuse, including advising said person of the availability of a shelter or other services in the community. The officer will also provide a person suspected of being a victim of an act of domestic violence with pre-printed material that provides them with information and laws relating to domestic violence. NRS 171.1225
- L. Locating the Suspect: If the suspect has left the scene prior to the officer's arrival, and probable cause exists for an arrest, all reasonable efforts should be made to locate the suspect and make an arrest.

## **II. INVESTIGATION OF DOMESTIC VIOLENCE CASES**

When investigating domestic violence, the general approach of the officer should reflect the seriousness of the offense and its consequences for both the suspect and the victim. Officers should also be aware that domestic violence is a crime against the community that impacts many areas and requires the expenditure of valuable community resources. To convey this seriousness, officers should inform the parties involved that domestic violence is a crime and investigate the incident as thoroughly as other crimes.

Officers should consider the victim's present emotional state in light of the emotional and psychological effects of abuse and the victim's long term safety. The investigative

goal should be to develop an evidence based case by capturing time sensitive evidence that may only be available at the initial scene. Therefore, they should not rely solely on the cooperation of the victim when conducting their investigation.

Every law enforcement officer should attempt to collect sufficient evidence to permit the prosecutor to conduct an “evidence-based prosecution;” that is, a prosecution that could proceed without the victim's presence or cooperation if necessary. Because it is the District Attorney or City Attorney who decides whether to prosecute a perpetrator of domestic violence and not the victim, officers should strive to collect sufficient other relevant evidence to make the testimony of the victim unnecessary to the prosecution of an offender.

A. Arrival at Scene:

1. Officers shall make every effort to do the following: (The order in which the officer accomplishes these activities should be determined by the specific circumstances of the case.)
2. Assess and secure the safety of the scene. (Utilize information from dispatch to begin this assessment prior to arrival at the scene)
3. Determine location and condition of victim.
4. Determine if suspect is still at scene.
5. Locate and secure any weapons at the scene.
6. Determine what, if any, crime has occurred.
7. Summon ambulance if injuries require.
8. Separate the victim, suspects and witnesses and request a written statement from each.
9. Prevent communication between the parties.
10. [This includes removing victim and witnesses from suspect's line of sight and range of hearing.]
11. Note location, demeanor, physical condition, appearance and statements made of all parties involved.
12. Determine if children are/were present and their location.

B. Preliminary Investigation:

Officers shall make every effort to do the following:

1. Attempt to locate and secure weapons.
2. Inquire about the nature of the incident and why the violence occurred.
3. Inform the victim that they do not “press” or “drop” charges, but that decision rests solely with the prosecutor’s office. Officers should affirm that Nevada law prohibits acts of domestic violence and the law will be strictly enforced. The officers should make no statement that would tend to dissuade a victim or witness from reporting an act of domestic violence to law enforcement or community services.
4. Obtain information concerning the present safety, prior history of abuse, availability of weapons and threats of retaliation. Please refer to the attached lethal assessment. Include this information in the Incident Report narrative. Including a synopsis of the lethality scale in the probable cause statement may influence bail or personal recognizance release.
5. Carefully inquire and document injuries to the victim and suspect that may be concealed by clothing or otherwise not readily observable.
6. If the suspect fled the scene, obtain location and physical identifiers of the suspect.
7. Note all alternative addresses for the victim. Alternatively, to maintain confidentiality of the victim’s whereabouts identify a friend or relative that will always be able to contact the victim.
8. Prepare and submit a written report on any act investigated that constitutes domestic violence pursuant to NRS 33.018.
9. Officers shall give the victim of all domestic violence complaints a form explaining the information required by NRS 171.1225. This form supplies the recipient of the following information:
  - a. Information about and how to obtain a protection order.
  - b. A list of community resources including a list of domestic violence advocates.
  - c. These forms are available in English, Spanish, and other languages depending on the jurisdiction.
  - d. Advise the victim there is no cost for a protection order.

## C. Interviews

Interview the victim, the suspect and other witnesses separately, including any children who may have witnessed the incident or any prior incidents of abuse. Attempt to videotape or tape record the statements of the victim and the suspect and to obtain written statements from all witnesses. An officer will make no statements, which tend to dissuade the victim from reporting an act of domestic violence. In all interviews, attempt to ask simple, open-ended questions.

### 1. Victim

- a. Note the victim's physical condition, including
  - i. Any injuries--describe in detail. Determine if medical treatment is necessary and seek appropriate care
  - ii. Torn clothing
  - iii. Smearred makeup or otherwise disheveled appearance
- b. Describe the victim's location on arrival.
- c. Ask the victim what time the incident occurred.
- d. Record any spontaneous statements of the victim
- e. Note the victim's emotional condition
- f. Document any evidence of substance/chemical abuse by victim
- g. Determine victim's relationship to suspect
- h. Obtain emergency contacts, telephone numbers, and pager numbers for the victim
- i. Determine if there was strangulation involved and ask the questions contained in Appendix C. Ask the victim if they lost consciousness during strangulation. Strangulation cases should be evaluated as felony incidents.
- j. Inquire about any statements made by suspect to victim during incident.
- k. Inquire about any prior history of domestic violence.
- l. Inquire about any protection/court orders.

- m. Inquire about other witnesses to the incident or prior incidents.
- n. If the suspect is not present, obtain identifiers, a photograph, and points of contact for the suspect.
- o. Ask the victim if the suspect had written house rules or a relationship contract that the victim was required to abide by. Obtain a copy if possible.

## 2. Suspect

- a. Describe suspect's location on arrival.
- b. Describe suspect's physical condition.
- c. Describe suspect's emotional condition.
- d. Ask the suspect what time the incident occurred.
- e. Record spontaneous statements, quotations and any comments of the suspect about the victim.
- f. Document knowledge, observations and other information about the suspect's mental health.
- g. Document evidence of substance/chemical abuse by suspect,
- h. Document suspect's version of the incident.
- i. Inquire about any prior history of domestic violence.
- j. Mirandize suspect when necessary and obtain a rights waiver.
- k. Ask if the suspect knows about any protection orders.
- l. Inquire about other witnesses to the incident or prior incidents.
- m. If the suspect is gone on arrival and can only be contacted by telephone, attempt to interview the suspect by telephone regarding what happened, any claimed injuries and other witnesses to the incident.
- n. Ask the suspect if he had written house rules or a relationship contract that the victim was required to abide by. Obtain a copy if possible.



### 3. Children

Often there are children in the homes where domestic violence occurs. It is the responsibility of the responding officer to interview all witnesses, including the children present in the home. Sometimes the children may not be physically present in the room where the domestic violence takes place; however, they should still be interviewed to determine if they heard or had knowledge of the current incident, as well as of any prior incidents. Never leave the scene of a domestic violence incident without verifying the safety of all children present.

- a. Separate the children from the suspect and victim.
- b. Interview each child individually and document their demeanor and where possible use videotape or tape recorder.
- c. When interviewing children, these basic techniques should be applied:
  - i. Try to establish a rapport with the child. Let the child know they are not at fault.
  - ii. Use single sentences (compound questions will confuse young children).
  - iii. Use simple words. Keep your voice inflection non-judgmental.
  - iv. Try to lower your profile (do not "tower" over the child; try to sit level with the child).
  - v. When an arrest is made, explain to the child that they are not responsible, at fault or to blame.
- d. Ask simple, open-ended questions:
  - i. What happened? (hitting, yelling, etc.)
  - ii. Who was there? (mommy, daddy, etc.)
  - iii. Did anyone get hurt? (get description of injury "owie")
  - iv. Who did the hurting? (mommy, daddy, both, etc.)
  - v. What was mommy/daddy hurt with? (description of mechanism, fist, belt, etc.)
  - vi. When did it happen? (day, night, etc.)

- vii. Where did it happen? (location in the house)
- viii. Has it happened before? (if yes, document frequency)
- ix. Are you hurt? (If yes, refer to child victim/witness protocol)
- e. In a case where domestic violence results in a homicide or attempted homicide, a trained investigator should interview all children living in the home as soon as possible.
- f. Ask children to specify who mommy and daddy are and what their names are.
- g. If a child witness will not speak, ask them to draw what happened or how they feel.
- h. Record the child's identifiers, the parent or guardian's name and address and where the children go to school so that the child may be subpoenaed to court if necessary.
- i. If the situation dictates, a copy of the report will be forwarded to Child Protective Services.
- j. It should be the investigating officer's discretion whether to photograph children.

NOTE: It should be noted that according to the statistics, children living in homes where domestic violence is prevalent run a greater risk of becoming victim to physical and sexual abuse. This risk should be taken into consideration when interviewing the domestic violence child/witness. In a case where the child/witness discloses abuse or molestation, the case should be investigated accordingly.

#### 4. Other Witnesses:

- a. Interview all witnesses separately and record names, addresses, phone numbers and emergency contacts.
- b. Record names and addresses of emergency personnel.
- c. Interview neighbors (ear-witnesses).
- d. Determine from witnesses if they are aware of a history of abuse.
- e. Locate and interview friends and acquaintances regarding knowledge of previous abuse.

- f. When possible, get written voluntary statements from all witnesses.

#### D. Lethality Assessment

1. Conduct a lethality assessment by considering the following factors:
  - a. Is there a history of abuse?
  - b. Does the suspect have obsessive or possessive thoughts?
  - c. Has the suspect threatened to kill the victim?
  - d. Does the suspect feel betrayed by the victim?
  - e. Is the victim attempting to separate from the suspect?
  - f. Have there been prior calls to the police?
  - g. Is there increasing drug or alcohol use by the suspect?
  - h. What is the prior criminal history of the suspect?
  - i. Is the suspect depressed?
  - j. Does the suspect have specific "fantasies" of homicide or suicide?
  - k. Does the suspect have access to or a fascination with weapons?
  - l. Has the suspect abused animals/pets?
  - m. Has the suspect demonstrated rage or hostile behavior toward police or others?
  - n. Has there been an increase in the frequency or severity of the abuse? (Documented or not)
  - o. Has the suspect been violent toward children?
  - p. Has there been strangulation involved and how often?
  - q. Is there a history of stalking behavior?

## E. Evidence

1. Describe crime scene. Note signs indicating struggle such as items disturbed, fought over or damaged; hair that has been pulled out, blood, broken fingernails, holes in walls, damaged telephones, etc.
2. Photograph the crime scene and all persons at the scene if the photographs have evidentiary value.
3. Ensure that victim and suspect's injuries are photographed clearly. Take intermediate and full body photographs of the victim and suspect. Take close-up photographs of visible injuries with a measurement scale in the photograph to show the size of the injury. Photograph the front and back of the suspect and victims hands. At a minimum, photographs allow victims and suspects to be readily identified to those attempting to execute warrants, serve summons, subpoenas or orders to show cause.
4. Impound and photograph all weapons and other evidence including all instrumentalities of the crime (i.e. belts, phone cords, hangers, gas cans, lighters, broken lamps, etc.).
5. Impound weapons for safekeeping in accordance with department policy. If the suspect has a domestic violence conviction and a firearm, forward a copy of the report to the appropriate federal authority.
6. Attach a signed medical release from the victim, regardless if medical attention is sought. Get the name of the family physician or mental health provider.
7. Attach related reports, statements, orders, photocopies, and property sheets.
8. Collect the victims and suspects clothing if they have evidentiary value.
9. Collect photographs and other evidence that establishes the relationship between the suspect and the victim.
10. If appropriate, photograph children present and where they were found.

## F. Medical Treatment: (if necessary)

1. Transport or have victim transported to hospital.
2. Obtain names, addresses and telephone numbers of ambulance or paramedic personnel treating the victim.
3. Obtain Document complaints of pain and injuries.

4. Obtain signed medical release from victim.
5. Determine if victim made statements to treating personnel regarding injury, incident or prior abuse and obtain statements as needed.
6. Document all information.

#### G. Arrest Decision

##### 1. Mandatory Arrest

- a. NRS 171.137 mandates that an officer shall arrest a person when s/he has probable cause to believe that the person has committed battery in a domestic violence situation within the preceding 24 hours. NRS 171.1229 requires that subjects arrested for domestic violence be fingerprinted by law enforcement. THEREFORE, citations are not appropriate or advisable.
- b. If the suspect is at the scene and mandatory arrest is warranted:
  - i. Take the suspect into custody, administer Miranda and solicit admissions and/or statements when applicable.
  - ii. Conduct an investigation in accordance with the guidelines in this policy.
- c. If the suspect has fled the scene and mandatory arrest is warranted:
  - i. Obtain the possible locations where the suspect would go and request that the appropriate law enforcement agency detain, Mirandize and interview the suspect.
  - ii. Issue an "attempt to locate".

##### 2. Determining the Primary Aggressor (NRS 171.137)

The intent of the law is to protect the victim. In situations where more than one battery may have occurred, the "primary" aggressor is the person determined to be the dominant, not necessarily the first aggressor. In making this determination, the following will be considered:

- a. The comparative extent of injuries or serious threats creating a fear of physical injury.
- b. The domestic violence history between the parties involved.

- c. The comparative sizes and vulnerability of the parties involved.
  - d. The demeanor of the parties involved, paying attention to excited utterances and emotional state.
  - e. Any weapons used or threatened for use by either party.
  - f. Claims of self-defense, defense of others, defense of property, coercion or trespass. The presence of defensive wounds, which may include scratches to the suspects, face, arms and hands or to the victim's neck in cases involving strangulation.
  - g. Witness statements.
  - h. Whether there was an excessive response to the other parties actions and/or time delay between battery offenses.
  - i. Whether there was a time delay between battery offenses.
  - j. The environment in which the battery occurred.
3. In making the decision to arrest, the following factors should not be considered in making the arrest decision:
- a. The marital status of the parties
  - b. Ownership or tenancy rights of either party
  - c. Verbal assurances that the violence will stop
  - d. Claims by the suspect that the victim provoked or perpetuated the violence
  - e. The physical or mental health of either party
  - f. Denial that the abuse occurred where evidence indicates otherwise
  - g. Speculation or assertions that the victim will not follow through or cooperate with criminal prosecution
  - h. Adverse financial consequences that might result from the arrest
  - i. A request by the victim not to arrest the suspect

- j. The racial, cultural, social, professional position, or sexual orientation of victim or suspect.
- 4. The following factors must be determined and clearly articulated in the Incident Report to support the arrest of the defendant:
  - a. Probable cause for each offense committed.
  - b. Determination and identification of the primary aggressor, if applicable.
  - c. A violation of an existing court order.

#### H. Report Writing

- 1. Ensure that elements of all involved crimes are included in report.
- 2. Document all injuries to the victim and the suspect.
- 3. Attach evidentiary photographs to the report.
- 4. Document all evidence collected.
- 5. Document, in detail, any past history of physical violence. Describe the nature of the violence and whether it was reported or unreported.
- 6. Document demeanor and statements of the victim, suspect, and witnesses.
- 7. Ensure the incident is documented even if an arrest did not occur.

#### I. Victims Rights/Officers Duty to Advise:

- 1. Give victim the information required in NRS 171.1225 contained in pre-printed material.
- 2. The decision to prosecute is made by the District Attorney or the City Attorney. The victim and suspect should be advised that he/she has no control over the decision to prosecute.
- 3. Verify and enforce court issued protective orders.
- 4. Exercise reasonable care for the safety of the officers and parties involved. No provision of this protocol will supersede that responsibility.

#### J. Bail Issues:

1. Consider requesting a bail enhancement in situations where the amount listed in the bail schedule is insufficient to ensure the victim's safety. NRS 378.484 establishes mandatory bail amounts for domestic battery of \$3000, \$5000 and \$15,000 based upon whether substantial bodily harm was involved and the suspect's previous domestic battery conviction history. This statute establishes the same bail schedule for violation of domestic violence protection orders with the bail amounts determined by the suspect's conviction history of violating protection orders. Under this statute an officer may request further bail enhancement in order to protect the victims safety.

#### K. Detention Responsibilities

1. When a suspect is booked for violation of a domestic violence protection order, detention personnel will check the arresting officer's report to determine if there is a statement in the report indicating that officer has determined that there is a direct or indirect threat of harm. If such a statement is in the report, detention personnel shall ensure the suspect is detained a minimum of 12 hours before being admitted to bail pursuant to NRS 33.030
2. In all cases when a suspect is booked for Battery-Domestic Violence pursuant to NRS 171.137, detention personnel must be aware that there is a mandatory 12 hour hold before the suspect may be released.
3. Detention personnel shall record and report any threats by the suspect directed at the victim to the investigating officer
4. Detention personnel shall ensure that the investigating officer and the victim advocate are notified when the suspect is going to be released so the victim can be notified. This is a critical step in maintaining the victims safety.

### III. DUAL ARRESTS

Dual arrests will be discouraged but are not prohibited per NRS 171.137. Officers should be aware that the arrest of both parties creates a criminal history for the victim, precludes the prosecutors and advocates from speaking with either party because of 5th Amendment immunity, and denies the victim eligibility for victims of crime compensation. It is the duty of the law enforcement personnel to identify and arrest only the primary physical aggressor. It is the purpose of this protocol to encourage all officers in this department to adhere to the intent of this mandate and refrain from making dual/mutual arrests. Before making a dual arrest, an officer should determine that two separate batteries occurred separated by time and space. Separate cases should be made for each arrest and separate reports made for each arrest. It is probable in the event of a dual arrest that neither party can be



successfully prosecuted. It is the policy of this department to encourage arresting officers to contact their supervisor prior to making such dual arrests.

#### **IV. FOLLOW-UP INVESTIGATION**

It is the policy of this department to vigorously pursue complete resolution of each domestic violence case.

- A. All domestic violence reports prepared pursuant to NRS 171.1227 will be reviewed for completeness and for any follow-up investigation as needed.
  1. "Investigative personnel" refers to a detective, investigative specialist, or other designated law enforcement personnel.
  2. Investigative personnel receiving domestic violence related crime and arrest reports would process them in the same manner as all other criminal violations.
- B. Follow-up investigations should consist of the following steps:
  1. Review patrol reports and determine whether all steps outlined above were completed and ensure remaining work is completed.
  2. Re-interview the victim, suspect, witnesses and children as needed.
    - a. Do not simply "confirm" what is in the patrol officer's report
    - b. Interview the victim or witness in detail and document the information received in your follow-up report.
    - c. Whenever possible, interview the victim and other witnesses in person.
    - d. Obtain subsequent photographs of the victim even if the patrol officer took photographs.
    - e. Obtain copies of medical reports if available and interview the treating physician to confirm the nature and severity of injuries.
    - f. If appropriate, obtain a copy of the operator/dispatcher tapes and the printout involving the original call for assistance. If there is a break in the operator/dispatcher tapes, document the reason for this.
    - g. Locate and interview other corroborating witnesses, (such as neighbors) who may have heard the incident, yet had not become involved.

- h. Inform the victim and witnesses of the status of the case and the intended referral to the District Attorney or the City Attorney.
- i. Record the names, addresses and telephone numbers of alternate means of contact for the victim, which is not for public dissemination, who will know of her/his whereabouts at all times during and after the investigation.
- j. Conduct a complete criminal history of the suspect and attach it to the investigator's report

## **Enforcement of Domestic Violence Protection Orders**

### **I. Policy**

Recognizing the escalatory nature of domestic violence, effective enforcement of protection orders against domestic violence constitutes homicide prevention. It shall be the policy of this department to provide all victims of domestic violence, regardless of their place of residency or origin, with the fullest protection of the law and to enforce the terms of their protection orders within this jurisdiction. Any violation of a protection order is at least an indirect threat of harm, which requires the adverse party to be held in custody for at least 12 hours before being admitted to bail, pursuant to NRS 178.484.

### **II. Full Faith and Credit**

The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C. 2265 and Chapter 33 of the Nevada Revised Statutes, require that valid foreign domestic violence protection orders be recognized and enforced as if they were issued by a court in this state. A foreign order is to be enforced pursuant to Nevada law even if:

1. The applicant in a foreign protection order would not be eligible for a protection order in Nevada.
2. The foreign order grants the named applicant more relief than the person would have received under Nevada's protection order statute.

### **III. Responding Officers Procedures**

When responding to an incident involving the violation of a domestic violence protection order, the officer should take the following enforcement actions:

#### **A. Immediate Actions at the Scene**

1. Ensure the safety of all involved.
2. Seek medical attention, if necessary.
3. Safeguard the applicant from further abuse.
4. Secure and protect the crime scene.
5. Secure any firearms or other dangerous weapons for safekeeping.
6. In accordance with departmental policy and applicable law, arrest the adverse party for offenses committed in the officer's presence and other offenses

committed at the scene for which the officer has probable cause (felonies, gross-misdemeanors, domestic battery, and protection order violations).

B. Determine whether a protection order exists and is authentic.

1. The officer should make every reasonable effort to confirm the existence of a protection order. In determining that a protection order exists, the officer may rely upon:
  - a. A copy of an order for protection against domestic violence that has been provided to the officer.
  - b. An order for protection against domestic violence that is included in the repository for information concerning orders for protection against domestic violence pursuant to NRS 33.095 or in any national crime information database.
  - c. Oral or written confirmation from a law enforcement agency or court in the issuing jurisdiction.
  - d. The statement of a person protected by a protection order that the order remains in effect, included in an examination of the totality of the circumstances.
2. An officer shall determine that a protection order is authentic if the order contains:
  - a. The names of the parties' involved and specific terms and conditions that the adverse party must comply with.
  - b. Information indicating that the protection order has not expired.
  - c. Information indicating that the court which issued the protection order had legal authority to issue the order as evidenced by a certified copy of the order, a file stamped copy of the order, an authorized signature or stamp of the court which issued the order or another indication of the authority of the court which issued the order.
3. An officer may determine that a protection order is authentic based on an examination of the totality of circumstances.

C. Assess whether the adverse party has been served, notified or otherwise informed of the terms and conditions of the protection order.

1. If the order is a foreign protection order, the officer should presume that the adverse party has been served, notified or otherwise informed.

2. If the order is a Nevada order, the officer should determine whether the adverse party has been served, notified or otherwise informed by utilizing any or all of the following:
  - a. Documentation contained in the applicant's copy of the protection order.
  - b. Nevada repository for protection orders.
  - c. NCIC protection order file
  - d. Communication with the court or law enforcement agency in the issuing jurisdiction.
  - e. Statements of the applicant.
  - f. Statements of witnesses, including children, family members or neighbors.
  - g. Statements of the adverse party.
  - h. An examination of the totality of the circumstances at the scene.

NOTE: The fact that an order has not been registered or included in the repository for information concerning orders for protection against domestic violence pursuant to NRS 33.095 or in any national crime information database is not grounds for a law enforcement officer to refuse to enforce the terms of the order unless it is apparent to the officer that the order is not authentic.

NOTE: For information concerning enforcement of orders served by mail, see Attorney General Opinion No. 2001- 31.

- D. If the officer cannot verify that the adverse party was served with the protection order or informed of the terms and conditions of the order, the officer shall:
  1. Serve a copy of the order if available, or
  2. Follow the steps outlined in section VI for notification.
- E. Determine if probable cause exists to believe that the adverse party has violated the protection order.
  1. Review the terms and conditions of the protection order.
  2. Establish probable cause for violation of the terms and conditions of order by the adverse party by utilizing any or all of the following:

- a. Statements of the applicant.
  - b. Statements of the adverse party.
  - c. Statements of witnesses, including neighbors or children.
  - d. Corroborating evidence obtained through the investigation.
  - e. Any other factor that leads the officer to believe a violation of the protection order has occurred.
- F. If, pursuant to B, C and E above, the officer determines that an authentic protection order has been served/noticed and that probable cause exists that the order has been violated, the officer shall:
1. If the adverse party is present, arrest the adverse party for violation of the terms and conditions of the protection order (and for any other violations committed at the scene); or
  2. If the adverse party has fled the scene:
    - a. Make every effort to immediately locate and arrest the adverse party.
    - b. If the adverse party cannot be located, take a report and submit for an arrest warrant and/or an investigation in accordance with department policy.
  3. Conduct risk assessment and provide assistance to the applicant for their immediate safety.

NOTE: NRS 178.484 requires that a person arrested for violation of a protection order shall be held in custody for at least 12 hours before being admitted to bail if the arresting officer determines that the violation is accompanied by a direct or indirect threat of harm. As set forth in section II (Policy), any violation of a protection order is at least an indirect threat of harm.

NOTE: NRS Chapter 33 provides immunity to a law enforcement officer who enforces an order for protection against domestic violence issued by the court of another state, territory or Indian tribe based upon a reasonable belief that the order is valid or who refuses to enforce such an order based upon a reasonable belief that the order is not valid (NRS 33.090).

**G. AN OFFICER SHALL TAKE THE FOLLOWING ACTIONS IN ALL CASES:**

1. Conduct risk assessment and provide assistance to the applicant for their immediate safety.
2. Provide the applicant with the information concerning assistance required by NRS 171.1223, including referring the applicant to the appropriate court, advocacy organization or community services for safety planning.
3. Take a report and conduct a follow up investigation according to department policy.
4. Document and report any indirect or direct threat against the applicant/victim by the adverse party and make a reasonable attempt to notify the applicant of the threat.

**IV. Notification of Protection Order**

Pursuant to NRS 33.070 and Attorney General Opinions 2000-02 and 2001-31, in the event an officer is conducting a standard wants and warrants check on an individual and is advised by the communications section that an active NCJIS protection order file “hit” exists for the individual and the protection order has not been served, the officer shall notify the adverse party of the protection order by taking the following actions:

- A. Verify the identity of the adverse party.
- B. Obtain the specific terms and conditions of the order and write them on the corresponding form provided by the department.
- C. Give the completed form to the adverse party or orally inform the adverse party of the terms and conditions of the order.
- D. Provide the adverse party with a copy of the appropriate set of notices (temporary or extended).
- E. Have the adverse party sign the notification form if practicable. If the adverse party refuses to sign the form, write - “refused” on the signature line.
- F. Inform the adverse party of the name, location and hours of the issuing court to obtain a copy of the order.
- G. Inform the adverse party that the adverse party now has notice of the provisions of the protection order and that a violation of any terms and conditions of the order will result in the adverse party’s arrest.
- H. Request that the communications center update the protection order file with:

1. Date and time notification was provided to the adverse party.
  2. The name and identification number of the officer who gave the notification.
  3. Information from the protection order hit concerning the terms and conditions of the order.
- I. Upon completion of the notification form, the issuing officer will also complete a report for the department's files.
  - J. If at any point during this process the adverse party makes a threat against the victim, the officer shall make a reasonable attempt to notify the victim and document the threat in the officer's report.

**V. Communication Section Responsibilities**

- A. Receive and maintain hard copies or electronic files of active protection orders that contain provisions pertaining to locations in the jurisdiction, including applicant's residence, place of employment, childcare, school or other locations.
- B. Provide available information concerning status and/or content of protection orders in the Repository, upon request by law enforcement personnel.
- C. Following notification pursuant to Section VI above, update the State Enter Notice Screen (SENS) with the following information:
  1. The date and time that notification was provided to the adverse party.
  2. The name and identification number of the officer who gave notification.
  3. Information from the protection order concerning the terms and conditions.



## **Victim Safety and Protection**

While working with community resources and advocacy agencies, the department shall make available all necessary and appropriate services to each victim.

- I. All officers/employees shall keep all information concerning victims confidential, including their whereabouts, safety plan, and any communications.
- II. The responding officer shall inquire whether the victim wants any weapons removed from his/her home for safekeeping in accordance with departmental policy.
- III. The officer designated as the victim's principal contact or the assigned victim advocate shall conduct lethality assessment with the victim. The information gained shall be incorporated into the safety plan developed with the victim.
- IV. All officers shall be aware of the increased danger to victims when the victim leaves an abusive partner, and the officer shall caution the victim to be alert to stalking activities on the part of the abuser and assist in safety planning.
- V. The officer designated as principal contact for the victim shall inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.
- VI. If officers become aware of witness or victim intimidation/coercion, he/she shall prepare a written report and immediately deliver it to the officer assigned to the case through the proper chain of command.
- VII. In order to ensure coercion is not being attempted, the assigned officer shall seek out secondary sources of information. Given the likelihood that a victim will recant, supplemental evidence should be sought out and preserved.

## **Special Populations**

### **I. Non-Traditional Relationships**

A careful reading of the domestic violence statute (NRS 33.018) reveals that domestic violence can occur not just in the traditional marriage, but also in any number of dating or familial relationships. Gay, lesbian, bisexual and transgender partners, teenagers dating, and elderly persons are just some of the non-marital populations that may experience domestic violence. Officers need to take care in understanding each situation they encounter, and not make statements that may appear to be prejudicial against any particular domestic situation or may discourage future reporting of domestic violence incidents.

### **II. Non English Speakers and Hearing Disabled**

Should an officer encounter a domestic violence situation involving a language or communication barrier, the officer should request the assistance of an individual qualified to communicate with those involved in the situation.

- A. Appropriate interpreters do not include: the abuser, family members, and children or friends. The use of inappropriate interpreters compromises the integrity of the investigation and the safety of the victim.
- B. Appropriate interpreters include:
  - 1. State or department qualified interpreters
  - 2. ATT language bank for multiple languages
  - 3. Individuals certified in sign to communicate with the deaf or hearing impaired.

### **III. Immigrants, Refugees, and Undocumented Persons.**

Immigrants, refugees and undocumented victims of domestic violence are frequently threatened with deportation by the abuser in an attempt to prevent the victim from seeking protection. Consequently, victims are often fearful of reporting abuse to law enforcement. A victim of domestic violence is not violating criminal laws by living undocumented in the United States, but may be in violation of federal civil laws. Local law enforcement does not have the responsibility or authority to enforce these federal immigration laws, and should avoid creating undue fear and non-cooperation by asking possible victims their immigration status when investigating cases of domestic violence.

#### **IV. The Elderly**

A substantial number of elder abuse cases are domestic violence related. Many older adults who live at home are at risk of abuse, neglect and financial exploitation by family members and others close to them. The victims of abuse are often isolated, and they may be afraid or unable to seek help for themselves. In some instances, this abuse meets the definition of domestic violence and officers should investigate them as such. Law enforcement officers play a key role in responding to reports of elder abuse and in working with elder abuse provider agencies on behalf of older victims. NRS requires that an officer report a crime involving a victim over the age of 60 to the State Aging Services Division. This agency can provide the officer with valuable assistance and guidance. Officers should be aware of Nevada's elder abuse statutes (NRS 200.5099 and NRS 200.5092) and the penalty enhancements provided for in the event substantial bodily or mental harm or death is involved. Any crime of violence to a victim over 60 can be charged as a felony. In these cases officers should be alert for financial abuse when the suspect and victim are not married. Officers must take great care in cases involving the elderly and infirm to ensure that the victim not be left uncared for in the event an arrest is made. Also, the officer needs to consider a senior's right of self determination

#### **V. Native Americans.**

Nevada has a substantial Native American population living on 26 independent tribal entities throughout the state. Although tribal entities are generally supported by federal agencies such as the Bureau of Indian Affairs and the FBI and also by their own Tribal Police, local law enforcement agencies frequently become involved when the abuser is a non-native. Jurisdiction in Indian country is a complex issue and when in doubt an officer should contact his supervisor or prosecutors office. Additionally, officers must be aware that domestic violence protection orders are valid throughout Nevada pursuant to the Full Faith and Credit provisions of both federal statute and Nevada Revised Statutes. It is the policy of this department to provide full assistance in domestic violence incidents occurring on tribal land.

## DOMESTIC VIOLENCE ADVOCATES

### Definition of Advocate

A person that listens to victims of domestic violence and empowers them to make choices. This person supports the decisions made by the victim, offering resources and information to help facilitate those decisions. This person does not make decisions for or give legal advice to a victim.

### Domestic Violence Advocates

There are two types of advocates that provide a variety of services to victims of domestic violence and law enforcement –Systems Advocates and Community Advocates

#### A. Systems Advocates

*These advocates often work for or with law enforcement agencies or the court system and these systems may define whom they can and cannot advocate for. These advocates may:*

1. Assist victims through the criminal justice system.
2. Provide information to the victim on the status of the criminal case.
3. Act as a liaison between the victims and detective or prosecutor.
4. Attend hearings with victims as needed.
5. Conduct a lethality assessment and assist with safety planning.
6. Assess the victim's needs and provide information and referrals to appropriate services.
7. Assist with filing a protective order and/or victim compensation applications

#### B. Community Advocates

*These advocates often work for community based advocacy programs and may:*

1. Provide crisis counseling to victims, family members and friends.
2. Conduct a lethality assessment and assists with safety planning.
3. Offer assistance with services furnished by the agency (i.e. shelter, counseling, case management, etc.)

4. Assess the victim's needs and provide information and referrals to appropriate services.
5. Assist with filing a protective order and/or victim compensation applications
6. Attend hearings with the victim as needed.
7. Communications between victims and community based advocates are covered by privilege.

## **INVESTIGATING HARASSMENT AND OR STALKING CASES IN THE CONTEXT OF DOMESTIC VIOLENCE**

### **I. Recognizing The Harassment And Or Stalking Case**

Often times domestic violence cases involve the crimes of harassment and or stalking. Anytime a victim reports any type of "harassing" behavior, the responding officer should consider the possibility of harassment and or stalking charges. Officers should be aware that harassment and stalking are separate charges with separate elements. Harassment and or stalking frequently occur in domestic violence situations or it may involve strangers. The investigative techniques for domestic violence cases are also applicable to harassment and or stalking.

### **II. Harassment And Stalking Defined:**

NRS 200.571 defines harassment: A person is guilty of harassment if: (A) Without lawful authority, the person knowingly threatens: (1) to cause bodily injury in the future to the person threatened or to any other person; (2) to cause physical damage to the property of another person; (3) to subject the person threatened or any other person to physical confinement or restraint; or (4) to do any act which is intended to substantially harm the person threatened or any other person with respect to his physical or mental health or safety; and (B) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.

NRS 200.575 defines stalking as: "A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated or harassed, and that actually causes the victim to feel terrorized, frightened, intimidated or harassed, commits the crime of stalking.

A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking.

### **III. Investigating The Harassment And Or Stalking Case**

There are two parts to any harassment/stalking investigation:

1. Assessing the suspect.
2. Gathering evidence (corroboration)

#### A. Assessing the suspect.

It is vital that the investigator learn as much as possible about the stalker and his/her method of operation. The investigator must assess the potential threat posed by a suspect. Information that should be documented includes:

1. Any prior threats made.
2. Any actual pursuit or following of the victim.
3. Any history of violence against the victim or others.
4. Other actions on the part of the suspect that may include any gifts, messages or third party contacts.
5. Any information regarding the suspect's tendency towards emotional outburst or rage.
6. Prior history of mental illness.
7. Substance abuse problems.
8. Possession or knowledge of or fascination with weapons.
9. Any history of protection order violations.
10. Suspect's prior criminal history and/or prior contacts with law enforcement.

#### B. Gathering Evidence (Proof) of the Stalking Conduct:

1. Use appropriate investigative techniques including search warrants to obtain evidentiary items from the victim and suspect: Secure any tangible items of evidence from the victim that substantiates the stalking behavior such as:
  - a. Any recorded communications, e.g., telephone, e-mail etc.
  - b. Any letters or notes written by the suspect to the victim.
  - c. Any objects sent to or left for the victim.
  - d. Any "Caller ID" telephone records.
  - e. Any chronological record of contacts with the suspect.

2. Search Warrants: Items to look for when serving warrants include but are not limited to:
  - a. Photographs of the victim.
  - b. Photos, diagrams, or drawings of the victim's home or workplace.
  - c. Writings, logs or diaries kept by the suspect that describe his stalking activities or thoughts/fantasies about the victim or other victims.
  - d. Personal items belonging to the victim.
  - e. Copies of protective order applications or affidavits when available.
  - f. Any log or calendar documenting the suspect's contacts with the victim.
  - g. Any electronic record of contacts with the victim such as e-mail etc.
  - h. Video or audiotapes that might have information concerning the stalking, such as surveillance footage.
  - i. Books describing stalking techniques or having subject matter dealing with stalking, harassment or violence.
  - j. Any equipment that appears to have been used to "stalk" the victim, such as: cameras, binoculars, video recorders, computers, digital imaging, etc.
3. Obtaining Corroboration: Corroborative evidence is crucial for a successful prosecution for stalking. Investigators should:
  - a. Photograph any items vandalized damaged, written on, etc.
  - b. Check for fingerprints on vandalized items or other objects sent to or left for the victim.
  - c. Advise the victim to put a trap on her phone.
  - d. Obtain phone records from the victim and suspect's residence.
  - e. Have the victim obtain a telephone answering machine.
  - f. Encourage the victim to create a chronological log of relevant events and keep the log updated regularly.
  - g. For any incident of harassment, determine whether witnesses were present and interview them.



- h. Research suspect's whereabouts during times of alleged acts to deter "alibi" defenses.
  - i. Consider surveillance in serious cases.
4. Proof of Victim's State of Mind: The crime of stalking requires that the victim feel terrorized, frightened, intimidated or harassed because of the stalker's conduct. The crime of harassment requires the victim be placed in reasonable fear that the threats from the suspect will be carried out. Investigators must document any evidence of the victim's response to the harassment. For example, has the victim:
- a. Moved to a new location or obtained a new phone number?
  - b. Put a trap on the phone?
  - c. Told friends, family, co-workers or building security of the harassment?
  - d. Given photos of suspect to security?
  - e. Asked to be escorted to the parking lot and work site?
  - f. Changed work schedule or route to work?
  - g. Stopped visiting place previously frequented?
  - h. Taken a self-defense course?
  - i. Purchased pepper spray or a gun?
  - j. Installed an alarm system?
  - k. Seen a counselor or therapist or other medical professional?
  - l. Has the victim obtained any protective orders?
  - m. Has the victim moved to a shelter?
  - n. Is the victim staying with a friend?
5. Suspect Interview: Suspect interviews can be extremely important in assessing the dangerousness of the suspect and in obtaining information that will ultimately help prove a stalking case.

- a. Video tape the interview whenever possible. Body language, gestures, voice tone, eye contact, etc. are important aspects in evaluating the stalker.
  - b. Research the suspect's background before the interview.
  - c. Gather as much information as possible about the suspect's thinking, behavior patterns, and activities regarding the victim.
  - d. **CAVEAT:** Be aware that in some cases, interviewing the suspect may serve to intensify his interest in the victim. Precautions must be taken whenever a suspect interview takes place.
6. Police/Prosecutor Procedures: Investigators assigned a stalking case should contact the District Attorney/City Attorney at the earliest practical opportunity. Time is of the essence in evaluating a stalking case. Because of the particular dynamics of stalkers, it is always advisable not to arrest until it is clear the evidence is sufficient for prosecution. A stalker who is arrested but quickly released for lack of evidence may be "empowered" and thus increase the risk to the victim.
  7. Harassment/Stalking Protection Orders: Protection orders can be a valuable tool in protecting the victim and sending a strong message to the suspect that this type of behavior will not be tolerated. The assigned investigator should advise the victim to obtain a protection order at the appropriate point in the investigation and these orders should be vigorously enforced. Violation of a harassment/stalking order is a Category C felony. (A separate protocol for enforcement of harassment/stalking orders is necessary and not within the scope of this project.)

## **DOMESTIC VIOLENCE INVOLVING JUVENILES**

### **I. JURISDICTION**

Domestic violence offenses such as Domestic Battery NRS 200.485 apply equally to juvenile offenders. When a juvenile commits any crime within the state, the Juvenile Court has jurisdiction over the minor and the District Attorney's Office is responsible for the prosecution of those cases.

### **II. POLICE RESPONSE**

- A. Arrest: Mandatory arrest policies equally apply to "domestic violence" cases where a juvenile is the offender. The juvenile will stay in Juvenile Hall for a minimum of twelve (12) hours as required by NRS 178.484.
- B. Victim Information: As in any other Domestic Battery case, the victim must be provided with a pre-printed material outlining information and laws relating to Domestic Violence NRS 171.1225.

### **III. PROTECTIVE ORDERS FOR TEENS**

If a juvenile wishes to obtain a Protective Order against an abusive partner, they will have to have a parent or guardian with them when applying at Family Court. Emergency Protective Orders are also available to teen victims with a parent's approval.

## **OFFICER INVOLVED DOMESTIC VIOLENCE PROCEDURES**

Domestic violence is a universal problem that affects people from all walks of life. Police officers are not immune. No person, because of his or her occupation, should be exempt from the application of the laws concerning domestic violence and officer involved domestic violence presents unique and complex problems. It is not within the scope of this document to address this issue in detail. When responding to a domestic violence call involving another officer, the following general procedures are recommended:

### **I. Investigations Involving Officers From Other Agencies**

- A. Criminal investigations of domestic violence involving peace officers from any agency should require a supervisor to respond. For the purpose of this investigative policy, peace officers include those described in NRS 289.150 and their equivalent from federal or out-of-state employers.
- B. These cases will be handled according to domestic violence laws, departmental policies, this protocol, and the Peace Officer's Bill of Rights.
- C. A supervisor from the arresting or investigating agency will notify the agency that employs the officer as soon as possible.

### **II. Investigations Involving Officers Within Agency**

- A. These investigations will be handled according to domestic violence laws and departmental policies.
- B. These are guidelines only. Each agency should develop and follow specific department policies and procedures regarding officer involved domestic violence consistent with the Peace Officer's Bill of Rights.

## **COURTESY REPORTS**

Occasionally a victim is unable to make a crime report in the jurisdiction where the crime occurred. Under such circumstances, an officer from the jurisdiction where the crime occurred should respond to where the victim is and conduct the investigation, if available.

### **I. POLICE RESPONSE TO OUT OF JURISDICTION CRIMES**

If the responding agency determines that the abuse took place in another jurisdiction, within the last 24 hours, the following procedures are encouraged:

- A. Attempt to contact the agency where the crime occurred.
  1. Ascertain if the agency will send officers to conduct an investigation in a timely manner.
  2. While waiting for the responding officers from the jurisdiction where the crime occurred, be prepared to provide a supplemental report to document anything the officer witnessed first hand.
    - a. Actions of the victim or suspect in the officer's presence.
    - b. Statements made by the victim or suspect in the officer's presence.
    - c. Demeanor of the victim or suspect.
- B. If an officer from the jurisdiction where the crime occurred is unavailable, prepare a "courtesy" report.
  1. The "courtesy" report should meet the same standards as any crime report investigated by that jurisdiction.
  2. Please use the DV Supplemental report form, as well. An effort should be made to recover any relevant evidence including photographs of the injuries.
  3. Upon completion of the investigation, a case number should be assigned to the case to meet the reporting requirements set forth in NRS 171.1227.
  4. It must be clearly noted that this is a courtesy report and to forward to appropriate agency.

## **II. COMPLETED COURTESY REPORT**

The quicker an Investigator can contact a victim, the better chance the investigator will have in finding a victim who will cooperate in the follow-up investigation. To facilitate this, it is important that the completed report reach the Investigative Unit responsible to investigate this incident as quickly as possible.

## NEVADA'S DOMESTIC VIOLENCE STATISTICAL PROGRAM

Reporting of domestic violence statistics by Nevada law enforcement agencies became mandatory on January 1, 1998. Nevada's domestic violence reporting includes any crimes of domestic violence, from trespassing to murder, when the crime is committed against persons related in the following manner: spouse, former spouse, parent, child, blood relative, related by marriage, co-habitant, former co-habitant, child in common, and dating or former dating relationship.

The Nevada Highway Patrol's Records and Identification Services Bureau, within the Department of Motor Vehicle and Public Safety, administers the Uniform Crime Reporting (UCR) Program. Part of the UCR Program's responsibility is the statewide collection and publication of domestic violence statistics as reported by Nevada law enforcement. To facilitate the collection of domestic violence crime statistics in a uniform manner, the UCR Program encourages reporting agencies to use the "State of Nevada Domestic Violence Statistical Form." Appendix D provides a copy of the form.

The Domestic Violence Statistical Form was designed so that an officer responding to a domestic violence incident can quickly fill in the needed information and have it forwarded to the UCR Program. UCR is working on the development of methods (e.g., scantron forms, electronic transmission), to facilitate the collection of these local statistics by the state.

Reports are compiled quarterly by the UCR program and the Nevada Domestic Violence Ombudsman, which is sent to all, contributing law enforcement agencies, prosecution offices, the judiciary, the legislature, libraries, the media and the public. A final annual report on domestic violence is published in the Crime and Justice in Nevada. For questions regarding domestic violence statistics, please call UCR at (775) 687-1600.

The information collected by law enforcement agencies on the Domestic Violence Statistical form has proven to be very useful to local and state agencies in their efforts to assess their training, resource and policy needs.

## **AUTHORITIES SECTION**

The following statutes are the principal sources of authority for enforcement of domestic violence crimes in Nevada.

NRS 33.060 - Notice of order to law enforcement agency; service of order; duty to enforce order; copy of order for applicant and adverse party. This requires officers to enforce a temporary or extended order without regard to the county in which it was issued.

NRS 171.137 - Arrest required for suspected battery constituting domestic violence; exceptions. This requires officers to arrest a person who he has probable cause to believe has committed a battery which constitutes domestic battery. Also requires officer to determine the primary physical aggressor, if mutual battery.

NRS 171.1227 - Peace officer to submit written report concerning suspected acts of domestic violence; copy of report to be forwarded to central repository. Officer must make a written report even if no arrest is made. Report to be forwarded to the central repository for Nevada records of criminal records.

NRS 171.1229 - Fingerprinting of persons detained and cited for committing suspected acts of domestic violence; fingerprints to be forwarded to central repository. When officer detains person for violating any ordinance, which is a misdemeanor and constitutes domestic violence and the officer issues a citation in lieu of taking him into custody, not less than one fingerprint must be taken from person and forwarded to state central repository, unless there are already fingerprints on file.

NRS 178.484 - Right to bail before conviction; exceptions; imposition of conditions; arrest for violation of condition. A person arrested for domestic battery can not be admitted to bail sooner than 12 hours after his arrest.



## POTENTIAL DOMESTIC VIOLENCE CHARGES

A situation involving domestic violence may result in a violation of one or more of the following sections of the Nevada Revised Statutes (this list is not all-inclusive):

NRS 33.017	Definitions of Temporary & Extended Orders of Protection Domestic Violence
NRS 33.018	Acts Which Constitute Domestic Violence (lists relationships)
NRS 33.020	Temporary Protective Order Against Domestic Violence
NRS 33.020 (5)	Emergency Protective Order Against Domestic Violence
NRS 33.030	Lists Contents of Protective Orders
NRS 33.070	Police To Make PC Arrests for Violations of Temporary & Extended Orders of Protection for Domestic Violence
NRS 33.080 (3)	Extended Protective Order Against Domestic Violence
NRS 33.085	Protection Orders Full Faith and Credit
NRS 33.090	TPO Full Faith and Credit (Federal Regulations)
NRS 33.095	DMV Central Repository
NRS 33.100	Penalties
NRS 125.560	Penalties for Violating TPO or/if Accompanied by Physical Violence
NRS 171.1225	Police to Provide Information to Victim
NRS 171.1227	Police to Submit Written Report with Copy to DMV
NRS 171.1229	Cited for Domestic Violence - Fingerprint and Send to DMV
NRS 171.137	PC Arrest Required Within 24 Hours of Occurrence Determining Primary Physical Aggressor Relationships Listed/Described
NRS 178.484	Bail - Mandatory 12 Hour Hold
NRS 199.230	Dissuading a Witness from Testifying

NRS 199.280	Resisting a Public Officer
NRS 199.305	Preventing or Dissuading a Person from Reporting Crime
NRS 199.310	Malicious Prosecution
NRS 200.010-030	Murder
NRS 200.320-330	Kidnapping
NRS 200.359	Violation of Child Custody Rights
NRS 200.359 (8)	Removing of Child for Protection
NRS 200.366	Sexual Assault
NRS 200.373	Spousal Sexual Assault
NRS 200.400	Assault With Intent to Commit Sexual Assault
NRS 200.400	Battery With Intent to Commit Sexual Assault
NRS 200.460	False Imprisonment
NRS 200.471	Assault/Assault With a Deadly Weapon
NRS 200.481	Battery
NRS 200.481 (2c)	Battery With a Deadly Weapon (BWDW)
NRS 200.485	Battery Constitutes Domestic Violence
NRS 200.485 (5)	Prosecuting Attorney Will Not Dismiss Case
NRS 200.571	Harassment/Stalking
NRS 200.575 1a & 2b	Harassment 1st & 2nd or Spousal Stalking
NRS 200.575 3a	Aggravated Stalking
NRS 200.591	Harassment/Stalking Protection Orders
NRS 200.591 5a	Violation of Stalking Temporary Protective Order
NRS 200.591 5b	Violation of Stalking Extended Protective Order

NRS 201.255	Annoying Phone Calls and Threatening Phone Calls
NRS 202.280	Discharging a Firearm
NRS 202.285	Discharging a Firearm at/into a Structure
NRS 202.285	Discharging a Firearm at/into a Vehicle
NRS 202.290	Aiming a Firearm in a Threatening Manner
NRS 202.320	Drawing Weapon in Threatening Manner
NRS 202.350	Carrying a Concealed Weapon Without a Permit
NRS 202.350	Carrying a Loaded Rifle, Shotgun in or on Vehicle Where Prohibited
NRS 202.360	Ex-Felon Not to Possess a Firearm
NRS 205.010-025	Arson (1st, 2nd, 3rd and 4th)
NRS 205.060	Burglary
NRS 205.067	Home Invasion
NRS 205.070	Commission of Another Crime While Committing Burglary
NRS 206.310	Malicious Destruction of Private Property
NRS 207.280	False Reporting of a Crime
NRS 217.475	Domestic Violence Deaths; Team Review
NRS 707.320	Interceptions or Delay of Message Over Telephone Line

## **THE FEDERAL DOMESTIC VIOLENCE LAWS AND THE ENFORCEMENT OF THESE LAWS**

In 1994, the Congress of the United States, as part of the Crime Bill, enacted legislation empowering the federal government to participate in the fight against domestic violence. This legislation, called the Violence Against Women Act (VAWA) is outlined below. In many domestic violence cases, particularly those involving violation of a foreign protection order, it is likely there has been a violation of federal law. The officer should refer these violations to the appropriate federal authorities in accordance with departmental procedures (e.g., contact the U.S. Attorney's Office, the FBI, the Bureau of Alcohol, Tobacco & Firearm, the Bureau of Indian Affairs etc.)

### **I. THE VIOLENCE AGAINST WOMEN ACT**

#### **A. Interstate Travel to Commit Domestic Violence 18 U.S.C. 2261**

##### **1. 18 U.S.C. 2261(a)(1)**

It is a Federal crime for a person to travel interstate (or leave or enter Indian country) with the intent to injure, harass or intimidate that person's intimate partner when in the course of or as a result of such travel the defendant intentionally commits a violent crime and thereby causes bodily injury. The law requires specific intent to commit domestic violence at the time of interstate travel. The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabited as spouses), and parents of a child in common. The intimate partner definition does not include a girlfriend or boyfriend with whom the defendant has not resided unless protected by state law. There must be bodily injury for prosecution under this statute.

##### **2. 18 U.S.C. 2261(a)(2)**

It is also a Federal crime to cause an intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud during which or as a result of which, there is bodily harm to the victim. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. As in subsection 2261(a)(1), the defendant must intentionally commit a crime of violence during the course of or as a result of the travel and there must be bodily injury to the spouse or intimate partner.

B. Interstate Stalking 18 U.S.C. 2261A

As of September 23, 1996, it is a Federal crime to cross a state line with the intent to injure or harass another person, if in the course of or as a result of such travel, the defendant places such person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family. The law requires specific intent to violate this subsection at the time of interstate travel. "Immediate family" includes a spouse, parent, sibling, child or any other person living in the same household and related by blood or marriage. It is also a Federal crime to "stalk," as it is defined in Section 2261A, within the special or maritime jurisdiction of the United States. This includes Indian reservations and military bases.

C. Interstate Travel to Violate an Order of Protection 18 U.S.C. 2262

1. 18 U.S.C. 2262(a)(1)

This law prohibits interstate travel (or travel into and out of Indian country) with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. To establish a violation of this statute, the Government must demonstrate that a person had the specific intent to violate the protection order at the time of interstate travel and that a violation actually occurred. This statute does not require an intimate partner relationship - although this relationship may be required by the state or other governmental body issuing the order - nor does it require bodily injury.

2. 18 U.S.C. 2262(a)(2)

It is also a Federal crime to cause a spouse or intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud during which or as a result of which, there is bodily harm to the victim in violation of a valid order of protection. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. The Government must also prove that a person intentionally injured an intimate partner in violation of a protection order during the course of or a result of the forced or coercive travel.

NOTE: This subsection, unlike corollary Section 2262(a)(1), requires an intimate relationship between the parties.

## II. FIREARM OFFENSES

### A. Possession of Firearm While Subject to Order of Protection 18 U.S.C. 922(g)(8)

It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The protection order must have been issued following an evidentiary hearing as to which the defendant had notice and an opportunity to appear. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury.

### B. Transfer of Firearm to Person Subject to Order of Protection 18 U.S.C. 922(d)(8)

It is illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner.

### C. Official Use Exemption, 18 U.S.C. 925

The restrictions of Sections 922(d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may these personnel possess officially issued firearms when off duty.

### D. Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence, 18 U.S.C. 922(g)(9)

As of September 30, 1996, it is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date.

A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon.

### E. Transfer of Firearm to Person Convicted of a Misdemeanor Crime of Domestic Violence, 18 U.S.C. 922(d)(9)

It is illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence.

F. Official Use Exemption 18 U.S.C. 925

The official use exemption does not apply to Sections 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties.

**III. OTHER RELEVANT STATUTES**

A. Full Faith and Credit to Orders of Protection, 18 U.S.C. 2265

This civil law provides that a civil or criminal domestic protection order issued by a court in one state or Indian tribe will be accorded full faith and credit by the court of another state or tribe, and is to be enforced as if it were the order of the court of the second state or tribe. This law applies to permanent, temporary and ex-parte protection orders that comply with the statute's requirements. To comply, the protection order must have provided the defendant with reasonable notice and an opportunity to be heard, in a manner consistent with due process. This law does not apply to mutual protection orders if (a) the original respondent did not file a cross or counter petition seeking a protective order or (b) if such a cross or counter petition was filed, but the court did not make specific findings that each party was entitled to such an order.

B. Self-Petitioning for Battered Immigrant Women and Children, 18 U.S.C. 1154

[NEEDS UPDATE WITH 2000]

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute allows victims to remain in the United States independent of their abusive husbands/parents.