North Dakota Model Law Enforcement Domestic Violence Policy

June 2012

Third Edition

Domestic Violence is a serious crime against the individual and the community. The purpose of this policy is to establish procedures for handling matters of domestic violence and abuse and to implement the most effective strategies for dealing with perpetrators of domestic violence.

Endorsed by the North Dakota Attorney General's Office, the North Dakota Chief's Association, and the North Dakota Sheriff's Association

Developed in collaboration with the following grant partners:

North Dakota Attorney General's Office
North Dakota Department of Health – Injury Prevention & Control Division
Rural Crime & Justice Center – Minot State University
Tribal Judicial Institute – University of North Dakota
North Dakota Council on Abused Women's Services / Coalition Against Sexual Assault in North Dakota (NDCAWS/CASAND)
Multi-Disciplinary Advisory Committee from across North Dakota

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This policy is intended to be adapted by individual agencies and contains best practices associated with law enforcement domestic violence policies. Technical assistance is available through the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota (NDCAWS/CASAND) to assist agencies with the adaptation process.

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DEVELOPMENT OF THE MODEL POLICY

North Dakota Century Code § 14-07.1-14 states "Every law enforcement agency shall develop and implement…specific operational guidelines for arrest policies and procedures in crimes involving domestic violence." This law was passed in 1989; however, a 2003 analysis conducted by the Rural Crime and Justice Center (RCJC) at Minot State University revealed that over 65% of law enforcement agencies in North Dakota did not have any such policy in place. This fact created an atmosphere of urgency for law enforcement and advocates throughout North Dakota and was the impetus for the North Dakota Department of Health – Injury Prevention and Control Division, in collaboration with the Council on Abused Women's Services/Coalition Against Sexual in North Dakota (NDCAWS/CASAND), to seek funding through the Department of Justice Grants to Encourage Arrest Policies and Procedures Program (GTEA).

The North Dakota Department of Health – Injury Prevention and Control Division received GTEA funding in September of 2004, and contracted with NDCAWS/CASAND to carry out the goals and objectives of the grant. This funding allowed NDCAWS/CASAND to establish a statewide advisory committee to examine law enforcement domestic violence policies and hire a coordinator to assist the advisory committee with developing a model law enforcement domestic violence policy for North Dakota.

The advisory committee met in December of 2004, and again in June of 2005. During that time period they examined numerous drafts of this model policy and made many collaborative decisions regarding content, length, and overall philosophical ideology of the model policy. The final draft was approved by the committee in August 2005. In January 2006, the Office on Violence Against Women approved the policy. The policy has also been reviewed and endorsed by the following: the North Dakota Attorney General's Office – October 2005, the North Dakota Chief's Association – January 2006, and the North Dakota Sheriff's Association – January 2006.

Since the development and distribution of the Model Policy in January 2006, there have been additional changes in legislation and language. This is the third edition which includes legislative updates from the 2007, 2009, and 2011 legislative sessions. This edition also includes information specific to strangulation as well as other updates in the appendices.

PURPOSE

Domestic violence is a serious crime against the individual and the community. The failure of any law enforcement officer to properly respond and handle a domestic violence call will expose individuals and the community to danger up to and including death. Because domestic violence can and does result in the death of individuals, every response to a domestic call should be treated the same as any other crime against a person.

The purpose of this policy is to establish procedures for addressing matters of domestic violence and to implement the most effective strategies for dealing with perpetrators of domestic violence. Domestic violence is often the result of unique and subtle emotional and social circumstances and, therefore, requires judicious response and rational application of a law enforcement officer's professional judgment and discretion. Law enforcement must exercise leadership in the community in responding to domestic violence cases and should optimize and coordinate all available resources for the handling of domestic violence cases.

POLICY STATEMENT

Victims of domestic violence should be treated with respect and dignity and be given all available assistance by law enforcement personnel responding to an incident of domestic violence. Every step possible should be taken to insure the safety of the victim, including providing a safety plan to the victim and, if necessary, transporting the victim and children to another site for their safety and protection.

The principal purpose of this policy is to establish procedures to be followed by law enforcement officers responding to domestic violence incidents so as to assure a consistent and effective response. Additionally, this policy seeks to:

1. Prevent future incidents of domestic abuse by establishing arrest as the preferred initial law enforcement response.
2. Reaffirm police responsibility and authority to make arrest decisions in accordance with state law and established probable cause standards.
3. Document allegations of domestic violence so there can be meaningful prosecution and delivery of victim services.
4. Assist in making determinations of the most immediately significant aggressor and utilizing investigation techniques to prevent dual arrest.

Appropriate and effective police response to domestic violence calls is the best mechanism for enhancing victim safety. It is also the means by which police departments can minimize departmental liability. It is, therefore, imperative that law enforcement officers receive appropriate initial training in the handling of domestic violence complaints along with training on an annual basis. In addition, due to bi-annual legislative changes, training should be provided every two years along with training pertaining to updated policies and procedures outlined here. It is also imperative that departments follow the statutory obligations for action, and implement these guidelines.

DEFINITIONS

A. "**Bodily Injury"** means "any impairment of physical condition, including physical pain." **N.D.C.C. § 12.1-01-04(4)**

B. **"Child"** means "an individual under the age of eighteen (18) years." **N.D.C.C. § 12.1-35-01(1)**

C. **"Domestic Violence"** includes "physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members." **N.D.C.C. § 14-07.1-01(2)**

D. **"Domestic Violence / Sexual Assault Organization"** means "a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault." **N.D.C.C. § 14-07.1-01(3)**

E. **"Family or household member"** means "a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section **N.D.C.C. § 14-07.1-02.**" **N.D.C.C. § 14-07.1-01(4)**

F. **"Foreign Protective Order"** means "a protection order issued by a tribunal of another state." **N.D.C.C. § 14-07.4-01(1)**

G. **"Intimidation"** means unlawful coercion; extortion. (Black's Law Dictionary, 2009)

H. **"Law enforcement officer"** means "a public servant authorized by law or by a Government agency to enforce the law and to conduct or engage in investigation of violations of law." **N.D.C.C. § 14-07.1-01(6)**

I. **"Predominant aggressor"** means "an individual who is the most significant, not necessarily the first, aggressor." **N.D.C.C. § 14-07.1-01(7)**

J. **"Probable Cause"** is "a reasonable ground to suspect that a person has committed or that a person has committed or is committing a crime or that a place contains specific items connected with a crime." (Black's Law Dictionary, 2009)

K. **"Protection order"** means "an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication

with, or physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state." **N.D.C.C. § 14-07.4-01(5)**

L. **"Self-defense"** means "a person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person." **N.D.C.C. § 12.1-05-04**
"A person is justified in using force upon another person in order to defend anyone else if the person defended would be justified in defending himself; and the person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense." **N.D.C.C. § 12.1-05-04(1)(2)**

M. **"Serious bodily injury"** means "bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs."
N.D.C.C. § 12.1-01-04(29)

N. **"State"** means "a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders." **N.D.C.C. § 14-07.4-01(7)**

O. **"Substantial bodily injury"** means "a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ." **N.D.C.C. § 12.1-01-04(31)**

P. **"Victim"** means "a natural person who has suffered direct or threatened physical or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person." **N.D.C.C. § 12.1-34-01(10)**

Q. **"Present Sense Impression"** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. **North Dakota Supreme Court. Rule 803. Hearsay Exceptions. (1)**

R. **"Excited Utterance"** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. **North Dakota Supreme Court. Rule 803. Hearsay Exceptions. (2)**

911 OPERATOR / DISPATCHER RESPONSE TO DOMESTIC VIOLENCE CALLS

A. The dispatcher who receives a call reporting threatened, imminent, or ongoing domestic violence, and/or the violation of any protection order, including orders issued pursuant to **N.D.C.C. § 14-07.1-06** and restraining orders, shall rank the call among the highest priority calls. The dispatcher shall dispatch officers to every reported incident. The dispatcher, whenever possible, shall dispatch two officers to the scene.

B. The dispatcher receiving a call regarding domestic violence should make every effort to keep a victim of domestic violence on the telephone until field units arrive. This provides assistance in monitoring the situation and enables the dispatcher to provide the most recent information to the field officers when they arrive at the scene. The dispatcher will obtain as much information as possible and communicate the information to the field units. The dispatcher shall determine the following, if possible:

- What is the emergency? Address? Apartment number? Call back number? Other phone number where caller might be located?
- Is anyone injured? If yes, is an ambulance needed?
- Are weapons involved or available? Has a weapon been used in the past?
- Who am I speaking to? Are you the victim? If not, where is the victim? Are you a witness?
- Is the domestic verbal or physical?
- What has happened? What is happening right now?
- Who is the suspect and is he/she present? If not, has the suspect left the scene (i.e. on foot, in a vehicle, etc., Obtain a description of the suspect, description of vehicle, the direction in which the suspect left, and his/her expected whereabouts).
- Any alcohol or drugs involved? Any alcohol or drugs at the scene?
- Are there children present? How many? What is their location at the scene?
- Are there other individuals present? How many? What is their location at the scene?
- Is there any type of restraining order in place? Has the suspect been served a copy of the order?
- Any outstanding warrants?
- Is there a previous history of domestic violence / assault? Have the police been to this address before?
- Are there threats of suicide / homicide? Have there been threats in the past?

C. If the phone call is disconnected, the dispatcher will immediately attempt to re-establish contact with the caller and notify field units. If the assailant is interfering with the phone call, the dispatcher will notify the field units of this information. Field units will still respond if the phone call has been disconnected or if the caller requests cancellation of the call.

D. If the complainant must leave the telephone to seek safety, advise the complainant to lay the phone down and not disconnect so dispatch or 911 operator can monitor the situation.

E. The dispatcher or 911 operator, in speaking with a victim of domestic violence, will not discuss the victim's desire to "press charges", "drop charges", or "prosecute". It is inappropriate for any dispatcher or 911 operator to make any comment or statement which seeks to place the responsibility for enforcement action with the victim.

F. Agencies taking domestic violence calls should be aware that the 911 tape frequently becomes a valuable piece of evidence in the prosecution of domestic violence cases, and should, therefore, make every effort to preserve this evidence and not discard / tape over / delete the 911 call. [Please review **N.D.C.C. §12.1-11-05(1)(b)** for further explanation.]

G. Dispatch centers should have a current list of domestic violence programs, shelters, and victim/witness programs on hand to assist law enforcement in offering services to victims of domestic violence. [See Appendix A, B, and C.]

H. When possible, check with officers to find out if they want the recording of the 911 phone call.

INITIAL RESPONSE AND INVESTIGATION

A. Officer Safety / Arrival at the Scene – NOTE: Officer safety should guide all responses to domestic violence calls.

1. Obtain all available information from the dispatcher before or upon arrival at scene.
2. Approaching the scene:
    a. Whenever possible, a minimum of two law enforcement officers should respond to a domestic call.
    b. Avoid the use of sirens and other such alarms, when allowed by law and policy and when safe arrival is still possible, in the vicinity of the scene. (The assailant may turn a weapon upon law enforcement, or flee the scene, if alerted.)
    c. Observe the location of the dispute before contacting the complainant. Consider the surroundings. If possible, approach and park in a manner not to be seen.
    d. Before knocking on the door, listen and look in any nearby window(s) to obtain additional information about the situation (layout of the house, number of people involved, weapons, etc). Law enforcement must be concerned for their own safety. To minimize the possibility of injury, law enforcement should stand to the side of the door when knocking. The unexpected may occur when the door opens.

B. On Scene Response

1. Identify selves as law enforcement, give an explanation of law enforcement presence, and request entry into the home. Ascertain identity of complainant – ask to see complainant.
    a. If entry is refused, law enforcement must explain that they need to make sure there are no injured persons inside.
    b. Refusal of entry or no response to a knock at the door may require a forced entrance to check safety of people inside. Law Enforcement may also make a warrantless entry to conduct a search if emergency /exigent circumstances exist. Law Enforcement must have a reasonable belief that such an emergency does exist (i.e. if law enforcement believes that someone is in distress and in need of assistance). Exigent circumstances are defined as:

        (1) Lives are threatened;
        (2) Property and/or evidence is about to be destroyed; or
        (3) Suspect's escape is imminent.

    c. Law enforcement may conduct a search of the premises if consent has been given to do so. Although a consent search eliminates a need for a warrant and for probable cause, such consent must be freely and voluntarily given. If two people have joint ownership or possession of a place or thing, either one may give a valid consent.

(1) A spouse can consent to the search of premises used jointly by both husband and wife. This is also true if man and woman are only cohabitants. If one of them exercises sole control over part of the premises, the other cannot give valid consent to search that part.

2. Once entry is secured, law enforcement shall:

   a. If possible, physically separate parties involved in domestic violence to prevent any further immediate contact between the parties. [Note: This includes removing the victim from the suspect's line of sight. If it is necessary to remove one party from inside the residence to the outside area, and officer safety permits, the suspect should be removed outside and the victim allowed to remain inside in a protected environment.]
   b. Restore order by gaining control of the situation.
   c. Take control of all weapons used or threatened to be used in the crime. NOTE: For the safety of both parties, if it is <u>not</u> required in a protection order, an officer still may suggest the respondent surrender weapons to law enforcement for a temporary period of time.
   d. Assess the need for medical attention and call for medical assistance if indicated.
      (1) If a party appears <u>minimally</u> injured and yet refuses medical assistance, carefully document any observed injuries as well as the refusal of medical treatment.
      (2) If a party appears <u>severely</u> injured, medical personnel shall be called with or without the consent of the party.
         - Attempt to obtain a medical records release signed by the victim/suspect at the scene, when possible.
         - If possible, send waiver signed by victim/suspect to medical facility as soon as possible and obtain copy of records for report including doctor's name and phone number.
   e. Document all parties present at the scene.
   f. Interview all parties i.e. victim, suspect, children, and/or any witnesses separately and away from the line of sight and hearing of the suspect; Use direct quotes of victims and witnesses about their fears and concern
   g. Assess and document the condition of the incident scene. What does it look like? (i.e. holes in wall, broken items, chairs tipped over, etc.) [Note: Photograph and/or videotape scene and document in report.]
   h. Record/document any excited utterances
   i. Collect and photograph all relevant evidence required for successful prosecution [Note: Use Appendix D or E to document any injuries.]
   j. Determine if a crime has occurred.

C. Preliminary Investigation

1. Interviewing all individuals present at scene

a. Ensure safety and privacy by interviewing the victim in a place separate from the suspect.
b. Critical to the success of the interview is the law enforcement officer's demeanor. Officers must listen, show interest in the disputants and their problem, maintain objectivity, and remain aware of nonverbal communications signals. Maintain good eye contact through natural, spontaneous glances. (Fixed gazes or staring increase fear and hostility.). A relaxed stance and appropriate facial and head movements demonstrate interest and encourage the parties to continue speaking.
c. After the parties have provided their statements, the officers should ask about details for clarification, and summarize the stated account (which allows the parties to point out anything that might be misrepresented).
d. Determine if there is a need for an interpreter/translator for any of the parties. Be mindful of the implication of using children as translators.
e. Be aware that parties may make excited utterances which may have evidentiary value. Record these utterances when practical and note them in your report.

2. Interviewing victim

[Note: If possible, officer should tape record the victim's- with the victim's consent – statement for evidentiary purposes]

a. Determine what happened.
b. Ascertain if anyone has any injuries, who caused them, and what weapons or objects were used to perpetrate the violence.
c. Ascertain victim's relationship to the suspect.
d. Ascertain if any threats were made against the victim or others, particularly children.
e. Ascertain if any property was damaged or if any pets were hurt.
f. Ascertain if there was any forced sexual contact against the victim's will.
g. Determine if there are any court cases pending against the suspect or if there are any protective orders in effect.
h. Determine if the suspect is on probation or parole.
i. Document victim's condition and demeanor in report.
j. Photograph and document in report:
   - Damaged clothing while on the victim
   - Seize torn or damaged clothing
   - Smeared makeup
   - Evidence of injury [Note: Use Appendix D or E to document any injuries.]
   - Condition of crime scene [Note: When documenting the scene photographically, officers are reminded to take both close-up and full scene pictures. If possible, officers should also videotape the scene.]

k. Obtain the phone number of the victim's residence and include that number in the incident report so jail/court/victim-witness/advocate personnel may inform the victim of the suspect's release on bail. Obtain alternative contact information, (i.e. additional phone numbers, etc.) where messages can be safely left if the victim decides to leave the residence for safety reasons**.** Also, if possible, record name, address, and phone number of two close friends or relatives of the victim who will know of her/his whereabouts 6-12 months from the time of the investigation. [Note: If the victim will be seeking to hide from the abuser, KEEP A SEPARATE RECORD of the address and phone number where the victim will be located.]
l. Provide contact information for local domestic violence program.
m. Arrange for follow-up photographs of the victim within one to three days in order to demonstrate the extent of the injuries that may later become more obvious.
n. The law enforcement officer shall not advise victims of domestic violence that they can "press" charges or "drop" charges. The decision to prosecute is made by the state's attorney. The victim and suspect will be advised that once a crime report is taken, he/she has no control over the decision to arrest and/or prosecute.
o. Document any presence or use of alcohol and/or drugs.

3. Interviewing Suspect

[Note: If possible, officer should tape record the suspect's statement for evidentiary purposes]

a. Determine what happened.
b. Any injuries, who caused them, and what weapons or objects were used to perpetrate the violence.
c. Document suspect's condition and demeanor in report.
d. Ascertain suspect's domestic violence and criminal history – any previous contact with law enforcement.
e. Photograph and document in report:
   - Damaged clothing while on the suspect
   - Torn or damaged clothing
   - Smeared makeup
   - Evidence of injury [Note: Use Appendix D or E to document injuries.]
f. Document any presence or use of alcohol and/or drugs.
g. Document any admissions to the allegations of domestic violence.

4. Interviewing Witnesses

a. Interview any witnesses to the incident – children, other family members, neighbors, etc. – as soon as possible.

b. Remember: witnesses may be experiencing significant trauma. This trauma may affect their recall abilities and may produce varying versions of events. This does not diminish the credibility of their description of events.
c. If witnesses provide information about prior assaults, document them to assist in establishing a pattern of abuse.
d. Interview emergency medical services (EMS) witnesses, emergency room (ER) personnel, and/or dispatch for corroborating evidence.

5. Interviewing Children

a. Children should be interviewed with care and kindness. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma or abuse should be noted in the report. [Use Appendix D or E to document any injuries.]
b. Children should be questioned in an age appropriate manner and interviewed without leading questions. The interview should be done away from the other parties, without parental influence.
c. Document children's full names, ages, dates of birth, and relationship to the parties.
d. Document the children's demeanor.
e. Children should be reassured and praised by the law enforcement officer after the child's statement has been recorded.
f. If a child is present at the scene of a domestic call or is the victim of domestic abuse, the law enforcement officer should determine whether the child has been subjected to physical abuse, sexual abuse, or neglect, and comply with the requirements defined in chapter **N.D.C.C. § 50-25.1.** If the child has been physically injured, the law enforcement officer shall ensure the child receives appropriate medical attention (this may require that the officer escort the child to the nearest hospital for treatment, arrange transportation via ambulance or guardian, etc.).
g. If the legal parent or guardian of a child can no longer provide care (i.e. when the victim is hospitalized), the law enforcement officer should consult with the legal guardian or parent on determining the disposition of the child and should make a good faith attempt to follow the request of the legal guardian or parent.
    - If the law enforcement officer reasonably believes that the child's immediate surrounding or conditions endanger the child's health and welfare, the officer may take the child into immediate custody pursuant to **N.D.C.C. § 50-25.1-07.**
    - When children are present, law enforcement shall document the basic circumstances surrounding their exposure to the incident in the police report and forward a referral to Child Protective Services as directed by current collaborative agreement.

ARREST DECISIONS

A. **Arrest:** Officers will make an arrest when probable cause and legal authority exist to make an arrest. Field release and referral to court is not recommended in domestic violence cases when grounds for an arrest are present. "If the law enforcement officer has probable cause to believe that a person has committed a crime involving domestic violence, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response." **N.D.C.C. § 14-07.1-10(1)**

B. **Arrest without a Warrant**: "A law enforcement officer may arrest a person without a warrant if the arrest is made within 12 hours from the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in **N.D.C.C. § 14-07.1-01**, whether or not the assault took place in the presence of the officer.

- After 12 hours have elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim**." N.D.C.C. § 14-07.1-11(2)**

1. Making the arrest:

a. Arrest the suspect, if he/she is present, apply handcuffs, inform him/her that the decision to arrest is a law enforcement one, and transport securely to the jail.
b. If the assailant is absent, and if the victim wishes, transport the victim, and children, (or arrange for transportation to) a safe shelter or other appropriate place. Circulate a "be-on-the-lookout" message describing the assailant and arrange for an arrest warrant.

C. **Factors that should not be considered in making the arrest:**

- Marital status, sexual orientation, race, or cultural, social, political or professional position.
- Ownership, tenancy rights of either party, or the fact that the incident occurred in a private place.
- Belief that the victims will not cooperate with criminal prosecution or that the arrest may not lead to a conviction.
- Verbal assurances that the abuse will stop.
- Disposition of previous police calls involving the same victim or suspect.
- Past law enforcement calls to assist at residence.
- Denial by either party that the abuse occurred when there is evidence of domestic abuse.
- Lack of a court order restraining or restricting the suspect.
- Concern about reprisals against the victim.

- Adverse financial consequences which might result from the arrest.
- Chemical dependency or intoxication of the parties.
- Who made the call: Whether it's the neighbor, victim, suspect or child.
- If investigating the violation of an Order for Protection, it does not matter who initiated the contact between the parties.

D. **Arrest when two or more complaints are received**: "A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that the family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each of the complaints separately to determine if either party acted in self-defense as defined in **N.D.C.C. § 12.1-05-03.** If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer shall consider which party was the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence, or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm." **N.D.C.C. § 14-07.1-10(2)**

E. **Predominant Aggressor:** The party that poses the greatest threat. As defined in **N.D.C.C. § 14-07.1-01(7)**, predominant aggressor "means an individual who is the most significant, not necessarily the first, aggressor." Law enforcement officers shall identify a predominant aggressor based on the totality of the circumstances. Some or all of these circumstances may be present:

- Comparative severity of injuries.
- The relative size, bulk, and strength of the parties involved.
- Likelihood of future harm/injury to any party.
- Use of weapons.
- Is one party specially trained in martial arts, boxing, or hand-to-hand combat techniques?
- Who is most afraid?
- Location or nature of injuries [Offensive vs. Defensive injuries].
- Did one party escalate the level of violence [Push followed by serious beating]?
- History of abuse [Is one person usually the predominant aggressor]?
- Existence of court protective orders.
- Demeanor of the parties.
- Use of alcohol and/or other drugs.
- Existence of corroborating evidence or witnesses.
- Criminal history.
- Timing of victimization claim [Person claimed to have been assaulted only after arrested].

[Note: This policy strongly discourages officers from making dual arrests.]

Indicators of Defensive Injuries

- Wounds on victim's palm(s) or hand(s)
- Wounds on inside and outside of victim's arms
- Bumps on the victim's head [especially on the back]
- Bite marks on suspect's chest, biceps, forearms
- Scratches on suspect's face, chest, neck [strangulation cases]
- Bruising behind ears of victim [strangulation cases]

[Note: Remember, self-defense does not include acts inflicted to punish or retaliate]

F. **Law Enforcement Immunity:** "A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice." **N.D.C.C. § 14-07.1-11(3)**

COURT ORDERS

A. **Violation of Protection Orders:** "A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violating a protection order under **N.D.C.C. § 14-07.1-06**, whether or not the violation was committed in the presence of the officer." **N.D.C.C. § 14-07.1-11(1)** NOTE: The law requires an arrest whether or not the excluded party was invited back to the residence.

1. If a law enforcement officer determines that an otherwise valid protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
2. Law enforcement should pay special attention to and assess the lethality of each respondent when serving protection orders. [Note: Officers should utilize Appendix D or F to assist in the determination of lethality.]

B. **Surrender of Weapons:** A respondent may be required in a protection order "to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in **N.D.C.C. § 12.1-01-04**, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm, or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm to the sheriff, or the sheriff's designee, of the county in which the respondent resides, or to the chief of police, or the chief's designee, of the city in which the respondent resides." **N.D.C.C. § 14.07.1-02(4)(g).**

NOTE: For the safety of both parties, if it is not required in a protection order, an officer still may suggest the respondent surrender weapons to law enforcement for a temporary period of time.

1. **Forfeiture of Weapons:** "Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose." **N.D.C.C. § 62.1-01-02**

2. Individuals – including law enforcement officers and military personnel – are prohibited from possessing or transferring (or returning) a firearm while subject to a protection order. **18 U.S.C. § 922 (g)(8) and 18 U.S.C. § 922 (d)(8)**. Individuals cannot possess ammunition either. EXCEPTION: Law Enforcement officers and military personnel are exempt from these prohibitions for official duty" firearms only. **18 U.S.C. § 925 (a)(1)** *[Federal Law]*

3. Individuals – including law enforcement officers and military personnel – are prohibited from possessing or transferring (or returning) a firearm if that person has been convicted

of a misdemeanor crime of domestic violence. No exception is made for law enforcement officers and military personnel. **18 U.S.C. § 922 (g)(9) and 18 U.S.C. § 922 (d)(9)** *[Federal Law]*

C. **Order Prohibiting contact:** "A law enforcement officer shall arrest a person without a warrant if the officer determines there is probable cause that the person has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection." **N.D.C.C. § 12.1-31.2-02(5)**.
NOTE: The law requires an arrest whether or not the excluded party was invited back to the residence.

D. **Disorderly Conduct Restraining Order**: "A peace officer may arrest the respondent without a warrant and take the respondent into custody if the law enforcement officer has probable cause to believe the respondent has violated an order issued under **N.D.C.C. § 12.1-31.2-01." N.D.C.C. § 12.1-31.2-01(7)(c)**
NOTE: The law allows an arrest whether or not the excluded party was invited back to the residence.

1. If a law enforcement officer determines that an otherwise valid disorderly conduct order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

E. **Foreign Orders/Nonjudicial Enforcement of Order (Full Faith and Credit):**

1. "A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of the protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for law enforcement." **N.D.C.C. § 14-07.4-03(1)**

2. "If the protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists." **N.D.C.C. § 14-07.4-03(2)**

3. "If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or

served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order." **N.D.C.C. § 14-07.4-03(3)**

4. "Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter." **N.D.C.C. § 14-07.4-03(4)**

F. **Law Enforcement Immunity:** "This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission is done with good faith in an effort to comply with this chapter." **N.D.C.C. § 14-07.4-05**

VICTIM ASSISTANCE

A. If an arrest occurs:

1. Complete an incident report and, if the victim requests, provide a copy or arrange to have a copy provided to the victim – this would be done absent good cause not to do so. Additionally, explain to the victim the procedure (who/where to call) to obtain a copy of the report. The procedure applies to domestic violence incidents, protection order violations, stalking incidents, and any other domestic violence related crime.
2. Advise the victim of the importance of preserving evidence.
3. Explain to the victim about protective orders and how to obtain them.
4. If the victim wants to leave the premises to ensure safety, remain at the scene while the victim packs essentials. Advise the victim to take only personal items plus important papers (i.e. bank account numbers, social security cards, passports, birth certificates, etc.).
5. If the victim needs a ride at the time of the incident, the officer may assist by transporting the victim to the Law Enforcement Center to wait for someone to pick up the victim (Domestic Violence Advocate, family member, friend, etc) or an officer may transport the victim to a safe place within reasonable distance. (A shelter – no matter what distance – shall be deemed "reasonable distance").
6. Provide the victim with the telephone numbers of the local or nearest domestic violence center and/or shelter.
7. Advise the victim that the case may be prosecuted even if the victim later recants and/or chooses not to cooperate with prosecution.

B. If an arrest does NOT occur:

1. Complete an incident report and, if the victim requests, provide a copy or arrange to have a copy provided to the victim – this would be done absent good cause not to do so. Additionally, explain to the victim the procedure (who/where to call) to obtain a copy of the report. The procedure applies to domestic violence incidents, protection order violations, and stalking calls.
2. Advise the victim of the importance of preserving evidence.
3. Explain to the victim about protective orders and how to obtain them.
4. If the victim wants to leave the premises to ensure safety, remain at the scene while the victim packs essentials. Advise the victim to take only personal items plus important papers (i.e. bank account numbers, social security cards, passports, birth certificates, etc.).
5. If the victim needs a ride at the time of the incidents, the officer may assist by transporting the victim to the Law Enforcement Center to wait for someone to pick up the victim (domestic violence advocate, family member, friend, etc) or an officer may transport the victim to a safe place within reasonable distance (a shelter – no matter what distance – shall be deemed an appropriate transport).
6. Provide the victim with the telephone numbers of the local or nearest domestic violence center and/or shelter.

7. Law enforcement shall assure the victim that they will assist in future emergencies and explain measures for enhancing the victim's own safety

C. <u>For ALL incidents:</u>

1. Law enforcement shall refer victims of domestic violence to the appropriate community resources, such as:
    a. Domestic Violence Centers
    b. Shelters
    c. Victim/Witness Programs
    d. Mental Health Agencies
    e. Medical doctors
    f. Legal Assistance agencies
    g. Social Services

2. Law enforcement shall provide victim contact information to jail staff and jail staff shall notify the victim before the suspect's release. [Note: Law enforcement should utilize Appendix G for assistance in notifying the victim.]

3. Law enforcement shall contact the local or nearest domestic violence advocacy center in situations involving arrests on domestic-related crimes to enable advocacy centers to make contact with the victim in order to:

    a. Provide information concerning the court process and available services;
    b. Elicit victim's input into the court process;
    c. Ascertain the victim's wishes regarding conditions of release; and
    d. Offer or facilitate accompaniment throughout the court process.

REPORTS

A. Required Reports: "A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If the officer determines through the course of an investigation that one of the individuals was the predominant aggressor, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports." **N.D.C.C. § 14-07.1-12**

1. The investigating officer shall prepare an investigation report regarding the incident in accordance with existing departmental policy. Any domestic violence call handled by this department shall have the initial report completed before the officer goes off duty. The complete report shall be written and completed within five (5) days from the incident's occurrence regardless of whether an arrest was made or not. [Note: Officers should utilize Appendix D.]

B. Documentation: The following should be documented within the report [Note: Officer should utilize Appendix H for documentation purpose.]:

- The victim's and suspect's exact words / excited utterances;
- Elements of all crimes investigated;
- Any visible injuries and/or complaints of pain – documentation should include a description in the police report, as well as photographs and medical reports (including a medical release), if medical treatment was obtained;
- Note whether children were present;
- Whether either party was photographed;
- Whether alcohol and/or drugs were present or used in the incident;
- Any past domestic violence (if possible, attach copies of previous reports made if law enforcement responded to other incidents);
- Note if weapons were present and/or are possessed by the suspect;
- Any court orders currently or previously in place (i.e. an Order for Protection, custody order, etc.);
- Any restraining order violations;
- List the phone number of the victim's residence along with alternative contact information, (i.e. additional phone numbers, etc.) where messages can be safely left if the victim decides to leave the residence for safety reasons**.** Also, if possible, record name, address, and phone number of two close friends or relatives of the victim who will know of her/his whereabouts 6-12 months from the time of the investigation. [Note: If the victim will be seeking to hide from the suspect, KEEP A SEPARATE RECORD of the address and phone number where the victim will be located.]
- Referrals provided to domestic violence program and other victim services**;** and
- If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them. *Use objective interpreters*

(someone who is not a family member or a percipient witness) to obtain statements and/or tape-record statements.

C. <u>Lethality Assessment Provided to Prosecutor's Office:</u> Officers should provide information regarding a suspect's dangerousness / lethality to the prosecutor for use at arraignment. Therefore, officers should gather information regarding the suspect's:

- Criminal history;
- History of abusing the current victim, including expired or dismissed protective orders;
- History of abusing other victims;
- History of abuse from other jurisdictions (including tribal and other states);
- Ownership, presence, or access to firearms, and their location;
- Use of weapons in prior abuse of current or previous victim(s);
- Present or past threats against or abuse of pets;
- Present or past attempts or threats to kill; and
- Present or past attempts or threats to commit suicide

D. <u>Documentation in non-arrest cases</u>: In addition to the above considerations, in cases in which an arrest is <u>not</u> made for domestic violence, stalking, or related crime, the incident still must be documented. In such cases, law enforcement should note in the incident report:

1. What referral information was provided; and
2. Why no arrest was made, nor any warrant sought.

E. <u>Access to Domestic Violence Reports:</u> Law enforcement will provide, at no cost, one copy of all domestic violence face sheets and incident reports to a domestic violence victim upon request. Absent good cause, the face sheet should be made available during business hours, within a reasonable amount of time of the request. Incident reports should be completed in an expeditious manner.

Reports should also be provided, at no cost when requested, to domestic violence advocates, shelters, and/or victim-witness coordinators under the same timelines provided above.

SUPERVISOR RESPONSIBILITIES

A. Assurances for Practice: Supervisors will ensure that the provisions of the North Dakota Century Code and these policy guidelines are met by reviewing each domestic violence incident report. Specifically supervisors will assure that:

- Dispatch logs will be reviewed to ensure that an incident report has been filed, even in cases in which no arrest was made. Calls which are received as allegations of domestic violence or a domestic disturbance will not be reclassified because no probable cause to arrest existed. Incident reports will be filed in those cases.

- A supervisor, or his or her designee within the department who is specifically trained to review domestic violence cases, in order to ensure that policy guidelines are met, will carefully review incident and arrest reports. If upon review of an incident report it is believed that probable cause exists, the supervisor will ensure that criminal charges are initiated according to statute and these guidelines.

- Whenever a department identifies a particular case as posing significant danger or risk, that case will be discussed at roll call, or through other channels in order to become aware of the situation.

B. Referrals: Supervisors will ascertain that appropriate referrals were provided to the victim and documented in the incident report.

C. Follow-up Investigation / Reports:

1. When assigning follow-up investigation or reviewing reports for completeness, supervisors shall, at a minimum, ensure the following is accomplished:

    a. Verify the inclusion of all investigative steps regarding initial law enforcement response/investigation. [Note: Supervisors shall ensure victims are re-contacted within 72 hours of the call to ascertain whether further law enforcement assistance is needed.]

    b. Obtain medical records when needed, if not already obtained.

    c. Interview background witnesses who may not have been available to the law enforcement officer at the time of the incident (i.e. neighbors, medical personnel, dispatch, etc.).

    d. Re-interview witnesses as necessary.

    e. If possible, contact the victim and witnesses to inform them of the status of the case and/or the intended referral to the states attorney's office.

f. Obtain subsequent photographs of injuries to the victims within one to three days of the incident (particularly when there were no initial photos taken or the initial photos did not show injuries to the victim).
g. Upon review of the follow-up investigation, the supervisor will ensure that additional charges are initiated whenever appropriate. For example, a supervisor should look beyond offenses charged out to ascertain if other charges are present (i.e. in addition to a protection order violation the facts may also support a stalking charge).

2. Follow-up investigation shall not consider the desire of the victim to "drop" charges in assessing whether the case should be submitted to the prosecuting attorney's office.

3. Personnel handling domestic violence cases should analyze each domestic violence case by asking the following questions:

    a. Can the elements of the offense be established without the testimony of the victim? For example:
        - Did the victim make an excited utterance?
        - Are there any eye witnesses to the offense?
        - Did the victim provide a detailed statement of the offense to an officer (preferably tape-recorded) or to another person who can impeach the victim if they appear in court and testify falsely?
        - Is there other corroborating evidence (such as injuries or a 911 tape) that would support the charge?
        - Did the suspect make admissions to the allegations of domestic violence?

    b. The case should be evaluated for referral to the Prosecutor's office for review regardless of the victim's wishes.

4. Under no circumstances should a victim be asked if he/she wishes to "press charges" or "drop charges". Investigative personnel shall not ask a victim if they want to "prosecute" the offender. The victim should be informed that the decision to proceed is out of his/her control.

5. If the victim presents a different version of the incident, the person/investigator taking the statement should incorporate some of the following questions and note in the follow-up report:
    a. Financial concerns;
    b. Contact with the defendant after the incident:
        - Were threats made?
        - Were they overt or subliminal?
    c. Child custody / visitation issues; and

d. Immigration concerns

D. <u>Training:</u> Supervisors will ensure that officers are provided and attend training at least once a year on one or more of the topics listed in the training section of this policy.

TRAINING

This law enforcement agency shall establish a written schedule for annual or semi-annual training for members of this agency on domestic violence. The goals of the training are to keep officers up-to-date on domestic violence laws, the department's domestic violence policy and procedures, and officer safety techniques in addition to providing officers with an in-depth understanding of the intricate issues and dynamics involved in domestic violence cases.

All licensed peace officers within this department, including administration and supervisors, should be trained in accordance with **N.D.C.C. § 14-07.1-14** and, at a minimum, receive at least four hours annually or two hours semi-annually on one or more of the following topics:

- Domestic violence dynamics & its impact on society;
- Effects of domestic violence on children;
- Protective order process / service;
- Predominant aggressor;
- Offensive / Defensive injuries;
- Stalking;
- Report writing in domestic violence cases;
- Law changes;
- Policy changes;
- On-Scene investigation;
- Lethality and risk assessment;
- Immigration Issues;
- Model protocols for addressing domestic violence;
- Available community resources;
- Victim Services;
- Reporting requirements.

Additional Administrative/Command/Supervisory training related to domestic violence should address the following:

- Department legal considerations and liability
- Media and public relations
- Criminal versus Administrative investigations
- Conducting lethality / dangerousness assessments

The Chief of Police, Sheriff, or his/her designee, shall ensure the review of the department's training policy annually and make any revisions deemed necessary.

A. Collaboration: Law enforcement should exercise a leadership role within the criminal justice community in the area of domestic violence. Law enforcement should collaborative with and invite other professionals, such as Domestic Violence Advocates, Child Protection Workers, Prosecutors, Probation/Parole, Jail Staff, and Dispatch, to training opportunities.

1. The department should collaborate with local domestic violence victim advocacy organizations, and the state domestic violence coalition in the development of a domestic violence training curriculum, and, whenever possible, shall use local

advocates or the state domestic violence coalition in the training of officers. [See Appendix I for agreement form.]

2. The department should collaborate with local, state, and national law enforcement agencies that have already implemented domestic violence training. The information gathered can serve as a guideline for the development of domestic violence training curriculum, and experienced officers from these jurisdictions can assist in training within the department.

3. The department should provide, if requested, copies of all departmental policies, procedures, and protocols on domestic violence to local domestic violence victim advocacy organizations.

4. The department should provide training, when requested, to local domestic violence victim advocacy organizations on the department's domestic violence policies, procedures, and protocols.

B. Training: Domestic Violence related training may be conducted at: department meetings, shift briefings, formal training sessions, field training, or any other approved manner. Additionally, trainings should include written bulletins, videotapes, verbal reminders, and presentations provided by the prosecutor's office, domestic violence agency, victim/witness program, the state domestic violence coalition, or officers specializing in domestic violence response.

1. In-service training – the department should select a series of effective and concise materials on domestic violence for routine dissemination to all personnel. Periodic in-service trainings on domestic violence and stalking should be held to review directives and discuss their implementation.

2. Roll-call training – Officers should receive regular instruction about domestic violence and stalking during roll call.

C. Program Evaluation: To enhance the effectiveness of trainings, the department should work with internal or external research resources to evaluate the training being provided. For example, to ascertain if an in-service on the most immediately significant aggressor was effective, the department should determine whether dual arrests declined and if officers investigated and documented how the most immediately significant aggressor was determined.

1. Internal research techniques/resources may include, but are not limited to:
   a. Surveys
   b. Pre/Post tests
   c. Gathering statistical data

2. External resources who may assist and provide research techniques and resources include, but are not limited to:
    a. North Dakota Council on Abused Women's Services / Coalition Against Sexual Assault in North Dakota
    b. Rural Crime and Justice Center – Minot State University
    c. Local universities that can assist with research techniques and applications

INTERAGENCY COLLABORATION / MULTIPLE JURISDICTIONS

Law enforcement must exercise leadership in the community in responding to domestic violence cases. This includes optimizing and coordinating all available resources for assisting victims in addition to collaborating and developing protocols with other agencies (not just law enforcement) to enhance victim safety and ensure accountability for the suspect.

A. The Violence Against Women's Act: Federal Crimes:

(1) Interstate Domestic Violence:

1. **Travel or conduct of offender:** A person who travels in interstate or foreign commerce or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b). **18 U.S.C. § 2261 (a)(1).**

2. **Causing travel of victim:** A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b). **18 U.S.C. § 2261 (a)(2).**

   (b) **Penalties**. A person who violates this section or section 2261(A) shall be fined under this title, imprisoned -
   (1) for life or any term of years, if death of the victim results;
   (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
   (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
   (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); <u>and</u>
   (5) for not more than 5 years, in any other case, or both fined and imprisoned.
   (6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

(2) Interstate Violation of Protection Order:

1. **Travel or conduct of offender:** A person who travels in interstate or foreign commerce, or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b). **18 U.S.C. § 2262 (a)(1).**

2. **Causing travel of victim:** A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b). **18 U.S.C. § 2262 (a)(2).**

   (b) **Penalties**. A person who violates this section shall be fined under this title, imprisoned -
   (1) for life or any term of years, if death of the victim results;
   (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
   (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
   (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); <u>and</u>
   (5) for not more than 5 years, in any other case, or both fined and imprisoned.

B. <u>Domestic Violence in Indian Country:</u> Law enforcement in Indian country can be a complicated undertaking. The jurisdictional framework that exists in North Dakota for both tribal and non-tribal lands creates many law enforcement concerns. Like nearly every other state, North Dakota has encountered uncertainties about whether or not a particular law enforcement agency is authorized to act. It is imperative that each individual law enforcement agency work with individual tribal governments to strengthen cooperative relationships in order to provide safety for domestic violence victims and maximize law enforcement resources.

C. <u>Agreements with Advocacy Programs</u>: Enhancing victim safety is something law enforcement cannot do alone. In order to increase victim safety and offender accountability,

law enforcement agencies should establish collaborative working agreements with advocacy programs. [See Appendix I].

D. <u>Collaboration with the Military</u>: All domestic violence incidents involving military suspects shall be handled according to this policy if:

1. The incident occurred outside the boundaries of a military facility; and
2. Local law enforcement agencies are called to assist in handling such an incident.

The intent of this policy is to eliminate all informal referrals, diversions, or report taking omissions in the handling of domestic violence incidents involving military personnel. No informal agreements with military police or a suspect's commanding officers shall take precedence over a suspect's arrest and prosecution by the non-military authorities.

OFFICER PERPETRATED DOMESTIC VIOLENCE

The [insert name of your agency] acknowledges that some police officers commit domestic violence against their intimate partners and some police officers are victims of domestic violence. As such, it is imperative to have a separate policy establishing specific operational guidelines on how to handle domestic violence incidents which involve law enforcement officers.

The development and implementation of a separate policy underscores the [insert name of your agency] commitment to creating and maintaining a work environment that does not tolerate domestic violence. Where incidents of domestic violence are alleged to have occurred, the department will act quickly to protect the victim, arrest the perpetrator, and conduct parallel administrative and criminal investigations.

This policy delineates a position by the department of absolute intolerance of domestic violence. An officer found guilty of domestic violence, either through criminal court or an administrative hearing, shall have his/her police powers revoked. Once implemented, the policy will apply to past convictions, and existing and future police officer domestic violence crime.

[Please review this department's "Officer Involved Domestic Violence Policy" for specific operational guidelines and procedures.]

North Dakota
Model Law Enforcement
Domestic Violence Policy
Appendices

Please see folder titled "Appendices" for the following documents:

Appendix A: North Dakota Domestic Violence Programs
Appendix B: North Dakota Victim/Witness Programs
Appendix C: Domestic Violence Worksheet
Appendix D: Injury Diagram Worksheet
Appendix E: Strangulation Report
Appendix F: Strangulation Supplemental Report
Appendix G: Strangulation Card
Appendix H: Lethality Assessment Sheet
Appendix I: Victim Notification Information
Appendix J: Evidence Collection Form
Appendix K: Working Agreement with Advocacy Program
Appendix L: Authorization for Release of Medical Records and Information
Appendix M: Common Charges Related to Domestic Violence*
Appendix N: Collaborative Agreement with Child Protection Services
Appendix O: Summary of Federal, State, and Tribal Jurisdictions
Appendix P: Power & Control Wheel**
Appendix Q: Unnatural Power and Control**
Appendix R: Brief Overview of Domestic Violence
Appendix S: Stalking Statute: North Dakota Century Code § 12.1-17-07.1

*Please see folder "ND Century Code" or visit the ND Legislative Branch: http://www.legis.nd.gov/information/statutes/cent-code.html

** For additional Power and Control Wheels visit the National Center on Domestic and Sexual Violence at: http://www.ncdsv.org/publications_wheel.html

ND Council on Abused Women's Services/Coalition Against Sexual Assault in ND
Domestic Violence/Sexual Assault Service Providers

Janelle Moos, Executive Director **NDCAWS/CASAND** 525 North 4th Street, Bismarck, ND 58501
Toll Free: 888-255-6240 Ph: (701) 255-6240 * FAX (701) 255-1904 * E-Mail: ndcaws@ndcaws.org *Website: www.ndcaws.org

BISMARCK *Crisis Line 1-866-341-7009*
Abused Adult Resource Center
PO Box 5003, Bismarck, ND 58502
Diane Zainhofsky, Director
Toll Free: 866-341-7009
Ph: 701-222-8370 Fax 701-323-9399
E-mail: aarc@btinet.net

BOTTINEAU *Crisis Line 1-800-398-1098*
Family Crisis Center
PO Box 371, Bottineau, ND 58318-0371
Dena Filler, Contract Mgr.
Ph: 701-228-2028 Fax 701-228-2472
Toll Free 888-755-7595
E-mail: famcc@srt.com

DEVILS LAKE *Crisis Line 662-7378*
Safe Alternatives for Abused Families
PO Box 646
Devils Lake, ND 58301-0646
Janel Taylor Director
Ph: 701-662-7378 Fax 701-662-2380
Toll Free 888-662-7378
E-mail: saaf@gondtc.com

DICKINSON *Crisis Line 225-4506*
Domestic Violence & Rape Crisis Center
PO Box 1081
Dickinson, ND 58602-1081
Darianne Johnson, Director
Toll Free 888-225-4506
Ph: 701-225-4506 Fax 701-225-4506
E-mail: dvrcc@ndsupernet.com

ELLENDALE *Crisis Line 349-5118*
Kedish House, PO Box 322
Ellendale, ND 58436-0322
Sharron Brady, Director
Toll Free: 877-349-4729
Ph: 701-349-4729 Fax 701-349-3562
E-mail: skbrady@drtel.net

FARGO *Crisis Line 293-7273*
Rape & Abuse Crisis Center
PO Box 2984
Fargo, ND 58108-2984
Greg Diehl, Director
Toll Free 800-344-7273
Ph: 701-293-7273 Fax 701-293-9424
E-mail: crisis@raccfm.com

FORT BERTHOLD *Crisis Line 627-3617*
Coalition Against Domestic Violence
PO Box 970
New Town, 58763-0970
Sadie Young Bird, Director
Ph: 701-627-4171 Fax 701-627-4106
E-mail: sgyoungbird@mhanation.com

GRAFTON *Crisis Line 352-3059*
Domestic Violence & Abuse Center Inc.
PO Box 308, Grafton, ND 58237-0308
Jolene Halldorson, Director
Toll Free: 866-435-7490
Ph: 701-352-4242 Fax 701-352-4222
E-mail: jolene@dvacnd.org

GRAND FORKS *Crisis Line 746-8900*
Community Violence Intervention Ctr.
211 South 4th St. Grand Forks, ND 58201-4766
Kristi Hall-Jiran, Director
Toll Free: 866-746-8900
Ph: 701-746-0405 Fax 701-746-5918
E-mail: embracepeace@cviconline.org

JAMESTOWN *Crisis Line 251-2300*
Safe Shelter
PO Box 1934
Jamestown, ND 58402-1934
Lynne Tally, Director
Toll-Free 888-353-7233
Ph: 701-251-2300 Fax 701-251-9095
E-mail: SafeShelter@qwestoffice.net

MCLEAN CO. *Crisis Line 462-8643*
McLean Family Resource Center
PO Box 506
Washburn, ND 58577-0506
Jenell Olson, Director
Toll Free: 800-651-8643
Ph: 701-462-8643 Fax 701-462-8680
E-mail: mfrc@westriv.com

MERCER CO. *Crisis Line 873-2274*
Women's Action & Resource Center
Box 940, Beulah, ND 58523
Lisa Weisz, Director
Ph: 701-873-2274 Fax 701-873-2436
E-mail: warc@westriv.com

MINOT *Crisis Line: 857-2200*
Domestic Violence Crisis Center
PO Box 881
Minot, ND 58702-0881
Dena Filler, Director
Toll Free 800-398-1098
Ph: 701-852-2258 Fax 701-838-7053
E-mail: dvcc@minot.com

RANSOM CO. *Crisis Line 683-5061*
Abuse Resource Network
PO Box 919, Lisbon, ND 58054-0919
Missy Schmidt, Director
Ph: 701-683-5061 Fax 701-683-0082
E-mail: ransomarn@nd.gov

SPIRIT LAKE *Crisis Line 766-1816*
Spirit Lake Victim Assistance
Box 297, Ft. Totten, ND 58335-0297
Melissa Merrick, Director
Ph: 701-766-1816 FAX: 701-766-4550
Toll Free 866-723-3032
E-mail: mmerrick.slva@gmail.com

STANLEY *Crisis Line 628-3233*
Domestic Violence Pro., NW ND
PO Box 538, Stanley, ND 58784-0538
Colleen Reese, Director
Ph: 701-628-3233 Fax 701-628-3234
Toll free 800-273-8232
E-mail: creese@nd.gov

TRENTON INDIAN SERVICE AREA
Crisis Line 774-1026
Domestic Violence Program
PO Box 210 Trenton, ND 58853
Nancy Mattingly, Interim Director
Ph: 701-774-1029 Fax 701-774-1022
E-mail: nmattingley@ccray.net

TURTLE MOUNTAIN RESERVATION
Crisis Line 477-0002
Hearts of Hope Box 900
Belcourt, ND 58316
Rochanda Gourneau Director
Ph: 701-477-0002 Fax 701-477-5246
E-mail: gourneau@utma.com

VALLEY CITY *Crisis Line 845-0072*
Abused Persons Outreach Center
PO Box 508, Valley City, ND 58072
Virginia Svenningsen, Director
Ph: 701-845-0078 Fax 701-845-1897
Toll-Free 866-845-0072
e-mail: apoc@daktel.com

WAHPETON *Crisis Line 642-2115*
Three Rivers Crisis Center
509 Dakota Ave Suite B
Wahpeton, ND 58075
Susan Rittenour, Director
Ph: 701-642-2115 Fax 701-642-3253
Toll-Free 800-627-3659
E-mail: trcc@702com.net

WILLISTON *Crisis Line 572-9111*
Family Crisis Shelter
Box 1893, Williston, ND 58802-1893
Lana Bonnet, Director
Ph: 701-572-0757 Fax 701-572-7239
E-mail: lana.fcs@midconetwork.com

North Dakota Victim/Witness Programs

Adams Co.
Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

Barnes Co.
Abused Persons Outreach Center
Victim/Witness Program
Valley City, ND
845-0078

Bottineau Co.
Family Crisis Center
Victim/Witness Program
Bottineau, ND
228-2028

Bowman Co.
Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

Burleigh Co. States Attorney's Office
Victim/Witness Program
Bismarck, ND
250-7783

Cass Co. States Attorney's Office
Victim/Witness Program
Fargo, ND
241-5869

Cavalier Co. States Attorney's Office
Victim/Witness Program
Cavalier, ND
265-8070

Dept of Juvenile Services
Victim/Witness Program
Fargo, ND
239-7269

FBI Victim Specialist
Bismarck, ND
223-4875

FBI Victim Specialist
Minot, ND
852-5071

FBI Victim Specialist
Grand Forks, ND
772-0812

Grand Forks Co.
Community Violence Intervention Center
Victim/Witness Program
Grand Forks, ND
746-0405

Griggs Co. States Attorney's Office
Victim/Witness Program
Hillsboro, ND
636-2432

Hettinger Co.
Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

McHenry Co.
Family Crisis Center
Victim/Witness Program
Bottineau, ND
228-2028

McLean Co.
McLean Family Resource Center
Victim/Witness Services
Washburn, ND
462-8643

Mercer Co States Attorney's Office
Victim/Witness Program
Stanton, ND
745-3518

Minot Air Force Base
Victim/Witness Services
Minot, ND
723-4158

Morton Co.
Abused Adult Resource Center
Victim/Witness Program
Bismarck, ND
222-8370

Mountrail Co.
Domestic Violence Program
Victim/Witness Services
Stanley, ND
628-3233

ND State Penitentiary
Dept. of Corrections
Victim Services
Bismarck, ND
328-6183

Pembina Co. States Attorney's Office
Victim/Witness Program
Cavalier, ND
265-8070

Pierce Co.
Family Crisis Center Victim/Witness Program
Bottineau, ND
228-2028

Ramsey Co.
SAFE Alternatives for Abused Families
Victim/Witness Services
Devils Lake, ND
662-7378

Slope Co.
Domestic Violence & Rape Crisis Center
Victim/Witness Program
Dickinson, ND
225-4506

Stark Co. States Attorney's Office
Victim/Witness Program
Dickinson, ND
456-7875

Steele Co. States Attorney's Office
Victim/Witness Program
Hillsboro, ND636-2432

Stutsman Co. States Attorney's Office
Victim/Witness Program
Jamestown, ND
251-6367

Traill Co. States Attorney's Office
Victim/Witness Program
Hillsboro, ND
636-2432

Turtle Mt. Reservation
Hearts of Hope
Victim/Witness Program
Belcourt, ND
477-000

Walsh Co. States Attorney's Office
Victim/Witness Program
Grafton, ND
352-2391

Ward Co. States Attorney's Office
Victim/Witness Program
Minot, ND
857-6480

Williams Co. States Attorney's Office
Victim/Witness Program
Williston, ND
577-4574

US Attorney's Office
Victim/Witness Coordinator
Bismarck, ND
530-2420

US Attorney's Office
Victim/Witness Coordinator
Fargo, ND
297-7430

Military:	960 Required:
____ Yes	____ Yes
____ No	____ No

Domestic Violence Worksheet

CFS #: _____ Time: _____ Date: _____ Officers: _____

Location of incident:

Victim's name: DOB: Sex: M___ F___ Phone # H: W:

Address of victim: Alternate contact (Name, Address, Phone):

Suspect's name: DOB: Sex: M___ F___ Phone # H: W:
Suspect's address:

The Victim/Suspect displayed the following emotional and physical conditions:

Victim:
___ angry
___ crying
___ fearful
___ hysterical
___ calm
___ afraid
___ irrational
___ threatening
___ nervous
___ other, explain _____
___ complained of pain
___ abrasion(s)
___ minor cut(s)
___ laceration(s)
___ fracture
___ concussion(s)
___ Under the influence of drugs
___ Under the influence of alcohol

Suspect:
___ angry
___ crying
___ fearful
___ hysterical
___ calm
___ afraid
___ irrational
___ threatening
___ nervous
___ other, explain _____
___ complained of pain
___ abrasion(s)
___ minor cut(s)
___ laceration(s)
___ fracture
___ concussion(s)
___ Under the influence of drugs
___ Under the influence of alcohol

Relationship between Victim and Suspect:

(Mark all that apply)

___ spouse
___ dating relationship
___ parent and child
___ family member
___ residing together
___ former spouse
___ child in common
___ emancipated minor
___ other _____
___ present ___ past

Length of relationship:

___ Years ___ Months

If applicable, date relationship ended: _____

Medical treatment:

___ none
___ paramedics
___ hospital
___ self-administered
___ will seek own doctor
___ refused medical aid

Paramedics at scene: _____ Yes ____ No

Name(s): _____
Hospital where treated: _____
Attending Physicians: _____

Domestic violence arrest made: ___ Yes _____No
Domestic violence charges pending: ____ Yes _____No
Investigative report filed: ____ Yes _____No
Protection/Restraining order: ____ Yes _____ No _____ Current _____Expired
Other charges: Suspect: ____Yes ____No
Victim: ____ Yes ____ No

Follow-up photo(s) ____ or statement(s) ____ required? (explain)
Copy of 9-1-1 call needed:_ Yes_ No

Weapons: Suspect: ____ Yes ____ No Type of weapon Used: _____
Victim: ____ Yes ____ No Type of weapon Used: _____
Weapons confiscated: ____ Yes ____ No Firearms confiscated: ___ Yes ____ No

Evidence collected from: ___Crime Scene ____Hospital _____Property Inventory #

Children present during domestic violence incident: ___ Yes ____ No

Statement(s) taken from children: ____Yes _____ No

Information on children forwarded to school: _____Yes _____No

School Names: _____ _____

Children's Names and Ages: _____ _____ _____

Witness(s):_____

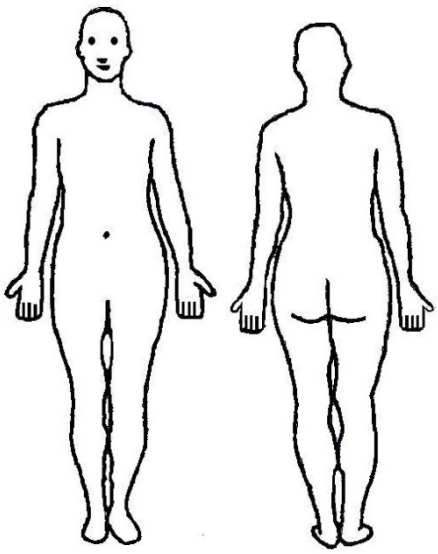
Photos: ___ Yes ____ No Number: ___ Taken by: _____

Photos of victim's injuries: ____ Yes ___ No

Photos of suspect's injuries: ____ Yes ___ No

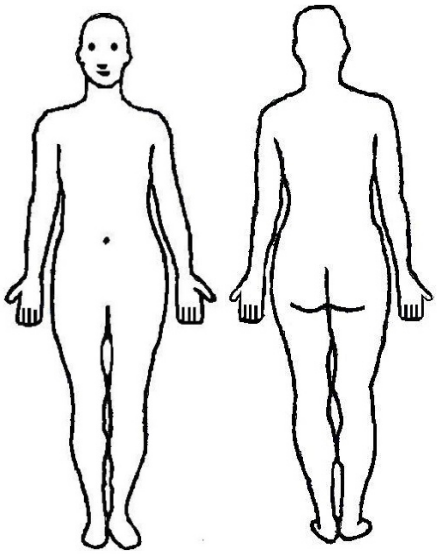
Mark the location(s) of any injuries on the diagram(s).
(Describe visible injuries, I.e., cut, bruise.)

____ Suspect ____ Victim



Height ____ Weight _____

____ Suspect ____ Victim



Height ____ Weight _____

Lethality Assessment

Identify Any Risk Factors

___ Threats of HOMICIDE or SUICIDE by the suspect
___ Fantasies of HOMICIDE or SUICIDE by the suspect
___ Depression of the suspect
___ WEAPONS
___ Obsessiveness/possessive beliefs about the victim
___ Job threatening circumstances
___ Pet abuse
___ Perpetrator's "perception of betrayal" by victim
___ Prior police calls to home
___ Rage towards police/others
___ Prior/additional criminal activity
___ Increase in frequency/severity of DV
___ Violent towards children
___ Increasing drug/alcohol use
___ Any hostage taking
___ Any strangulation cases
___ Beating victim while pregnant
___ Separation/threatened separation

To assist law enforcement, I, _____, hereby authorize the release to the _____ Police Department or _____ County Sheriff's Department all of my medical records related to any physical harm or trauma that I have had in the last two years. I also authorize the medical providers' employees to discuss the medical records or treatment with law enforcement personnel until such time as this release has been terminated in writing.

Date: _____ Signature: _____

Witness: _____ Print Name: _____

Narrative:

_____
_____
_____
_____

For Records Use Only

Current Charge: ____ Simple Assault (1531D) ____ Aggravated Assault (2011)

Prior history of domestic violence (Suspect) ____ Yes ____ No If Yes, # of prior incidents _____

Of the Suspect prior incidents, how many resulted in Suspect arrest? (give number) _____

Prior history of domestic violence (Victim) ____ Yes ____ No If Yes, # of prior incidents _____

Of the Victim prior incidents, how many resulted in Victim arrest? (give number) _____

This form was adapted with permission from the Minot Police Department, Minot, North Dakota.

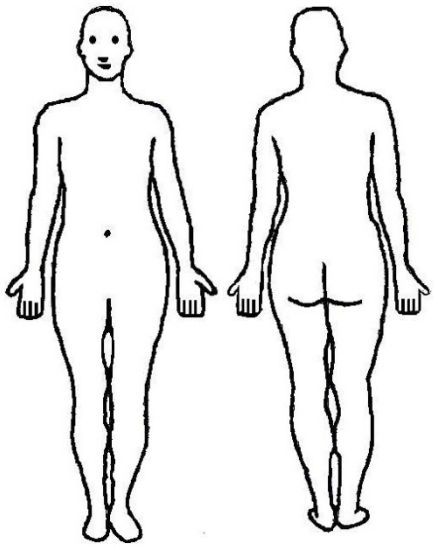
Injury Diagram Worksheet

Report Number:_____ Time:_____ Date:_____Officer(s):

Medical Treatment:	**Paramedics at Scene:**	**Hospital where treated:**
___none	_____Yes	
___paramedics	_____ No	
___hospital		
___self-administered	Names_____	**Attending Physicians:**
___will seek own doctor	_____	
___refused medical aid	_____	

Mark the location(s) of any injuries on the diagram(s).
(Describe visible injuries, I.e., cut, bruise.)

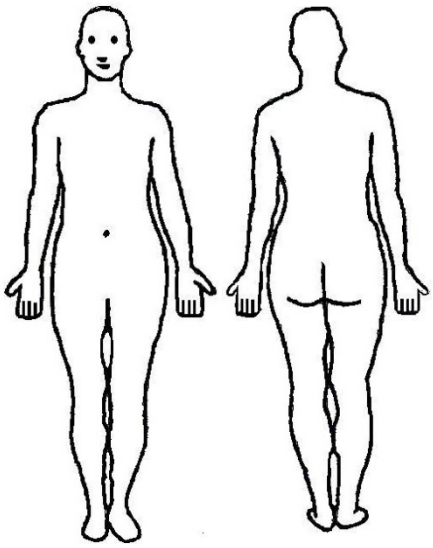
____ Suspect ____ Victim



Height ____ Weight _____

Mark the location(s) of any injuries on the diagram(s).
(Describe visible injuries, I.e., cut, bruise.)

____ Suspect ____ Victim



Height ____ Weight _____

Photos Taken of crime scene: ___Yes___No Number Taken:_____Taken by:_____
Photo's Taken of Victim's injuries: ___Yes___No Number Taken:_____Taken by: _____
Photo's Taken of Suspect's injuries:___Yes___No Number Taken:_____Taken by: _____

To assist law enforcement, I, _____, hereby authorize the release to the _____ Police Department or _____ County Sheriff's Department all of my medical records related to any physical harm or trauma that I have had in the last two years. I also authorize the medical providers' employees to discuss the medical records or treatment with law enforcement personnel until such time as this release has been terminated in writing.

Date: _____ Signature: _____

Witness: _____ Print Name: _____

Narrative:

_____

_____

_____

_____

_____

This form adapted with permission from the Minot Police Department, Minot, North Dakota.

Insert Department
Domestic Violence Investigation

Complaint # _____

Suspect: Victim:

Source / Origin

- ☐ 911 Call from residence
- ☐ 911 Call from outside residence
- ☐ Non 911 call
- ☐ On view
- ☐ Other: _____

Relationship between Victim and Suspect

- ☐ Spouse
- ☐ Ex-Spouse
- ☐ Cohabitants
- ☐ Parent / Child
- ☐ Child in Common
- ☐ Dating
- ☐ Prior Dating
- ☐ Siblings
- ☐ Other: _____

NOTE: List all witnesses (children present) on IR form.

Victim Demeanor

- ☐ Angry
- ☐ Crying
- ☐ Hysterical
- ☐ Afraid / Fearful
- ☐ Irrational
- ☐ Nervous
- ☐ Apologetic
- ☐ Calm
- ☐ Threatening
- ☐ Other:

Suspect Demeanor

- ☐ Angry
- ☐ Crying
- ☐ Hysterical
- ☐ Afraid / Fearful
- ☐ Irrational
- ☐ Nervous
- ☐ Apologetic
- ☐ Calm
- ☐ Threatening
- ☐ Other:

Child Information

- ☐ Not Present
- ☐ Physically checked
- ☐ Angry
- ☐ Crying
- ☐ Hysterical
- ☐ Afraid/fearful
- ☐ Irrational
- ☐ Nervous
- ☐ Apologetic
- ☐ Calm
- ☐ Threatening
- ☐ Victim
- ☐ Sleeping
- ☐ Other: _____

Evidence Information

Evidence Collected: ☐ At scene ☐ Hospital ☐ Other: _____

Photographs: ☐ Digital ☐ Polaroid ☐ 35mm ☐ Video

☐ **Follow-up photos requested / recommended**

Statements: ☐ Victim ☐ Suspect ☐ Witness

☐ To be obtained: ☐ V ☐ S ☐ W

Referrals Made (As required by State Law)

NDCC 12.1-34-02

- ☐ CVIC
- ☐ NHS
- ☐ Private Atty.
- ☐ Personal Physician
- ☐ 960 Form
- ☐ Other: _____

Note: Domestic Violence Victims are not to be "referred" to the States Attorney's Office.
Officer must complete affidavit or request for review.

Lethality Assessment

- ☐ History of Domestic Violence
- ☐ Suspect used a weapon
- ☐ Suspect has access to a weapon
- ☐ Suspect threatened to use a weapon
- ☐ Suspect violent towards others
- ☐ Suspect stalks / threatens victim
- ☐ Incident occurred during separation
- ☐ Protection Order / No Contact Order violated
- ☐ Suspect using alcohol / drugs at incident
- ☐ Suspect abuses alcohol / drugs
- ☐ Suspect threatened / attempted suicide
- ☐ Victim threatened / attempted suicide
- ☐ Violence towards pregnant partner
- ☐ Suspect stated "If I can't have you, no one will."
- ☐ Suspect has injured / killed pets
- ☐ Violent episodes more frequent
- ☐ Violence is getting more severe
- ☐ Suspect threatens to kill
- ☐ Forced Sexual Activity
- ☐ Victim responses are all "NO"
- ☐ Other _____

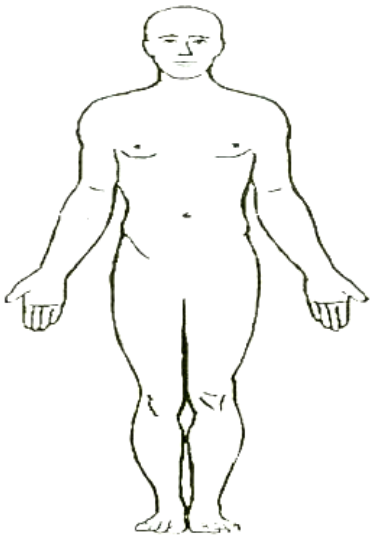
This form adapted with permission from the Grand Forks County Sheriff's Department, Grand Forks, North Dakota.

Please send all Medical Records to:
County Sheriff's Office (Insert agency and address)
Phone # 701-

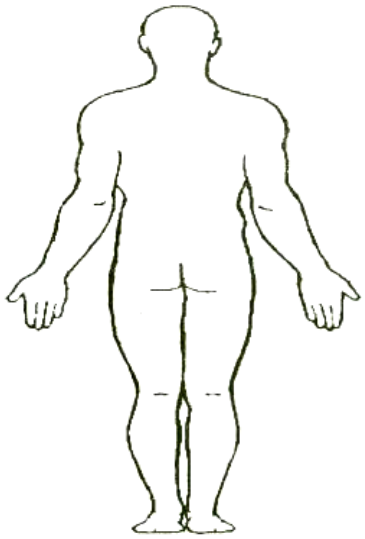
Medical Treatment	**Strangulation Symptoms** (This section for strangulation injuries **only**)	
☐ First Aid	☐ Neck pain	☐ Rope or cord burns / Marks
☐ Paramedics on scene	☐ Scratch marks	☐ Raspy voice
☐ At Hospital	☐ Tiny red spots	☐ Nausea / Vomiting
☐ Refused	☐ Difficulty swallowing	☐ Fainting / Unconsciousness
☐ Self treated	☐ Loss of body functions	☐ Light headed
☐ None	☐ Ears ringing	☐ Miscarriage
☐ Other: _____	☐ Neck swelling	☐ Personality changes
	☐ Red linear marks / Bruising	☐ Other: _____

Body Diagram

(Draw a line from injury description to appropriate area on diagram)



Pain
Laceration
Scrape
Swelling
Bruise
Reddened area
Bleeding
Puncture
Firearm wound
Bite mark
Other:



Officer Signature:

Medical Release

(Please have the victim date and sign this portion if medical records are needed to further investigation.)

Patient name _____

Street Address _____ City _____ State, Zip _____

Birth Date _____ Soc. Sec. No. _____ Home Phone _____

I authorize _____(Insert Medical Facility Name) to release all information they have pertaining to me, including, but not limited to Mental Health Records_____**(initial)** HIV or Aids Records_____ **(initial)** and Chemical Dependency Records_____**(initial)** over the past three years or **limited to the date(s) of** _____ to the Grand Forks Sheriff's Department. Please **do / do not (circle)** include X-ray films. The purpose of this is for investigation of a legal matter, and can be in **oral form / written form / both (circle).** The release is effective 12 months from this date. A photocopy is as valid as the original. I understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it (e.g., probation, parole, etc.) and that in any event this consent expires automatically as described above. I understand that information disclosed under this authorization may be disclosed again by the person or organization to which it is sent. I also understand the Chemical Dependency client / patient's records are protected by Federal Law (42CFR Part 2) and cannot be disclosed without this written consent unless otherwise provided by federal regulation. I understand that information disclosed under this authorization may be disclosed again by the person or organization to which it is sent (ie States Attorney). The privacy of this information may not be protected under the federal privacy regulations.

Signature of Patient or Guardian: Date: Witness:

This form adapted with permission from the Grand Forks County Sheriff's Department, Grand Forks, North Dakota.

Domestic Violence Model Policy

Documentation for Strangulation for Law Enforcement

Use when strangulation is reported

Signs: *observations made by others (law enforcement, medical personnel)*

Face/Head

- ☐ Red or flushed
- ☐ Bruising
- ☐ Scratches
- ☐ Bleeding from ear canal
- ☐ Cuts/abrasions in mouth
- ☐ Bloody nose
- ☐ Broken nose
- ☐ Swollen tongue or lips

Petechiae *(pinpoint red spots)*

- ☐ on cheeks/chin/forehead
- ☐ Bloody/red eyeball (s)
- ☐ under the tongue
- ☐ in the ear canal or external ear
- ☐ around the nose
- ☐ to **R** and/or **L** eyelid
- ☐ to **R** and/or **L** eyeball
- ☐ on the scalp

Head

- ☐ Hair pulled
- ☐ Bump(s)
- ☐ Concussion
- ☐ Skull fracture

Under Chin

- ☐ Redness
- ☐ Scratches
- ☐ Bruises
- ☐ Abrasions

Neck

- ☐ Redness
- ☐ Scratches
- ☐ Bruises
- ☐ Abrasions
- ☐ Swelling
- ☐ Ligature marks
- ☐ Fingernail impressions

Shoulders

- ☐ Redness
- ☐ Scratches
- ☐ Bruises
- ☐ Abrasions

Chest

- ☐ Redness
- ☐ Scratches
- ☐ Bruises
- ☐ Abrasions

Symptoms: *conditions noted by the victim*

Breathing Changes

- ☐ Difficulty breathing
- ☐ Unable to breathe
- ☐ Hyperventilation

Swallowing Changes

- ☐ Trouble swallowing
- ☐ Painful to swallow
- ☐ Nausea/Vomiting
- ☐ Neck Pain

Voice Changes

- ☐ Raspy voice
- ☐ Hoarse voice
- ☐ Unable to speak
- ☐ Coughing

Other

- ☐ Dizzy
- ☐ Headache
- ☐ Fainting
- ☐ Amnesia

Method/Manner of Strangulation:

How did strangulation occur:

- ☐ One hand—R or L
- ☐ Two hands
- ☐ Forearm—R or L
- ☐ Knee or foot
- ☐ Ligature—how?_____
- ☐ Multiple attempts
- ☐ Multiple methods
- ☐ How long?_____
- ☐ Where did it occur?_____

Details of strangulation:

- ☐ Is the suspect R or L handed
- ☐ Was the victim shaken/straddled/held against wall
- ☐ Did victim's head hit against floor/wall/ground
- ☐ How hard was the suspect's grip?_____
- ☐ Victim also smothered
- ☐ Was the victim wearing jewelry Y/N
- ☐ Clothing torn Y/N

Victim:

- ☐ Urination or defecation
- ☐ How/Why did strangulation stop?
  _____
- ☐ How long did strangulation last?
  _____

Suspect:

- ☐ Facial expressions?_____
- ☐ Demeanor?_____
- ☐ What did the suspect say?
  _____

STRANGULATION

THINGS TO LOOK FOR:

- Bumps on the head
- Scratch marks
- Bruising (check behind ears)
- Chin abrasions
- Petechiae (small red spots)
- Red eyes (check under eye lids)
- Neck swelling
- Marks/injuries from jewelry

OTHER SIGNS:

Fainting and nausea
If victim has lost bodily function, find garment and take as evidence.
Ask where strangulation occurred (bedroom, kitchen, etc.): photo area.

Inform victim that serious injuries can develop over the next few hours and/or days.

Encourage Medical Attention

This project was supported by Grant No. 2004-WE-AX-0051 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Strangulation Interview Questions

1. Any current pain or discomfort? Where and to what extent?
2. Have you noticed any change in your voice or speech?
3. Are you having difficulty speaking or breathing?
4. Did the attacker use one or both hands?
5. Was the attack from the front or from behind?
6. Did you feel faint, dizzy or pass-out?
7. Did you lose control of your bladder or bowels or did you vomit?
8. Did you fear for your life?
9. Have there been any pervious attempts at strangulation?
10. Do you have any pre-existing injuries?
11. Are you pregnant?
12. Do you have any injuries hidden by clothing?
13. What caused the assailant to stop the assault?
14. What was happening and/or what did the assailant say prior to, during and after the incident?

Encourage Medical Attention

This card was adapted with permission from the Community Violence Intervention Center (CVIC) and the Grand Forks County Sheriff's Department, Grand Forks, North Dakota.

This form adapted with permission from the Community Violence Intervention Center (CVIC) and the Grand Forks County Sheriff's Department, Grand Forks, North Dakota.

Lethality Assessment Sheet

All battering is dangerous: one push or shove could result in death. Battering typically increases in frequency and severity over time. Certain behaviors, actions and words by a batterer, however, can indicate an increase in lethality for a victim. Law enforcement should be able to recognize these signs – and question victims, batterers, witnesses, and/or children – about them to better understand, and possibility predict, the lethality of a domestic violence situation.

The following indicators may show signs of increased lethality risk to the victim:

Degree of ownership the batterer expresses regarding the victim;
Threats of homicide;
Threats of suicide;
Possession of or access to weapons;
Rage;
History of past abuse;
Fantasy of homicide or suicide;
Obsessiveness about victim (or the victim's family/friends);
Centrality of victim to batterer;
History of stalking;
History of holding victim captive;
History of pet abuse;
Victim making plans to leave or has already left;
Drug and/or alcohol usage;
Access to the victim and her family;
Number of times police have been called to the house;
Level of risk-taking by the batterer;
Acute mental health problems;
History of depression;
History of anti-social behavior; and
Violence in the family of origin.

Access to the Victim:
Simply put, batterer's can not kill their victim's if they do not have a way to gain access to them. Unless the batterer is incarcerated there is always the chance that the batterer will find and kill the victim—no protective order can prevent that. However, the likelihood that a homicide will occur decreases as the ability to gain access to the victim decreases.

Frequency and Severity of Abuse:
Incidences of violence in intimate partner relationships increase in frequency and severity over time. When assessing lethality, this progression should be examined very carefully. A batterer who is showing clear signs of assaulting a victim on a regular (daily or weekly) basis, causing significant physical injuries, has held the victim partner captive, or is using weapons or objects to assault the victim is demonstrating an increased risk of lethality.

History of Stalking Behaviors by the Batterer:
A batterer demonstrates stalking behaviors by: following the victim, calling repeatedly at work, waiting outside of work or the place the victim is living, calling, writing the victim letters, and sending the victim "presents" repeatedly after the victim has left or attempted to leave. This kind of behavior demonstrates the batterer's refusal to recognize or accept the victim's separation from them. A batterer who engages in such stalking behaviors is at increased risk of homicide because they believe that the victim has no right to have a life of their own, free from the batterer's control. The batterer will demonstrate this belief, and sometimes expressly states it, that "If I can't be with him/her, if I can't have him/her, then no one will."

Rage:
A batterer who exhibits rage—not simply anger and disapproval—surrounding the victim's behavior (i.e. that the victim dared to leave or behave in a way inconsistent with the batterer's wishes) has an increased chance of being lethally violent toward the victim.

"Ownership" of the battered partner:
The batterer who says "Death before divorce!" or "You belong to me and will never belong to another!" or "If I can't have you nobody will!" may be stating a fundamental belief that the victim has no right to life separate from them. A batterer who believes he/she is absolutely entitled to the victim's services, obedience and loyalty, no matter what, may be life-endangering.

Centrality of the partner:
A batterer who idolizes the victim, or who depends heavily on the victim to organize and sustain his/her life, or who isolates him/herself from all other community, may retaliate against a partner who decides to end the relationship. The batterer rationalizes that the victim's "betrayal" justifies a lethal "retaliation".

Repeated intervention by law enforcement:
Partner or spousal homicide almost always occurs in a context of historical violence. Prior intervention by the police indicates an elevated risk of life-threatening conduct.

Escalation of risk taking:
A less obvious indicator of increasing danger may be the sharp escalation of personal risk undertaken by a batterer. The chances of a lethal assault increases significantly when a batterer begins to act without regard to the legal or social consequences that previously constrained his/her violence.

Threats of homicide or suicide:
The batterer who has threatened to kill his/her victim, himself/herself, the children or relatives must be considered extremely dangerous.

Fantasies of homicide or suicide:
The more the batterer has developed a fantasy about who, how, when and/or where to kill, the more dangerous he/she may be. The batterer who has previously acted out part of a homicide or suicide fantasy may be invested in killing as a "solution to his/her problems".

Weapons:
When a batterer possesses, collects, or is obsessed with weapons and/or has used them or has threatened to use them in past assaults – either on the victim, the children or himself/herself - there is an increased potential for lethal assault. If a batterer has a history of arson or the threat of arson, fire should be considered a weapon.

Timing:
A batterer may choose to kill when he/she believes that he/she is about to lose his/her victim, when the batterer concludes that the victim is permanently leaving, or if the batterer cannot envision life without the victim. Victims are most likely to be murdered when attempting to report abuse or to leave an abusive relationship. That is not to say that all batterers kill when they conclude that the victim is separating from them. Some kill long before they have any idea that the victim may be thinking about leaving. Therefore, it is not safe to assume that because the victim hasn't made plans to leave, that the batterer will not be dangerous.

History of antisocial behavior:
A batterer who has demonstrated aggressive behavior to the general public such as bar fights, gang related violence, job related violence, vandalism, repeated unlawful behavior is likely to be more dangerous.

Holding victim captive:
A batterer who holds the victim captive is at high risk of inflicting homicide. Between 75% and 90% of all incidences where the victim is held captive in the United States are related to domestic violence situations.

Drugs and Alcohol:
Batterers with a history of problems with drugs and/or alcohol show a higher risk. In addition, regardless of their drug and/or alcohol history, intoxication at the time of assault shows significant risk to partners.

Violence in his family of origin:
The more severe the violence either experienced personally, or observed, in the family of origin, the greater the risk.

Cruelty to animals:
Many victims have testified about their experience with batterers who neglect or abuse pets, farm animals or wild animals, or force them or their children to do so. Consider this a risk factor.

Victim Notification Information

Name of Inmate: _____

Pending Charge(s): _____

Names of parties that should be notified of inmate's release:

Victim(s) name/phone number (home, work, and cell #s):

_____
_____
_____
_____
_____
_____
_____
_____

Alternative Point of Contact: name/phone number:

_____
_____
_____

Is the victim able to access the SAVIN system for automated notification? ___ yes ___no

If unable to contact / reach the victim please notify:

Victim/Witness Coordinator _____at _____ or
Victim Advocate _____ at_____.

THANK YOU!

Comments:_____
_____
_____
_____
_____
_____
_____
_____

This form was adapted from a template provided by the Burleigh County Victim/Witness Program

Evidence Collection Form

Agency_____Case Number: _____

Evidence:

- ☐ Photographed the crime scene
- ☐ Took “full body” photograph of suspect
- ☐ Photographed the victim’s injuries
- ☐ Photographed the suspect’s injuries
- ☐ Impounded and took into evidence all weapons used (i.e. knifes, guns, phones, electrical cords, etc.)
- ☐ Impounded weapons for safekeeping
- ☐ Took into evidence any objects thrown or used in the incident
- ☐ Attached related reports, photos, and evidence tags

Victim Investigative Checklist:

- ☐ Described the victim’s location upon arrival
- ☐ Administerrd first aid to the victim
- ☐ Noted time dispatched, arrived and when victim spoke
- ☐ Recorded any spontaneous statements made by the victim
- ☐ Described the victim’s emotional condition
- ☐ Described the victim's physical condition, including height and weight
- ☐ Documented the victim's injuries in detail (size, location, and coloration) and if medical treatment was sought
- ☐ Documented evidence of substance/chemical abuse by victim
- ☐ Noted victim's relationship to suspect
- ☐ Recorded history of abuse
- ☐ Noted any restraining/court orders
- ☐ Gave victim notice of rights and services information card
- ☐ Recorded any temporary address/phone of victim

Suspect Investigative Checklist:

- ☐ Described the suspect’s location upon arrival
- ☐ Administered first aid to the suspect
- ☐ Recorded any spontaneous statements made by the suspect
- ☐ Described the suspect’s emotional condition
- ☐ Described the victim's physical condition, including height and weight
- ☐ Documented evidence of substance/chemical abuse by suspect
- ☐ Following Miranda, asked suspect if he/she wanted to make a statement, knew of the restraining order (if applicable) and/or understood the order

Witness Investigative Checklist:

- ☐ Interviewed the reporting party
- ☐ Identified all witnesses and interviewed them separately
- ☐ Recorded all witness addresses and phone numbers
- ☐ Recorded names and addresses of emergency personnel who assisted at the scene
- ☐ Identified treating physician and hospital
- ☐ Recorded the “911” number and incident number

Children Investigative Checklist:

- ☐ Interviewed each child alone
- ☐ Listed names, ages, school and teacher for each child present
- ☐ Note if children live in the home, whether or not they were present
- ☐ Recorded any spontaneous statements made by the children
- ☐ Described each child’s emotional state
- ☐ Described child’s injuries, if any.
- ☐ Photographed the children

Report Officer: _____Date:_____

Approved by:_____ Date:_____

Working Agreement with Advocacy Program

The following agencies wish to assist one another in their individual efforts to break the continuing cycle of domestic violence on their community. Liaison appointments, collaborative courses of action, and approved methods of information gathering and distribution are important routes to utilize in the ongoing effort to combat this crime. This agreement strives to meet the following objectives:

- Ensure victim safety and make sure any intervention occurs in a way that retains the dignity of the victim
- Focus efforts on stopping the batterer's use of violence – not striving to fix or end the relationship.
- Develop and implement polices, procedures, and protocols that act as a general deterrent to battering in the community.
- Establish cooperative relationships between agencies that jointly seek to end domestic violence in the community.

I. The Law Enforcement Agency Agrees to:

A. Contact the advocacy program for all arrests related to domestic violence crimes, including incidents where officers determine there is probably cause to arrest but the alleged perpetrator cannot be immediately located. Law enforcement shall specify and communicate to the advocacy program who the responsible party is to make transfer this information i.e. dispatch, arresting officer, jailer, etc.)

B. Share arrest and non-arrest report on all domestic violence related incidents. Domestic violence incidents would be those wherein the parties involved have a relationship as defined in N.D.C.C. § 14-07.1-01 (4). These calls include, but are not limited to, assault, disorderly conduct, and civil protection order violations. Law enforcement shall specify and communicate to the advocacy program the specific procedure that will be utilized to transfer this information i.e. reports e-mailed / faxed by shift supervisor, etc.)

C. Keep statistics on all domestic violence related incidents, both arrests and non-arrests. Law enforcement is encouraged to maintain computerized data when possible.

D. Review, revise, and update law enforcement policy on domestic violence annually with the assistance and input from the advocacy program.

E. Provide and/or participate in annual training on domestic violence, as needed.

F. Identify a liaison from the law enforcement department to work with the advocacy program for purposes of implementing this working agreement and to discuss any deviations from policy and changes in protocol.

G. Participate in meetings with the advocacy program and other criminal justice agency representatives as part of a coordinated community response team.

II. The Advocacy Program agrees to:

A. Maintain a 24 hour telephone service that will provide information to callers regarding services and options available to victims of domestic assault.

B. Make contact with the victim in order to:

1. Provide information concerning the court process and available services;
2. Elicit the victim's input into the court process;
3. Ascertain the victim's wishes regarding conditions of release; and

4. Offer accompaniment throughout the court process.

C. Provide support and assistance for victims throughout the civil and/or criminal court process by accompanying them to court, advocating on their behalf when appropriate, and assisting with transportation and child care when possible.

D. Facilitate any exchange of information relevant to the case as desired and requested by the victim.

E. Provide training to local law enforcement and other criminal justice agencies on the issue of domestic violence.

F. Meet with individual agency liaisons to discuss deviations from policy or changes in protocol.

G. Meet with representatives of all involved agencies to discuss the effectiveness of the police and practices of the coordinated community response.

H. Securely maintain all law enforcement reports to insure confidentiality of involved parties. Advocacy program staff will access law enforcement reports for review purposes and to potentially assist a victim with the criminal and/or civil court process. Only clients of the advocacy program may receive copies of the reports. Any other party will be directed to request a copy from the law enforcement agency.

I. Provide quarterly statistical reports to intervention agencies regarding the cases in which they are involved.

J. Identify a liaison from the advocacy program to work with law enforcement for purposes of implementing this working agreement.

This agreement is entered into for the purpose of standardizing the collaborative domestic violence incident response between law enforcement and the advocacy program. It will be reviewed annually to assess its effectiveness and to make revisions where needed.

This agreement is entered into on _____ and expires a year from the date listed above.

_____

Law Enforcement Date

_____

Advocacy Program Date

This form was adapted from a template provided by the Moorhead Police Department, Moorhead, Minnesota.

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS AND INFORMATION

I hereby authorize and request the release of any and all medical information and copies of any and all medical records to the _____ Police Department or the _____ Sheriff's Department related to any physical harm or trauma I have had over the last two years. I also authorize the medical provider's employees to discuss the medical records or treatment with law enforcement until such time as this release has been terminated in writing.

Patient Name:_____

Date of Birth:_____

Said records and information may be released to any representative of the **[Insert your agency's name**] Department.

_____

Signature of Patient or Legal Guardian Date

_____

Witness Date

(A copy of this release is the same as the original)

This form was adapted with permission from the Minot Police Department, Minot, North Dakota.

Collaborative Agreement with Child Protection Services

The following agencies wish to assist one another in their individual efforts to break the continuing cycle of domestic violence in their community. Liaison appointments, collaborative courses of action, and approved methods of information gathering and distribution are important routes to utilize in the ongoing effort to combat this crime. This agreement strives to meet the following objectives:

- Ensure victim safety
- Ensure intervention occurs in a way that retains the dignity of the victim
- Ensure law enforcement and child protection work cooperatively with one another

I. The Law Enforcement Agency agrees to:

A. Submit copies of all arrest and non-arrest domestic violence police reports involving children who are:

1. Present – this includes incidents in which the child may have overheard the incident and not actually witnessed it
2. Witnesses – this includes incidents in which the children may only have observed a portion of the incident

B. Reports shall be submitted to child protection in a timely fashion agreed upon by both agencies. This may include one or more of the following:

1. Hand delivering copies
2. Faxing copies
3. E-mailing copies

C. Identify a liaison from the law enforcement department to work with child protection for the purpose of implementing this working agreement and to discuss any deviations and/or changes in this agreed upon procedure.

D. Participate in meetings with child protection pertaining to issues of domestic violence and children.

II. Child Protection agrees to:

A. Accept copies of all arrest and non-arrest domestic violence police reports **in lieu of a 960 form or attached to a partially completed 960 form** involving children who are:

1. Present – this includes incidents in which the child may have overheard the incident and not actually witnessed it

2. Witnesses – this includes incidents in which the children may only have observed a portion of the incident

B. Accept reports from law enforcement in a fashion agreed upon by both agencies. This may include one or more of the following:

1. Hand delivering copies
2. Faxing copies
3. E-mailing copies

C. Identify a liaison from the child protection agency to work with law enforcement for purposes in implementing this working agreement and to discuss any deviations and/or changes to these agreed upon procedures.

D. Participate in meetings with law enforcement pertaining to issues of domestic violence and children.

This agreement is entered into for the purpose of standardizing the collaborative domestic violence incident response between law enforcement and child protection. It will be reviewed annually to assess its effectiveness and to make revisions where needed.

This agreement is entered into on _____ and expires a year from the date listed above.

_____

Law Enforcement Date

_____

Advocacy Program Date

This form was adapted from a template provided by the Moorhead Police Department, Moorhead, Minnesota.

Summary of Federal, State, and Tribal Jurisdictions

The following chart sets forth a summary of the relevant jurisdictional parameters for most crimes occurring in Indian Country when the jurisdictional basis is simply that the crime occurred in Indian Country. It is apparent from the jurisdictional maze that, for these types of crimes, it will not always be clear at the outset of an investigation where jurisdiction ultimately lies for prosecution. Until the status of the defendant, victim, and land is definite, it cannot be determined whether the offense will be prosecuted in tribal, state, or federal court.

Offender	Victim	Jurisdiction
Indian	Indian	Federal Jurisdiction for felonies listed in Major Crimes Act (18 U.S.C. § 1153) Tribal Jurisdiction for misdemeanors No jurisdiction for felonies not listed in 18 U.S.C. § 1153
Indian	Non-Indian	Federal Jurisdiction for felonies listed in Major Crimes Act (18 U.S.C. § 1153) Federal Jurisdiction for other felonies and misdemeanors not listed in § 1153 (including assimilative crimes) unless tribe has already punished defendant. Tribal Jurisdiction for misdemeanors
Non-Indian	Indian	Federal Jurisdiction for both felonies and misdemeanors, including assimilative crimes.
Non-Indian	Non-Indian	State Jurisdiction for both felonies and misdemeanors.
Indian	Victimless Crime	Primarily Tribal Jurisdiction. Federal Jurisdiction in some cases.
Non-Indian	Victimless Crime	Primarily State Jurisdiction Federal Jurisdiction in some cases.

This summary was developed by Christopher B. Chaney, AUSA from the District of Utah, and provided by Rick Volk, AUSA from the District of North Dakota.

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.

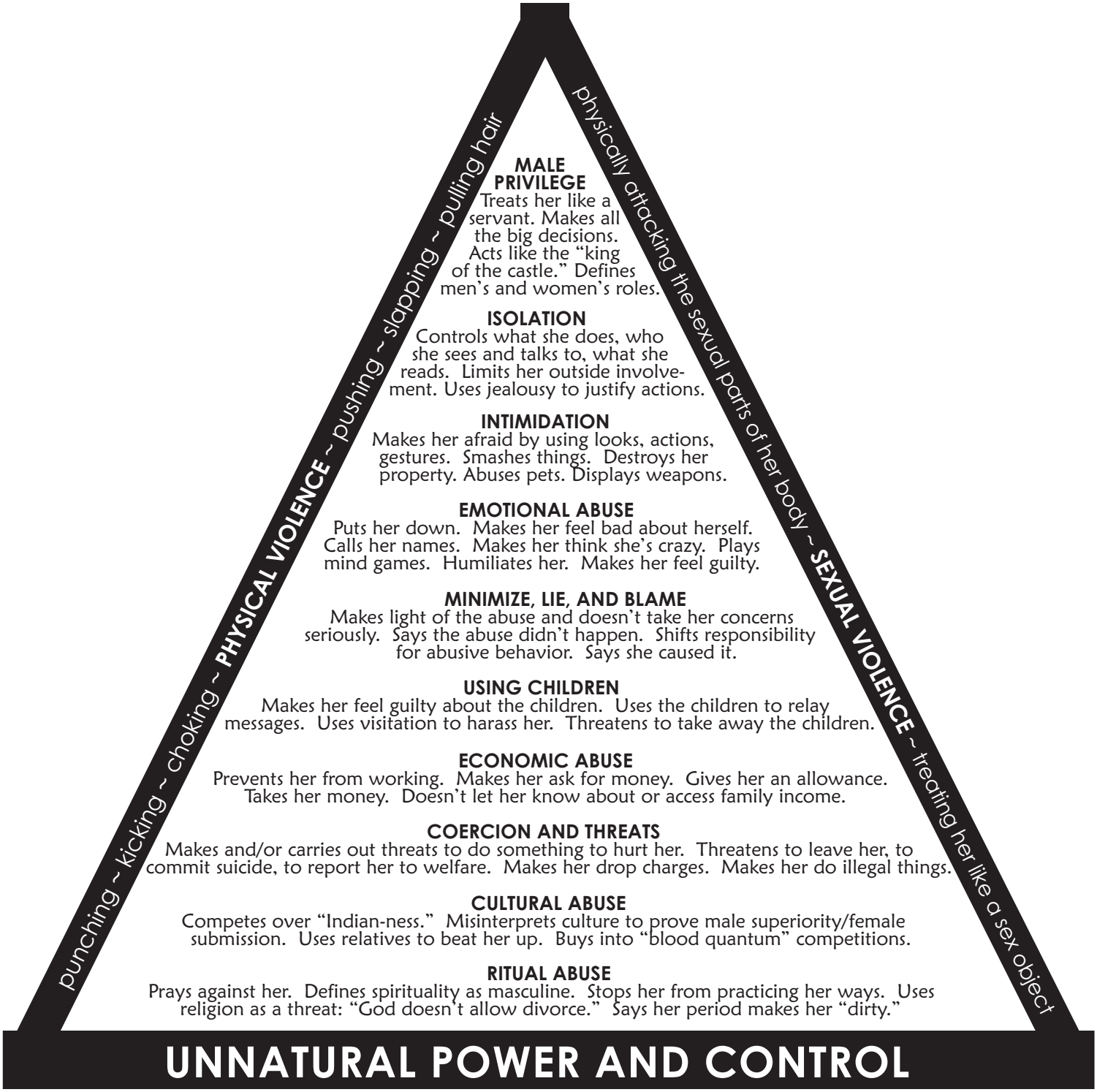
The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types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

Developed by:
Domestic Abuse Intervention Project
202 East Superior Street
Duluth, MN 55802
218.722.4134

Produced and distributed by:

NATIONAL CENTER
on Domestic and Sexual Violence
training · consulting · advocacy
4612 Shoal Creek Blvd. · Austin, Texas 78756
512.407.9020 (phone and fax) · www.ncdsv.org

Violence Against Native Women: Battering



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Developed by:
Sacred Circle - National Resource Center to End Violence Against Native Women

What you can do

- **Become informed.** Learn more about domestic violence by contacting the program in your community.
- **Lend a sympathetic ear.** Offer support and be willing to listen.
- **Guide them to community services.**
- **Help them develop a safety plan.** Encourage the victim to develop a plan to protect themself and their children if their partner becomes abusive again.
- **Know when to intervene.** Domestic violence is a crime and if you know that it is occurring, call the police immediately.

Resources for victims

- One-on-one support and listening.
- Shelter or safe housing.
- Emergency transportation.
- Assistance with finding permanent housing.
- Assistance with obtaining a protection order and other types of legal advocacy.
- 24 hour crisis hotline.
- Assistance with emergency and basic living needs.
- Battered women's support groups.
- Child advocacy services.

** To access these services, contact your local program as listed on the back of this brochure.*

North Dakota Council on Abused Women's Services/
Coalition Against Sexual Assault in North Dakota
525 North 4th Street
Bismarck, ND 58501
Toll Free: 1-888-255-6240
Phone: 701-255-6240
Fax: 701-255-1904
TYY: 711 or 1-800-366-6888
Website: www.ndcaws.org

Domestic Violence Service Providers:

Beulah/Mercer County: Women's Action & Resource Center
873-2274; *Crisis Line: 873-2274*

Bismarck: Abused Adult Resource Center
222-8370; *Crisis Line: 1-866-341-7009*

Bottineau: Family Crisis Center
228-2028; *Crisis Line: 1-800-398-1098*; 1-888-755-7595

Devils Lake: Safe Alternatives for Abused Families
Crisis Line: 662-7378; 1-888-662-7378

Dickinson: Domestic Violence and Rape Crisis Center
Crisis Line: 225-4506; 1-888-225-4506

Ellendale: Kedish House
349-4729; *Crisis Line: 349-5118*; 1-877-349-4729

Fargo: Rape and Abuse Crisis Center
Crisis Line: 293-7273; 1-800-344-7273

Ft Berthold: Coalition Against Domestic Violence
627-4171; *Crisis Line: 627-3617*

Grafton: Domestic Violence & Abuse Center Inc.
352-4242; *Crisis Line: 352-3059*

Grand Forks: Community Violence Intervention Center
746-0405; *Crisis line: 746-8900*; 1-866-746-8900

Jamestown: Safe Shelter
Crisis Line: 251-2300; 1-888-353-7233

McLean County: McLean Family Resource Center
Crisis Line: 462-8643; 1-800-651-8643

Minot: Domestic Violence Crisis Center
852-2258; *Crisis Line: 857-2200*; 1-800-398-1098

Ransom County: Abuse Resource Network
Crisis Line: 683-5061

Spirit Lake: (Ft. Totten) Spirit Lake Victim Assistance
Crisis Line: 766-1816; 1-866-723-3032

Stanley: Domestic Violence Program, NW, ND
Crisis Line: 628-3233; 1-800-273-8232

Turtle Mt. Reservation: Hearts of Hope
Crisis Line: 477-0002

Trenton: Circle of Hope
Crisis Line: 774-1026

Valley City: Abused Persons Outreach Center
845-0078, *Crisis Line: 845-0072;* 1-866-845-0072

Wahpeton: Three Rivers Crisis Center
Crisis Line: 642-2115; 1-800-627-3659

Williston: Family Crisis Shelter
572-0757; *Crisis Line: 572-9111*

8/11

DOMESTIC VIOLENCE: What you should know

30+ Years of Advocacy for victims of violence

North Dakota Council on Abused Women's Services/
Coalition Against Sexual Assault in North Dakota

DOMESTIC VIOLENCE

Domestic violence is an ongoing pattern of behaviors and abusive tactics employed against an intimate partner or ex-partner to gain complete power and control over that person's life. Although every victim's individual experience has unique aspects, domestic violence can include:

Physical Abuse

- Pushing or shoving.
- Hitting, slapping, punching, or kicking.
- Pulling hair.
- Strangling or restraining by force.
- Using a weapon, i.e. gun, knife, blunt object.

Sexual Abuse

- Forcing or coercing unwanted or nonconsensual sexual activity (rape, oral sex, anal sex).
- Forced prostitution
- Repeated accusations of sexual activity with others, i.e. calling partner a "whore" or a "slut."

Emotional Abuse

- Intimidation– putting the victim in fear by using looks, actions, gestures, loud voice, destroying property.
- Isolation– controlling what the victim does, who the victim sees and talks to, where the victim goes.
- Economic abuse– trying to keep the victim from getting or keeping a job, making her ask or beg for money, taking money, controlling checkbook and bank accounts.
- Threats– threatening to hurt the victim or the children, to take the children, and/ or to commit suicide.
- Children– making the victim feel guilty about the children, using the children to relay abusive messages, using visitation as a way to further the abuse or harassment, labeling the victim as a "bad" or inadequate parent.

Feelings of Victims

- Fear– feeling overwhelmed for their own personal safety and the safety of the children.
- Confusion– believing their partner when they promise to change or stop the abuse and feeling confused over changes in the partner's day-to-day behavior.
- Shame and guilt– being told they deserve the abuse, and trying to change their behavior to stop the abuse.
- Minimization– abuser constantly "reducing" or even denying the abuse.
- Trapped, powerless– all the victim's energy being spent merely trying to survive or protect the children.

Impact on Children

- Terror– living in fear the abuse will happen again, causing hyper-vigilance and a feeling of being "on guard" all the time.
- Rage– feeling extreme anger toward the abusive parent as well as anger about not being protected.
- Divided loyalties– lying to teachers or other authority figures to protect their family, creating feelings of shame and isolation.
- Emotional withdrawal– having trouble forming friendships and other relationships due to low self-esteem and anxiety.

Overview of Domestic Violence

Domestic Violence is a system of power and control over an intimate partner. Domestic violence includes any and all forms of abuse: physical, sexual, and emotional. The motivation is always to control another person's thoughts and behavior.

Domestic Violence Against an Adult Can Include:

Physical Abuse

- Pushing or shoving
- Hitting or slapping
- Strangling or restraining by force
- Pulling hair
- Punching, kicking
- Twisting arms, tripping
- Using a weapon, i.e. gun, knife, blunt object, lighted cigarette

Sexual Abuse

- Forcing or coercing a sexual activity that is not wanted or consented to (rape, oral sex, anal sex)
- Forced prostitution
- Repeated accusations of sexual activity with others, i.e. calling partner whore or slut

Emotional Abuse

- Intimidation--putting the victim in fear by using looks, actions, gestures, loud voice, destroying property.
- Isolation--controlling what the victim does, who the victim sees and talks to, and where the victim goes.
- Putting the victim down, name calling, mind games.
- Economic abuse--trying to keep the victim from getting or keeping a job, making a partner ask or beg for money, taking money, controlling the checkbook and bank accounts.
- Threats--making threats to hurt the victim or the children, to take the children, and/or commit suicide.
- Using Children--making the victim feel guilty about the children, using the children to relay messages, using visitations as a way to further harass or abuse, labeling the victim as a bad or inadequate parent.

The Power and Control Wheel provides a visual to help explain the dynamics of a domestic violence situation. Compare that wheel to the Equality Wheel, which assists in defining a non-violent relationship.

Three to four million women are beaten in their homes by husbands or partners each year. Current statistics indicate that 95% of all cases involve male abusers and female victims. (U.S. Department of Justice) Women and children are not the only victims of violence, but statistics

indicate that more women than men are battered by their partners. Therefore we refer to the victim as "she" and the abuser as "he."

How do victims of domestic violence feel?

- Fear - Fears for personal safety and the safety of the children are often overwhelming.

- Confusion - The victim may believe her partner when he promises to change or to stop abusing her. The victim may feel confused over the change in the partner's behavior from day to day.

- Shame and Guilt - Victims are told that they deserve the abuse, and they try to change their behavior to stop the abuse. This makes victims feel progressively worse about themselves, because nothing they do stops the abuse. Victims may be ashamed about staying in the relationship. Each abusive incident progressively lowers a victim's self-esteem and initiative to leave the situation.

- Minimization of the Abuse - The abuser constantly tells the victim that the abuse is deserved, or even that it did not occur at all. Victims begin to think they may be exaggerating and may begin to view the abuse as "normal."

- Trapped, powerless - When all control is taken away, it takes all a victim's energy merely to survive and protect the children. Leaving is seen as an unattainable goal.

Why do battered women stay?

The above question, "Why do battered women stay?" more accurately reflects society's reality. Gender also plays a large role in the power imbalance that forces woman to stay in abusive relationships more often than men.

Asking why she stays is an important question to answer, but it is also important to examine society's need to ask it. We ask this question because we have a need to place blame somewhere. It is easier to blame the victim of a crime than to hold the perpetrator accountable, especially in the complicated context of domestic violence.

However, society must get past this stumbling block, and begin to view victims of domestic violence consistently with compassion, and that means acceptance of their life choices and a conscious refusal to pass judgment. We also need to be mindful of the statistics, and be aware that leaving does not mean safety. A battered woman stays because of:

- Fear for her safety and the safety of her children. 75% of domestic assaults occur at the point of separation or divorce. (U.S. Department of Justice) A woman is murdered in this county by a stalking ex-husband or boyfriend every two hours. (de Becker, Public Radio interview, July 9, 1997) Leaving is the most potentially deadly time.

- Fear that her children will be taken from her. Batterers threaten that they will take the children from the victim either legally or illegally if she dares to leave the relationship.

- No transportation --A rural battered women often cannot leave her home because of lack of transportation. She may not have access to a vehicle, or a driver's license. Even if she does have a vehicle, she may be reluctant to drive to appointments with service providers for fear the abuser will check mileage. In addition, many rural and remote residents live on gravel back roads, and road conditions are often poor. Maintenance and snow removal may be intermittent or completely lacking.

- Economic -- In rural areas, as in other areas, poverty is devastating. Poverty in rural areas is often harsher than professionals may realize because of the lack of available services and safety nets. Seasonal jobs mean unemployment during the off-season, with little chance of finding other employment. Rural areas have few, if any, job training programs.

- Nowhere to go in the short term - Rural battered women may not have access to a shelter, or the nearest one may be more than an hour away. Going to a shelter means uprooting children from school and extended family.

- No permanent housing -- For rural battered women, leaving a batterer means leaving the community because of a lack of permanent housing. Staying in the community often means living is sub-standard or unsafe housing.

- Security -- Many rural women have never lived anywhere else, and leaving the security of a family is a giant step into the unknown.

- Livelihood/Lifestyle -- Many battered women are business partners in the farming or ranching operation. Children are begging to return -- It is difficult to ignore the pleas of children to return to their homes, even when a battered women knows that the situation is unsafe.

- No childcare -- Rural areas face a severe shortage of childcare. Mothers who work outside the home often have to piece together childcare arrangements that includes friends and relatives, or they must transport their children to another community where childcare is available. Mothers are often worried about the emotional and physical well-being of their young children. This is one more obstacle that rural battered women face.

- Religious reasons -- Churches are the social fabric of small towns and rural communities. Many rural women are deeply religious, and deeply opposed to breaking up the family.

- Extended Family -- Family plays a huge role in the lives of rural and remote people. Family provides comfort and security, and sometimes is one of the only social outlets. Homes, businesses, and farms are often intertwined among extended family members. Preserving the relationship is vital to the emotional and financial health of each individual. Divorce wreaks havoc on this intricate structure. Battered women are often

pressured to stay in abusive relationships for the sake of the family.

- Generational Effects of Domestic Violence -- Isolation can be pronounced in rural communities, and the family is often a closed unit. If a battered woman grew up witnessing violence she may face additional barriers to leaving within her own family.

12.1-17-07.1. Stalking.

1. As used in this section:
   a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
   b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
   c. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment.

2. No person may intentionally stalk another person.

3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.

5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. a. A person who violates this section is guilty of a class C felony if:
   (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;
   (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
   (3) The person previously has been convicted of violating this section.
   b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

North Dakota
Model Law Enforcement
Domestic Violence Policy
North Dakota Century Codes

NDCC § 12.1-17 Assault – Threats – Coercion – Harassment

NDCC § 50.25.1 Child Abuse and Neglect

NDCC § 12.1-06 Criminal Attempt

NDCC § 12.1-31 Miscellaneous Offenses

NDCC § 43-17 Physicians and Surgeons

NDCC § 14-07.4 Uniform Interstate Enforcement of Protection Orders Act

NDCC § 12.1-16 Homicide

NDCC § 12.1-21 Damaging Property or Public Services

NDCC § 12.1-18 Kidnapping

NDCC § 12.1-17.1 Offenses Against Unborn Children

NDCC § 14.7.1 Domestic Violence

NDCC § 12.1-31.2 Disorderly Conduct Restraining Order

NDCC § 12.1-20 Sex Offenses

*Please visit the ND Legislative Branch:
http://www.legis.nd.gov/information/statutes/cent-code.html

CHAPTER 12.1-17

ASSAULTS -THREATS -COERCION -HARASSMENT

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:

   a. Willfully causes bodily injury to another human being; or

   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

2. The offense is:

   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.

   b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.

   c. A class B misdemeanor except as provided in subdivision a or b.

12.1-17-01.1. Assault. A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person:

1. Willfully causes substantial bodily injury to another human being; or

2. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

12.1-17-02. Aggravated assault. A person is guilty of a class C felony, except if the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ in which case the offense is a class B felony, if that person:

1. Willfully causes serious bodily injury to another human being;

2. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;

3. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or

4. Fires a firearm or hurls a destructive device at another human being.

12.1-17-03. Reckless endangerment. A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

12.1-17-04. Terrorizing. A person is guilty of a class C felony if, with intent to place another human being in fear for that human being's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person

1. Threatens to commit any crime of violence or act dangerous to human life; or

2. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

12.1-17-05. Menacing. A person is guilty of a class A misdemeanor if he knowingly places or attempts to place another human being in fear by menacing him with imminent serious bodily injury.

12.1-17-06. Criminal coercion.

1. A person is guilty of a class A misdemeanor if, with intent to compel another to engage in or refrain from conduct, he threatens to:

    a. Commit any crime;

    b. Accuse anyone of a crime;

    c. Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute; or

    d. Take or withhold official action as a public servant or cause a public servant to take or withhold official action.

2. It is an affirmative defense to a prosecution under this section that the actor believed, whether or not mistakenly:

    a. That the primary purpose of the threat was to cause the other to conduct himself in his own best interest; or

    b. That a purpose of the threat was to cause the other to desist from misbehavior, engage in behavior from which he could not lawfully abstain, make good a wrong done by him, or refrain from taking any action or responsibility for which he was disqualified.

12.1-17-07. Harassment.

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:

    a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;

    b. Makes a telephone call anonymously or in offensively coarse language;

    c. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or

    d. Communicates a falsehood in writing or by telephone and causes mental anguish.

2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.

3. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

4. A person who telephones a 911 emergency line with the intent to annoy or harass another person or who makes a false 911 report is guilty of a class A misdemeanor.

    a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 purpose.

    b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.

12.1-17-07.1. Stalking.

1. As used in this section:

    a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.

    b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.

    c. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment.

2. No person may intentionally stalk another person.

3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.

5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. a. A person who violates this section is guilty of a class C felony if:
    (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07 or a similar offense in another state, involving the victim of the stalking;

    (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or

    (3) The person previously has been convicted of violating this section.

b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

CHAPTER 50-25.1

CHILD ABUSE AND NEGLECT

50-25.1-03. Persons required and permitted to report - To whom reported.

1. Any physician, nurse, dentist, optometrist, dental hygienist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, child care worker, foster parent, police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.

2. Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department.

3. A person who has knowledge of or reasonable cause to suspect that a child is abused or neglected, based on images of sexual conduct by a child discovered on a workplace computer, shall report the circumstances to the department.

50-25.1-04. Method of reporting.

All persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made to the department or the department's designee. Oral reports must be followed by written reports within forty-eight hours if so requested by the department or the department's designee.
A requested written report must include information specifically sought by the department if the reporter possesses or has reasonable access to that information. Reports involving known or suspected institutional child abuse or neglect must be made and received in the same manner as all other reports made under this chapter.

CHAPTER 12.1-06

CRIMINAL ATTEMPT -FACILITATION -SOLICITATION -CONSPIRACY

12.1-06-01. Criminal attempt.

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

2. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 12.1-03-01 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

3. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a class AA felony is a class A felony and an attempt to commit a class A felony is a class B felony; and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a class B felony shall be a class C felony and an attempt to commit a class C felony shall be a class A misdemeanor.

12.1-06-02. Criminal facilitation.

1. A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statutes.

2. Except as otherwise provided, it is no defense to a prosecution under this section that the person whose conduct the defendant facilitated has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

3. Facilitation of a class A felony is a class C felony. Facilitation of a class B or class C felony is a class A misdemeanor.

12.1-06-03. Criminal solicitation.

1. A person is guilty of criminal solicitation if he commands, induces, entreats, or otherwise attempts to persuade another person to commit a particular felony, whether as principal or accomplice, with intent to promote or facilitate the commission of that felony, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.

2. It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be a victim of the offense, or the offense is so defined that his conduct would be inevitably incident to its commission, or he otherwise would not be guilty under the statute defining the offense or as an accomplice under section 12.1-03-01.

3. It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.

4. Criminal solicitation is an offense of the class next below that of the offense solicited.

12.1-06-04. Criminal conspiracy.

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in section 12.1-03-01.

6. Conspiracy is an offense of the same class as the crime which was the objective of the conspiracy.

12.1-06-05. General provisions.

1. The definition of an offense in sections 12.1-06-01 to 12.1-06-04 does not apply to another offense also defined in sections 12.1-06-01 to 12.1-06-04.

2. Whenever "attempt" or "conspiracy" is made an offense outside this chapter, it means attempt or conspiracy, as the case may be, as defined in this chapter.

3. a. Other than as provided in subsection 4, in a prosecution under section 12.1-06-01, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant avoided the commission of the crime attempted by abandoning any criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

   b. Other than as provided in subsection 4, in a prosecution under section 12.1-06-03 or 12.1-06-04, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy.

   c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.

CHAPTER 12.1-31

MISCELLANEOUS OFFENSES

12.1-31-01. Disorderly conduct.

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:

   a. Engages in fighting, or in violent, tumultuous, or threatening behavior;

   b. Makes unreasonable noise;

   c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;

   d. Obstructs vehicular or pedestrian traffic or the use of a public facility;

   e. Persistently follow a person in or about a public place or places;

   f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;

   g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose;

   h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person; or

   i. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

12.1-31-07. Endangering a vulnerable adult - Penalty.

1. In this chapter, unless the context otherwise requires:

   a. "Caregiver" means a person who is responsible for the care of a disabled adult or vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of a disabled adult or vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a disabled adult or vulnerable elderly adult who is the patient or client of the licensed health care provider.

   b. "Disabled adult" means a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

   c. "Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.

2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the disabled adult or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class B felony.

12.1-31-07.1. Exploitation of a vulnerable adult - Penalty.

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:

   a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or

   b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.

2. Exploitation of a disabled adult or vulnerable elderly adult is:

   a. A class A felony if the value of the exploited funds, assets, or property exceeds one hundred thousand dollars.

   b. A class B felony if the value of the exploited funds, assets, or property exceeds twenty thousand dollars but does not exceed one hundred thousand dollars.

   c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed twenty thousand dollars.

3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.

4. This section does not impose criminal liability on a person who has:

   a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or

   b. Made a good faith effort to assist in the management of the disabled adult's or vulnerable elderly adult's funds, assets, or property.

12.1-31-14. Surreptitious intrusion or interference with privacy.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:

   a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
   b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.

2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:

   a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
   b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.

CHAPTER 43-17

PHYSICIANS AND SURGEONS

43-17-41. Duty of physicians and others to report injury -Penalty.

1. Any physician, physician assistant, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma: agency in the county in which the care was rendered.

    a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or

    b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement

2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.

3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.

4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.

5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.

6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

CHAPTER 14-07.4

UNIFORM INTERSTATE ENFORCEMENT OF PROTECTION ORDERS ACT

14-07.4-01. Definitions. In this chapter:

1. "Foreign protection order" means a protection order issued by a tribunal of another state.
2. "Issuing state" means the state whose tribunal issues a protection order.
3. "Mutual foreign protection order" means a foreign protection order that includes provisions issued in favor of both the protected individual seeking enforcement of the order and the respondent.
4. "Protected individual" means an individual protected by a protection order.
5. "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state.
6. "Respondent" means the individual against whom enforcement of a protection order is sought.
7. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.
8. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

14-07.4-02. Judicial enforcement of order.

1. A tribunal of this state shall enforce the terms of a valid foreign protection order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. A tribunal of this state shall enforce a valid foreign protection order issued by a tribunal, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. A tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order.
2. A tribunal of this state shall enforce the provisions of a valid foreign protection order which governs custody and visitation. The custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.
3. A protection order is valid if it:
   a. Identifies the protected individual and the respondent;
   b. Is currently in effect;
   c. Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing state; and
   d. Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex

parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the issuing of the order, in a manner consistent with the rights of the respondent to due process.

4. A person authorized under the law of this state to seek enforcement of a foreign protection order establishes a prima facie case for its validity by presenting an order valid on its face.

5. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

6. A tribunal of this state may enforce the provisions of a mutual foreign protection order which favor a respondent only if:

   a. The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

   b. The tribunal of the issuing state made specific findings in favor of the respondent.

14-07.4-03. Nonjudicial enforcement of order.

1. A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

2. If the protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

3. If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

4. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter.

14-07.4-04. Registration of order.

1. Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall present a certified copy of the order to any clerk of district court in this state.

2. Upon receipt of a protection order, the clerk of district court shall register the order in accordance with this section. After the order is registered, the clerk of district court

shall furnish to the individual registering the order a certified copy of the registered order. If a foreign order is registered, the clerk of district court shall transmit a copy of the order to the appropriate law enforcement agency.

3. The clerk of district court shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order which is inaccurate or is not currently in effect shall be corrected or removed from the registry in accordance with the law of this state.

4. An individual registering a foreign protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is currently in effect.

5. A foreign protection order registered under this chapter may be entered in any existing state or federal registries of protection orders, in accordance with state or federal law.

6. A fee may not be charged for the registration of a foreign protection order or the correction or removal of a foreign protection order.

14-07.4-05. Immunity. This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission is done in good faith in an effort to comply with this chapter.

14-07.4-06. Other remedies. Pursuing remedies under this chapter does not preclude a protected individual from pursuing other legal or equitable remedies against the respondent.

14-07.4-07. Penalty. Violation of a protection order under this chapter is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.

CHAPTER 12.1-16

HOMICIDE

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if the person:

   a. Intentionally or knowingly causes the death of another human being;

   b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or

   c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, a felony offense against a child under section 12.1-20-03, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 14-09-22, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime causes the death of any person. In any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

      (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;

      (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury;

      (3) Reasonably believed that no other participant was armed with such a weapon; and

      (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under circumstances which would be class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in that person's situation under the circumstances as that person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

CHAPTER 12.1-21

DAMAGING PROPERTY OR PUBLIC SERVICES

12.1-21-06.1. Interference with telephone during emergency call. A person is guilty of an offense if that person removes, damages, or obstructs any telephone or telephone line or any part or apparatus on the line, or severs any wire connected to the line, so as to interfere with an emergency telephone call. The offense is a class C felony if it was done intentionally. The offense is a class A misdemeanor if it was done knowingly or recklessly.

CHAPTER 12.1-18

KIDNAPPING

12.1-18-01. Kidnapping.

1. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:

   a. Hold him for ransom or reward;

   b. Use him as a shield or hostage;

   c. Hold him in a condition of involuntary servitude;

   d. Terrorize him or a third person;

   e. Commit a felony or attempt to commit a felony; or

   f. Interfere with the performance of any governmental or political function.

2. Kidnapping is a class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a class B felony.

12.1-18-02. Felonious restraint. A person is guilty of a class C felony, if he:

1. Knowingly abducts another;

2. Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or

3. Restrains another with intent to hold him in a condition of involuntary servitude.

12.1-18-03. Unlawful imprisonment.

1. A person is guilty of a class A misdemeanor if he knowingly subjects another to unlawful restraint.

2. It is a defense to a prosecution under this section that the actor is a parent or person in equivalent relation to the person restrained and that the person restrained is a minor.

12.1-18-04. Definitions. In this chapter:

1. "Abduct" means to restrain a person with intent to prevent his liberation by:

   a. Secreting or holding him in a place where he is not likely to be found; or

   b. Endangering or threatening to endanger the safety of any human being.

2. "Restrain" means to restrict the movement of a person unlawfully and without consent so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by: a. force, intimidation, or deception; or b. any means, including acquiescence of the victim, if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement.

12.1-18-05. Removal of child from state in violation of custody decree - Penalty.
Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of the custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

CHAPTER 12.1-17.1

OFFENSES AGAINST UNBORN CHILDREN

12.1-17.1-05. Aggravated assault of an unborn child. A person is guilty of assault of an unborn child, a class C felony, if that person willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child.

12.1-17.1-06. Assault of an unborn child. A person is guilty of assault of an unborn child, a class A misdemeanor, if the person willfully assaults a pregnant woman and inflicts bodily injury on an unborn child.

CHAPTER 12.1-32

PENALTIES AND SENTENCING*

12.1-32-01. Classification of offenses -Penalties. Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1 Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.

2 Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

3 Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

4 Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.

5 Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.

6 Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.

7 Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

**For additional explanations/full details of Penalties and Sentencing Chapter please visit:*
http://www.legis.nd.gov/cencode/t121c32.pdf

CHAPTER 14-07.1

DOMESTIC VIOLENCE

14-07.1-01. Definitions.

1. "Department" means the state department of health.

2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.

3. "Domestic violence sexual assault organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four-hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.

4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.

5. "Health officer" means the state health officer of the department.

6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.

7. "Predominant aggressor" means an individual who is the most significant, not necessarily the first, aggressor.

8. "Willfully" means willfully as defined in section 12.1-02-02.

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.

3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

    a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.

    b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.

    c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

    d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.

    e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.

    f. Awarding temporary use of personal property, including motor vehicles, to either party.

    g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.

5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.

6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

7. No order or agreement under this section affects title to any real property in any matter.

8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.

9. Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

14-07.1-02.1. Allegation of domestic violence - Effect. If the court finds that a party's allegation of domestic violence in a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding, or termination of parental rights proceeding is false and not made in good faith, the court shall order the party making the false allegation to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

14-07.1-03. Temporary protection order -Copy to law enforcement agency.

1. If an application under section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, based upon an allegation of a recent incident of actual domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.

2. An ex parte temporary protection order may include:

    a. Restraining any party from having contact with or committing acts of domestic violence on another person.

    b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.

    c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

    d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.

3. Unless otherwise terminated by the court, an ex parte temporary protection order remains in effect until an order issued under section 14-07.1-02 is served.

4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.

5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.

6. Fees for filing and service of process may not be assessed to the petitioner for any proceeding seeking relief under chapter 14-07.1.

14.07.1-03.1. Notification of stalking law. When an order is issued under section 14-07.1-02 or 14-07.1-03, the order must include or have attached to it a copy of section 12.1-17-07.1.

14-07.1-04. Assistance of law enforcement officer in service or execution. When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to a domestic violence shelter care facility.

14-07.1-05. Right to apply for relief. A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 is not affected if the person leaves the residence or dwelling to avoid domestic violence. The court may not require security or bond from any party unless the court deems it necessary in exceptional cases.

14-07.1-05.1. Appointment of guardian ad litem for minor. The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time before the full hearing. The role of the guardian ad litem consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, after notice to the state's attorney of the county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or individual to be restrained has been served a copy of the order, the first violation of any order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony. For purposes of this section, "first violation" means the first

time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

14-07.1-07. Nonexclusive remedy. Any proceeding under sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from domestic violence. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section. Any order issued under this section expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support of the order must be immediately certified to the court. The certification to the court has the effect of commencing proceedings under section 14-07.1-02.

14-07.1-10. Arrest procedures.

1. If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic violence, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response.

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer shall consider which party was the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence, or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm.

3. An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

14-07.1-11. Arrest without warrant.

1. A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer.

2. A law enforcement officer may arrest a person without a warrant if the arrest is made within twelve hours from the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in section 14-07.1-01, whether or not the assault took place in the presence of the officer. After twelve hours has elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement

officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

3. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

14-07.1-12. Reports. A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If an officer determines through the course of an investigation that one of the individuals was the predominant aggressor, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

14-07.1-14. Law enforcement guidelines and training.

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.

2. The peace officer standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

14-07.1-18. Domestic violence or sexual assault program records -Confidentiality - Exceptions -Penalty.

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:

    a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;

    b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and

    c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.

2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:

    a. A client consents to the release of information that relates only to that client or the

client's dependents;

b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;

c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

14-07.1-19. Release conditions. If an individual charged with or arrested for a crime involving domestic violence, including a violation of a domestic violence protection order under section 14-07.1-03 or an order prohibiting contact under section 14-07.1-13, is released from custody, a district or municipal court may require that electronic home detention or global positioning system monitoring be used for the individual as a condition of release.

CHAPTER 12.1-31.2

DISORDERLY CONDUCT RESTRAINING ORDER

12.1-31.2-01. Disorderly conduct restraining order -Penalty.

1. "Disorderly conduct" means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly conduct does not include constitutionally protected activity.

2. A person who is a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct may seek a disorderly conduct restraining order from any court of competent jurisdiction in the manner provided in this section.

3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the disorderly conduct, and that the individual engaged in disorderly conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.

4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. Unless otherwise terminated by the court, the temporary restraining order is in effect until a restraining order issued under subsection 5 is served.

5. The court may grant a disorderly conduct restraining order ordering the respondent to cease or avoid the disorderly conduct or to have no contact with the applicant if:

    a. A person files a petition under subsection 3;

    b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsection 4 and with notice of the time and place of the hearing;

    c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and

    d. The court finds after the hearing that there are reasonable grounds to believe that the respondent has engaged in disorderly conduct. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.

7. A disorderly conduct restraining order must contain a conspicuous notice to the respondent providing:

a. The specific conduct that constitutes a violation of the order;

b. Notice that violation of the restraining order is punishable by imprisonment of up to one year or a fine of up to two thousand dollars or both; and

c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.

8. If the respondent knows of an order issued under subsection 4 or 5, violation of the order is a class A misdemeanor. If the existence of an order issued under subsection 3 or 4 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.

9. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of disorderly conduct. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving disorderly conduct.

10. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist any person in the preparation of documents necessary to secure a restraining order under this section.

11. Fees for filing and service of process may not be charged to the petitioner in any proceeding seeking relief due to domestic violence under this chapter.

12.1-31.2-02. Order prohibiting contact.

1. If an individual who is charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or a sex offense is released from custody before arraignment or trial, the court authorizing the release of the individual shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the individual from having contact with the victim, an order prohibiting the individual from having contact with the victim. The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense. The state's attorney shall provide a copy of the order to the victim. The court shall determine at the time of the individual's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed.

2. If the court has probable cause to believe that the individual charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further act of violence, the court shall require that the individual surrender for safekeeping any firearm or specified dangerous weapon in or subject to the individual's immediate possession or control, to the sheriff of the county or chief of police of the city in which the individual resides.

3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order within one business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

4. An individual who violates a court order issued under this section is guilty of a class A misdemeanor.

5. A law enforcement officer shall arrest an individual without a warrant if the officer determines there is probable cause that the individual has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection.

CHAPTER 12.1-20

SEX OFFENSES

12.1-20-01. General provisions. In sections 12.1-20-03 through 12.1-20-08:

1. When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.

2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.

3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least three years older than the minor.

12.1-20-02. Definitions. In sections 12.1-20-03 through 12.1-20-12:

1. "Coercion" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

2. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.

3. "Object" means anything used in commission of a sexual act other than the person of the actor.

4. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

5. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

12.1-20-03. Gross sexual imposition -Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

    a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;

    b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;

c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;

d. The victim is less than fifteen years old; or

e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

2. A person, who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:

a. The victim is less than fifteen years old;

b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or

c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.

3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.

b. Otherwise the offense is a class A felony.

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

12.1-20-03.1. Continuous sexual abuse of a child.

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.

2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.

3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged

in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

12.1-20-04. Sexual Imposition. A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

1. Compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or

2. Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

12.1-20-05. Corruption or solicitation of minors.

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.

2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.

3. An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

12.1-20-05.1. Luring minors by computer or other electronic means.

1. An adult is guilty of luring minors by computer or other electronic means when:

    a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and

    b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.

2. A violation of this section is a class A misdemeanor if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen,

or the adult is twenty-two years of age or older and the adult reasonably believes the minor is age fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.

3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

    a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;

    b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;

    c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;

    d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;

    e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or

    f. The other person is a minor, fifteen years of age or older, and the actor is an adult.

2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

12.1-20-11. Incest. A person who intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

12.1-20-12.2. Surreptitious intrusion.

1. An individual with the intent to arouse, appeal to, or gratify that individual’s lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:

    a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another.

    b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another.

    c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps in the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

    d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

12.1-20-14. Admissibility of evidence concerning reputation of complaining witness -Gross sexual imposition and sexual imposition. Superseded by N.D.R.Ev. 412.

12.1-20-15. Credibility of complaining witness attacked -Procedure. Superseded by N.D.R.Ev. 412.

12.1-20-15.1. Admissibility of evidence of victim's manner of dress in sex offense cases. Superseded by N.D.R.Ev. 412.