

MONTANA LAW ENFORCEMENT ACADEMY

DOMESTIC VIOLENCE

FIELD GUIDE



MONTANA LAW ENFORCEMENT ACADEMY
DOMESTIC VIOLENCE
FIELD GUIDE



Published in 2008 by the Montana Law Enforcement Academy
2260 Sierra Road East Helena, MT 59602

CONTENTS

INTRODUCTION.....	4
I- RESPONDING.....	5
Prior to Arrival.....	5
On Scene.....	5
Entry.....	5
Allowed Entry.....	5
Denied Entry.....	6
No One Appears Home to Allow Entry.....	7
Secure Scene.....	7
II- INVESTIGATING.....	9
Evidence Collection.....	9
Investigation with Victims.....	10
Investigation with Children.....	11
Investigation with Witnesses.....	12
Investigation with Suspects.....	12
III- MAKING THE ARREST.....	13
Determining Predominant Aggressor.....	13
Report Writing.....	14
IV- ONGOING INVESTIGATION.....	15
V- LAWS PERTAINING TO DOMESTIC VIOLENCE.....	16
Montana Code Annotated (MCA).....	16
Assault Statutes.....	16
Partner or Family Member Assault (PFMA). 45-5-206 MCA.....	16
Aggravated Assault. 45-5-202 MCA.....	18
Stalking. 45-5-220 MCA.....	18
Arrest/Seizure Statutes.....	19
Basis for Arrest without Warrant for Predominant Aggressor. 46-6-311 MCA.....	19
Time of Making Arrest. 46-6-105 MCA.....	20
Written Report when No Arrest is Made. 46-6-601 MCA.....	21
PFMA Seizure of Weapons. 46-6-603 MCA.....	21
Orders of Protection Statutes.....	22
Written Orders of Protection. 40-15-204 MCA.....	22

Temporary Order of Protection. 40-15-201 MCA24
 Violation of Orders of Protection. 45-5-626 MCA.....26
 No Contact Order. 45-5-209 MCA27
 Eligibility for Orders of Protection. 40-15-102 MCA.....27

Victims’ Rights and Services Statutes 29

Notice of Rights to Victims of Partner/Family
 Member Assault. 46-6-602 MCA.....29
 Services to Victims of Crime. 46-24-201 MCA.....29
 Notification of Available Protective Services. 46-24-202 MCA.....30
 Prompt Notification to Victims and
 Witnesses of Certain Offenses. 46-24-203 MCA.....30
 Crime Victims/Family Members-
 Rights to Attend Proceedings. 46-24-106 MCA.....32
 Advocate Privilege. 26-1-812 MCA.....32

Other Montana Statutes to Consider 33

Criminal Destruction or Tampering
 with a Communication Device. 45-6-105 MCA.....33
 Criminal Endangerment. 45-5-207 MCA.....34
 Assault on a Minor. 45-5-212 MCA.....34
 Assault. 45-5-201 MCA34
 Assault with a Weapon. 45-5-213 MCA35
 Use of Force in Defense of a Person. 45-3-102 MCA35
 Use of Force by Aggressor. 45-3-105 MCA36
 Additional Montana Statutes to Consider.....37

**Federal Statutes Applicable to
 Domestic Violence Crimes in Montana 38**

Misdemeanor Crime of Domestic Violence. 18 USC 921(33).....38
 Receipt or Possession of Firearms. 18 USC 922(g)39
 Other Federal Statutes to Consider39

Glossary of Terms 40

VI- RESOURCES..... 46

Local, State and National Resources.....46
 Template for Notice of Rights for Victims of Violent Crimes.....48
 Sample of Risk Assessment Checklist.....50
 Working with the Media52
 Acknowledgements.....53

INTRODUCTION

Partner/Family Member Assault (PFMA) is commonly called domestic violence. No matter what we call it, this crime can be defined as a pattern of abusive behaviors in any relationship that is used by an intimate partner to gain and maintain power and control over another intimate partner. Law enforcement officers have the difficult responsibility of addressing this crime with the dual role of holding offenders accountable while keeping victims and children safe.

The dynamics of domestic violence can create complex issues for law enforcement so a team of experts collaborated to create this guide book to support you in addressing domestic violence with the ultimate goal of promoting safety for all involved.

This publication is merely a guide to assist you and is not meant to be all inclusive of the steps that may be needed or requested by your area prosecutor. Communicate with your prosecutors to ensure that you understand what is needed to insure offender accountability and safety for victims.

The Montana Law Enforcement Academy seeks to support you in any investigation that promotes administration of justice.

Sincerely,



Roxanne Ross
Program Manager, Domestic Violence Program
Montana Law Enforcement Academy
(406) 444-5620
rross@mt.gov

RESPONDING

PRIOR TO ARRIVAL

- Get all available information from dispatcher to include criminal history of parties, presence of weapons, presence of children/ witnesses, protective orders in effect or violation of protective orders.
- If possible, always have another officer dispatched to domestic violence calls.
- Record the time of dispatch and arrival on scene.

ON SCENE

- Avoid lights and sirens and park in an undetectable location.
- Activate your audio recorder if available.
- Look and listen for signs that the altercation is still in progress.
- Question any persons you encounter as you approach.
- Use cover and concealment as you approach.
- Assess situation by attempting to view interior and listen at the door before knocking.

ENTRY

Primary officer should knock and announce. If possible, allow a person from the inside to answer your knock and open the door. Stand to the side of the doorway.

Allowed Entry

- Swing the door open and do a visual sweep from a safe vantage point before entering.
- Survey the interior. When possible, the primary officer will initiate contact with parties as cover officer keeps alert for risks.
- Determine who called and the facts of the incident.
- Speak to all individuals involved. Identified victims and children must be provided a safe distance from suspect whenever possible during interviews.

Denied Entry

- Use persistent verbal communications and identify reasons why entry is being requested.
- Contact dispatch to call the location and speak to the person refusing entry. This may allow other occupants to allow entry.
- Dispatch may have additional information that can aid you in determining if an exigent entry is warranted.
- If entry is still denied, it must be determined if a forced entry is warranted. This requires exigent circumstances.
- To minimize damage and injury of a forced entry, consider obtaining keys from apartment managers, landlords, relatives, neighbors, or look for hidden keys.
- If necessary, gain entry through windows or use available entry equipment.

Exigent Circumstances

Officers should refer to MCA 46-6-311 (Arrest without warrant for predominant aggressor):
(2) "The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Under this statute, exigent circumstances are established if officers are called to an address by a partner or family member reporting an incident of partner or family member assault.

In cases where the caller is someone other than a partner or family member (a witness, passerby, neighbor, or an informant), officers will need to investigate to determine the exigency of the situation.

No One Appears Home To Allow Entry

- Attempt voice contact.
- Contact dispatch to call the residence.
- Look for vehicles and listen for sounds that indicate that someone is home.
- Attempt to contact known family members.
- Question witnesses, passersby, or neighbors that may have information about the possible whereabouts of the parties and the vehicles parties drive.
- If necessary, leave and return silently using another strategy.
- If you must leave without making contact, pass information and circumstances on to next shift.
- If possible, return to the location later to determine situation and if contact with parties is possible.

SECURE SCENE

- Secure any weapons that may be a risk to you or the parties involved.
- Render first aid or call EMS (Emergency Medical Services) if necessary and record names of EMS personnel. This is imperative if victim is pregnant or has reported strangulation.
- If EMS was needed, record contact information of physicians and/or facilities where treatment was received.
- Get signed medical release forms.
- Separate the parties and restrict visual and auditory contact.
- Restrict movement of parties, and do not allow them to move from room to room or out of sight.
- Keep visual contact of your partner.
- Restrain any parties that pose a safety risk to you or others. If an arrest is warranted, it may require moving a suspect to a patrol car.

- Hold your interviews in rooms with least accessibility to weapons.
- Eliminate distractions to your investigation (i.e. loud TV, radios, etc.)
- Avoid allowing parties to “clean up” the scene until after your investigation is completed with photographs.
- Record statements of parties to capture emotions about incident.
- Identify children, elderly and other persons in the household, and check on their welfare. Get statements and photographs from them when possible.

Orders of Protection

Violations of protective orders are indicators of possibly dangerous situations

An order of protection is a court order with the purpose of providing protection to victims of domestic violence, sexual violence and stalking.

The 1994 Violence Against Women Act (VAWA) requires that all valid orders of protection must be enforced wherever the violation occurs (any state, tribal court, commonwealth, territory or possession of the U.S.) regardless of where it was issued. If presented with a paper copy of a protective order, there is no requirement to verify the terms and conditions of the order with the issuing state.

NOTE: An officer may not assist a restrained person in an act that violates an order of protection.

INVESTIGATING

NOTE: An important goal of your investigation is to “paint a picture” of the situation for your prosecutor and/or jury.

EVIDENCE COLLECTION

- Collect weapons that are used or were threatened to be used in the assault as they must be seized and held as evidence.
- Photograph the scene and document any evidence of the altercation (i.e. broken items, furniture tipped over, holes in walls, phone cord pulled out of wall, etc.).
- If clothing is important to your investigation, photograph while on the person and then seize the clothing for evidence.
- Look for furniture or pictures that appear out of place; they may be hiding important evidence.

Tampering with a communication device 45-6-105 MCA

This can be charged if a person purposely and knowingly destroys or tampers with a telephone or other communication device to obstruct, prevent or interfere with:

- A report to law enforcement agency of any actual criminal offense, bodily injury, or property damage.
- A request made to a nongovernmental agency, hospital, doctor, or other medical provider.

To destroy or tamper with is to make that communication device unusable or inoperable by interrupting its use or making it inaccessible.

NOTE: This charge can be applied to each offense (i.e. pulling two separate phone cords out of the wall during an incident while victim is trying to call 911 is two charges of this statute.

INVESTIGATION WITH VICTIMS

Victim Recanting

Victims often recant or may not cooperate with law enforcement or the criminal justice system due to safety and survival reasons. This can make it more difficult to hold offenders accountable. It is critical to build your case around physical evidence and witness testimony other than the testimony of the victim. It is critical to fortify your case with photos, statements, audio recordings, good reporting, preserving 911 tapes, and proper evidence collection.

- Interview and get statement (audio and/or written) with victim's exact words whenever possible. This must be done out of sight of the suspect and out of hearing range.
- Note victim's emotional state in your report to support statement (i.e. crying, shouting, fearful, etc.). Include "excited utterances."

Excited Utterances

"Excited utterances" are defined as "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." Montana Rules of Evidence 803(2).

- Photograph and document any injuries and their overall physical appearance even if injury is not visible or difficult to see. Take photographs immediately and photograph 1-3 days later to document severity and injury progression.
- Ask victim specifically about pregnancy and strangulation. If either element is present, request emergency medical services. These two situations are commonly overlooked and can be dangerous and in some cases deadly. Document this clearly in your report.
- Get medical release form signed as soon as possible.

- Refer to a victim’s advocate. Clearly explain role of advocate. If available in your area, make reasonable accommodations for the victim to meet with an advocate. This is critical for victim safety and for assistance in safety planning and resource referral.
- Read and give copy of Victim Rights Form to the victim. Make note in your report that this occurred.
- If a “No Contact Order” is issued to the suspect at the scene, inform victim that it is in effect and if there is prohibited contact, the victim should call 911.

No Contact Order

A court may issue a No Contact Order and direct law enforcement to serve the order on all suspects charged with PFMA. Notice of the order must be given orally and in writing by a peace officer at the time that the suspect is charged. The charge of PFMA must be supported by a peace officer’s affidavit of probable cause and should be issued at the time that the suspect is charged. The No Contact Order is effective for 72 hours or until the suspect makes the first appearance in court.

INVESTIGATION WITH CHILDREN

- Interview the children alone if possible.
- Note their overall appearance and demeanor in your report.
- Document injury and contact emergency medical services if necessary.
- Photograph the children when possible.
- Explain to all children that what has happened is not their fault.
- Contact a child advocate if available.
- Contact Child Protective Services when needed.

Montana Child Abuse Hotline
1-866-820-5437 (KIDS) or 406-444-5900

INVESTIGATION WITH WITNESSES

- Interview all witnesses and get recorded and/or written statements.
- Get contact information on all witnesses for the follow-up investigation and for future contact should the prosecutor need to contact them.

INVESTIGATION WITH SUSPECT

Miranda

REMEMBER MIRANDA WARNING IF CUSTODIAL INTERROGATION.

NOTE: “In custody” for the purposes of Miranda is defined as a person being deprived of their freedom of action in any significant way or their freedom of action has been curtailed to a degree associated with a formal arrest. The courts look to the circumstances surrounding the interrogation--actions of law enforcement--and whether a reasonable person would have felt they were not at liberty to terminate the interrogation and leave. Courts rely on a totality of the circumstances analysis to determine if the person was in custody. *State v. Munson*, 2007 MT 222. Officers should keep in mind that a court might determine a person to be in custody even though they are in their own home, have been told they are free to leave, or that they are not under arrest.

- Interview and get recorded and/or written statement.
- Photograph if injuries are reported and take follow-up photos 1-3 days later to document severity and injury progression.
- If a “No Contact Order” is served to suspect, explain the order, its restrictions, and the consequences of a violation.

MAKING THE ARREST

DETERMINING PREDOMINANT AGGRESSOR

NOTE: If no arrest is made, it is required by statute (46-6-601 MCA) that a written report must be filed setting forth the reason or reasons for that decision.

- Establish probable cause by applying the totality of the circumstances to make an arrest for PFMA.
- Tell victims that they are not responsible for charging the suspect or dropping or dismissing the charges.
- Inform victims of their rights and remedies (verbally and in writing) according to statute.
- Make reasonable accommodations to ensure they are safe.
- A thorough investigation should support arresting one party (the predominant aggressor) over the other.

Predominant Aggressor

Montana is a “preferred arrest” state. You must determine who the predominant aggressor is to avoid dual arrests. The predominant aggressor is the most significant aggressor in the situation. Dual arrests should only occur when an extensive investigation has proven that aggression is equally mutual. These should be very rare in occurrence.

The elements of this statute can be remembered by the acronym **FISH**. **F**ear (or lack of fear), **I**njuries (offensive vs. defensive), **S**ize and strength of the parties, and **H**istory of violence. Statements of all parties and the totality of the situation should support this decision.

Self defense should be considered when a person uses force against another when he/she reasonably believes that it was necessary for defense against another’s imminent use of unlawful force. See MCA 45-3-102 (Use of force in defense of a person) and MCA 45-3-105 (Use of force by an aggressor).

REPORT WRITING

Prepare your report and forward on to prosecutor, investigator or designated personnel to do the follow-up investigation. It should include, but is not limited to, the following information:

- Date, location, time of incident and arrival date and time.
- Relevant 911 information.
- All elements of the PFMA statute.
- F**ear or lack of fear, **I**njuries, **S**ize of suspect and victim, and **H**istory of violence (**FISH**).
- Statements by victim, suspect, and witnesses.
- “Excited utterances” and quotes relevant to support the facts.
- Alcohol and/or drug use of parties.
- Documentation of any protective orders, warrants, probation status, and/or prior convictions.
- Documentation of the presence of children and elderly and their welfare.
- Documentation of strangulation (if relevant) as well as emergency medical services information.
- Documentation of pregnancy (if relevant) as well as emergency medical services information.
- Documentation of other evidence for prosecutor (i.e. photos, audio tape or taped statements, evidence collected etc.).

ONGOING INVESTIGATION

- Keep your prosecutor updated on the progression of your investigation.
- Contact victim within 72 hours to see if further law enforcement assistance is needed.
- Re-interview as necessary.
- Continue any victim, witness, or suspect questioning needed to accurately establish the facts of your case.
- Interview background witnesses that may not have been available initially.
- Keep victim informed of the status of the case (victim/witness advocates may assist with this).
- Get medical records if not already obtained.
- Take follow-up photos.

Victim re-interviewing

If victims recant or change their version of what happened, try to ask questions about the following issues and note responses in your supplemental report:

- Financial concerns or fears
- Contact with the suspect since charge
- Threats or fears
- Child custody or visitation issues
- Immigration issues

LAWS PERTAINING TO DOMESTIC VIOLENCE

INTRODUCTION TO MONTANA CODE ANNOTATED

The following information is derived from the laws contained in Montana Code Annotated (MCA). It is recommended that officers always refer to the actual statutes contained in Montana Code Annotated for the precise wording of the various statutes. Officers are further advised to communicate openly with their respective prosecutors as to the interpretation and application of these laws in their enforcement actions. Words or phrases in bold type indicates that these terms are further defined within the **Glossary** at the end of this section.

ASSAULT STATUTES

Partner or family member assault (PFMA). 45-5-206 MCA

- (1) (a) **Purposely** or **knowingly** causes **bodily injury** to a **partner** or **family member**
 - (b) **Negligently** causes **bodily injury** to a **partner** or **family member** with a **weapon**
 - (c) **Purposely** or **knowingly** causes **reasonable apprehension of bodily injury** in a **partner** or **family member**.
- (2) (a) “**Family Member**” means mothers, fathers, children, brothers, sisters, and other past or present members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.
 - (b) “**Partner**” means spouses, former spouses, persons having a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

- (3) 1st or 2nd **conviction** – misdemeanor and a 3rd or subsequent **conviction** – felony. For the purpose of determining the number of **convictions** under this section, a **conviction** means a **conviction**, as defined in 45-2-101 (General definitions), in this state, **conviction** for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant’s appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior **conviction** for domestic abuse under this section is a prior **conviction** for purposes of subsection
- (3) (a) A **conviction** for assault with a **weapon** under 45-5-213 (Assault with a **weapon**), if the offender was a **partner** or **family member** of the victim, constitutes a **conviction** for the purpose of calculating prior **convictions** under this section.
- (7) The court may prohibit an offender from possession or use of the firearm used in the assault. The court may also prevent an offender from having their “Carrying a Concealed Weapon Permit” renewed if a firearm was used in the assault . . .

Investigative Considerations

Same-sex unions or relationships do not meet the definition of Family Member or Partner under Montana law. If officers know it to be a same-sex relationship with domestic violence dynamics, they are encouraged to apply a similar statute (i.e. Assault) and provide victim with rights and remedies for safety.

Determine whether the suspect has a prior **conviction** before the arraignment. If you are uncertain as to whether a particular offense qualifies as a prior **conviction**, ask your prosecutor.

Aggravated assault. 45-5-202 MCA

- (1) A person commits the offense of aggravated assault if the person **purposely** or **knowingly** causes **serious bodily injury** to another or **purposely** or **knowingly**, with the use of physical force or contact, causes **reasonable apprehension** of **serious bodily injury** or death in another.
- (2) A **conviction** is a felony.

Stalking. 45-5-220 MCA

- (1) A person commits the offense of stalking if the person **purposely** or **knowingly** causes another person **substantial emotional distress** or **reasonable apprehension** of **bodily injury** or death by repeatedly:
 - (a) following the stalked person; or
 - (b) harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, as defined in 45-8-213 (Privacy in communications), or any other action, device, or method.
- (2) This section does not apply to a constitutionally protected activity.
- (3) 1st **conviction** – misdemeanor; 1st **conviction** with Restraining Order in effect – felony; 2nd or subsequent **conviction** – felony.
- (6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes *prima facie* evidence that the accused person **purposely** or **knowingly** followed, harassed, threatened, or intimidated the stalked person.

ARREST/SEIZURE STATUTES

Basis for arrest without warrant – arrest of predominant aggressor – no contact order. 46-6-311 MCA

- (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.
- (2)
 - (a) The summoning of a peace officer to a place of residence by a **partner** or **family member** constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in **partner** or **family member** assault cases involving injury to the victim, use or threatened use of a **weapon**, violation of a restraining order, or other imminent danger to the victim.
 - (b) When a peace officer responds to a **partner** or **family member** assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the **predominant aggressor**. If, based on the officer's evaluation, the officer determines that one person is the **predominant aggressor**, the officer may arrest only the **predominant aggressor**. A determination of who the **predominant aggressor** is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

- (i) the prior history of violence between the **partners** or **family members**, if information about the prior history is available to the officer;
 - (ii) the relative severity of injuries received by each person;
 - (iii) whether an act of or threat of violence was taken in self-defense;
 - (iv) the relative sizes and apparent strength of each person;
 - (v) the apparent fear or lack of fear between the **partners** or **family members**; and
 - (vi) statements made by witnesses.
- (3) If a judge has issued a standing order as provided in 45-5-209 (PFMA), a peace officer shall give a defendant charged with **partner** or **family member** assault both written and verbal notice of the no contact order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court.

Time of making an arrest. 46-6-105 MCA

An arrest may be made at any time of the day or night, except that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a judge endorsed upon an arrest warrant. However, a person may be arrested in the person's home or private dwelling at night if the person is being arrested pursuant to 46-6-311 (Arrest without a warrant) for the offense of partner or family member assault.

Written report when no arrest made in domestic violence situation. 46-6-601 MCA

When a peace officer is called to the scene of a reported incident of domestic violence but does not make an arrest, the peace officer shall file a written report with the officer commanding the law enforcement agency employing the peace officer, setting forth the reason or reasons for the decision.

Partner or family member assault – seizure of weapon.

46-6-603 MCA

- (1) A peace officer who responds to a call relating to **partner** or **family member** assault shall seize the **weapon** used or threatened to be used in the alleged assault.
- (2) The responding officer may, as appropriate:
 - (a) take reasonable action necessary to provide for the safety of a victim and any other member of the household;
 - (b) transport or arrange for the transportation of the victim and any other member of the household to a safe location; and
 - (c) assist a victim and any other member of the household to remove necessary personal items.
- (3) A **weapon** seized under this section may not be returned to the offender until **acquittal** or until the return is ordered by the court.

ORDERS OF PROTECTION STATUTES

Written orders of protection. 40-15-204 MCA

- (1) The court may, on the basis of the **respondent's** history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the **petitioner** needs **temporary** or **permanent** protection.
- (2) In a **dissolution** proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a **permanent** order of protection.
- (3) An order of protection may include all of the relief listed in MCA 40-15-201 (**Temporary** order of protection), when appropriate.
- (4) An order of protection may include restraining the **respondent** from any other named **family member** who is a minor. If this restriction is included, the **respondent** must be restrained from having contact with the minor for an appropriate time period as directed by the court or **permanently** if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.
- (5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made **permanent** under subsection (1), (2), or (4). The order may be terminated upon the **petitioner's** request that the order be dismissed.

- (6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.
- (7) An amendment to a **temporary** order of protection or to an order of protection is effective only after it has been **served** in writing on the opposing party.
- (8) There is no cost to file a petition for an order of protection or for service of an order of protection whether **served** inside or outside the jurisdiction of the court issuing the order.
- (9) Any **temporary** order of protection or order of protection must conspicuously bear the following: “Violation of this order is a criminal offense under 45-5-220 (Stalking) or 45-5-626 (Violation of order of protection) and may carry penalties of up to \$10,000 in fines and up to a 5-year jail sentence. This order is issued by the court, and the **respondent** is forbidden to do any act listed in the order, even if invited by the **petitioner** or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter.”

Investigative Considerations

An order of protection is not enforceable if it has expired.

Temporary order of protection. 40-15-201 MCA

- (1) A **petitioner** may seek a **temporary** order of protection from a court listed in 40-15-301 (Jurisdiction and venue). The **petitioner** shall file a sworn petition that states that the **petitioner** is in **reasonable apprehension of bodily injury** or is a victim of one of the offenses listed in 40-15-102 (Eligibility for orders of protection), has a relationship to the **respondent** if required by 40-15-102 and is in danger of harm if the court does not issue a **temporary** order of protection immediately.
- (2) Upon a review of the petition and a finding that the **petitioner** is in danger of harm if the court does not act immediately, the court shall issue a **temporary** order of protection that grants the **petitioner** appropriate relief. The **temporary** order of protection may include any or all of the following orders:
 - (a) prohibiting the **respondent** from threatening to commit or committing acts of violence against the **petitioner** and any designated **family member**;
 - (b) prohibiting the **respondent** from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the **petitioner**, any named **family member**, any other victim of this offense, or a witness to the offense;
 - (c) prohibiting the **respondent** from removing a child from the jurisdiction of the court;
 - (d) directing the **respondent** to stay 1,500 feet or other appropriate distance away from the **petitioner**, the **petitioner's** residence, the school or place of employment of the **petitioner**, or any specified place frequented by the **petitioner** and by any other designated family or household member;

- (e) removing and excluding the **respondent** from the residence of the **petitioner**, regardless of ownership of the residence;
- (f) prohibiting the **respondent** from possessing or using the firearm used in the assault;
- (g) prohibiting the **respondent** from transferring, encumbering, concealing, or otherwise disposing of any **property** except in the usual course of business or for the necessities of life and, if so restrained, requiring the **respondent** to notify the **petitioner**, through the court, of any proposed extraordinary expenditures made after the order is issued;
- (h) directing the transfer of possession and use of the residence, an automobile, and other essential personal **property**, regardless of ownership of the residence, automobile, or essential personal **property**, and directing an appropriate law enforcement officer to accompany the **petitioner** to the residence to ensure that the **petitioner** safely obtains possession of the residence, automobile, or other essential personal **property** or to supervise the **petitioner's** or **respondent's** removal of essential personal **property**;
- (i) directing the **respondent** to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

- (j) directing other relief considered necessary to provide for the safety and welfare of the **petitioner** or other designated **family member**.
- (3) If the **petitioner** has fled the parties' residence, notice of the **petitioner's** new residence must be withheld, except by order of the court for good cause shown.
- (4) The court may, without requiring prior notice to the **respondent**, issue an immediate **temporary** order of protection for up to 20 days if the court finds, on the basis of the **petitioner's** sworn petition or other evidence, that harm may result to the **petitioner** if an order is not issued before the 20-day period for responding has elapsed.

Violation of order of protection. 45-5-626 MCA

- (1) A person commits the offense of violation of an order of protection if the person, with knowledge of the order, **purposely** or **knowingly** violates a provision of any order provided for in 40-4-121 (**Temporary** order) or an order of protection under Title 40, chapter 15. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been **served** with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.
- (2) Only the **respondent** under an order of protection may be cited for a violation of the order. The **petitioner** who filed for an order of protection may not be cited for a violation of that order of protection.

- (3) 1st and 2nd **conviction** – misdemeanor; 3rd or subsequent **conviction** – felony.

No contact order. 45-5-209 MCA

- (1) A court may issue a standing no contact order and direct law enforcement to **serve** the order on all defendants charged with a violation of 45-5-206 (PFMA).
- (2) Notice of the order must be given orally and in writing by a peace officer at the time that the offender is charged with a violation of 45-5-206 (PFMA).
- (3) The charge of a violation of 45-5-206 (PFMA) must be supported by a peace officer's **affidavit of probable cause**.
- (4) The no contact order issued at the time that the defendant is charged with a violation of 45-5-206 (PFMA) is effective for 72 hours or until the defendant makes the first appearance in court.

Eligibility for order of protection. 40-15-102 MCA

- (1) A person may file a petition for an order of protection if they are a victim of the following crimes according to statute:
- (a) if the **petitioner** is in **reasonable apprehension of bodily injury** by the **petitioner's partner** or **family member** or
- (b) the **petitioner** is a victim of one of the following offenses committed by a **partner** or **family member**:
- (i) assault
 - (ii) aggravated assault
 - (iii) intimidation
 - (iv) **partner** or **family member** assault (PFMA)
 - (v) criminal endangerment
 - (vi) negligent endangerment

- (vii) assault on a minor
 - (viii) assault with a weapon
 - (ix) unlawful restraint
 - (x) kidnapping
 - (xi) aggravated kidnapping or
 - (xii) arson
- (2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender as defined by MCA:
- (a) a victim of assault, aggravated assault, assault on a minor, stalking, incest, sexual assault, or sexual intercourse without consent; or
 - (b) a **partner** or **family member** of a victim of deliberate homicide or mitigated deliberate homicide.
- (3) A parent, guardian *ad litem*, or other representative of the **petitioner** may file a petition for an order of protection on behalf of a minor **petitioner** against the **petitioner's** abuser. At its discretion, a court may appoint a guardian *ad litem* for a minor **petitioner**.
- (4) A guardian must be appointed for a minor **respondent** when required by MCA. An order of protection is effective against a **respondent** regardless of the **respondent's** age.
- (5) A **petitioner** is eligible for an order of protection whether or not:
- (a) the **petitioner** reports the abuse to law enforcement;
 - (b) charges are filed; or
 - (c) the **petitioner** participates in a criminal prosecution.

Investigative Considerations

A court can issue an order of protection any time after an abusive incident.

VICTIMS' RIGHTS AND SERVICES STATUTES

Notice of rights to victim in partner or family member assault (PFMA). 46-6-602 MCA

Whenever a peace officer arrests a person for PFMA, or responds to a call in which PFMA is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of victim rights information.

Services to victims of crime. 46-24-201 MCA

- (1)** Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:
 - (a)** the availability of crime victim compensation;
 - (b)** access by the victim and the defendant to information about the case, including the right to receive documents under 46-24-106 (Crime victims/**family members** rights to attend proceedings);
 - (c)** the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim, and including the right to be accompanied during interviews as provided in 46-24-106; and
 - (d)** stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

- (2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.
- (3) As soon as possible, law enforcement personnel shall give to the victim the following information:
 - (a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and
 - (b) the prosecuting attorney's name, office address, and telephone number.

Notification of available protective services. 46-24-202 MCA

Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation, including the process for obtaining a protective order from the court.

Prompt notification to victims and witnesses of certain offenses. 46-24-203 MCA

- (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:
 - (a) the arrest of an accused;
 - (b) the release of the accused pending judicial proceedings;
 - (c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;

- (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or *nolo contendere* and the setting of a trial date;
 - (e) if the accused is convicted or pleads guilty or *nolo contendere*, the function of a pre-sentence report; the name, office address, and telephone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 (Sentencing hearing) to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;
 - (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and
 - (g) the right under 46-24-212 (Information concerning confinement) of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration.
- (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential **bodily injury** to the victim, a relative of a victim or witness who is a minor, or a relative of a homicide victim.

Investigative Considerations

Coordinate with your victim/witness advocate to disseminate this information to victims and their family members. Law enforcement is ultimately responsible for notification.

Crime victims/family members – rights to attend proceedings.

46-24-106 MCA

- (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

Advocate privilege. 26-1-812 MCA

- (1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.
- (2) This privilege belongs to the victim and may not be waived, except by **express consent**. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.
- (3) For purposes of this section, the following definitions apply:
 - (a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a **partner** or **family member**.

- (b) "Victim" means a person seeking assistance because of **partner** or **family member** assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

OTHER MONTANA STATUTES TO CONSIDER

Criminal destruction of or tampering with communication device.

45-6-105 MCA

- (1) A person commits the offense of criminal destruction of or tampering with a communication device if the person **purposely** or **knowingly** destroys or tampers with a telephone or other communication device to obstruct, prevent, or interfere with:
- (a) the report to any law enforcement agency of any actual criminal offense;
 - (b) the report to any law enforcement agency of any actual **bodily injury** or **property** damage; or
 - (c) a request made to any governmental agency or to any hospital, doctor, or other medical provider for necessary ambulance or emergency medical assistance.
- (2) A person destroys or tampers with a communication device by making the communication device unusable or inoperable, by interrupting its use, or by making it inaccessible.

Investigative Considerations

A phone call to a non-governmental crisis line or victim advocate does not meet the requirements of this statute.

Criminal endangerment. 45-5-207 MCA

- (1) A person who **knowingly** engages in conduct that creates a substantial risk of death or **serious bodily injury** to another commits the offense of criminal endangerment. This conduct includes but is not limited to **knowingly** placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.
- (2) A **conviction** is a felony.

Assault on a minor 45-5-212 MCA

- (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201 (Assault), and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.
- (2) A **conviction** is a felony.

Assault. 45-5-201 MCA

- (1) A person commits the offense of assault if the person:
 - (a) **purposely** or **knowingly** causes **bodily injury** to another;
 - (b) **negligently** causes **bodily injury** to another with a **weapon**;
 - (c) **purposely** or **knowingly** makes physical contact of an insulting or provoking nature with any individual; or
 - (d) **purposely** or **knowingly** causes **reasonable apprehension** of **bodily injury** in another.

Investigative Considerations

This statute may be applied when an officer has knowledge that a same-sex relationship is a factor in domestic violence.

Assault with a weapon. 45-5-213 MCA

- (1) A person commits the offense of assault with a **weapon** if the person **purposely** or **knowingly** causes:
- (a) **bodily injury** to another with a **weapon**; or
 - (b) **reasonable apprehension of serious bodily injury** in another by use of a **weapon** or what reasonably appears to be a **weapon**.
- (2) (a) A **conviction** for (1)(b) is a felony
- (b) A **conviction** for (1)(a) is a felony. In addition, if the person convicted of assault with a **weapon** is a **partner** or **family member** of the victim, as defined in 45-5-206 (PFMA-penalty), the person is required to pay for and complete a counseling assessment as required in 45-5-206(4) (PFMA-penalty).

Use of force in defense of a person. 45-3-102 MCA

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a **forcible felony**.

Use of force by aggressor. 45-3-105 MCA

The justification described in 45-3-102 (Use of force in defense of a person) through 45-3-104 (Use of force in defense of property) is not available to a person who:

- (1) is attempting to commit, committing, or escaping after the commission of a **forcible felony**; or
- (2) **purposely** or **knowingly** provokes the use of force against himself, unless:
 - (a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or
 - (b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

Additional Montana Statutes to Consider

When responding to domestic violence calls, officers should consider violations of other statutes in addition to the assault codes. Some examples:

45-4-103 MCA Attempt

45-5-203 MCA Intimidation

45-5-207 MCA Criminal endangerment

45-5-208 MCA Negligent endangerment

45-5-301 MCA Unlawful restraint

45-5-302 MCA Kidnapping

45-5-303 MCA Aggravated kidnapping

45-5-304 MCA Custodial interference

45-5-502 MCA Sexual assault

45-5-503 MCA Sexual intercourse without consent

45-5-622 MCA Endangering welfare of children

45-6-101 MCA Criminal mischief

45-6-102 MCA Negligent arson

45-6-203 MCA Criminal trespass to property

45-6-204 MCA Burglary

45-7-206 MCA Tampering with witnesses and informants

FEDERAL STATUTES APPLICABLE TO DOMESTIC VIOLENCE CRIMES IN MONTANA

NOTE: When considering federal offenses, always coordinate with your prosecutor, supervisor and consult departmental policy.

Misdemeanor crime of domestic violence. 18 USC 921(33)

- (a) means an offense that is a misdemeanor under Federal or State law; and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly **weapon**, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
- (b) A person shall not be considered to have been convicted of such an offense unless the person was represented by counsel or **knowingly** and intelligently waived the right to counsel; a person was entitled to a jury trial, the case was in fact tried by a jury, or the person **knowingly** and intelligently waived the right to have the case tried by a jury; a person shall not be considered to have been convicted of such an offense if the **conviction** has been expunged or set aside or is an offense for which the person has been pardoned or has had civil rights restored unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Receipt or possession of firearms. 18 USC 922

(g) It shall be unlawful for any person to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce: (8) who is subject to a court order that –(A) was issued after a hearing of which said person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate **partner** of such person or child of such intimate **partner** or person, or engaging in other conduct that would place an intimate **partner** in reasonable fear of **bodily injury** to the **partner** or child; (8) who is subject to a court order that –(c)(i) includes finding that such person represents a credible threat to the physical safety of such intimate **partner** or child; or, (c)(ii) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate **partner** or child that would reasonably be expected to cause bodily injury; or (9) Who has been convicted in any court of a misdemeanor crime of domestic violence.

Other Federal Statutes to Consider

- **Interstate Domestic Violence/Crossing State Lines.**
18 USC 2261(a)(1) and (2)
- **Interstate Stalking. 18 USC 2261 (A)**
- **Interstate Violation of Protection Order.**
18 USC 2262(a)(1) and (2)
- **Full Faith and Credit. 18 USC 2265**

GLOSSARY OF TERMS

The following terms are found in bold throughout this section and are defined below:

Affidavit of Probable Cause

Affidavit outlining the facts and circumstances supporting probable cause.

Acquittal

Found “not guilty.”

Bodily Injury

Physical pain, illness, or an impairment of physical condition and includes mental illness or impairment. MCA § 45-2-101 (5) (General definitions) (2007).

Conviction

A judgment of conviction or sentence entered upon a plea of guilty or *nolo contendere* or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. MCA § 45-2-101 (16) (General definitions) (2007).

Dissolution

Divorce.

Express Consent

Express consent may be verbal or written permission.

Family Member

Mothers, fathers, children, brothers, sisters, and other past or

present members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household. MCA § 45-5-206 (2)(a) (PFMA-penalty) (2007).

Forcible Felony

A felony that involves the use or threat of physical force or violence against any individual. MCA § 45-2-101 (24) (General definitions) (2007).

Knowingly

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge," have the same meaning. MCA § 45-2-101 (35) (General definitions) (2007).

Negligently

A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The

risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. MCA § 45-2-101 (43) (General definitions) (2007).

Partner

Spouses, former spouses, persons having a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex. MCA § 45-5-206 (2)(b)(PFMA-penalty) (2007).

Petitioner

Person seeking the order of protection.

Permanent (in relation to orders of protection)

Respondent of an order of protection has been provided with reasonable notice and opportunity to be heard.

Predominant Aggressor

A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

- (i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;
- (ii) the relative severity of injuries received by each person;
- (iii) whether an act of or threat of violence was taken in self-defense;
- (iv) the relative sizes and apparent strength of each person;

- (v) the apparent fear or lack of fear between the partners or family members; and
- (vi) statements made by witnesses.

MCA § 46-6-311 (2)(b) (Criminal procedure) (2007)

Property

A tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
- (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

- (k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

Purposely

A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result.

When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose," have the same meaning. MCA § 45-2-101 (65) (General definitions) (2007).

Reasonable Apprehension

The standard for determining whether a person had reasonable apprehension of bodily injury is that of a reasonable person under similar circumstances. Direct evidence is not necessary to establish the elements of the offense. A conviction may be based entirely on circumstantial evidence, and direct proof of other facts may give rise to an inference that a victim had reasonable apprehension of bodily injury. In this case, the victim: (1) fled from her apartment with her dog over concern about defendant's past behavior; (2) locked herself in a neighbor's bathroom; (3) heard defendant scream that he was going to kill her; (4) observed knife holes that defendant was making in her apartment door; and (5) ultimately fled the building. From these facts a jury could find that

the victim had reasonable apprehension of bodily injury, and denial of defendant's directed verdict motion was not an abuse of discretion. *St. v. Vukasin*, 2003 MT 230, 317 M 204, 75 P3d 1284 (2003).

Respondent

Person against whom the order of protection is sought.

Serious Bodily Injury

Is injury that:

- (i) creates a substantial risk of death;
 - (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or
 - (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.
- (b) The term includes serious mental illness or impairment.

Serve

To make a legal delivery of. *Black's Law Dictionary* 1103 (7th ed. 2000).

Temporary (in relation to orders of protection)

When the court acts without notice to the respondent of an order of protection.

Weapon

An instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury. *MCA § 45-2-101 (79) (General definitions) (2007)*.

RESOURCES

LOCAL, STATE, AND NATIONAL RESOURCES

Domestic violence victims may find it helpful to get more information about this type of crime. The easiest source for them to seek out is their local program; however there are several state and national resources that can assist them:

National Network to End Domestic Violence (NNEDV)

NNEDV is a national organization that tracks research, statistics, and innovative solutions to issues surrounding domestic violence prevention.

(202) 543-5566

www.nnedv.org

Sacred Circle

This is a national program that focuses on domestic violence issues specific to Native Americans.

(877) 733-7623

www.sacred-circle.com

The Montana Coalition Against Domestic and Sexual Violence (MCADSV)

MCADSV is a statewide organization that can assist callers with Montana-specific research and contact information about local programs.

(406) 443-7794 or (888) 404-7794

www.mcadsv.com

Montana Legal Services Association

This is a statewide organization that offers direct legal representation, legal advice and *pro se* assistance

Office: (406) 442-9830

Help Line: (800) 666-6899

www.mtlsa.org

Montana Office of Victim Services

This is part of Montana’s Department of Justice and the web page offers help to victims of many crimes including domestic violence, rape, sexual assault, and stalking. It also offers information about Crime Victim Compensation and Restorative Justice.

(800) 498-6455

www.doj.mt.gov/victims/default.asp

Local Program Information:

Name: _____

Address: _____

Office Phone: _____

Crisis Phone: _____

Email/web page: _____

TEMPLATE FOR NOTICE OF RIGHTS FOR VICTIMS OF VIOLENT CRIMES

Criminal Charges: The City or County Attorney’s office can file criminal charges against an offender if that person committed the offense of partner or family member assault, sexual assault, or any other crime against you.

Orders of Protection: If you are the victim of a violent crime, you may petition the court for an order that:

- (1) prohibits the offender from hurting you or threatening to hurt you;
- (2) directs the offender to leave your home and prohibits the offender from having any contact with you;
- (3) prevents the offender from transferring any property, except in the usual course of business;
- (4) prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your work site or other specified place;
- (5) gives you possession of necessary personal property;
- (6) prohibits the offender from possessing or using the firearm used in the assault.
- (7) If you file a petition in District Court, the District Court may order all of the above and may award custody of your minor children to you or to the other parent. The District Court may order visitation of your children between the parents. The District Court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

Obtaining an Order of Protection: The forms that you need to obtain an order of protection can be obtained at: _____

(list all local information).

You may call: _____

(phone number of local victim-witness advocate) for additional information.

Conditions of Bond: The Conditions of Bond ordered for an offender can provide many of the same protections as those in an order of protection and can address other concerns you may have, such as:

Restitution and Compensation: You may be eligible for:

- restitution payments from the offender (the offender would be required to repay you for the costs you have had to pay as a result of the crime). You may call the victim/witness advocate at _____ (local number) for additional information about restitution.
- crime victim compensation payments (a fund administered by the State of Montana for innocent victims of crime). Call the Crime Victim Compensation program at 800-498-6455.

Release of Offender: You are entitled to know if the offender has been released from jail.

You can call the victim/witness advocate at

_____ (local number)

or the county jail at

_____ (local number)

for this information.

As a crime victim, there are many resources available to you in

_____ County:

(List local and state resources)

Signed: _____ (victim) Date: _____

Printed Name of Officer: _____

Signature of Officer: _____

Copies Given To:

_____ Victim

_____ Victim/Witness Advocate

_____ Law Enforcement

SAMPLE OF RISK ASSESSMENT CHECKLIST

Almost all domestic violence situations have an elevated risk of serious bodily harm or even death for the victim. The actual level of risk associated with each incident of domestic violence may be impossible to predict. By seeking answers to some of the following questions, officers may be better able to assess the victim's exposure to such an elevated risk of serious bodily harm or even death.

Threats of homicide or suicide: Has your partner ever talked about killing self, killing you, the kids, or other family members (even if your partner later says "just kidding")?

Fantasies of homicide or suicide: Has your partner ever talked specifically about how he or she would kill themselves or others? Does your partner make references to how it would feel to die or how it would feel if you were to be killed?

Depression: Does your partner work, have outside activities, have hobbies? How does your partner deal with stress? Does your partner stay home or have a routine he or she does not deviate from? Does your partner exhibit hope or excitement about anything? Does your partner talk in terms of being a "loser" and having little reason to "go on"?

Weapons: Does your partner carry, own or have access to firearms of any kind? Has your partner ever threatened you or others with a weapon? Has your partner mentioned interest in getting one?

Obsession about the victim and/or family: Has your partner made statements to you such as: "There is no one else for me;" "I cannot go on without you in my life;" "Death before divorce;" "You belong to me;" "You will never belong to another;" or "If I can't have you, nobody will"?

Centrality of victim: Has your partner made statements about the only "thing" in life is you? Does your partner have anything else that means anything to him or her, such as a job, career goals, hobbies, children, friends, etc? Has your partner had job problems or recently lost a job?

Rage: Has your partner exhibited extreme rage toward you or others? Does your partner overreact to minor problems? Does your partner have a history of violent behavior directed at anyone else? What was your partners' reaction with officers in the past?

Drug or alcohol consumption: Does your partner use drugs or alcohol? Does your partner's overall behavior change when drunk or high? Has your partner become abusive toward others while under the influence of drugs or alcohol?

Animal abuse: Has your partner ever mutilated, hurt or killed family pet(s) or threatened to do so (even if they said, "just kidding")?

Access to victim and/or family members: Is there an order of protection or no-contact order in effect between you and your partner? Do you have a safe place to go: a shelter, a relative's or friend's home that is unknown to your partner? Do you have a safety plan?

Sharp escalation of personal risk: Has your partner acted without regard to legal or social consequences? For example, does your partner abuse you in public without concern for what others think?

Previous contacts with law enforcement: Is there a history of violence or any violations of an order of protection? Is there a history of other violent behavior? (Verify prior calls to law enforcement as they indicate an elevated risk of lethality.)

End of life issues: Has your partner taken out a life insurance policy or changed an existing policy? Has your partner recently made out or altered a will?

WORKING WITH THE MEDIA

Do not discuss your investigation with the media or the public without first obtaining permission from your supervisor. Victim information cannot be released unless you have verified that you are allowed to do so (see Attorney General opinion below).

Investigative Considerations

VOLUME NO. 50 OPINION NO. 6

CRIMINAL JUSTICE INFORMATION - Dissemination of Crime Victim Information;

POLICE DEPARTMENTS - Dissemination of Crime Victim Information;

PRIVACY - Dissemination of Crime Victim Information;

SHERIFFS - Dissemination of Crime Victim Information;

STATUTORY CONSTRUCTION - Dissemination of Crime Victim Information;

MONTANA CODE ANNOTATED - Sections 44-5-103, (3), (12), (13), -303, -311, (1), (3), -502 to -504, -507;

MONTANA CONSTITUTION - Article II, sections 9, 10;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 119 (1988)....

THEREFORE, IT IS MY OPINION:

1. When a crime victim requests confidentiality, the public dissemination of certain information, including the address, telephone number, or place of employment of the victim or a member of the victim's family is prohibited, unless an exception listed in MCA § 44-5-311(1) applies.
2. Information directly or indirectly disclosing the identity of victims of certain sex crimes may not be publicly disseminated unless an exception listed in MCA § 44-5-311(1) applies.
3. A law enforcement agency may disclose a crime scene location under MCA § 44-5-311(1), (3), even if such disclosure may suggest the identity of the victim.

Ms. Mary Van Buskirk April 1, 2004 Page 7.

ACKNOWLEDGEMENTS

A special thanks to Kevin Olson, Glen Stinar, Jerry Williams, Lynn Solomon, Deb Butler, Kelly Parsley, Erin Inman, Matt Dale, Armando Oropeza for helping to complete this project. The information contained within this field guide is not intended as legal advice and should not be construed as such.

This project was supported by Sub grant No. 07-W02-90051 awarded to the Montana Board of Crime Control (MBCC) through the U.S. Department of Justice, Office on Violence Against Women. Points of view in this document are those of the Montana Law Enforcement Academy and do not necessarily represent the official position or policies of the U.S. Department of Justice.



1,000 copies of this public document were published at an estimated cost of \$6.98 per copy, for a total cost of \$6976.90, which includes \$6976.90 for printing and \$.00 for distribution.

Cover Photo by John Reddy.