

Montana Law Enforcement Academy

Domestic Violence

Field Guide

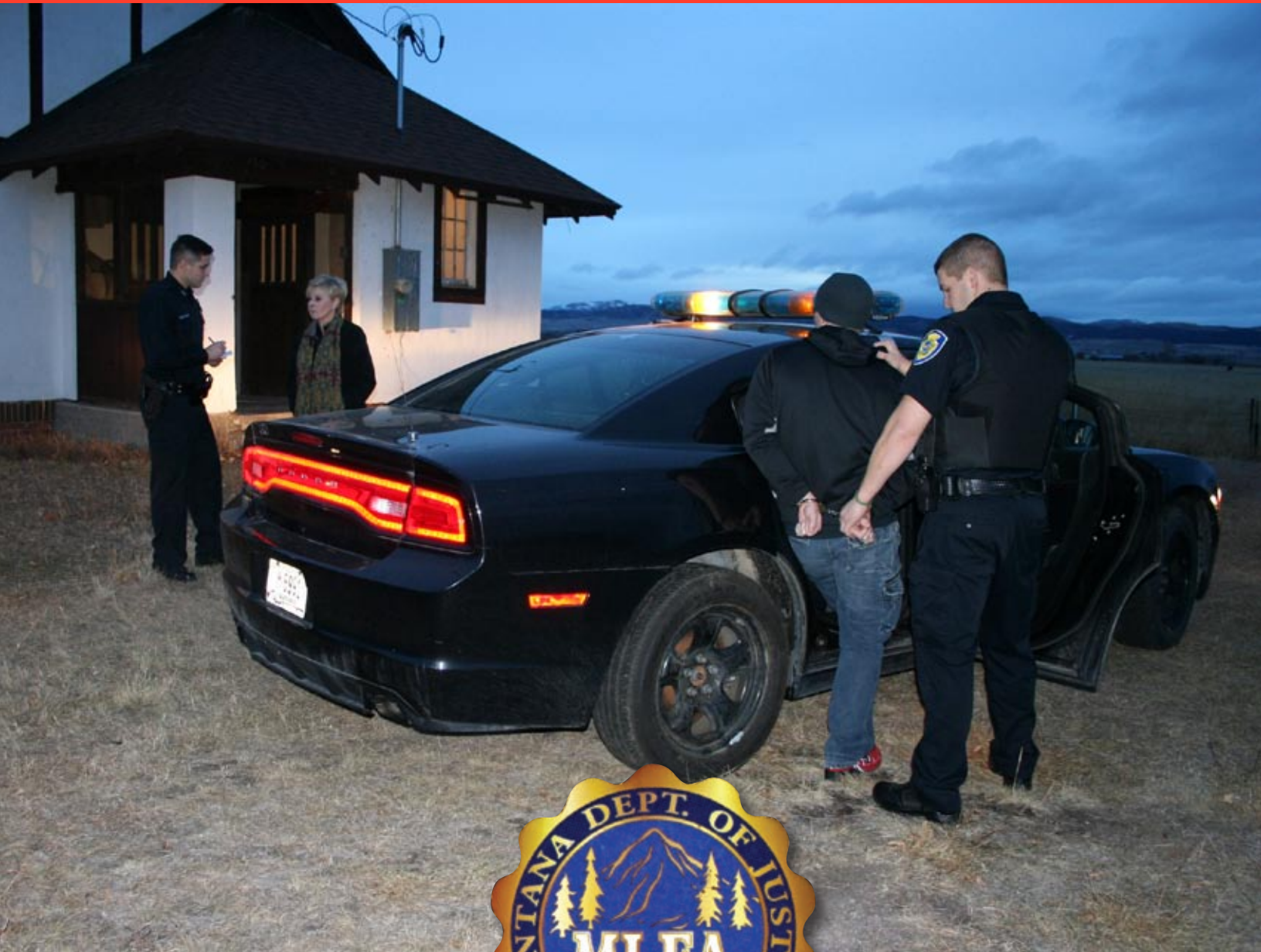


Table of Contents

CHAPTER 1—Patrol Response

Framework: Patrol Response to Domestic Violence-Related Cases1

Policy: Patrol Response1

Protocol 1: Patrol Response to Domestic Violence-Related Calls3

Domestic Violence Patrol Report Checklist11

Protocol 2: Victim Engagement Guidelines14

CHAPTER 2—Conducting Investigations

Framework: Conducting Investigations in Domestic Violence-Related Cases.16

Policy: Conducting Investigations16

Protocol 3: Domestic Violence Investigation17

CHAPTER 3—Supervising Investigations

Framework: Supervising Investigations in Domestic Violence-Related Cases.21

Policy: Supervising Investigations21

Protocol 4: Supervising Investigations in Domestic Violence–Related Cases21

CHAPTER 4—Supervising the Patrol Response

Framework: Supervising the Patrol Response to Domestic Violence-Related Cases.22

Policy: Patrol Supervision22

Protocol 5: Supervising the Patrol Response to Domestic Violence22

CHAPTER 5-Domestic Violence Laws

Introduction to Montana Code Annotated24

Assault Statute24

Aggravated Assault24

Stalking.24

Arrest/Seizure Statutes25

Orders of Protection Statutes26

Victims’ Rights and Services Statute.29

Chapter 6—Other Montana Statutes to Consider

Additional Montana Statutes to Consider..... .31

Chapter 7—Federal Statutes Applicable to Domestic Violence Crimes in Montana

Other Federal Statutes to Consider33

Special Considerations for Domestic Violence in Indian Country33

CHAPTER 8—Glossary35

CHAPTER 9—Resources37

Acknowledgements 38

Appendices

Appendix 1A Gone on Arrival Cases.41

Appendix 1B Interventions with Victims as Suspects or Defendants42

Appendix 1C Law Enforcement Response to Persons with Disabilities44

Appendix 1D Making the Arrest Decision46

Appendix 1E Miranda Rights and Domestic Violence Cases.48

Appendix 1F Outcry Witnesses and excited Utterances49

Appendix 1G Law Enforcement Response to Strangulation.50

Appendix 1H Law Enforcement Response to Stalking53

Appendix 1I Response to Children in Domestic Violence-Related Calls60

Appendix 1J Victim Engagement and the Law Enforcement Response to Domestic Violence62

Appendix 1K Supervising Domestic Violence Investigations64

Appendix 3L Follow-up Investigation of Domestic Violence Cases66

CHAPTER 1—PATROL RESPONSE

FRAMEWORK: Patrol Response to Domestic Violence-Related Cases

The responding patrol officer is one of few practitioners in the criminal justice system to come close to seeing and hearing what really goes on in the privacy of violent homes. For a responding officer, the patrol report is one of a dozen he or she might write in a shift. In a domestic violence legal case, however, it is the most important document. Its attention to specific details either helps or hinders subsequent efforts to maximize victim safety and offender accountability. This guide emphasizes the importance of accumulating accurate information over time and incidents in order to understand and appropriately respond to the level of danger and risk posed by offenders in a crime that is often complex and difficult to prosecute.

Although it starts with a law enforcement response, domestic violence calls involve other components of the criminal justice and community safety systems. All have a specific role to play in a case and each looks to the officer’s report when making decisions about when and how to act. The investigator reads a report asking, “Can I work this up into a case that can be proven beyond a reasonable doubt? Are there witnesses? Can I find them? Did they see or hear something?” The bail evaluator asks, “Will this person be a threat to the public or to this or other victims?” The prosecutor asks, “What crimes were committed, if any? Was anyone acting in self-defense?” When cases result in a plea or conviction where a pre sentence investigation is required, the writer asks,” is this event an unusual happening or part of a pattern of violence, coercion and intimidation?” To answer this question the PSI (Pre-sentence Investigation) writer reads every report written on the defendant. When officers treat each call as part of an ongoing case the pattern will emerge and the safety needs of all victims become more evident. The criminal justice system goals of victim safety and offender accountability are largely dependent on the patrol officer’s initial response to the case.

The policies and protocols for law enforcement response listed in this guide are accompanied by tools and training memos for the responding officers. The policies and protocols emphasize the importance of basic, solid law enforcement work in domestic violence cases, which can seem futile on a case-by-

case basis but will, in many cases, result in a successful intervention over time. Such success is more likely when officers and other interveners stay engaged with victims who may be quick to call for help during an assault, but who are understandably cautious in joining in an adversarial court process against the person who holds all of the power cards and readily uses coercion and violence to maintain that power.

POLICY: Patrol Response

In accordance with Montana State Law and for the purposes of this policy, the offense of domestic violence is codified in Section 45-5-206 M.C.A. Partner Family Member Assault, where in family members are defined as mother, fathers, children, brothers sisters, and other past or present family 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.

Partners are defined as spouses, former spouses, persons who have a child in common, or persons who have been or are currently in a dating or ongoing intimate relationship.

A person commits the offense of partner or family member assault if the person:

- (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; or
- (c)

purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

A first or second conviction of Partner Family Member Assault is a misdemeanor. A third or subsequent conviction is a felony.

Montana Statutes guide many aspects of an officer’s response to domestic violence call. Those statutes place legal duties on officers toward victims of

domestic violence, and often state what officers must do while responding to domestic violence. While this guide does contain legal information, it is not intended as legal advice. It is not a substitute for knowing and following Montana Law. This guide seeks to integrate best policies and practices from Praxis International’s Blueprint for Safety, with Montana Law. Patrol officers and supervisors should follow general agency policy and take the following actions in responding to domestic violence–related calls, using the protocols, appendices, and training memos referenced and included as part of this policy.

1. Implement the provisions of this chapter in accordance with Protocol 1: Patrol Response to Domestic Violence–Related Calls.
2. Respond to domestic violence–related calls directly and without delay.
3. Secure the scene and as safety permits separate all parties.
4. Conduct a thorough initial investigation to determine if probable cause exists to believe a crime has been committed and identify the suspect.
5. Where probable cause exists to believe a crime has been committed, the summoning of a peace officer to a place of residence by a partner or family member constitutes exigent circumstances for making an arrest. In addition, arrest is the preferred response in partner member assault cases. Make the arrest decision according to the following requirements and guidelines:
 - a. The officer should arrest when probable cause exists and any of the following conditions are present:
 - i. injury to the victim
 - ii. use or threatened use of a weapon
 - iii. violation of a restraining order
 - iiii. any other Imminent danger to the victim
 - b. The officer must document the decision not to arrest in a written report and file that report with the officer commanding the law enforcement agency.
 - c. If it appears the parties have been involved in mutual aggression, the officer shall evaluate the situation to determine who the predominant aggressor is. If the officer determines that one person is the

- predominant aggressor, the officer may arrest only the predominant aggressor.
- d. Determination of the predominate aggressor must be based upon but is not limited to the following considerations, regardless of who was the first aggressor: prior history of violence, relative severity of the injuries, whether an act of violence was taken in self-defense, relative size and apparent strength of each person, apparent lack of fear between the partners or family members, statements made by witnesses.
 - e. Dual arrests should only occur when an extensive investigation has determined that aggression is equally mutual. This should be a very rare occurrence.
 - f. Utilizing Appendix 1B: *Interventions with Victims as Suspects or Defendants* be aware of the need to adjust responses when the suspect is a victim of ongoing physical and/or sexual abuse by the victim of this incident.
6. Seize any weapon used or threatened to be used in the alleged assault.

Be Aware: Under Montana Law (46-6-603 MCA) an officer responding to a call relating to partner or family member assault must seize the weapon used or threatened to be used in the alleged assault. Officers can and absolutely should keep parties from weapons at the scene. Montana Law does not specifically allow officers to take any weapons with them from a household other than the one used or threatened to be used.

46-6-603 MCA (2)(a) allow a responding officer to: “take reasonable action necessary to provide for the safety of a victim and any other member of the household”.

Depending on circumstances, this provision may allow an officer to seize other weapons from the home if he or she believes it is necessary to provide for the safety of a victim or other member of a household.

An officer, can also request that the judge order weapons seized, by clearly stating in the officer’s affidavit of probable cause, the reasons those weapons pose a danger to the victim or other members of the household. The judge can then order the weapons seized as a condition of bond or sentence.

- In any case, any officer who believes it is necessary to remove all weapons to protect a victim or others, should request help from a supervisor in deciding what to do.
7. Collect and secure evidence related to the probable cause determination, regardless of whether the suspect has been arrested at the scene.
 8. In cases where the suspect is gone on arrival (GOA), probable cause to arrest exists, and the officer would have made an arrest, take measures to locate the suspect and submit a complete investigation report.
 - a. Remain on the scene until the officer believes that the likelihood of imminent violence or abuse has been eliminated and the situation has stabilized.
 - b. Ensure that the victim has been given information about safety and resources before clearing the scene.
 9. Whether or not there has been an arrest, provide assistance to victims, including assistance with accessing medical care, securing shelter, and providing “notice of rights to victim in partner family member assault (PFMA)” (**46-6-602 MCA**), notice of “services to Victims of Crimes” (**46-24-201 MCA**), and “Notification of Available Protective Services” (**46-24-202 MCA**), in accordance with Protocol 2: Victim Engagement and Appendix 1C: *Law Enforcement Response to Persons with Disabilities*.
 - a. Notify the local advocacy program of all domestic-related arrests and gone-on-arrival cases where officers issued a pick-up-and-hold as soon as possible, in accordance with Protocol 2: Victim Engagement. (NOTE: This requires an agreement between the department and the advocacy program.)
 10. Submit the appropriate report on all calls that include an allegation of a domestic assault or related crime.
 11. Do not recode any call coded as a domestic by dispatch where the relationship between the parties fits the domestic relationship definition. A call may be recoded if it can be verified that there is no domestic relationship between the parties.

12. When responding to a domestic call involving a department employee, secure the scene and address the safety needs of those present. Request that a supervisor of higher rank than the officer involved be dispatched to the scene to oversee the criminal investigation and make an arrest decision in accordance with this policy.
 - a. If the arrestee is an officer from the same agency as the responding officer, the supervisor at the scene shall recover the officer’s badge, law enforcement identification card, and service weapon. If circumstances indicate a high risk of danger or potential lethality, the on-scene supervisor shall deal with all weapons at the scene on the same basis as they would for any citizen.
 - b. If the suspect is the chief of police or the Sheriff, the second in command shall be called to the scene.

PROTOCOL 1: Patrol Response to Domestic Violence-Related Calls

A. Prior to Arrival

1. 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.
2. If possible, always have another officer dispatched to domestic violence calls.
3. Record the time of dispatch and arrival on scene.

B. On Scene

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

C. Entry

- 1. 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.

D. Allowed Entry

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

E. Denied Entry

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

F. No One Appears Home To Allow Entry

- 1. Attempt voice contact.
- 2. Contact dispatch to call the residence.
- 3. Look for vehicles and listen for sounds that indicate that someone is home.
- 4. Attempt to contact known family members.
- 5. Question witnesses, passersby, or neighbors that may have information about the possible whereabouts of the parties and the vehicles parties drive.

- 6. If necessary leave and return silently using another strategy.
- 7. If you must leave without making contact, pass information and circumstances on to next shift.
- 8. If possible, return to the location later to determine situation and if contact with the parties is possible.

G. Securing the Scene

- 1. Separate occupants and witnesses from the victim and accused, keeping them out of sight and hearing range of one another, as safety permits, but keep your partner in sight If possible.
- 2. Hold interviews in rooms with least accessibility to weapons.
- 3. Restrain the suspect if necessary, and/or remove the suspect.
- 4. Assess for injuries, administer first aid, and request medical services as necessary.
- 5. Inquire about strangulation and internal injuries.
- 6. If injuries appear life-threatening or if the victim is impaired, e.g., through injury or intoxication and unable to make the decision, request medical services regardless of the victim’s preference.
- 7. Determine the whereabouts and identities of all people on the premises, including children.
- 8. Identify and secure weapons that might pose a threat during the investigation or that might be potential evidence. The officer must seize any weapon(s) used or threatened to be used in the incident.

H. Initial Investigation

- 1. Make initial observations and note spontaneous statements by those at the scene, including:
 - a. Immediate statements made by victim, suspect or witnesses. Pay special attention to excited utterances and outcry witnesses. (See Appendix 1F: *Outcry Witnesses and Excited Utterances*.)
 - b. Observe and, where possible, photograph the crime scene (furniture tipped over; broken phones, doors, other damaged property; torn clothing; blood; sign or absence of sign of physical altercation, etc.)

Be Aware: Victims are often motivated to clean the crime scene. Take steps to avoid crime scene degradation. If possible, photograph the scene before it is cleaned up and before EMS arrives.

- c. Emotional demeanor of parties at the scene (angry, scared, crying, etc.)
- d. Physical appearance of parties (disheveled clothing or hair, torn clothing, obvious injury, flushed face, etc.). If possible photograph the children.
- e. Indications of drug or alcohol use by those at the scene and apparent level of intoxication or impairment (coherent in responding to questions)
- 2. Obtain a comprehensive account of events by interviewing or talking with each party involved in or witness to the incident. Follow agency policy regarding use of body worn camera and/or audio recording. Do not rely solely on a body worn camera to record audio of an Interview. Use a back-up personal audio recorder if available.
 - a. To the extent possible and as safety permits, talk to all parties and witnesses away from sight and hearing range of other parties.
 - b. Arrange for an interpreter if necessary.
 - c. Seek the following information from each party involved in the incident:
 - i. Specific nature of any threats
 - ii. Indications of witness tampering or whether the suspect has threatened the victim if she or he seeks help from law enforcement
 - iii. Manner in which weapons were used
 - iiii. Indications of stalking
 - v. Details about indications of strangulation, specify ligature vs. manual. collect any object used in ligature strangulation
 - vi. Indications of self-defense • Injuries or impairment
 - vii. Pain
 - viii. Effects of strangulation
 - ix. Breathing
 - x. Impaired movement

- xi. Hoarseness, loss of voice
- xii. Difficulty swallowing
- xiii. Loss of bladder or bowel function
- xiv. Red eyes
- xv. Petechiae

- d. Account of events
- e. Emotional state
 - i. Recent use of alcohol or drugs
 - ii. Relationship to other parties involved, including witnesses
 - iii. Presence and type of firearms and other weapons in the home, regardless of whether a weapon was used in the current incident
- d. Talk to each witness; document what the witness saw and heard and relationship to the parties involved, date of birth, and a number and address to reach the witness.
- e. Be alert to and probe for indications of sexual aggression or coercion, stalking and/or strangulation.
- f. Ask the victim if the suspect knows his or her address and phone number(s). If the victim is concerned that the suspect will obtain this information, note that in the report and inform victim that the information has been marked as confidential, but it is nevertheless possible that the suspect could gain access to it. Follow department protocol to protect victim contact information.
- 3. Obtain information about the history of violence and stalking from the apparent victim by asking the following three risk questions:
 - a. Do you think he/she will seriously injure or kill you, your children, or someone else close to you?
 - i. What makes you think so?
 - ii. What makes you think not?
 - b. How frequently does he/she intimidate, threaten, or assault you?
 - i. Is it changing?
 - ii. Getting worse?
 - iii. Getting better?
 - c. Describe the time you were the most frightened or injured by him/her.

4. Establish whether the victim has been intimidated about cooperating with law enforcement personnel or courts by asking if the suspect has ever threatened the victim for seeking help from the law enforcement/courts or others? If so, obtain details.

5. Obtain a description of what each witness saw and heard and the witness’s name, date of birth, and contact information.

6. Utilizing Appendix 1B: *Interventions with Victims of Battering as Suspects or Defendants*: be attentive to the need for adjusting interventions to protect both the suspect and victim of the incident.

7. Obtain information from Dispatch using available databases.

Be Aware: If responding to the hospital or some other location other than where the event occurred, it is important to determine the exact location of the incident to establish jurisdictional authority of the investigation.
2. Dual arrests are discouraged in Montana unless probable cause exists for both parties involved. Utilize this protocol and the guidance in the training memos to investigate and make an arrest decision when it appears both parties have been involved in mutual aggression.

a. When it appears both parties have been involved in mutual aggression, investigate and make an arrest decision regarding the predominant aggressor. Consider who would most likely cause the greater degree of fear and harm to the other if left unrestrained. (See Appendix 1D *Making the Arrest Decision*.)

Be Aware: under Montana Law a charge for Partner Family Member Assault, or Aggravated Assault or Assault with a Weapon against a partner or family member, must be supported by an officer’s affidavit of probable cause.

b. Take the predominant aggressor into custody.
3. If a child is present and the circumstances result in a situation where the care giver is not able to safely provide care for the child (due to arrest, intoxication, or other circumstances), then contact the child abuse hotline (1-866-597-0590) and request that the on-call child protection specialist respond and assist in locating an emergency placement for the child. Asking the care giver to provide a safe care giver, without having Child Protection Services involved my result in the placement of a child with an unsafe care giver due to the inability of law enforcement to conduct all of the necessary emergency background checks before placement. An officer does have the authority to remove a child from immediate harm under **(41-3-301 MCA)**. That officer should not attempt to place the child, however, without the help of Child Protective Services, for the reasons discussed above.

4. Conduct the arrest swiftly and safely, once that decision has been made.

a. Search and handcuff the suspect prior to placing him or her in the squad.

b. If available, activate the in-squad camera and recorder when the suspect is in a vehicle.

5. Make a record of all spontaneous statements by the suspect.

6. After arriving at the jail, fill out the required documents to hold the defendant. Ensure that the jail has complete and accurate information about how to contact the victim when the suspect is released.

Be Aware: under Montana Law (46-9-302 MCA) a person arrested on, PFMA, stalking, or violation of an order of protection may not be released on bail without first appearing before the judge.

7. Appendix 1E: *Miranda Rights and Domestic Violence Cases* should be reviewed before interviewing suspects .If an additional interview of the arrested domestic abuse suspect is conducted at the detention facility consider the following;

a. If possible have a detective interview felony suspects.

b. Record all in-custody interviews.

c. Do not attempt to make a custodial interview of a non-English speaking suspect without the assistance of a court-certified interpreter.

Be Aware: if a judge has issued a standing order that the arrestee not contact the victim for 72 hours, In that jurisdiction, the officer must give the arrestee, both written and verbal notice of the no contact order. The notice must including specific conditions as ordered by the court.

5. Photograph damaged property, including all evidence seized as well as broken windows and doors, damage to vehicles, damaged telephones, and similar evidence.

6. Photograph, and if possible, collect damaged property such as broken phones, bloody or torn clothing.

7. NOTE: Do not seize a telephone if it is the only working phone available to the victim. (Local advocacy programs may be able to supply cell phones equipped to call 911.)

8. Collect electronic evidence such as text messages, email, voicemail, etc.

L. Strangulation – Investigation and Evidence Collection

1. Be alert to the signs and symptoms of strangulation.

2. If the victim has any of the symptoms of strangulation, dispatch emergency medical services. See Appendix 1G: *Law Enforcement Response to Strangulation* regarding medical care.

3. Conduct an initial interview of the victim regarding the method of strangulation and its impact, e.g., difficulty breathing, loss of consciousness.

4. If possible, talk with the suspect and obtain photographs to document the presence or absence of defensive wounds.

5. Document all evidence of strangulation in the written report, using the term “strangulation” rather than “choking,” unless quoting the party interviewed.

M. Stalking – Investigation and Evidence Collection

1. Be alert to the possibility that any single report of domestic abuse could be part of a pattern of stalking behavior. Pay particular attention to repeated violations of protection orders and no contact orders.

2. Ask questions of the victim to determine if the current incident is an isolated event or part of a pattern of behavior.

3. Be aware of the possibility that actions that would not otherwise be illegal or might not cause alarm in another context could be examples of stalking behavior and respond

K. Evidence Collection – General

1. Collect and process all relevant evidence from the scene.

2. Photograph injuries and note bruises or other injuries that may require follow-up by investigators.

3. Obtain a medical release from the victim and information about where medical treatment will be sought. Include the following information on the release:

a. Date treatment was initially sought or will be sought to the present date

b. Victim’s authorization for release of records regarding follow up treatment

4. Photograph disarray at the scene.

according to Appendix 3G: *Training Memo— Law Enforcement Response to Stalking*.

- 4. After obtaining a warrant, search the suspect’s vehicle, if present, for tools and implements used to commit stalking, kidnapping, or related crimes.
- 5. Be alert to the existence of and collect evidence specifically associated with stalking behavior, such as floral deliveries, emails, notes, cards and letters, gifts, and similar evidence.
- 6. Note in the report information the victim has offered regarding previous acts of stalking or harassment for follow-up by the investigator.

N. Suspect Gone-on-arrival (GOA)

- 1. In addition to the initial investigation procedures included in this protocol, obtain the following information when the suspect has left the scene (GOA) prior to patrol officers’ arrival:
 - a. Suspect’s name, date of birth, and physical description, including clothing
 - b. Suspect’s direction and mode of travel upon leaving the premises
 - c. Description of the suspect’s vehicle, if applicable
 - d. Where the suspect might have gone or where the suspect stays when not with the victim
 - f. Whether the suspect has ever interfered with the victim’s attempts to seek help, especially from law enforcement
- 2. Take the following actions when the suspect has left the scene (GOA) prior to patrol officers’ arrival:
 - a. Search for the suspect on the premises.
 - b. Search for the suspect in the immediate area and the direction and area where the suspect might have fled.
 - c. Check with dispatch for other addresses where the suspect might be located.
 - i. Issue a squad pick-up.
 - ii. Issue a hold and question.
 - iii. Note squad pick-up and alert actions in the report.
 - d. Encourage the victim to call 911 if the suspect returns.

- e. Provide information to the victim about restraining orders, how to request that the prosecutor file a criminal complaint, advocacy services, and shelter.
- f. Offer to transport the victim or arrange for transport to shelter or another safe place if needed.
- g. Provide whatever assistance is reasonable to help the victim to secure broken doors or windows.
- h. Collect and process evidence in the same manner as when an arrest has taken place.
- i. If practical, remain at the scene until the officer believes the likelihood of further violence has been eliminated.
- j. After leaving the scene, when possible, drive by the residence over the next few hours and return to look for the suspect.
- k. Prior to clearing the scene, ensure that the victim receives information about victim advocacy services, protection orders and how to request criminal charges.

O. Victim Engagement

- 1. Work in collaboration with victims and provide specific support and attention to safety.
- 2. Notify the local advocacy program by telephone at (number) on all domestic-related arrests and gone-on-arrivals as soon as possible.
 - a. Preferred: make the referral before clearing the scene, but at the latest immediately after booking.
 - b. Provide the advocacy program with the following information:
 - i. Case number
 - ii. Victim’s name, address and phone numbers
 - iii. Suspect’s name and date of birth
 - iiii. The charge(s) and whether the suspect was arrested
 - v. A brief description of the incident
 - vi. Any information regarding the victim’s needs (e.g., interpreter, medical treatment and facility, need for shelter)

P. Children at the Scene

Under Montana Law, acts of violence against anyone in the home are considered psychological abuse to a child if that violence injures the child’s emotional, intellectual, or psychological capacity. Officers are mandatory reporters of any form of child abuse and neglect. If an officer has reason to suspect that there has been violence against anyone in home where child lives, that officer must call the Child Protective Services Hotline- 1-866-597-0590. Officers must call and report suspected abuse even if they know someone else has reported.

- 1. Check on the welfare of all minors at the scene and determine:
 - a. Names and dates of birth of any children present
 - b. Presence and location of any children at the incident
 - c. Physical and emotional condition of any children present
 - d. Child or children’s involvement in the incident, if any
- 2. Unless absolutely necessary to make an arrest/ predominant aggressor decision, do not interview a child about the violent events. Witnessing domestic violence is a significant trauma to a child. In order to avoid re-traumatizing a child (and tainting their potential testimony) any witness interview of the child should be done by a forensic interview team or someone trained in child forensic interviewing.
- 3. Be aware of how the child is responding to the situation and try to reduce the child’s anxiety and fear.
- 4. Be alert to and document any spontaneous and relevant statements made by a child witness.
- 5. Avoid subduing or arresting a party in front of children whenever possible.
 - a. If a child witnesses the arrest, talk with the child to provide reassurance that the arrested person will be alright, the child did nothing wrong, the arrest is not their fault, law enforcement is there to help keep everyone safe for the night, and the officer is making the arrest decision.
- 6. When the actions of the officer result in a situation where no responsible adult will be in the home to care for the children, involve CPS in

determining whether a caregiver the parent(s) wish to leave the child with is safe.

- 7. Notify Child Protective Services when any of the following occur:
 - a. A child has been injured as a result of an assault.
 - b. A child has been sexually abused.
 - c. A child has been neglected.
 - d. Actions taken by the officer will result in a situation where no responsible adult can be located to care for the child or children.
 - e. If there have been acts of violence committed against a person in the home where the child resides.
- 8. Call for medical assistance or transport the child to the nearest hospital for treatment.

Q. Recoding Calls

- 1. Do not recode any call coded as a domestic by dispatch where the relationship between the parties fits the domestic relationship definition. If the relationship is unknown, do not recode.

R. Reports – Determination of Probable Cause

- 1. In all cases resulting in a determination of probable cause that a crime was committed, regardless of the initial coding by dispatch and including cases where the suspect has left the scene, prepare a written report that documents the items included in the Domestic Violence Patrol Report Checklist, attached to this protocol.

Be Aware: If the victim is afraid that disclosure of her or his address and phone number will compromise personal safety or property, clearly indicate on the report that the victim’s address and phone number must be kept confidential from the suspect. If the victim seeks shelter, do not include the location in the report; obtain a telephone number where she can be reached in the next few days. Be aware that once a victim is in a shelter, that shelter will maintain confidentiality and will not disclose information to law enforcement about the victim. For example, without the victim’s permission, the shelter will not state whether or not the victim is present at the shelter.

S. Reports – Decision Not to Arrest

- 1. If an officer responds to a scene of a reported incident of domestic violence but does not make an arrest, the officer must file a written report with the officer commanding the law enforcement agency. This report should include:
 - a. An explanation of the reasons for the decision not to arrest
 - b. Description of the attempts to locate the parties involved, if applicable
 - c. Names and dates of birth of the parties involved

T. Incidents Involving Department Employees

- 1. Secure the scene and address the safety needs of those present.
- 2. Request that a supervisor of higher rank than the officer involved be dispatched to the scene.
- 3. Under the direction of the on-scene supervisor, conduct a criminal investigation, make an arrest decision, and process evidence in accordance with the policy and this protocol.
- 4. If the arrestee is an officer from the same agency as the responding officer, the on-scene

supervisor shall recover that person’s badge, law enforcement identification card, and his or her service weapon.

- a. If circumstances indicate a high risk of danger or potential lethality, the supervisor shall deal with all weapons at the scene, using the same due process as with any member of the public.
- b. If the suspect is unwilling to allow officers to take possession of the weapon or weapons, badge, and identification card, the on-scene supervisor will notify the watch commander.
- c. If the suspect is the chief of police, the senior assistant chief shall be called to the scene.

- 5. If the arrestee is an officer employed by an agency other than the responding officer’s agency, the on-scene supervisor shall notify the suspect’s agency of the arrest.
- 6. The on-scene supervisor shall ensure that the victim is given the required information about the victim’s rights and that the referral to the local advocacy program is made in accordance with local agreement.

Domestic Violence Patrol Report Checklist

Background and officers’ actions:

Time of officers’ arrival and time of incident _____

Relevant 911 information, including specific details about any violence or threats in the 911 call _____

Immediate statements of either party and any witnesses at the scene _____

A complete description of the scene _____

Note any existing protection or no-contact orders, probation, warrants, prior convictions _____

Summarize actions taken by responding officers (e.g., entry, arrest, non-arrest, use of force, attempts to locate, transport, advocacy contact and referrals, victim notification, seizing firearms, rationale for self-defense or primary aggressor determination) _____

Provide account of evidence collected (e.g., pictures, statements, weapons, other) _____

Presence of risk factors _____

If an arrest was not made, the reason why _____

When possible, issue a squad pick-up and hold on GOA suspects that are on probation

For each witness and party involved:

His/her account of events and responses to follow-up questions _____

Officer observation related to the person’s account of events _____

Identification, address, and means of locating the person for follow-up, including: Home address and phone number; Place of employment, work address and phone number; Cell phone number(s); Relationship to other parties _____

For each party involved:

physical and vehicle descriptions; aliases _____

- ☐ Seized weapon used, or threatened to be used in the assault.
- ☐ Gave: *Notice of Rights to Victim in Partner Family Member Assault, Notice of Services to Victims of Crimes and Notification of Available Protective Services.*
- ☐ Gave arrestee written and verbal notice of any standing *No Contact Order* including conditions as ordered by the court.
- ☐ Determined predominant aggressor if it appeared parties were involved in mutual aggression.
- ☐ Filed a written report if no arrest made.

PROTOCOL 2: Victim Engagement Guidelines

- Work in collaboration with victims, using the principles of “continuing engagement,” as addressed in the training memo accompanying this protocol.
 - Whenever possible, minimize the victim’s need to confront the offender.
 - When using information provided by the victim, protect her or him from retaliation.
 - Treat each interaction with the victim as an attempt to build collaboration over multiple interventions.
 - Be mindful of the complex and often dangerous implications of a victim’s cooperation with the legal system.
 - Be aware that the fundamental purpose of battering, which characterizes the majority of domestic violence criminal cases, is to control what the victim says, thinks, feels, and does. Victims are rarely in a position to “tell all,” although they may do so in unguarded moments. Take great care to not endanger victims with what they have shared about the offender, the abuse and their situation.
 - Engage in dialogue with the victim, thereby avoiding inadvertently treating her or him simply as an information source. Be aware that the victim’s account may be non-linear (fragmented and/or out of sequence) due to trauma.
 - In order to avoid unintentionally replicating or reinforcing the actions of the abuser, offer a clear alternative to messages that the victim is crazy, at fault, unbelievable, and unable to make decisions and that the abuser is unstoppable.
 - Victim engagement guidelines for patrol officers: In responding to domestic violence– related calls, conducting the on-scene investigation, and interacting with victims and suspects, take the following specific actions, as appropriate to the circumstances of the case and victim safety:
 - Do not tell the perpetrator what the victim has told officers. But be aware that the perpetrator may have access to the victim’s statement in later court proceedings.
- Do not ask the victim if she or he:
 - Wants the suspect arrested
 - Will testify in court
 - Remain at the scene until the likelihood of further imminent violence has passed.
 - Recognize that remaining calm and professional even if the victim is upset or hostile will enable officers to obtain better information.
 - Recognize that the need for assistance may continue beyond the current incident and that the officer’s response will influence whether the victim will view law enforcement as a resource for ending the violence in the future.
 - Reassure the victim that he or she can continue to call law enforcement if necessary. This is especially true for victims who seem hostile to intervention.
 - Be cognizant of the victim’s need for privacy and dignity by allowing her or him to change clothes if needed, shielded from on-lookers.
 - Obtain a phone number of someone who will always know how to reach the victim and record that number on the Victim Information Form in accordance with department procedure.
- Be Aware: Under Montana Law (46-24-203 MCA) once a victim provides the appropriate official with a current address and telephone number, that victim must receive prompt advance notification, if possible, of important court proceedings related to their case, such as arrest or release of the accused.**

 - Provide victim with information about shelter, orders for protection and other community resources; preferable a card that provides notice of the domestic abuse victim’s rights.
 - Recognize that for a variety of reasons a vic-tim may appear hostile to officers even if she or he asked for help. If officers are patient and calm in the face of that hostility it will often dissipate over time; that is, initial hostility is likely to dissipate three or four calls later, but probably not five or ten minutes later.
 - Recognize that victims are most likely to disclose abuse to the responding officer
- immediately following an assault. Most of the information on lethality and risk will be disclosed at this point in time.

 - Recognize that the officer’s need for specific information may compete with the victim’s need to talk on his or her own terms.
 - Recognize that better information is usually obtained by asking open-ended questions and following up on responses to those questions.
 - Reassure the victim that the violence is not her or his fault, that she or he did the right thing by calling law enforcement, and that officers will take appropriate action to protect the victim.
 - Provide messages of help, reassurance, and protection.
3. Victim engagement guidelines for investigators: In conducting the investigation and interacting with victims and suspects, take the following specific actions, as appropriate to the circumstances of the case and victim safety.

 - Do not tell the suspect what the victim has told you.
 - If circumstances allow, do not tell the suspect you have spoken to the victim.
 - Treat each contact with the victim as an opportunity to build a continuing relationship.
 - Be patient with victims who may be hostile and less than appreciative of your efforts. Over time, if treated well, most victims will participate in a collaboration to stop the violence.
 - Ensure that the victim knows who you are and how to contact you.
 - Encourage the victim to report contact, abusive behavior and/or violations by the suspect.
 - Request that the victim report any threats made by the offender for cooperating with the investigation.
 - Inform the victim of the importance of keeping a record of mail, voice mail, e-mail, text messages, and other communication and contact from the suspect or others acting on the suspect’s behalf.
- Inform victim of the availability of periodic “welfare” checks at her or his residence by officers.
 - Problem solve with the victim around enhancing safety as the case proceeds through the legal system.
 - If the victim is willing to talk about the full scope of abuse and violence, ask for details and record all credible reports of violence, stalking, coercion, intimidation, and related acts of abuse.
 - Provide victim with information about shelter options, and community resources. Provide “Notice of rights to victim in partner family member assault (PFMA).” notice of “Services to Victims of Crimes”, and “Notification of Available Protective Services”.
 - Ask open-ended questions—more likely to produce information than narrow questions.
 - Provide the victim with the phone number of the local advocacy program for safety planning and services. (See Appendix 1B: *Interventions with Victims as Suspects or Defendants* for referrals involving victims who are suspects.)
 - If the victim and/or witnesses do not speak English, contact appropriate interpreter services.
 - If possible obtain a written statement form the victim about the incident.
 - For follow-up interviews, do not use neighbors or family members (specify local procedures for interpreter services).
 - Provide messages of help, reassurance, and protection, using the guidance provided by Appendix 1J : *Victim Engagement and the Law Enforcement Response to Domestic Violence*.

Chapter 2—Conducting Investigations

FRAMEWORK: Conducting investigations in domestic violence-related cases

Investigators build upon and expand the initial evidence collection and attention to danger and risk provided by patrol officers. The subsequent investigation can be a critical factor in determining whether a prosecutor can take action in ways that minimize the victim’s direct participation in the prosecution and need to confront the offender. Evidence developed by the investigator can make it possible to pursue charges related to witness tampering and to actions of violence that are associated with increased risk and lethality, such as stalking, strangulation, and sexual coercion and aggression.

Policy: Conducting Investigations

In addition to following general department policy, the investigative unit will take the following actions in conducting investigations in domestic violence–related cases, using the protocols and appendices referenced and included as part of this policy.

1. Implement the provisions of this policy in accordance with Protocol 3: Domestic Violence Investigations.
2. The supervisor shall promptly review every domestic violence–related report where an officer has determined that probable cause exists that a crime was committed and assign the case for follow-up investigation; or send the report to the charging attorney with no further investigation.
3. In cases where a primary investigation centers on a non-domestic crime but a domestic violence–related crime was also involved in the case, fully investigate the domestic-related crime.
4. Conduct investigations supplementing the initial law enforcement investigation at the scene.
5. Prioritize investigation of cases where the suspect is gone-on-arrival in the same manner as in-custody cases and take victim safety into account.
6. Engage with the victim or victims in a way that prioritizes safety, offers resources, builds collaboration over time, and increases access

to services and protection in accordance with Protocol 2: Victim Engagement Guidelines.

7. If a case that the investigator believes has strong merit is declined by the prosecuting authority, request the specific reason for the decision to decline and explore the possibility of further investigation to support prosecution. If the prosecutor remains reluctant to proceed with the case, discuss it with the investigative unit supervisor for further follow-up.

The unit supervisor shall review cases regularly as appropriate with the prosecutor’s office and shall meet quarterly with prosecutors to review and discuss recurring issues.
8. In cases where the prosecutor has insufficient evidence to charge the case but believes that further investigation would likely produce enough evidence to charge, the prosecutor will designate the case for release pending further investigation and return the case to the investigator specifying what additional investigation actions should be taken and designating a time period in which to gather the information. If there is still insufficient evidence to charge at the end of the additional investigation period, the prosecutor will decline the case and promptly inform the investigator.
9. Be alert for crimes that often occur in domestic violence situations and investigate according to the related training memos; such crimes include:
 - a. Stalking/harassment
 - b. Strangulation
 - c. Sexual coercion and sexual aggression
 - d. Witness tampering
10. Conduct all investigations involving department employees and law enforcement personnel as suspects, in accordance with this policy and protocol.
11. Conduct all investigations involving a public figure in accordance with this policy and protocol,

regardless of the socioeconomic status or prominence of the suspect.

12. Determine if the suspect is on probation; if so, notify probation of the circumstances of the case, including any offenses where the suspect left the scene and has not been located.

Protocol 3: Domestic Violence Investigation

A. Case Assignment

1. Regardless of whether the offender is in custody or out of custody (GOA), cases with one or more of the following factors will receive the highest priority in case assignment:
 - a. An imminent time deadline before which the suspect must be charged or released
 - b. Significant injury or impairment
 - c. Strangulation or stalking behavior has been alleged
 - d. A victim’s response to risk questions indicates significant risk of harm
 - e. A victim expresses fear of imminent bodily harm
2. Cases with one or more of the following factors will receive secondary priority in case assignment:
 - a. Minor injury or no injury, except where the prosecutor has requested an investigation
 - b. No indication of ongoing abuse or victim intimidation by the suspect
3. No follow-up investigation will be assigned on cases involving:
 - a. Misdemeanors where the initial investigation is complete
 - b. Cases without probable cause
4. Follow-up investigation for in-custody misdemeanor cases will occur after charging at the request of the city attorney.
5. Cases shall be evaluated for multiple charges and joint investigation.
 - a. The investigative unit supervisor shall evaluate cases for multiple charges, both domestic-related and non-domestic-related.

- b. If there is the possibility of multiple charges, the investigator will thoroughly investigate all crimes.

6. If it appears that the suspect is a victim of ongoing abuse by the victim of this incident, assign the case to an investigator with instructions to follow the procedures in Appendix 1B: *Interventions with Victims of Battering as Suspects or Defendants*.

B. Investigation

1. Identify and obtain contact information for witnesses if not included in the incident report.
2. Conduct follow-up interviews with and obtain statements from witnesses, including the person who called 911, if the initial interview was incomplete or missing important information.
3. Apply the following considerations in determining whether to conduct follow-up interviews with children:

Unless absolutely necessary, do not interview a child about the violent events. Witnessing domestic violence is a significant trauma to a child. In order to avoid re-traumatizing a child (and tainting their potential testimony) any witness interview of the child should be done by a forensic interview team or someone trained in child forensic interviewing.
4. Arrange for a follow-up interview with the victim.
 - a. Inquire about their welfare and safety.
5. Provide referral information regarding advocacy support, restraining orders, and other community supports.
6. Conduct a thorough interview with the victim that includes attention to:
 - a. Her or his account of events surrounding the incident
 - b. The extent to which the victim feels uneasy about providing information to law enforcement and if so, why
 - c. The extent to which the suspect has ever warned the victim about talking with law enforcement or outsiders for help, now or in the past, and the specifics of any threats or warnings

- d. Initial and continuing treatment of injuries

e. Indicators of stalking

7. Conduct the domestic violence risk assessment with the victim.

a If it appears there is a history of violence, ask follow-up risk questions. Cover the following risk factors and as time allows probe for what the victim thinks are the risks associated with each factor.

i. Does he/she own a gun?

ii. Have you left after living together?

iii. Does he/she ever try to strangle you?

iiii. Has he/she ever used a weapon against you or threatened you with a weapon?

v. Has he/she threatened to kill you or himself/herself?

vi. Has he/she avoided arrest for domestic violence?

vii. Does he/she use drugs? If so, what kind and with what effect?

viii. Has he/she ever forced you to have sex when you didn't want to?

ix. Does he/she control many of your daily activities (e.g., friendships, whether or when your family can visit, travel)?

x. Is he/she jealous of you?

xi. Does he/she follow or spy on you or leave threatening notes or messages?

xii. Do you have a child that is not his/hers?

xiii. Has he/she beaten you when you were pregnant?

xiiii Have you ever had a miscarriage? What were the circumstances surrounding this event.

xv. Has he/she ever threatened or tried to commit suicide?

xvi. Is he/she working?

xvii. Is he/she an alcoholic or problem-drinker?

8. In the victim interview and risk assessment, probe for details related to:

a. Severity and frequency of abuse

b. Victim's level of fear

c. Isolation

d. History of violence (whether or not it resulted in law enforcement contact)

9. Follow up on any indications or suspicions of strangulation, stalking, witness tampering, or sexual coercion or aggression.

10. Record all statements as required by law and in other situations whenever possible.

11. Obtain all medical reports after verifying signed release.

12. Run a comprehensive criminal history check.

13. Document all history of abuse by obtaining:

a. Past law enforcement reports on the offender

b. Past and current protection orders including the Petition and Affidavit portion, and any existing no contact orders issued by a criminal court

c. In cases of stalking or increased risk of harm (per risk assessment), law enforcement reports from other jurisdictions within and outside the state

d. NOTE: Gathering law enforcement reports from other jurisdictions may occur after charging, but before pre-trial in order to amend charges if appropriate prior to pre-trial negotiations.

14. Collect all evidence related to the case, including:

a. Follow-up photographs of injuries at 24, 48, and 72 hours in cases where bruises may develop after the initial response

b. Physical evidence not collected by the responding patrol officers

c. Any weapons used, or threatened to be used, in the incident

BEWARE: If the incident included threats to kill, highlight threats for prosecution so a request can be made for seizure and/or no possession of weapons as a condition of release.

d. Recordings/printouts of relevant voice mail, e-mail, text messages, etc. Send a

preservation letter to the Phone Company, or ISP to prevent destruction of relevant data.

15. Make note of information missing from the patrol reports and convey incomplete reports to the investigative unit supervisor. The investigative unit supervisor will return incomplete reports to appropriate patrol commander for review and a supplement, if necessary.

16. Make immediately available to the probation officer conducting a pre sentence investigation the following information:

a. All information related to the criminal history check and history of abuse

b. Responses to the victim interview and risk questions, with attention to the type, severity, and frequency of violence; the victim's level of fear and degree of isolation

c. All supplemental reports of interviews with witnesses

17. Make the initial report available to Child Protection Services.

C. Gone-on-arrival (GOA) cases

1. In cases where the offender was not arrested at the scene, cases with one or more of the following factors will receive the highest priority:

a. Significant injury or impairment

b. Witness tampering, strangulation or stalking behavior has been alleged

c. A victim's response to risk questions indicates increased risk of harm

d. A victim expresses fear of imminent bodily harm

2. Follow Section B-Investigation of the protocol in conducting the investigation of GOA cases.

3. Before interviewing the victim, determine if the victim is safe and able to speak freely.

4. Inform the victim that the investigator will attempt to interview the suspect.

5. Take the following actions when interviewing a suspect who is out of custody/GOA:

a. Conduct the interview in person so that suspect reactions can be assessed.

b. Notify the victim if the investigator assesses increased risk of harm and assist the victim in problem-solving regarding enhancing her/his safety.

6. Determine whether the suspect is on probation for a misdemeanor offense; if so, forward the incident report and contacting the probation officer to discuss whether a pick-up-and-hold should be issued.

7. If the charge is a felony, issue a pick-up-and-hold.

8. When the suspect is in custody, conduct the suspect interview at the jail.

9. Notify the victim of the prosecutor's charging decision.

a. Ensure that the victim has information regarding advocacy and civil protection orders.

b. Encourage the victim to call law enforcement again if new incidents occur.

D. Victim engagement

1. In conducting the investigation, work in collaboration with victims according to Protocol 2: Victim Engagement Guidelines.

2. When using information provided by the victim, protect her/him from retaliation.

a. Do not tell the suspect what the victim has told you.

b. If circumstances allow, do not tell the suspect you have spoken to victim.

3. Ensure that the victim knows who you are and how to contact you.

Be Aware: under Montana Law (46-24-203 MCA) once a victim provides the appropriate official with a current address and telephone number, that victim must receive prompt advance notification, if possible, of important court proceedings related to their case, such as arrest or release of the accused.

4. Encourage the victim to report contact, abusive behavior and/or violations by the suspect.

5. Request that the victim report any threats against her/him for cooperating with the investigation.

6. Inform the victim of the importance of keeping a record of mail, voice mail, e-mail, text messages,
- 18 | Chapter 2 — Conducting Investigations
- Chapter 2 — Conducting Investigations | 19

and other forms of communication and contact from the suspect or others acting on the suspect's behalf.

7. Inform the victim of the availability of periodic "welfare" checks at her/his residence by officers.
8. Problem solve with the victim around enhancing safety as the case proceeds through the legal system.

E. Declined cases

1. Notify the victim of the prosecutor's decision.
2. When the prosecutor declines a case the investigator believes has merit, he or she should discuss the case with the supervisor and then contact the charging attorney to discuss the reason for declining the case and explore the possibility of further investigation. If the charging attorney indicates additional investigation might result in charges, continue the investigation as requested by the prosecutor.
3. After a prosecutor's initial decision to decline the case, if the investigator concludes the case has strong merit, he or she may request supervisory approval to retain the case and gather additional evidence to improve the possibility of charging.
4. If the case is finally declined by the prosecutor as a felony and transferred to another prosecuting authority as a misdemeanor, the investigator should be informed of the transfer and contact the new charging attorney to discuss the case.

F. Stalking

1. Investigate allegations or indications of stalking according to guidance provided in Appendix 1H: *Law Enforcement Response to Stalking*.

G. Strangulation

1. Investigate allegations or indications of strangulation according to guidance provided in Appendix 1G: *Law Enforcement Response to Strangulation*.

H. Sexual coercion and aggression

1. Review the officer's report for indications of or references to sexually coercive or aggressive behavior.
2. Interview the victim with sensitivity to the complexity of revealing sexual aggression or coercion.
3. Consult with an advocate if sexual coercion or aggression is indicated in the initial report.

I. Cases involving employees

1. Conduct the investigation following general policies and procedures and this protocol.
2. If patrol has not already done so, the investigative unit supervisor shall notify the supervisor of the suspect's unit as soon as possible after the incident.
3. Contact local advocacy program for assistance in referring the victim for safety planning and services.
4. Deliver all reports and information obtained to the suspect's commander at the completion of the investigation.
5. Refer all incidents involving law enforcement personnel for review by the prosecuting authority.
6. In appropriate cases, discuss referring case with the Division of Criminal Investigation [DCI] or another jurisdiction with an investigative unit supervisor.

CHAPTER 3—Supervising Investigations

FRAMEWORK: Supervising Investigations In Domestic Violence-Related Cases

Supervisory oversight of domestic violence investigations ensures that this link in the interagency response works to its fullest potential. Oversight should reinforce thorough evidence collection, attention to risk and danger, and strategies that minimize the need for a victim to confront the offender. Oversight should emphasize proper investigation and documentation to accurately charge a case.

POLICY: Supervising Investigations

In addition to following general agency procedures covering supervisory oversight of investigations, the patrol shift or investigative unit supervisor should take the following actions in providing supervisory oversight of investigations in domestic violence-related cases, using the protocols and appendices referenced as part of this policy.

1. Implement the provisions of this policy in accordance with Protocol 4: Supervising Investigations.
2. Monitor investigative files to determine if all necessary actions were taken in the investigation, and direct any necessary follow-up.
3. Prepare a report outlining whether patrol reports sent to the investigative unit comply with the patrol report protocol.
4. Meet every other month with division commanders to discuss quality and compliance of patrol reports with the protocol and refer reports to commander for review and redrafting if necessary.
5. Meet quarterly with the city and county attorney's offices to discuss and review problematic cases.
6. Prepare and update a quarterly case tracking report.
7. Consult with investigators on individual cases.
8. Review policies, protocols, and training memos with new investigators assigned to the unit within 30 days of their assignment.
9. Update policies and protocols each year pursuant to legislative, statutory changes.

Protocol 4: Supervising Investigations in Domestic Violence-Related Cases

1. Ensure that every officer/investigator is familiar with policies and procedures.
2. Provide consultation to officers/investigators on cases as needed.
3. Monitor investigations to determine:
 - a. If additional training is necessary in investigative techniques (e.g., interviewing, and predominant aggressor evaluation)
 - b. If additional training is necessary in the specifics arising in domestic violence-related cases
4. If additional training is warranted, direct the officer/investigator to appropriate training and continue monitoring to determine effectiveness of training.
 - a. Number of cases investigated
 - b. Number of cases charged (misdemeanors, and felonies)
 - c. Number of cases declined (misdemeanor, and felonies)
 - d. Number of incomplete patrol reports returned
 - e. Concerns that need to be resolved and anticipated challenges
5. Review policies, protocols and training memos with new investigators assigned to the unit within 30 days of assignment.
6. Update policies and protocols yearly to comply with legislative statutory changes.
7. Assistant agency command staff will review five to ten randomly selected files every six months for completeness, using the case review checklist appended to this protocol.
 - a. Number of cases investigated
 - b. Number of cases charged (misdemeanors, and felonies)
 - c. Number of cases declined (misdemeanors, and felonies)

CHAPTER 4—Supervising the Patrol Response

FRAMEWORK: Supervising the patrol response to domestic violence-related cases

The safety of victims and prosecution success hinges largely on what happens in the first hour of each case. The patrol officer’s role in laying a foundation for all subsequent interventions cannot be over- emphasized. Patrol supervisors, in turn, relay the department’s priorities and expectations, thereby reinforcing the agency response and the patrol officer’s key role. This is accomplished by supervisors periodically attending domestic violence calls at the scene, reviewing reports on a daily basis, and providing more in-depth review of reports as needed to maintain the department’s report-writing standards and reinforce the importance of thorough patrol reports to the overall safety and accountability goals of the interagency approach. In addition to following general agency policy, patrol sergeants and department command should take the following actions in providing supervisory oversight in domestic violence–related cases, using the protocols and appendices included in this policy.

POLICY: Patrol Supervision

1. Implement the provisions of this policy in accordance with Protocol 5: Supervising the Patrol Response to Domestic Violence.
2. Monitor responding officers’ on-scene activities and compliance with policy by periodically appearing on the scene of domestic calls and assessing the patrol response.
3. Review patrol reports for accuracy and completeness.
4. Respond to patrol officers’ requests to approve decisions to not arrest in misdemeanor cases where probable cause has been established.
5. Respond to department employee–involved domestic violence calls by ensuring that a supervisor of higher rank than the involved officer is dispatched to the scene.
6. Ensure that patrol officers receive and are introduced to domestic violence response policies and protocols and related appendices and training memos.

Protocol 5: Supervising the Patrol Response to Domestic Violence

1. Assess the on-scene patrol response to domestic violence-related calls, including:
 - a. Skill in securing the scene and managing the immediate crisis
 - b. Skill in obtaining initial information from those at the scene
 - c. Thorough assessment and documentation of probable cause determinations
 - d. Awareness of potential stalking, strangulation, and witness tampering
 - e. Skill and thoroughness in identifying, photographing (or arranging for photographs) of injuries and relevant evidence, and collecting physical evidence
 - f. Professional and competent treatment of those at the scene, including victims, children, people with disabilities, older victims
 - g. Prompt referral to advocacy. “Notice of rights to victim in partner family member assault (PFMA)” (46-6-602 MCA), notice of “services to Victims of Crimes”(46-24-201), and “Notification of available Protective Services” (46-24-202)
 - h. Conscientious attention to the security of the victim by making reasonable efforts to secure broken doors or windows, obtain a cell phone to call 911, etc.
2. Conduct daily and ongoing reviews of patrol officers’ reports.
 - a. Use the Law Enforcement Report Checklist attached to Law Enforcement Protocol 1: Patrol Response to Domestic Violence– Related Calls, to review daily reports submitted by officers and approve or send back for corrections.
 - b. If the suspect is in custody and the author of the report is off-duty, approve the report

and notify the investigative unit supervisor of the errors in the report.

- c. On a quarterly basis, randomly select two reports of each officer and conduct a thorough review of reports. Where reports do not meet the standards, meet with the officers to provide feedback and guidance.
- d. Periodically review a sample of reports submitted by officers in cases involving a determination of no probable cause to review compliance with policy and protocol.
4. In responding to department employee– involved domestic violence, take the following action:
 - a. Recover the officer’s badge, ID, and service weapon.
 - b. If the situation is deemed to be highly dangerous, deal with all weapons from the

scene on the same basis as any member of the public.

- c. Supervise the on-scene investigation.
5. Introduce and provide officers with appendices and training memos related to policies and protocols governing the patrol response to domestic violence cases.
 - a. Patrol sergeants: introduce each of the appendices and training memos and review them with patrol during roll call.
 - b. Post appendices and training memos via e-mail.
 - c. Direct officers to read and confirm that they have read the documents pursuant to established procedures.

CHAPTER 5—Domestic Violence Laws

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.

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 family 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" mean spouses, former spouses, persons having a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship
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 stature 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 stature, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection.

- (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 firearm was used in the assault.

Be Aware: The 2013 Legislature specifically removed the exclusion of this law from being applied to same sex relationships. 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 engages in a course of conduct (two or more acts) which causes another person to: 1. fear for their own safety, or that of another person, or 2. suffer "substantial emotional distress" meaning significant mental suffering or distress. Treatment or counseling is not required.

"Course of conduct " is broadly defined and includes direct and indirect acts by any method or means .

2. This section does not apply to a constitutionally protected activity.
3. 1st conviction - misdemeanor; 1st conviction with Protective Order in effect - felony; 2nd or subsequent conviction - felony.
4. 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:

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

Bail schedule acceptance by peace officer. 46-9-302 MCA.

A person may not be released on bail without first appearing before the judge when the offense is:

- a. any assault on a partner or family member, as partner or family member is defined in 45-5-206;
- b. stalking, as defined in 45-5-220;
- c. violation of an order of protection, as defined in 45-5-626

Time of making an arrest. 45-6-105 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 of 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.

Reports. 41-3-201 MCA.

1. When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department of public health and human services.
2. Professionals and officials required to report are:
 - a. a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;
 - b. a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;
 - c. religious healers;
 - d. school teachers, other school officials, and employees who work during regular school hours;
 - e. a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;
 - f. a foster care, residential, or institutional worker;
 - g. a peace officer or other law enforcement official;

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."

BEWARE: 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 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 (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) if effective for 72hours 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 the petitioner is a victim of one of the following offenses committed by a partner or family member:

assault
aggravated assault intimidation
partner or family member assault (PFMA)
criminal endangerment
negligent endangerment
assault on a minor
assault with a weapon
unlawful restraint
kidnapping
aggravated kidnapping or 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 the petitioner participates in a criminal prosecution.
- c. the petitioner participates in a criminal prosecution.

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

Victims’ Rights and Services Statute

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. 46-24-201MCA

- 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 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. 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.

BEWARE: 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 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 or 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.

CHAPTER 6—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.

BEWARE: A telephone 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 caused reasonable apprehension of bodily injury in another.

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 dander 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 form 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.

Investigation of alleged offense involving claim of justifiable use of force. 45-3-112 MCA

When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

Additional Montana Statutes to Consider

When responding to domestic violence calls, officers should consider violations of other statutes in addition to that assault code. 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

CHAPTER 7—Federal Statutes Applicable to Domestic Violence Crimes in Montana

Be Aware: When considering federal offenses, always coordinate with your prosecutor, supervisor and consult your 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 of possession of firearms. 18 USC 922

- a. 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; 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) & (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

Special Considerations for Domestic Violence in Indian Country

Montana has seven reservations. Each reservation has its own tribal court. The federal government has jurisdiction over all “Major Crimes” on the reservation except for the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation. As such, the federal government and the tribes, and not the county or state, has jurisdiction over the majority of criminal matters arising on the reservation. In the context of domestic violence, generally speaking the federal government will charge assaults resulting in serious and substantial bodily injury, assaults with a dangerous weapon, and assaults involving strangulation and asphyxiation.

Generally, tribal courts do not have jurisdiction over non-Indians in the criminal setting. If non-Indian vs non-Indian crime arises out of Indian Country, the county has jurisdiction. Additionally, in the instance of misdemeanor assault involving a non-Indian assaulting an Indian, the federal government has jurisdiction.

In 2013 the Violence Against Women Act permitted tribal courts to have jurisdiction over misdemeanor assault arising in Indian Country when the assailant is non-Indian and the victim is Indian and the parties are intimate or dating partners. Tribes are only permitted to exercise this jurisdiction if they have met due process requirements required by the statute.

CHAPTER 8—Glossary

Affidavit of Probable Cause – Affidavit outlining the facts and circumstance 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 the 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. MCA § 45-5-206 (2)(b)(PFMA-penalty) (2007).

NOTE: The 2013 Legislature specifically removed the exclusion of safe sex relationships from the PFMA statute. Therefore the term Partner also includes same sex relationships.

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: the prior history of violence between the partners or family members, if information about the prior history is available to the officer; the relative severity of injuries received by each person; whether an act of or threat of violence was taken in self-defense; the relative sizes and apparent strength of each person; the apparent fear or lack of fear between the partners or family members; and 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: real estate; money; commercial instruments; admission or transportation tickets; written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner; things growing on, affixed to, or found on land and things that are part of or affixed to a building; electricity, gas, and water; birds, animals and fish that ordinarily are kept in a state of confinement; food and drink, sample, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; other articles, materials, devices, substances, and whole or partial copies, descriptions, photograph, 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 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:**
- creates a substantial risk of death;
 - causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or
 - 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.

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).

CHAPTER 9—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)

(202) 543-5566
www.nnedv.org

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

Sacred Circle

(877) 733-7623
www.sacred-circle.com

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

The Montana Coalition Against Domestic and Sexual Violence (MCADSV)

(406) 443-7794 or (888) 404-7794
www.mcadsv.com

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

Montana Legal Services Association Office:

(406) 442-9830

Help Line: (800) 666-6899
www.mtlsa.org

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

Montana Office of Victim Services

(800) 498-6455
<https://dojmt.gov/victims/>

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.

Montana Child Abuse and Neglect Hotline

1-866-820-5437

Montana Child Abuse and Neglect Hotline for Law Enforcement Reporting

1-866-597-0590 (24 Hour Toll Free Number)

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 you 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.

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 payment 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: _____

You may call:

Telephone 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:

- a. 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.
- b. 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 detention center at (local number) _____ for this information.

If a person has been found guilty of partner or family member assault against you or a partner or family member, as defined in [45-5-206](#), or has been found guilty of stalking or another offense involving bodily harm or the threat of bodily harm against you or a partner or family member, you may choose to keep your residential address off the list of registered voters by contacting the county election administrator at_____

As a crime victim, there are many resources available to you: (List local and state resources)

Signature of Victim: _____ Date: _____

Printed Name of Officer: _____

Signature of Officer: _____ Date: _____

Copies Given To: ☐ Victim

☐ Victim/Witness Advocate Law Enforcement

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This revised copy is being produced for electronic distribution.

Appendix 1A

Training Memo—Gone-on-Arrival (GOA) Cases

Domestic violence incidents where the suspect leaves the scene before police arrive often involve dangerous suspects hoping to evade consequences for their actions.¹ When an officer makes a determination that probable cause exists for an arrest, but the suspect is not present, the officer should search for the suspect.

Officers should obtain the following information:

- ☐ Suspect’s name, date of birth, and physical description, including clothing
Suspect’s means and direction of travel
- ☐ Description of the suspect’s vehicle if applicable Where the suspect might have gone
- ☐ Where the suspect stays when not with the victim
- ☐ Whether the suspect has ever interfered with the victim’s attempts to seek help

Officers shall take the following action:

- ☐ Search for the suspect on the premises.
- ☐ Search for the suspect in the immediate area and where suspect might have fled. Issue a pick-up and hold.
- ☐ Encourage the victim to call 911 if suspect returns.
- ☐ Provide information to the victim about restraining orders, advocacy services, and shelter. Offer to transport the victim (or arrange for transport) to a shelter or medical facility if needed.

In those cases in which the **suspect was not arrested** on scene, prosecutors find it helpful to the case for the investigator to attempt to interview the suspect in order to commit the suspect to a story or a defense. Primary consideration for the victim’s safety must be taken into account prior to doing so. Potential danger factors to consider include: (1) a suspect who is unaware that the police were called, (2) a suspect who is gang-affiliated, (3) a victim who is unaware of the possibility the suspect could be interviewed several days or weeks after the crime, and (4) a suspect who has made prior threats or acts of suicide, homicide or taking the children. When a decision is made to interview a suspect, inform the victim that the suspect may be interviewed within the next two weeks or so. If the suspect has a violent history, conduct the interview as soon as possible. Conduct the interview in person, for victim safety as well as to assess the suspect’s reactions and truthfulness.

If the case has been submitted to prosecutors for consideration and if the **case has been declined**, notify the victim of the prosecutor’s decision.

Training Memo—Interventions with Victims as Suspects or Defendants

Many victims of ongoing abuse use violence against their abusers. Some of that violence is legal and some is not. Intervention in these cases can and often does produce unintended consequences. A key intervention principle is to intervene in ways that do not make the victim of ongoing abuse (who we will refer to as the victim/defendant) more vulnerable to a batterer's violence. At the same time the intervention should be focused on preventing the victim/defendant from using force against the abuser as a means of attempting to protect against future violence and coercion.

The victim of ongoing abuse is someone who is being battered by their partner, not someone who has simply been the victim of a past incident of abuse. Battering means the victim/defendant is being subjected to a pattern of coercion, intimidation and violence and that abuse has limited the victim/defendant's autonomy and ability to act in her or his interests without being subject to abuse. Battering almost always leads to the element of entrapment in the relationship. By this we mean that a person is not simply free to say, "This is not working for me I'm leaving". Instead the victim is, through psychological, economic and/or physical controls compelled to stay with, protect, or in some way act in the interest of the abuser.

Most batterers will claim to be the victim of abuse by the person they batter and intervening practitioners who are not positioned to make the distinctions between battering and resistive force are likely to intervene in ways that protect neither and perhaps embolden the batterer.

Because the criminal justice system tends to be incident focused it is difficult for the system to uncover and make visible to practitioners acting on the case the pattern of abuse occurring in the relationship. If that pattern is not uncovered, the criminal justice system intervention may be misguided.

Victims of ongoing coercive control (battering) who are arrested and convicted for fighting back or "retaliation" can be easily and unintentionally made more vulnerable to violence by the perpetrator of the battering following that state intervention. The challenge facing the criminal justice system is one of balancing what in these cases

may be complicated goals of holding the defendant accountable so that the violence does not recur while at the same time enhancing the safety of the victim who is most at risk when the defendant is also the victim of on-going abuse.

It is rare in heterosexual relationships that a woman has the capacity, opportunity and socialization to batter (as distinguished from using violence) but while uncommon, such cases do occur. The objectives in these cases are the same. Intervene in ways that;

- a) offers the victim of battering that is using violence alternative ways to cope, manage, or respond to being battered and;
- b) reduces the violence and coercive control the victim/defendant is being subjected to by their batterer. The following procedures are used to process cases involving a victim/defendant with attention to these inter-agency goals.
 1. 911: The more explicit and detailed the call taker can be in conveying to responding officers what the caller saw or heard, the more likely the officer will make an accurate determination regarding predominant aggressor.
 - The emphasis for 911 is to convey accurate information about what the caller has heard or seen to assist officers in determining who did what to whom when at the scene. The information from the caller accurately conveyed by dispatch to the responding officer is an important factor in determining which party to arrest.
 2. Patrol officer: In a well-functioning system most cases involving victim/suspects will be screened out of the system by patrol officers who make sound predominant aggressor determinations.
 - When it appears both parties have been involved in mutual aggression, arrest the predominant aggressor.
 - The prosecuting attorney will determine if charges should be brought against the non-arrested party.
 - Predominant aggressor is generally defined as the party to the incident who, by his or her actions

in this incident and through known history and actions, has caused the most physical harm, fear and intimidation against the other.

- If there is a compelling safety issue officers may arrest both parties.

These policies seem simple and uncomplicated but at times they can be extremely challenging to carry out in cases where nothing at the scene seems straightforward. During an audit of patrol responses to domestic violence cases in three Minnesota counties a group of deputies, police sergeants, advocates and prosecutors read over 200 patrol reports evaluating their strengths and weaknesses. Just over a third involved women using violence. Of those 71 cases officers appeared to make appropriate self-defense and predominant aggressor determinations in half the cases. In 8% of those cases only the woman was arrested either because she was the predominant aggressor or she was the sole aggressor. In over 70% of the cases there was sufficient information in the patrol report (or past patrol reports reviewed) to conclude that the woman was being battered by the man she assaulted.

In half of the cases (35) police either arrested no one, or both parties, or persons who appeared to have been acting in self-defense. These actions were further discussed and a number of patrol practices were identified as contributing to unsound outcomes. The identified practices were:

- Officers did not question the suspect at all and based their decision to arrest on the statement of the first party to claim an assault.
- Officers conducted an inadequate interview with both parties to ferret out contradictory statements, failed to link statements to observable evidence, failed to interview other witnesses or 911 caller.
- The lack of visible injuries especially in strangulation cases led to hasty conclusions that there was no probable cause and that the person who claimed they were being strangled (choked) was not acting in self-defense.
- Male parties claiming to be victims stressed mental health issues of the woman; primarily that she was on medication, bi-polar or suicidal. In many of these cases the woman was not seen as credible, not interviewed or only asked a few basic questions about her emotional state.
- The victim/suspect was often drinking and while not always incapable of giving a coherent story the fact of her drinking appeared to undermine her credibility as an assault victim with the officer.

There is a high correlation of alcohol and drug use with repeated victimization. This means that victim/defendants are frequently going to be using alcohol as a coping mechanism for the abuse.

- In two cases the victim/suspect could not communicate to the officer in the same language. The male party who claimed victim status interpreted for the officers who were communicating with the woman who was a suspect.
- The officers had arrested the other party on several occasions often mentioning the need to try something different and this time arrest the female.
- The officers didn't link the victim/ suspect with an advocate.
- These practices were addressed in the new training program offered officers and by changing the report writing format and guidelines the officers were using when responding to cases involving victim/defendants. For a detailed description of solutions to these problematic practices See St. Louis County Sheriff's Office Domestic Violence Handbook and Training Guide for Patrol Deputies (2001) available on the Praxis website, http://www.praxisinternational.org/lib_criminaljusticesystem.aspx.

Research shows that many victims of ongoing domestic violence will use violence against their abusers at least once. Many victims use force more than once. This does not mean that the two parties are engaging in "mutual combat." In almost all of the cases entering the criminal justice system, one party is using violence as a pattern of coercion and intimidation, and the other is reacting to that violence. In almost all cases one person is far less able to stop the violence against her/him and one person is suffering greater injuries, greater levels of fear, and greater degrees of emotional stress.

It is vital that the context of the violence be taken into account if interveners are to engage in actions that enhance victim safety and offender accountability rather than inadvertently place the victim of ongoing violence who is a defendant in this particular case at further risk. Tailoring the response of each intervener based on differentiating the context and severity of the violence provides the opportunity to modify the intervention to the specifics of the case. It facilitates employing the intervention most likely to improve case outcomes when the defendant is a victim of ongoing violence.

Training Memo—Law Enforcement Response to Persons with Disabilities

Adapted from First Response to Victims of Crimes Who Have a Disability, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 2002

Two federal laws, the Americans with Disabilities Act or 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination on the basis of a disability. These laws define a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities, who has a record of such impairment, or is regarded as having such impairment.

Both the ADA and Section 504 require law enforcement to offer to victims of crimes with disabilities an equal opportunity to benefit from and participate in all programs and services provided by the law enforcement agency. Officers must also provide for equal communication with people with disabilities and must make reasonable modifications to policy, practice and procedure to accommodate crime victims with disabilities unless doing so would fundamentally alter the service or program.

Officers also have a responsibility to respond to suspects and arrested persons with disabilities according to the ADA and Section 504.

The following are general guidelines for responding to people with disabilities:

1. Do not describe the person by his or her impairment. Say, “person with a disability” rather than “disabled person.” Similarly, saying, “the victim has schizophrenia” rather than “the victim is schizophrenic” or “the victim is mentally ill” demonstrates an understanding that the disability is something the person has, not something the person is.
2. Ask how the person wants to be characterized and how to communicate with him or her most effectively. The presence of family members or others with knowledge of the disability may be helpful in helping the officer communicate appropriately, but be mindful that family members or service providers could be the offenders.
3. Avoid expressions of pity by using phrases such as “suffering from” a disability.
4. Be aware that some disabilities might not be immediately obvious to officers. Unusual behaviors, speech patterns, inappropriate emotional responses or lack of responsiveness to officers’ questions and directives could be an indication of a disability.
5. Speak directly to the person with a disability, even if they are accompanied by another person.
6. Be aware that people who are Deaf do not necessarily regard themselves as having a disability, but rather as a cultural group with a specific identity, language (American Sign Language, or ASL) and culture. Understand that the individual who is Deaf may or may not be fluent in ASL and may or not be proficient in reading or writing English. Be prepared to use a range of techniques to ensure that the officer is able to communicate effectively, including the use of visual aids or gestures, written communication, or ASL interpreters.
7. In general, speak slowly and clearly, not necessarily loudly. Remain calm, even if the individual is agitated. Limit distractions in the room if possible.
8. Document the person’s disability in your report, including their individualized communication, transportation, medication, or other accommodation needs.
9. If the person to be arrested is a caregiver of the victim or another person with a disability in the residence, ask who can be called to arrange for that person’s continued care. Do not leave the scene until arrangements are made.
10. Never assume that victims of crimes with disabilities suffer less physical, emotional, or psychological trauma than other victims.

For more information about law enforcement response to persons with disabilities, see the following resources:

First Response to Victims of Crimes Who Have a Disability, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 2002

<http://www.ojp.usdoj.gov/ovc/publications/infores/vicdis.htm>

Americans with Disabilities Act, Information for Law Enforcement, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 2006

<http://www.ada.gov/policeinfo.htm>

Training Memo—Making the Arrest Decision

Officers must answer several key questions in making arrest decisions in domestic violence cases:

1. Is there probable cause that a crime has been committed?
2. When it appears both parties have used aggression, who is the predominant aggressor?

Probable Cause Determination

The Legal standard for making an arrest is probable cause. Probable cause to arrest a person exists when the officer reasonably believes that the person has committed a crime, based on the officer’s observations, inferences, and experience. In making this determination the officer should consider the totality of facts and circumstances.

In making the decision to arrest, the officer should consider and later document all the evidence readily available at the time of the decision. The officer begins the process of considering the facts when reading the dispatch transmission. Consider for example, a CAD entry that reads “woman screaming, neighbor thinks he’s hitting her”. In this situation, there is no requirement that there be corroborating evidence such as a visible injury. If believed, the words of the victim are sufficient to establish probable cause. By the same token, the existence of an injury alone is not complete information. The officer must determine how the injury occurred, and whether the suspect inflicted it. Where it appears both parties been involved in mutual aggression, the officer must determine who the “Predominant Aggressor” is.

Predominant Aggressor

Montana is a “preferred” arrest state. The officer must determine who the predominant aggressor is to avoid dual arrests. (Dual arrests should only occur when an extensive investigation has proven that aggression is equally mutual). These should be very rare in occurrence. If an officer determines that one person is the predominant aggressor, the officer may only arrest that person.

The predominant aggressor is not necessarily the person who hits first. The predominant aggressor is determined by considering a number of factors and balancing the weight of these factors to determine who is causing the greatest harm and using the most aggression.

Officers must consider certain factors under Montana’s “Predominant Aggressor” statute. These factors can be remembered by using the acronym **FISHD**: **F**ear (or lack of fear), **I**njuries (offensive vs. defensive), **S**ize and **S**trength and **S**tatements of the parties, **H**istory of violence, and considering these factors, whether an act or threat of force was taken in self-**D**efense.

Officers can also consider the following when making a predominant aggressor determination:

- Who appears to be the most afraid of the other or especially afraid of future injury?
- What is the likelihood of each suspect to cause future injury?
- What is each person’s fear of being injured by the other?
- Who used the most force in this incident?
- Who appears to use the highest level of violence in the relationship?
- Who poses the greatest ongoing threat to the other?
- What are the actions of each party relative to the PD domestic violence policy and mission to protect victims?
- What is the comparative size and strength of the parties?

What is each party’s purpose in using violence? For example, to control the other’s aggression or future use of violence; or to place the victim in fear for their safety or their children’s safety?

Who has a history of violence?

Who has a history of past protection or harassment orders from this victim or other victims?

Has either party used sexual aggression toward the other?

Self-Defense Determination

Self-defense means that the person reasonably believed that he or she was in imminent danger and force was necessary, and the person used only the level of force reasonably necessary to prevent the harm feared. There is no duty to retreat from one’s own home when acting in self-defense, but the lack of duty to retreat does not cancel the obligation to act reasonably when acting in in self-defense. The elements of self-defense are:

1. The person using force had a reasonable belief that she or he needed to do so to prevent being harmed by another’s use of unlawful force.
 - What did you think was going to happen?
 - What were you thinking when you picked up the knife?
 - What made you think that?
 - Why weren’t you going to let him come near you? What did you think would happen?
2. The other’s use of unlawful force must be actual or imminent.
3. The amount of force used of was reasonably necessary to prevent another person’s use of unlawful force. The amount of force that is reasonable for one person is not necessarily what is reasonable for another. For example a stronger person cannot use the same amount of force that a person with less physical strength can use.
4. The use of force is based on the person’s beliefs at the time of the incident about the risk, immediacy of the risk, and force necessary to prevent harm, not on the intent of the person making the threat.

Excluded Factors

Arrests should be made **without** regard to:

A person’s marital status, sexual orientation, religion, age, race, culture, immigration status or socio-economic position (including public or professional status or occupation, such as police officer)

Property ownership, tenancy rights of either party, or the fact the incident occurred in a private place

Belief that the victim may not cooperate with criminal prosecution or that the arrest may not lead to a conviction

Belief that the arrest will not lead to prosecution

Verbal assurances that the abuse will stop

Denial by either party that the abuse occurred when there is evidence of domestic abuse

Lack of a court order restraining or restriction the suspect

Adverse financial consequences that might result from arrest

Use of alcohol or drugs, or intoxication of the parties

Training Memo—Miranda Rights and Domestic Violence Cases

Both the United States and the Montana Constitution protect a person against compelled self-incrimination. In order to safeguard this right, both the United States Supreme Court and the Montana Supreme Court have held that if a person is both in custody and subject to interrogation, the person must be read his or her Miranda rights. State law also requires that any interrogation of a felony suspect in custody in a “place of detention” (such as the jail or a law enforcement center) be electronically recorded. Montana cases have interpreted what a custodial interrogation means and support the following conclusions:

- A person is in “custody” if, based on the surrounding circumstances, a reasonable person would believe that he or she is under formal arrest or is being detained to a degree associated with formal arrest.
- A person is subject to interrogation if the suspect’s statements are the product of words or actions on the part of the police that the officers should have known were reasonably likely to elicit an incrimination response.
- Police officers should make preliminary inquiries at the scene to determine what happened and who if anyone should be arrested. Officers do not need to give a Miranda warning when doing so, as long as the person is not in custody.
- Spontaneous statements from persons at the scene do not require a Miranda Warning. Police officers should precisely document all spontaneous statements by the offender, both before and after arrest, at the scene, and while being transported.

What is “in custody” pursuant to Montana case law?

“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 being curtailed to a degree associated with 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. The Officer should keep in mind that a court might determine a person to be in custody even though they are in their own home.

An officer giving a “Miranda” warning must inform the person that:

The person has the right to remain silent, that anything the person says can be used against the person in a court of law, that the person has the right to speak to an attorney and to have an attorney present during any questioning, and that if the person cannot afford an attorney, one will be provided for the person at no cost to the person

Training Memo—Outcry Witnesses and Excited Utterances

As a general rule, officers will not be allowed to testify about what another person said at the scene (unless that person testifies and is subject to cross examination at trial). Allowing a witness to repeat another person’s statements violates the “hearsay” rule because the statement cannot be tested for truth and reliability by cross examining the person who said it.

Regardless, officers should document all relevant statements made at the scene, and pay special attention to statements made to any “outcry witness” (the first person to hear the allegation of abuse made by the victim). Sometimes statements made to outcry witnesses and officers will meet a firmly established exception to the hearsay rule. If so, officers and outcry witnesses may be allowed to testify about those statements.

One hearsay exception that applies often in Domestic Violence cases is **Rule of Evidence 803(2) Excited Utterance**. An **excited utterance** is, “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.” If a court agrees that a statement is an excited utterance, a witness may be allowed to relate that statement even though the statement is hearsay.

Officers must document important facts to help the prosecutor argue a statement meets the excited utterance hearsay exception including:

- Who said what to whom? (The officer should quote the exact words of the statement if known.)
- A detailed description of the startling event or condition.
- The time of the startling event and the time of the statement. (The officer should be as exact as possible).
- A detailed description of the demeanor of the witness. This can include: tone of voice, facial expressions, body language, and whether or not the witness was crying.

Documenting these things clearly in a police report will enable an officer to testify in later hearings to determine the admissibility of statements. Clear documentation will also alert prosecutors that possibly admissible statements exist.

Appendix 1G

Training Memo—Law Enforcement Response to Strangulation

[This memo includes material adapted from the Minnesota Coalition for Battered Women and from Gael B. Strack, How to Improve Your Investigation and Prosecution of Strangulation Cases, September 2007]

Strangulation is a serious crime and marker of risk to the victim. Only four pounds of pressure for ten seconds can cause unconsciousness and death can result in as little as one or two minutes, depending on the pressure applied.¹ Injuries are often not immediately evident. Fifty percent of victims in one study, for example, showed no visible injuries.² Strangulation may lead to death up to thirty hours after an incident.

Strangulation behavior is potentially lethal and it is a common action used by an abuser to dominate a victim. It sends multiple messages, such as: “Stop saying what I don’t want to hear,” “I can kill you if I want,” and “I’m more powerful than you.” It is more frequently an act of violence used by a person with a significant strength advantage than by people of equal strength. It is rarely used by a victim of violence as an act of self-defense or retaliation. Perhaps because of the frequency of strangulation as a tactic of ongoing violence and coercion, victims may not always offer a complete picture of the strangulation they have experienced or they may not mention it at all. As a result, it is easy for a law enforcement officer to overlook specific details about strangulation. Any incident in which an offender places his or her hand or arm or another object around the victim’s neck or throat and squeezes is potentially lethal behavior and creates a grave risk of injury or death. An offender’s use of strangulation may foreshadow escalating use of violence and homicidal intent.

It is critical that reports of “choking,” as many members of the public describe strangulation, be recognized

at the scene and thoroughly investigated. Although there may not be visible injury, the victim can tell law enforcement about other indicators of strangulation and the offender’s intent. A careful investigation from initial patrol involvement onward is central to successfully prosecuting this crime and intervening in ways that minimize the victim’s need to confront the offender and help protect the victim from retaliation. When strangulation has been used as an effective tactic of violence and coercion, a victim may be particularly fearful and reluctant to participate in prosecution.

Recognizing and Investigating Strangulation

Patrol Officer’s Role:

- ✓ Be alert to initial symptoms and signs of strangulation and investigate accordingly.
- ✓ Secure emergency medical assistance at the scene.
- ✓ Be as thorough as time and the victim’s medical condition permit.
- ✓ Make predominant aggressor determination as necessary.
- ✓ Flag the case for prompt follow-up investigation.
- ✓ Refer the victim to a domestic violence advocacy program for safety planning and services.

Investigator’s Role:

- ☐ Continue the investigation and seek additional evidence.
- ☐ Conduct a thorough interview with the victim as soon as her/his medical condition permits.
- ☐ Encourage the victim to seek medical attention if that did not already happen.

- ☐ Take follow-up photos of injuries as they evolve over time.
 - ☐ Give the victim information about the signs, symptoms, and seriousness of strangulation.
6. Refer the victim to a domestic violence advocacy program for safety planning and services.

Observe and Document:

Initial Symptoms of Strangulation

- ✓ Raspy, hoarse voice; coughing; loss of voice, difficulty talking
- ✓ Wheezing, short of breath, difficulty breathing, hyperventilating
- ✓ Difficulty swallowing or pain in throat
- ✓ Swelling of the tongue
- ✓ Nausea or vomiting
- ✓ Dizziness

Secure Emergency Medical Assistance if the victim has any of the above symptoms or if her/ his voice, breathing, or speech worsen

Initial Signs of Strangulation

- ✓ Scratches, abrasions, marks on neck or face
- ✓ Impressions of hand or fingers in the skin
- ✓ Impression in the skin which might indicate use of a cord or other ligature, jewelry, or other object
- ✓ Neck appears swollen
- ✓ Ruptured capillaries in the eyes, under the eyelids, on the face or neck (petechiae)
- ✓ Fingernail marks on the victim’s own face, neck or chest as a result of trying to push the perpetrator away or resist the attack

BEWARE: Make every effort to encourage the victim to accept medical attention if you think she/he has been strangled. Swelling or other undetected injuries to the throat can be life threatening.⁴

⁴ Victims may refuse medical attention because they do not think their injuries require it or because of the potential cost. Undetected injuries, however, can cause complete obstruction of the airway, even 36 hours later. Strongly encourage victims to seek medical attention. It may help some victims to know that medical documentation is also persuasive evidence.

Recognizing and Investigating Strangulation

Considerations in Assessing Predominant Aggressor

- ✓ Reference Appendix 3C: Training Memo—Arrest Decisions
- ✓ Strangulation assault may not produce visible injuries to the victim
- ✓ Victim’s self-protection and reaction to strangulation may produce injuries to perpetrator: e.g., scratches to face, arms, hands, elbows; bruises on shins; bite marks on arm or chest

Victim Interview

- ✓ Patrol officers will rarely be in a position to conduct a complete interview. In most cases they will be able to cover many questions, however, in addition to attention to the initial signs and symptoms of strangulation.
- ✓ Investigators will be able to ask questions that were not asked at the scene and develop additional information about the act or acts of strangulation and the case overall.
- ✓ Use the victim’s own words in asking questions. If he or she says “choked me” or “cut off my air” or “grabbed my throat,” use those descriptions rather than substituting the word strangulation.
 - ☐ Have you been hurt? Who hurt you?
 - ☐ How did it happen?
 - ☐ Do you have any current pain or discomfort?
 - ☐ On a scale of 1 to 10, with 10 being the most, how much pain or discomfort?
 - ☐ Have you noticed any change in your voice or speech?
 - ☐ Are you having difficulty speaking or breathing now?
 - ☐ Did you feel faint or dizzy or as though you might pass out? Do you feel that way now?
 - ☐ Did you lose consciousness? If so for how long?

- ☐ Did you lose control of your bladder or bowels? Did you vomit?
- ☐ Did the person who hurt you use one hand or both hands?
- ☐ Use his/her arms, knees, or another body part on your throat or head area? Block your nose or mouth?
- ☐ Were you pinned or banged against a wall? Thrown to the floor or ground? Shaken?
- ☐ Did your head strike anything? If so, do you have any additional injuries? Are you pregnant?
- ☐ Did he/she use any objects, e.g., cords, ropes, straight objects, against your neck or throat?
- ☐ Where exactly were his/her hands or the object that was used on your neck or throat?

Evidence Collection and Report Writing

1. Obtain specific, detailed descriptions and document:
 - ☐ How the victim was strangled
 - ☐ The mechanism for the assault (e.g., hands, cord, baseball bat)
 - ☐ Symptoms and signs of strangulation
 - ☐ Visible injuries
2. Look for redness, scratch marks, scrapes, fingerprint marks, thumb-print bruising, ligature marks, bruising, tiny red spots, swelling and/or lumps on victim’s neck.
3. Look for neck swelling; ask victim to look in the mirror to assess any swelling.
4. Check suspect for wounds inflicted by a victim trying to defend herself/himself:
 - ☐ Scratches to the face or arms
 - ☐ Bruises on the shins from being kicked
 - ☐ Scratches to hands and elbow area o Bite marks to the arms or chest
5. Locate and seize any weapons used.
6. Look for corroborating evidence in the room where the victim was strangled.
7. Locate, photograph, and impound any object used to strangle the victim

8. Photograph and collect any damaged property, including any sheets or other items the victim may have urinated or defecated on.
9. Obtain medical and dental release from victim
10. Photograph all injuries of both parties, no matter how minor.
11. Take the following photographs:
 - ☐ Distance photo (full body) to identify victim and location of injury
 - ☐ Close-up photos of face and neck area at different angles
 - ☐ Follow-up photos of injuries at 24, 48, and 72 hours
12. Document the totality of the incident, in addition to the strangulation.

Report

1. In report writing, use the word “strangulation,” not “choked”, except when recording the victim’s exact words. Use the phrase, “consistent with strangulation”
2. In narrative, report all signs and symptoms observed, consistent with strangulation.
3. Record victim’s description of injury even if there are no visible signs (include all complaints of pain; type and location).
4. Record the victim’s exact words (e.g., “he choked me”).

Appendix 1H

Training Memo—Law Enforcement Response to Stalking

What is stalking?

Stalking is a form of repeated victimizing behavior constituting a series of incidents rather than a single criminal act. It is defined in part by the fear it induces in the victim. Stalking can consist of both criminal and noncriminal behavior and any type of crime, from vandalism to homicide, could be part of a stalking case. Stalking laws criminalize noncriminal behavior, such as sending letters, making phone calls, and delivering flowers, if that behavior is part of a pattern that causes the victim to feel frightened, threatened, oppressed, persecuted, or intimidated.

Under Montana Law (**45-5-220 MCA**) stalking requires that the defendant purposely or knowingly caused the stalked person substantial emotional distress, or reasonable apprehension of bodily injury or death. It also requires that the defendant did this by repeatedly (more than once). “Following the stalked person, or harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, or any other action, device, or method.”

To prove a stalking case, therefore, officers must gather direct or circumstantial evidence that:

- The stalked person to experience the emotional distress or apprehension.
- The defendant caused this reaction.
- That the Defendant did so either on purpose, or knowing that it was highly probable his or her actions would cause the reaction. (If the defendant attempts to contact or follow the stalked after receiving actual notice that the stalked person does not want to be contacted

or followed, this is “prima facie evidence” that the defendant purposely or knowingly followed, harassed threatened, or intimidated the stalked person.)

- and Finally, the defendant caused the distress or apprehension by repeatedly committing one of the acts listed above.

A second or subsequent stalking offense (or a first offense against a victim who was under the protection of a restraining order directed at the offender) is a felony under Montana Law.

Why is it important for law enforcement officers and investigators to recognize and be prepared to investigate stalking?²

Stalking signal s danger and the combination of stalking and physical abuse is a higher indicator of lethality than either behavior alone.³ Of female stalking victims, 77% are stalked by a current or former intimate partner or acquaintance.⁴ The majority of stalking victims are also victims of physical abuse. Eighty-one percent of stalking victims who were stalked by a current or former intimate partner reported that they had also been physically assaulted by that partner.⁵ Domestic violence offenders are the most dangerous. They know the victim intimately—where she lives and works, where her parents live, where she takes her children to school—and they have a history of violence. They often feel entitled to track her down and punish her for leaving and may also believe they are beyond the law. Seventy-six percent of females murdered by an intimate partner had been stalked by that offender at least once in the year prior to the murder.⁶

¹Aggravating factors include but are not limited to falsely impersonating another or possessing a dangerous weapon at the time of the offense.

²Many of the suggested law enforcement techniques outlined here are adapted from A Guide to Encourage Best Practices for Law Enforcement in Stalking Investigations, New Mexico 2006.

³Stalking: Prevalence, Lethality & Impact, Stalking Resource Center

⁴Stalking: Creating a Coordinated Community Response, June 2007.

⁵National Violence Against Women Survey, 1998

⁶McFarlane, et al., Stalking and Intimate Femicide, 1999.

What challenges does stalking present to law enforcement?

Viewed in isolation, individual stalking incidents often appear innocent, but once identified as part of a pattern of behavior of unwanted contact imposed on the victim by the perpetrator, the seriousness of the behavior becomes apparent. Critical first steps in any stalking investigation are to acknowledge the legitimacy of the victim’s fear and recognize that stalking behavior can indeed be the precursor of significant violence.

Stalkers may commit criminal acts in multiple jurisdictions. The victim may live in one city, work in another county, attend school in a third location, and flee to a relative or friend’s home because of the harassment. There can be different locations—and sometimes different victims’ names on crime reports (e.g., when the friend’s or relative’s property is vandalized)—which all relate to acts committed by the same stalker, but are not being investigated by the same police officer or even the same department.

It is important to recognize that the law enforcement agency in any jurisdiction where an act of stalking has occurred can exercise jurisdiction over the entire case. Sharing reports, records, and evidence is vital to the successful recognition and pursuit of stalking cases. Evidence collection is essential to the corroboration of the stalking conduct. The investigator needs to learn as much as possible about the stalker’s method of operation in order to assess the potential threat posed by the suspect and to provide a solid foundation for successful prosecution.

What is involved in recognizing and investigating stalking?

Law enforcement should consider the possibility of stalking anytime there is a report of harassing behavior, repeated phone calls, violations of orders for protection or harassment restraining orders, following the victim, or appearing at the victim’s home, work or school. Inquiring about and paying attention to specific patterns of behavior and risk factors will help law enforcement recognize stalking. The following chart includes a list of common stalking and harassing behaviors alongside factors which can signal increased risk of harm or lethality.

Attention to Stalking and Related Risk

Behaviors that may signal stalking or suggest high risk to a victim;

1. Assaults
2. Violations of protective orders
3. Threats
4. Following or spying on victim
5. Driving by the victim’s residence
6. Appearing at a victim’s home, workplace, or school
7. Entering victim’s home
8. Leaving or delivering items (e.g., flowers, letters)
9. Delivering items meant to cause fear (e.g., dead animals)
10. Injuring or killing pets
11. Annoying or threatening hang-up phone calls, e-mails, or text messages
12. Disabling or tapping the victim’s phone
13. Audio- or videotaping the victim without the victim’s knowledge
14. Photographing the victim or victim’s acquaintances
15. Intercepting mail
16. Ordering products or subscriptions in the victim’s name
17. Attempting to obtain information about the victim from others
18. Spreading false rumors or allegations about the victim
19. Vandalizing the victim’s property
20. Disabling the victim’s vehicle
21. Installing a GPS device on the victim’s vehicle
22. Past or present threats to kill this victim or other victims
23. Past incidents of violence against this victim and/or others
24. Use or possession of weapons such as guns, knives, or other potentially lethal weapons
25. High degree of obsession, possessiveness, and/or jealousy regarding the victim
26. Violations of a restraining order with demonstration of little concern for the consequences of arrest and jail time
27. Present or past threats of suicide
28. Access to the victim and/or the victim’s family.
29. Hostage-taking
30. Depression or other indications of the stalker’s mental illness
31. Stalker’s abuse of drugs or alcohol
32. History of prior stalking of this victim or other victims

Patrol Officer and Investigator Roles

A patrol officer’s initial investigation helps flag a possible stalking case for follow-up and is an opportunity to collect evidence that might subsequently be unavailable and refer the victim to assistance with safety planning. An investigator probes further, establishes the patterns of stalking behavior in more detail, identifies and collects additional evidence, and contributes to overall safety planning.

Patrol Officers

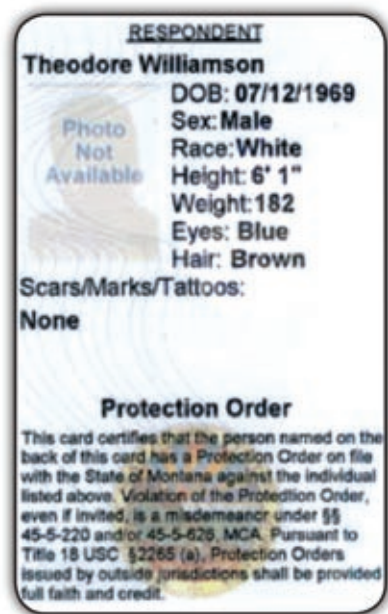
- a. Be alert to behaviors that signal stalking.
- b. As time and resources allow, conduct a preliminary interview of the victim and ask about:
 - i. Suspect’s specific threats to kill or commit suicide
 - ii. Impact of stalking behavior on the victim, including whether the victim has:
 - iii. Whether the victim believes the suspect has the will and capacity to carry out the threats
 - iv. Any pattern of pursuit or monitoring the victim’s whereabouts
 - v. Any unwanted gifts or written communication
 - vi. Invasions of privacy
 - vii. Information about and knowledge of the victim’s daily routines
 - viii. Suspect’s access to or fascination with weapons
 - ix. Suspect’s history of chemical abuse or mental illness
 - x. Victim’s level of fear
 - xi. Upcoming dates of significance, e.g., anniversaries, court dates, birthdays
- c. Moved, changed jobs, or changed phone numbers
- d. Told friends, family members, or coworkers about the suspect’s behavior
- e. Stopped visiting places previously frequented
- f. Changed driving routes, work schedules, or shopping patterns
- g. Attended self-defense classes or purchased pepper spray, alarms systems, or other products to enhance personal safety
- h. Purchased a firearm
 - i. Experienced changes in eating or sleeping habits
 - i. Encourage the victim to document incidents and their effect in a stalking/harassment log.

- ii. Advise the victim to keep all voice mails, e-mails, text messages, letters, and objects from the suspect.
- iii. Encourage the victim to contact a domestic violence advocacy program for assistance in developing a safety plan.

Orders of Protection

- The Violence Against Women Act (VAWA), requires that to protect victims, all valid Orders of Protection, must be enforced regardless of where the Order was issued.
- That includes: State Courts, Tribal Courts, Commonwealth Territory or Possessions of the United States.
- The issuing jurisdiction determines: who is covered under the Order, the terms and the conditions of the Order, and when the order expires.
- The Jurisdiction In which the Order is enforced determines: How the Order is enforced, the arrest authority of the responding officer, and the crimes charged for a violation of the order.
- There is no requirement that the signature of the issuing jurisdiction be the original or that there be a raised seal or stamp on the document. There is no requirement that a certification form be affixed to the Order.
- It is vital that officers strictly and diligently enforce orders of protection. Orders of Protection issued in Montana under **40-15-204 MCA**, conspicuously bear the words: “Violation of this order is a criminal offense under 45-5-220 or 45-5-626 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.”

Be aware under Montana Law, (45-5-626 MCA) 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.



In Montana, anyone with a valid permanent order of protection (or any child or other person protected by one), can order a “Hope Card”:

The Hope card lets the officer know that there is a valid permanent Order of Protection in place. In case of a potential violation of an order, an officer can refer to the Hope Card for more information.

In Montana, Hope Cards are issued by Tribal Courts and the State of Montana. While the cards differ slightly, they must be recognized by law enforcement throughout the state.

Investigators

The investigator’s role is to assemble as complete a picture and understanding of the stalking behavior as possible and the threat presented by that behavior. Sources of information can include patrol officers’ reports, interviews with the victim or victims, evidence collected from the victim or at the scene, criminal history records, protection or restraining order records, evidence obtained via a search warrant, and contacts with other jurisdictions.

A. Threat assessment: basic questions

- ☐ Does the victim believe the threat?
This is important information, even if the victim dismisses the danger she or he might face.
- ☐ Was the threat made in the presence of other people? In writing? In a recorded telephone conversation?

B. Threat assessment: firearms and other weapons

- Weapons include firearms and other dangerous weapons such as compound bows, swords, large hunting knives, or martial arts weapons
- ☐ Does the suspect have access to weapons? Does the suspect keep weapons in more than one place?

- ☐ Willingness to leave evidence or an attitude of “I don’t care who knows” may indicate increased danger.
- ☐ Is the threat detailed and specific?
Evaluate threats in stalking similar to evaluating a potential suicide: the more thought that has gone into the plan, evidenced by the amount and specificity of the detail, the more likely it will be carried out. A statement such as, “I’m going to kill you,” is cause for concern. A statement such as, “Tonight I’m going to rape and strangle you and no one will ever find your body,” is cause for even greater alarm.
- ☐ Is the threatened act consistent with the suspect’s past behavior?
- ☐ Does the suspect have the means to carry out the threatened act?
- ☐ Has there been any “rehearsal” of the threatened act?
This can be verbal run-through (e.g., “let me tell you what I’m going to do”) or partial reenactment (e.g., showing someone the intended weapon or the intended site for the murder or burial).
- ☐ Does the threat extend to others, such as children, family members, police, or a new partner? Fear of harm to others may restrict a victim’s willingness to resist the suspect’s demands and/or to follow through with police and the courts.
- ☐ Does the threat involve murder, suicide, or both?
A substantial percentage of domestic homicides are multiple-victim killings, murder-suicides, or murder-suicide attempts.
- ☐ How many times has a protection or restraining order been issued against the suspect? How many times has the suspect violated a protection or restraining order?

- ☐ Does the suspect have access to weapons owned by others? Is he or she trained in the use of those weapons?
 - ☐ Is having and being willing to use weapons part of the suspect’s self-image?
This is particularly important to determine when the suspect is employed by or affiliated with law enforcement, corrections, the military, or the criminal justice system.
 - ☐ Has the suspect’s past violence involved the display, use, or threatened use of firearms or other weapons?
 - ☐ Does the victim possess weapons? What kind? Is the victim trained in their use?
- C. Threat assessment: escalation of stalking behaviors
- ☐ Does the suspect enlist others in monitoring the victim’s behavior?
Others could include the suspect’s friends, family, coworkers, and cell mates; also, the victim’s friends, family, and coworkers.
 - ☐ Has the suspect contacted or threatened the victim’s friends, relatives, or coworkers? o Has the suspect followed, spied on, staked out, or otherwise monitored the victim?
 - ☐ Has the suspect made unwanted attempts to communicate by mail, e-mail, text messages, telephone, or through third parties? These communications do not have to be threats. They can include sending flower, gifts, or messages of apology or reconciliation, such as “can you ever forgive me; let’s work it out together.” They can include messages carried by or involving children that the suspect and victim have in common, such as “you know the children miss me” or “I want us to be a family again.”
- D. Collaborate with the victim to gather evidence and support safety
- ☐ Review evidence collected by patrol officers; obtain any additional tangible items of evidence from the victim that supports the claim of stalking behavior.
- E. Letters or notes written by the suspect to the victim
- Keep latent print and DNA possibilities in mind when handling these items.

- F. Objects sent to or left for the victim, including gifts or flowers
- G. Answering machine tapes, voice mail, or other forms of recorded phone messages. Document time and date; make a recording of these messages to document content and tone of communication.
- H. Text messages and e-mails
- I. Telephone call trace or phone trap information from the telephone company (e.g., Call Trace/ Caller ID/*57 records for the victim’s phone)
- J. Entries in a log/journal/diary kept by the victim which shows any dates, times, and locations of suspect encounters and the nature of the encounter
 - ☐ Encourage the victim to contact you or other investigative officers with any new information, evidence, or additional contacts involving the suspect.
 - ☐ Encourage the victim to document future contact from the offender by using a contact log, or retaining answering machine, voice mail, e-mail, and text messages.
 - ☐ Inquire whether the victim has changed her or his life as a result of the suspect’s actions.
 - ☐ Encourage the victim to keep a journal of how the stalking has affected her/his life and well-being (e.g., loss of sleep or appetite, missed work, need to seek counseling, security and safety measures, feelings or thoughts of fear or dread) in order to help establish the fear, intimidation, and persecution elements of the crime. NOTE: Inform the victim that the suspect/defendant will have the right to review the journal during the prosecution process.
 - ☐ Encourage the victim and others documenting contacts or collecting evidence to protect evidence collected from theft or destruction by the suspected offender.
 - ☐ Establish, review, and revise safety plans and response strategies as needed to provide optimal protection.

Safety Planning and Strategies for Victims of Stalking

- A. On each subsequent law enforcement contact with the victim, assess the likelihood of continued violence by the suspect toward the victim or others.
- B. Re-evaluate risk as the circumstances of the case change.
- C. Encourage the victim to inform neighbors, family members, co-workers, and friends of the situation and provide them with a description of the suspect and/or suspect's car so that they can warn the victim and/or the authorities if the suspect appears.
- D. Encourage the victim to discourage any third party from intervening with the offender (other than in situations of assisting in self-defense) without the knowledge and assent of the law enforcement and victim service professionals involved with the case.
- E. Consider providing the victim with a home safety or welfare check.
- F. Suggest measures to increase security (e.g., locks and lighting, home security systems with panic buttons, emergency cell phone, reduce obstacles around the residence that might provide cover for an intruder).
- G. Identify measures that will help the victim avoid face-to-face contact with the suspect (e.g., vary daily routines, routes traveled, and shopping locations; avoid making predictable appointments; arrange for escorts when in public, at work, or outside the immediate residence.)
- H. Where the suspect has visitation rights to children in common, if possible arrange for supervised visitation or a transfer of the children through other third parties to avoid face-to-face confrontation.
- I. Encourage the victim to call law enforcement immediately if the suspect violates any existing court orders.

Thorough evidence-gathering

According to the circumstances of the stalking case, review and consider all possible sources of evidence, in addition to that provided directly by the victim.

- A. Consider a search warrant for suspect's residence, vehicle, and workplace. Be alert for:
 - Photographs of the victim
 - Photographs, diagrams, or drawings of the victim's home or workplace
 - Writings, journals, logs, or diaries kept by the suspect
 - Personal items belonging to the victim
 - Video or cassette tapes that might have information, such as surveillance footage
 - Books describing stalking techniques or having a subject matter dealing with stalking, harassment, or violence
 - Keys that fit the victim's house or vehicle
 - Equipment that appears to have been used to stalk the victim, such as cameras, binoculars, video recorders, computers, fax machines
- B. Collect videotape surveillance or still photography of the offender generated by law enforcement officers.
- C. Collect security video (from grocery stores, banks, parking lot/workplace security cameras) that is evidence of the suspect stalking the victim.
- D. Obtain the suspect's telephone records; consider seizing the suspect's cellular phone.
- E. Obtain certified copies of police reports from other jurisdictions; convictions sheets.
- F. Evidence gathering in cases of cyberstalking:
 - Retain all e-mail or other electronic messages which target the victim.
 - Work with Internet service providers to trace the source of such communications to the suspect.
 - Consider contacting allied law enforcement officials with expertise in computer forensics to assist with the investigation.
 - Look for hard copies of any communications, pictures, or prints that the suspect may have sent to the victim.
 - Consider search warrants for seizing computer equipment used by the suspect at home and at work.
- G. If not already completed by patrol officers, photograph any items vandalized, damaged, rearranged, altered, or written on.

- H. Check for fingerprints or DNA on vandalized items or other objects sent to or left for the victim.
 - Ask the victim to contact the phone company to have a phone trap installed.
- J. Interview witnesses to the harassment or stalking. Often friends, family members, coworkers, employees, employers, or neighbors have information regarding the suspect's behavior.
- K. Research the suspect's whereabouts during the times of alleged acts to deter alibi defenses.
- L. If there is a serious risk of harm to the victim, consider surveillance of the suspect. This may be particularly useful in a case where there appears to be a specific pattern to the suspect's conduct.
- M. Identify and obtain statements from any additional witnesses not interviewed at the scene and collect all pertinent information.
- N. Based on information gathered during the investigation, identify and contact other potential victims of the suspect (e.g., previous partners of the stalking suspect).

Suspect interview

Conduct a non-custodial interview with the suspect once the investigation and background research on the suspect is complete in order to fully address and assess any issues and/or responses the suspect may offer. The objectives in conducting a suspect interview are to:

- A. Determine criminal activity.
- B. Determine the suspect's current state of mind.
- C. Attempt to assess the threat posed by the suspect.
 - Always take precautions, including safety planning with the victim, whenever a suspect interview is conducted. In some cases interviewing the suspect may serve to intensify the offender's interest in the victim and provoke more extreme action.
 - Record the interview on audio or videotape.
 - Research the suspect's background in advance of the interview, if possible, with attention to criminal history via state and

local database checks; and interviews with those that may provide relevant information about the suspect, such as family, friends, employers, and school officials.

- Use two investigators to interview any stalking suspect and be aware of officer safety.
- Begin the interview using an objective approach (i.e., non-accusatory questions, non-judgmental responses to the suspect's answers) to encourage as much voluntary information as possible regarding the suspect's conduct toward the victim.
- Obtain as many details as possible and thoroughly document the interview.
- Provide the suspect a chance to view his or her actions and intentions as misunderstood by the victim and others.
- Question the suspect about other potential victims or crimes.
- Encourage the suspect to change his or her behavior. Advise the suspect that the behavior is unwanted, unacceptable, and must stop immediately.

Supervisory oversight

Review incident reports and investigator files to ensure that thorough investigation procedures are being followed in potential stalking cases.

- A. Determine and identify the need for additional officer training or supervision.
- B. Review case classification practices and procedures to ensure that stalking cases are being properly classified.
- C. Provide a method to track cases that are initially charged or filed as stalking cases, regardless of how they may later be reclassified as the result of a plea or recharging decisions.

Training Memo—Response to Children in Domestic Violence–Related Calls

Children are often at the scene of calls involving domestic assault and related crimes. The law enforcement response has an impact on everyone present, including children. Safety for children and adult victims is paramount.

Under Montana law, acts of violence against anyone in the home are considered psychological abuse to a child if that violence injures the child’s emotional, intellectual, or psychological capacity. Officers are mandatory reporters of any form of child abuse and neglect. If an officer has reason to suspect that there has been violence against anyone in home where child lives, that officer must call the Child Protective Services Hotline- 1-866-597-0590. Officers must call and report suspected abuse even if they know someone else has reported.

To respond effectively and safely in ways that protect and reassure children, patrol officers and investigators should:

- Assess whether children have been physically harmed.
- Minimize the impact on children who are or were present at the scene.
- Recognize children’s physical and emotional dependence on their parents.
- Support the non-offending parent’s efforts to keep children safe.

Determining whether children are present

- A. Officers should determine and document:
 - ☐ Whether there are any children present or who were present during the incident
 - ☐ Children’s names and ages
 - ☐ Demeanor and spontaneous statements
 - ☐ Relationship to the adult parties
 - ☐ Whether the children have been physically harmed
- B. To help determine the presence of children, officers should:

- ☐ Be alert for physical evidence that may indicate the presence of children (toys, clothing, etc.).
- ☐ Inquire of the parties at the scene about the whereabouts of children, whether they were present, and whether they were or intentionally or unintentionally injured.
- C. Decide whether to make visual contact with children at the scene who are not visible to officers, considering:
 - ☐ Whether there is reason to believe that children are injured or at risk of harm o Severity of the incident
 - ☐ Whether there are enough officers at the scene to make contact safely
- D. Decide whether it is appropriate to make visual contact, considering:
 - ☐ Whether to ask the victim/parent/guardian to accompany the officer
 - ☐ Whether there is a compelling reason to wake children who appear to be sleeping

Safety checks

- Determine whether the child is in need of medical treatment and arrange treatment if necessary, in partnership with the victim/parent/ guardian.
- Follow mandated reporting protocols as appropriate.
- Convey to the non-offending parent information about the report and the typical process related to a child welfare/child protective services referral.
- If the children are in immediate danger, involve Child Protective Services for removal of the children.

Interviewing children

Unless it is absolutely necessary to make an arrest/ predominant aggressor decision, do not interview a

child about the violent events. Witnessing domestic violence is a significant trauma to a child. In order to avoid re-traumatizing a child (and tainting their potential testimony) any witness interview of the child should be done by a forensic interview team or someone trained in child forensic interviewing.

- Document spontaneous statements made by children as quotes.
- Include the circumstances under which the statement was made and note the child’s demeanor (e.g., excited, crying, visibly upset, shaking, withdrawn).

Tips for interviewing children

If there is no other option, and an officer must Interview a child about the events, think about the following tips for interviewing children:

- A. Talk with the child outside the presence of the parent or guardian to minimize the Influence over the child’s statements. (However, there may be occasions when the presence of a parent will minimize the impact on the child.)
- B. Consider the child’s age and developmental level.
- C. Select a location that is comfortable for the child.
- D. Sit at the child’s level.
- E. Start by talking to the child about something that makes the child comfortable. Tell the child that It is ok to say, “I don’t know.”
- F. Explain why you are there.
- G. Ask open ended questions.
- H. Avoid indicating the response you are looking for, or the child may simply give it to you.
- I. Be aware of any indication that the child is afraid of one or both parents or other adults at the scene.
- J. Be aware of a child’s inclination to feel responsible or guilty about what has happened. Reassure the child that what happened is not his or her fault.
- K. Do not pry information from the child. Be aware that children who are also victims of abuse may have been warned not to talk to outsiders and to distrust all adults.

- L. Allow the child to provide most of the Information
- M. Don’t interrupt the child during the interview
- N. End the interview if the child wants to stop.

Subduing or arresting someone in the presence of children

Generally, the officer should avoid arresting or subduing an aggressive party in the presence of children. If this cannot be avoided, the officer should talk with the children about their actions and explain that the children are not responsible for what has happened, the officer is responsible for the decision, and the arrested person will be all right.

Recognizing children’s need for continuity of care

In general, the best way of providing safety and security for a child is to assist the non-offending parent to make the child safe.

- A. Speak reassuringly and calmly to the parent.
- B. Talk with the parent about what she or he thinks is needed to keep them safe. Offer referrals to community resources.
- C. If the parent is too seriously injured or emotionally distraught to provide care for children, help the parent identify and find a relative or close friend whom the children know and trust.
- D. Prior to leaving the scene, explain the outcome of the call to children who are old enough to communicate verbally, using age-appropriate language. Ask the child if he or she has any questions about the incident or police response.

Training Memo—Victim Engagement and the Law Enforcement Response to Domestic Violence

Why is victim engagement important?

How victims are treated in domestic abuse–related cases has much to do with the possibilities for collaboration between victims and interveners in advancing victim safety and offender accountability. Most domestic violence crimes are part of a pattern of ongoing violence, intimidation, and abuse that requires ongoing intervention. Cooperation with the legal system often has complex and dangerous consequences for victims, which need to be recognized and countered if victims are to view intervention as meaningful and something they can fully support. Patrol officers, investigators, and other police personnel can engage with victims in ways that set and reinforce a tone of support and protection. In the words of one investigator:

If I treat her with respect and let her know I’m concerned the first time I meet her, when it happens again she is more likely to take my call, or even call me. If I get frustrated and angry because I need her in order to get to him and I throw up my hands, saying ‘fine, you want to live that way, go ahead,’ then I’m just one more person slapping her in the face.

What is involved?

- 1. Whenever possible, minimize the victim’s need to confront the offender.
- 2. When using information provided by the victim, protect her/him from retaliation.
 - Do not tell the suspect what the victim has told you.
 - If circumstances allow, do not tell the suspect you have spoken to the victim.
- 3. Treat each interaction with the victim as an attempt to build collaboration over multiple interventions.
 - Treat each contact with the victim as an opportunity to build a continuing relationship.

- Be patient with victims who may be hostile and less than appreciative of your efforts. Over time and if treated well, most victims will participate in a collaboration to stop the violence.
 - Ensure that the victim knows who you are and how to contact you.
 - Encourage the victim to report all contact, abusive behavior, or violations by the suspect.
 - Inform the victim of the importance of keeping a record of mail, voice mail, e-mail, text messages, and other communication and contact from the suspect or others acting on the suspect’s behalf.
- 4. Be mindful of the complex and often dangerous implications of cooperation with the legal system for victims.
 - Inform the victim of the availability of periodic “welfare” checks at her or his residence by officers.
 - Request that the victim report any threats against her or him for cooperating with the investigation.
- 5. Problem solve as to how the victim might enhance safety as the case proceeds through the legal system. Be aware that the fundamental purpose of battering is to control what the victim says, thinks, feels, and does. Victims are rarely in a position to “tell all,” although they may do so in unguarded moments. Take great care to not endanger victims with what they have shared about the offender, the abuse and their situation.
 - If the victim is willing to talk about the full scope of abuse and violence, ask for details and record all credible reports of violence, coercion, intimidation, and acts of abuse.
 - Inform the victim of community services that help support and enhance safety.

- 6. Engage in dialogue with the victim rather than treating her or him as a data point.
 - Ask open-ended questions. Open-ended questions produce more information than narrow questions.
 - Provide the victim with the phone number of a domestic violence advocacy program for safety planning and services.
 - If the victim or witnesses do not speak English, contact appropriate interpreter services.
 - For follow-up interviews and contact, utilize interpreter services who speak the victim’s language or other appropriate interpreter services. Do not use neighbors or family members.
- 7. Avoid unintentionally replicating or reinforcing the actions of the abuser by offering clear alternatives to messages that the victim is crazy, at fault, unbelievable, and unable to make decisions and that the abuser is unstoppable. Victims have said that the following messages, when offered by a police officer, have changed things for them and helped counter the messages of abuse:
 - You don’t deserve this kind of treatment.
 - What he (or she) is doing is a crime and he needs to hear that from us, from the police, courts, judges, people he might have to listen to.
 - It is our responsibility—the police and the courts—to investigate and respond to crimes. Don’t let this get turned around on you. This is not something you are doing to him (her). It’s what we are doing because of what he/she is doing.
 - You and your children shouldn’t have to live with this, with the fear, upheaval, violence. You deserve a life without all this.

- The reason we bring these cases into the criminal court is to try to get some control on the offender and give him a chance to turn things around. It’s up to him. If he can stop all this he’ll be fine; if he keeps it up the courts will get tough on him.
- You know him/her. It’s going to take all of us working together to really stop him.

Supervising Domestic Violence Investigations

Case Review Checklist

Instructions: Check all elements included in investigation response to this case.

Reference Protocol 3: Domestic Violence Investigations

Case # _____

Domestic Violence Investigations Case Review Checklist

- ☐ Appropriate priority in case assignment
- ☐ Follow-up interviews with all witnesses if initial interview incomplete or missing important information
 - 911 caller
 - Children
- ☐ Follow-up interview with victim
 - Account of events surrounding the incident
 - Attention to whether suspect has ever warned victim about talking to police or seeking help
 - Specifics of any threats or warnings from suspect
 - Initial and continuing treatment of injuries
- ☐ Domestic violence risk assessment with victim
 - Conducted and results noted in report
 - Attention to severity and frequency of abuse
 - Attention to victim’s level of fear
 - Attention to suspect’s actions to isolate victim
 - History of violence (whether or not law enforcement was contacted)
- ☐ Follow up investigation on any indications or suspicions of:
 - Strangulation
 - Stalking
 - Witness tampering or intimidation
 - Sexual coercion or aggression
- ☐ Recorded statements as required by law and in other situations
- ☐ Verification of signed release and gathering of medical reports
- ☐ Comprehensive criminal history check, including juvenile record
- ☐ Documentation of all history of abuse
 - Past PD reports on the offender
 - Past and current court orders: and (including Petition and Affidavit portions)
 - Police reports from other jurisdictions in cases of stalking or increased risk of harm

- ☐ Evidence collection
 - Follow-up photographs of injuries
 - Physical evidence not collected by patrol
 - Any weapons used in incident (and highlight threats to kill)
 - Recordings or printouts of relevant voice mail, e-mail, text messages, and similar evidence
- ☐ Missing information in patrol report noted and addressed
- ☐ Information to probation officer conducting pre sentence investigation according to Memorandum of Understanding Regarding Exchange of Records, if applicable
- ☐ Gone-on-arrival (GOA) cases
 - Assign priority according to victim injury or impairment; possible witness tampering, strangulation, or stalking; increased risk of harm or high level of victim fear
 - Complete investigation, including victim interview and domestic violence risk assessment
 - Notify victim of attempt to interview suspect
 - Conduct in-person interview of suspect out of custody if possible
 - Notify victim if investigator assesses increased risk of harm
 - Check probation status; if so, forward incident report and contact with probation officer
 - Interview in-custody suspect in jail
 - Notify victim of prosecutor’s charging decision
- ☐ Collaboration with victim
 - Protect victim from suspect retaliation: do not disclose what victim has told investigators
 - Provide investigator name and contact information
 - Encourage victim to report suspect contact, abusive behavior, violations
 - Request victim report any threats by suspect for cooperating with the investigation
 - Inform victim of importance of keeping a record of mail, voice mail, e-mail, texts, etc. by suspect or others acting on suspect’s behalf
 - Assist victim with problem-solving around personal safety
- ☐ Follow-up and referral to supervisor on case declined by prosecutor that investigator believes has merit
- ☐ Investigation of cases involving department employees according to protocol
 - Notify supervisor of suspect’s unit, if necessary
 - Reports and information to suspect’s commander
 - Refer to prosecuting authority

Case review summary. How could the investigation of this case have been more thorough and complete according to PD policy and protocol regarding response to domestic violence cases?

Reviewed by: _____ Signature: _____ Date: _____

Appendix 1L

Follow-up Investigations and Expanded Attention to Risk

1. Conduct a thorough interview with the victim that includes attention to:
 - a. Her or his account of events surrounding the incident
 - b. The extent to which the victim feels uneasy about providing information about the incident to law enforcement and if so, why
 - c. The extent to which the suspect has ever warned the victim about talking with police or outsiders for help, now or in the past, and the specifics of any threats or warnings
 - d. Initial and continuing treatment of injuries
2. Conduct a domestic violence risk assessment with the victim.
 - a. Review the victim's response to the three risk questions included in the patrol report
 - b. Ask the victim about the suspect's actions and behavior:
 - ☐ Does he/she own a gun?
 - ☐ Have you left after living together?
 - ☐ Does he/she ever try to choke you?
 - ☐ Has he/she ever used a weapon against you or threatened you with a weapon?
 - ☐ Has he/she threatened to kill you or himself?
 - ☐ Has he/she avoided arrest for domestic violence?
 - ☐ Does he/she use drugs? If so, what kind and with what effect?
 - ☐ Has he/she ever forced you to have sex when you didn't want to?
 - ☐ Does he/she control many of your daily activities (e.g., friendships, whether or when your family can visit, travel)?
 - ☐ Is he/she jealous of you?
 - ☐ Does he/she follow or spy on you or leave threatening notes or messages?
 - ☐ Do you have a child that is not his/hers?
 - ☐ Has he/she beaten you when you were pregnant?
 - ☐ Has he/she ever threatened or tried to commit suicide?
 - ☐ Is he/she working?
 - ☐ Is he/she an alcoholic or problem drinker?
 - c. In the victim interview and risk assessment, probe for details related to:
 - ☐ Severity and frequency of abuse
 - ☐ Victim's level of fear
 - ☐ Isolation
 - ☐ History of violence (whether or not it resulted in law enforcement contact)
3. Use the discussion with victim to determine if the violence constitutes battering, resistive violence, or domestic violence with no patterned attempt to control the victim.
4. Follow up on any indications or suspicions of strangulation, stalking, witness tampering, or sexual coercion or aggression.





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