

NEVADA DOMESTIC VIOLENCE RESOURCE MANUAL

For

**LAW ENFORCEMENT
PROSECUTORS
THE JUDICIARY
ATTORNEYS
ADVOCATES**

Prepared By
THE URBAN GROUP LLC

Principal Editor
Ruth Pearson Urban, M.S.

Legal Editor
Professor Mary Berkheiser
UNLV Boyd School of Law

Principal Authors
Ogonna Atamoh, Law Student
Heidi Bock, Law Student
Professor Mary Berkheiser
Ruth Pearson Urban, M.S., Social Worker

Contributing Authors
Leslie Clark, Law Student
Lisa Mitalski Noel, Law Student

and
Legal Secretarial Services Provided By
Professionally Legal
Ellen Sternhill, PLS

For

**THE ADMINISTRATIVE OFFICE OF THE COURTS
SUPREME COURT OF NEVADA
ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS
PEACE OFFICERS STANDARDS AND TRAINING**

FALL 2000

TABLE OF CONTENTS

PREFACE

I.	INTRODUCTION	ii
II.	DISCLAIMER	ii
III.	ACKNOWLEDGMENTS	ii
IV.	DEDICATION	iii
V.	ABOUT THE AUTHORS AND EDITORS	iii, iv
CHAPTER 1	UNDERSTANDING AND ADDRESSING DOMESTIC VIOLENCE	1
CHAPTER 2	DOMESTIC VIOLENCE LAWS	58
CHAPTER 3	LAW ENFORCEMENT	77
CHAPTER 4	PROSECUTION	133
CHAPTER 5	THE JUDICIARY	218
CHAPTER 6	CIVIL PRACTICE	255
CHAPTER 7	VICTIM SERVICES	269
	GLOSSARY OF TERMS	321
	BIBLIOGRAPHY	328
	APPENDICES	334
	INDEX	335

I. INTRODUCTION

The Nevada Prosecution Advisory Council, Administrative Office of the Courts and Peace Officers Standards and Training requested the production of a comprehensive domestic violence manual that will focus on domestic violence issues in Nevada. This Manual provides background information on domestic violence and an overview of domestic violence laws, along with chapters devoted specifically to Law Enforcement, Prosecution, Judiciary, Civil Practice and Victim Services.

The Manual was made possible by a grant from the Violence Against Women Act (VAWA).

II. DISCLAIMER

Any errors or oversights in this Manual are unintentional and should not be attributed to any of the persons or agencies who kindly contributed their resources and assistance.

III. ACKNOWLEDGMENTS

I want to thank Professor Mary Berkheiser, UNLV Boyd School of Law, for collaborating on this Manual from the beginning of the process and sharing her writing talents, inspiration, and knowledge of the law.

This project was blessed with two excellent law students, Ogonna Atamoh and Heidi Bock, who served as the principal authors. They will be in the first class to graduate from the Boyd School of Law at UNLV in 2001. They have embraced this project and feel very strongly about the plague of Domestic Violence. Thank you! I also want to acknowledge Leslie Clark and Lisa Mitalski Noel, two other members of the 2001 graduating class of the Boyd School of Law, for their contributions.

I owe special thanks to Ellen Sternhill, PLS, of Professionally Legal, for keeping up with the numerous and difficult to follow, edits, re-drafts and re-workings. Her eye for detail and dedication to this project are evident throughout this Manual. She did a tremendous job!

Mike McCormick, Executive Director of the Nevada Prosecution Advisory Council, has been a wonderful source of technical assistance, and I am grateful for his support and guidance.

This Manual would never have been possible without the dedication of the exceptional men and women working in the Domestic Violence arena, who selflessly gave of their time and materials to assist in its production. Many of these individuals have been acknowledged throughout this Manual, but collectively I want to extend my upmost appreciation for their contribution, especially the ones who were not specifically mentioned.

Ruth Pearson Urban, M.S., Editor

IV. DEDICATION

This Manual is dedicated to the countless victims of Domestic Violence in Nevada and their advocates who have diligently worked to create and improve the safety net through their hard work and commitment. The authors of this Manual are deeply grateful for all of you and your work.

V. ABOUT THE AUTHORS AND EDITORS

Professor Mary Berkheiser

Mary Berkheiser is Director of Clinical Programs and Associate Professor of Law at the William S. Boyd School of Law, University of Nevada Las Vegas. Professor Berkheiser was a founding member of the Boyd faculty and came to Nevada after three years teaching in the Law School Clinic of the Arizona State University College of Law and ten years in practice in Phoenix. Berkheiser graduated magna cum laude from the University of Arizona School of Law in 1984. She was editor-in-chief of the Arizona Law Review, outstanding graduate of the class of 1984, and Order of the Coif. Immediately following law school, Professor Berkheiser clerked for Arizona Supreme Court Justice Stanley Feldman.

Ruth Pearson Urban, M.S.

Ruth Pearson Urban, M.S. is recognized as a leader in the field of alternative dispute resolution in the State of Nevada. She established the first court connected mediation program in the area of contested child custody and visitation matters in 1985 for the Eighth Judicial District Court, and the first community mediation program, the Neighborhood Justice Center, in 1991 for Clark County. Ruth was a founding member of the Southern Nevada Domestic Violence Task Force and is a member of the Nevada Network Against Domestic Violence. Ruth is a licensed social worker and holds a bachelors degree in social work and a masters degree in counseling. After a distinguished career in public service, she started The Urban Group LLC, a consulting firm that specializes in management consulting, facilitation, mediation and training. The Urban Group LLC is located at 418 Crater Court, Henderson, NV 89014; and can be contacted at (702) 458-8529.

Heidi Nagel Bock

Heidi Nagel Bock graduated *summa cum laude* from the University of Nevada, Las Vegas and holds a Master of Arts degree in clinical psychology with a specialization in criminal psychology and forensics. Prior to law school, she worked as an intern in the Behavioral Science Services Unit for the Federal Bureau of Investigation and was a state peace officer assigned to the Nevada Office of the Attorney General.

Currently, she is Managing Editor of the *Nevada Law Journal*, the first law review publication in Nevada. She will graduate from the William S. Boyd School of Law in May 2001.

Ogonna Atamoh

Ogonna M. Atamoh was born and raised in Munich, Germany. She received a Bachelor's Degree in Liberal Arts, majoring in English, with a Minor in German, from UNLV. Ogonna is in her third year at the Boyd School of Law in the Fall, and is currently working for the law firm of James, Driggs, Walsch, Santoro, Keamy, Johnson and Thompson.

Ellen Sternhill, PLS

Ellen Sternhill, PLS, is one of only three certified Professional Legal Secretaries in Southern Nevada, and is the owner of Professionally Legal, a freelance Legal Secretarial service. Ellen Sternhill attended Central Pennsylvania Business College in Harrisburg, Pennsylvania, where she graduated with her Associate's Degree for Legal Secretary. She has over 20 years of experience as a Legal Secretary/Assistant in various types of law firms, encompassing working for sole practitioners, mid-size and large law firms, as well as for Municipal attorneys. She is also a member of the National Notary Association, CCOLA (Clark County Organization of Legal Assistants), National Association of Legal Professionals (formerly National Association of Legal Secretaries "NALS" and is active in the Las Vegas and State chapters), the Henderson Chamber of Commerce and the Las Vegas Chamber of Commerce. Professionally Legal is located at 2708 Briarcliff Avenue, Henderson, NV 89014 and can be contacted at (702) 837-8894.

CHAPTER 1

UNDERSTANDING AND ADDRESSING DOMESTIC VIOLENCE

- 1.1 INTRODUCTION
- 1.2 GENERIC OVERVIEW OF A DOMESTIC VIOLENCE CASE IN NEVADA
- 1.3 DOMESTIC VIOLENCE DEFINED
- 1.4 THEORIES OF DOMESTIC VIOLENCE
- 1.5 WHY VICTIMS STAY WITH PERPETRATORS
- 1.6 CHILD VICTIMS OF DOMESTIC VIOLENCE
- 1.7 DYNAMICS OF THE PERPETRATOR OF DOMESTIC VIOLENCE
- 1.8 CYCLE OF VIOLENCE
- 1.9 PROOF OF DOMESTIC VIOLENCE
- 1.10 DOMESTIC VIOLENCE STATISTICS
 - 1.10.1 National Federal Domestic Violence (“Intimate Violence”) Statistics
 - 1.10.2 Nevada Domestic Violence Statistics
- 1.11 DOMESTIC VIOLENCE MYTHS AND FACTS
- 1.12 COORDINATED COMMUNITY RESPONSE
- 1.13 DOMESTIC VIOLENCE IN SPECIAL POPULATIONS

1.13.1 Sexual Minorities

1.13.2 Tribal Issues

1.13.3 Immigration Issues

1.13.4 The Elder Population

1.14 ACKNOWLEDGMENTS

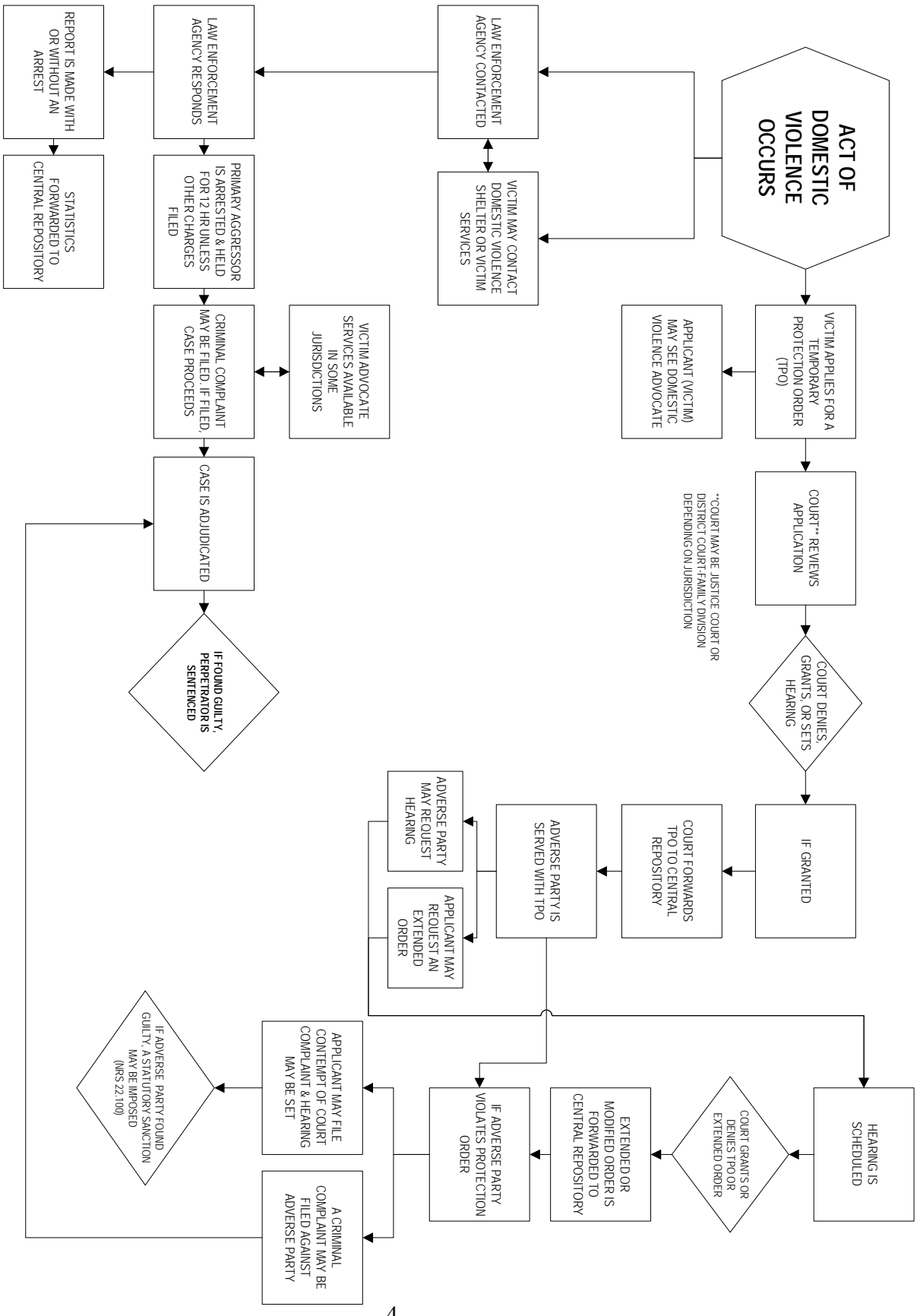
1.1 INTRODUCTION

This Manual was created to provide a resource for members of the judicial, law enforcement and legal communities who encounter domestic violence. This chapter is the key to the remaining chapters of the Manual. It provides a comprehensive overview of domestic violence so that those utilizing the Manual understand the dynamics of this serious problem that touches every socio-economic level, cultural group and profession.

1.2 GENERIC OVERVIEW OF A DOMESTIC VIOLENCE CASE IN NEVADA

The following page provides a schematic that shows a typical case proceeding through the Law Enforcement, Judicial and Victim Services Systems. It is not meant to be comprehensive and does not represent a specific jurisdiction. However, it does illustrate how all of the systems work together.

DOMESTIC VIOLENCE CASE IN NEVADA A GENERIC OVERVIEW



PREPARED BY THE URBAN GROUP LLC 10/01/00

NOTE: PROCEDURES IN COURT DIFFER DEPENDING ON JURISDICTION. FOR EXAMPLE, DUE TO THE VOLUME, THE DOMESTIC VIOLENCE COMMISSIONER IN CLARK COUNTY USUALLY MAKES A DETERMINATION ABOUT A TPO BASED ON THE APPLICATION, BUT MAY SET A HEARING. WHEREAS IN WASHOE COUNTY, THE DOMESTIC COURT MASTER PERSONALLY INTERVIEWS ALL PROTECTION ORDER APPLICANTS.

1.3 DOMESTIC VIOLENCE DEFINED

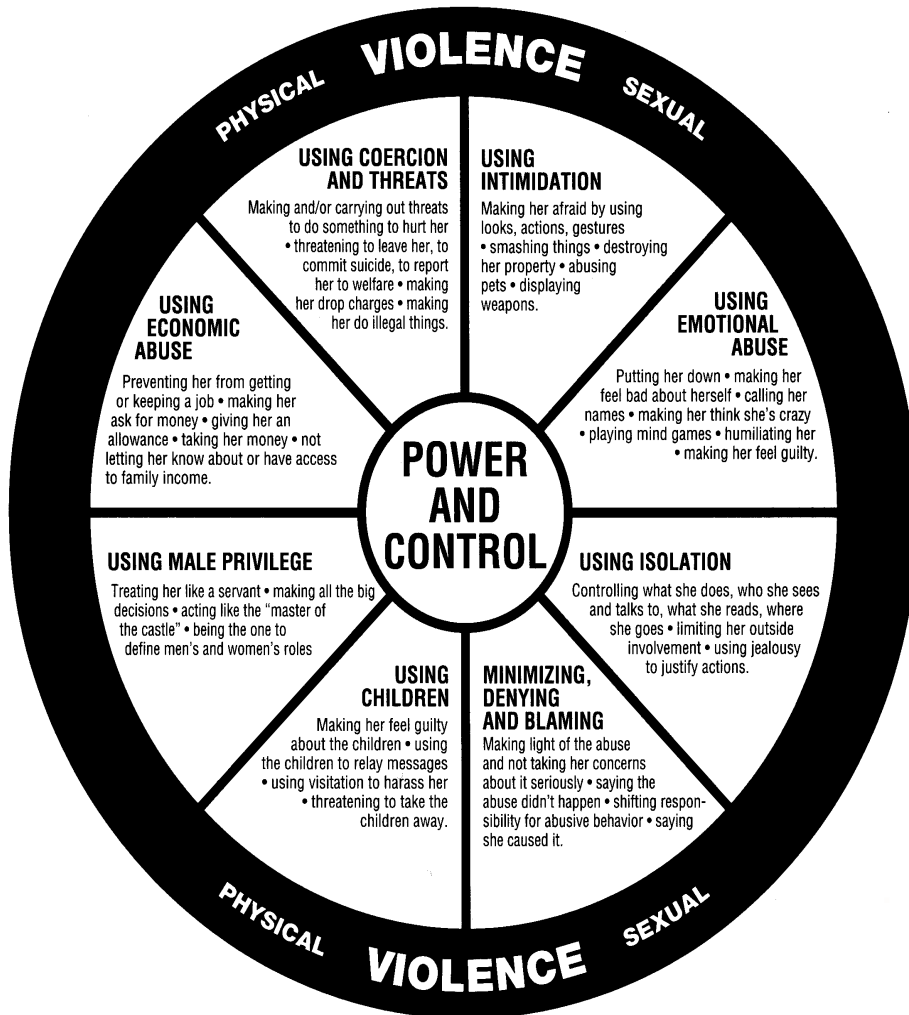
Domestic violence has evolved from a private, family matter, cloaked in secrecy and shame, to the recognition of domestic violence as a crime involving the use of power, coercion and violence to control another. To that end, domestic violence crimes are treated in the same manner as more random crimes against persons. However, domestic violence is different from such crimes because a perpetrator and victim are, by definition, never strangers, but rather partners in an intimate relationship, family members, or parents of common children. Thus, the victim is bound to the perpetrator in ways not commonly seen in traditional crimes against a person – the victim may rely on the perpetrator for economic support or child support, as the co-parent of their children or as a parent. It is the relationship between the victim and perpetrator, and all of the things that relationship implies, that may make the investigation and prosecution of domestic violence of increased importance, albeit more complex and difficult.

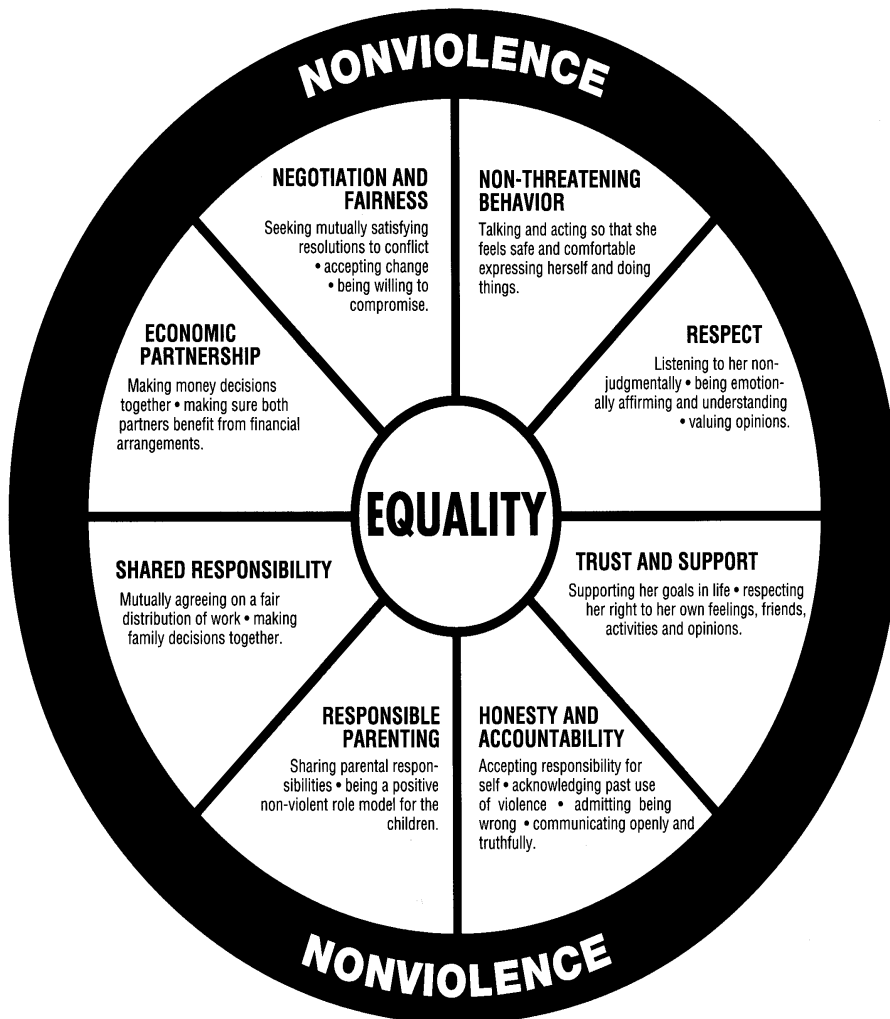
Thus, domestic violence generally is defined as a violent crime committed in the context of an intimate relationship.¹ Ongoing domestic violence is characterized by a pattern of escalating abuse in which one partner in the relationship controls the other through force, deprivation and/or the threat of deprivation or violence. The Power and Control Wheel reproduced below depicts the forms of control exerted by the perpetrator over the victim.² The Equality Wheel following the Power and Control Wheel depicts a healthy intimate relationship.³

¹LINDA A. MCGUIRE, PROSECUTION OF DOMESTIC VIOLENCE IN IOWA: A PROSECUTION MANUAL §3-15 (3rd ed. 1998).

²Reproduced with permission of the Domestic Abuse Intervention Project, 202 E. Superior Street, Duluth, MN 55802 (218)722-2781.

³*Id.*





Abuse comes in many forms. The list below provides a sample and is not intended to be exhaustive.⁴

Physical Abuse: Kicking, punching, shoving, slapping, pushing, and any other acts which hurt or injure the body

Sexual Abuse: Forced or pressured sexual acts, including rape.

Emotional Abuse: Comments against another's self-esteem, including calling another vulgar names, criticizing body parts or sensuality; threats to report child abuse or neglect and have children removed from home, or to report to INS; distorting or withholding information about legal rights, health care, money, or family; isolation (both social and physical).

Verbal Abuse: Name-calling, threats, put-downs.

Spiritual Abuse: Attacking another's spiritual or religious beliefs.

Financial Abuse: Controlling and manipulating another by threatening economic status and/or basic needs.

Homophobic-based Abuse: Threatening to "out" another to persons who are not aware of the person's sexual orientation.

Immigration-based Abuse: Using another's immigration status and/or fear of deportation as a mechanism to gain control.

Destructive Acts: Actual or threatened assault of another's property or pets to induce fear and/or control.

A New Phenomenon - Cyber-Stalking

Chapter 4 of this Manual contains information on the prosecution of stalkers in domestic violence cases. Cyber-stalking is a new phenomenon in stalking. According to the Commission on Domestic Violence of the American Bar Association, abusers can discover a victim's Internet activities by gaining access to the victim's e-mail account. The stalker can read the victim's incoming and outgoing mail and send threatening or harassing e-mail

⁴Adapted from Santa Clara County Probation Dep't, *Domestic Violence. Info. And Referral Handbook* (visited May 27, 2000) <http://www.growing.com/nonviolent/victim/vict_res.htm>).

messages to the victim. The victim should print and save these messages as evidence of abuse. For more information on this issue, contact the United States Attorney's office.

1.4 THEORIES OF DOMESTIC VIOLENCE

Domestic violence shares many of the characteristics of other power and control relationships, as described below.

Prisoners of War

Psychologist Alfred D. Biderman studied prisoners of war and the brainwashing tactics used by the Nazis in World War II and the Chinese in the Korean conflict.⁵ Biderman depicted in his Chart of Coercion, which was published by Amnesty International in 1973, the behavior of the captor in conditioning the prisoner. When with others, the captor exerts a rigid control over his behavior; however, when with the victim, he uses selectively abusive behavior which demonstrates "an established set of control skills" intended to produce the completely compliant and dependent victim.⁶ The coercive techniques used on P.O.W.s included: sleep deprivation, torture, bondage, rape and other threats and violent actions of all types.

Domestic violence reveals many of the same techniques as the captor's coercion of the prisoner. A particular problem in domestic violence, as with highly trained combat soldiers, is that many battered women are actually strong individuals who will not give in. The stereotype that battered women are weak, pathetic, and easily manipulated is not borne out by the evidence. The FBI reports that a woman is beaten every ten seconds, but a better way to understand the actual dynamics of domestic violence is to realize that a woman resists battery every ten seconds.⁷

The Stockholm Syndrome

Battering has been likened to the Stockholm Syndrome, the phenomenon of bonding with one's captor. In their study of "hostage" relationships, Dee L.R. Graham and Edna Rawlings found parallels between persons in hostage situations and those in battering relationships.⁸ Graham and Rawlings studied several groups and determined that bonding occurred in many "hostage" groups, including: prostitutes, cult members, concentration

⁵ ANN JONES, NEXT TIME SHE'LL BE DEAD 90 (1994).

⁶ *Id.* at 88.

⁷ *Id.* at 94.

⁸ DEE L.R. GRAHAM & EDNA I. RAWLINGS, *Dating Violence, Young Women In Danger*, in BONDING WITH ABUSIVE DATING PARTNERS: DYNAMICS OF STOCKHOLM SYNDROME 121 (1991).

camp prisoners, incest victims, emotionally and physically abused children, and battered women. Graham and Rawlings concluded from analyzing the background of the domestic violence victim that it was similar to the background of the flight attendant on a plane that is hijacked. The following dynamics are at work in the battering relationship:⁹

1. Perceived threat to survival and the belief that the captor is willing and capable of carrying out the threat;
2. The captive's perception of some small kindness from the captor within the context of terror;
3. Isolation from perspectives other than those of the captor; and
4. Perceived inability to escape.¹⁰

Graham and Rawlings believe that the following process takes place in an abusive or hostage situation: "An abuser traumatizes a victim, who cannot escape, by threatening her physical and psychological survival. As a result of being traumatized, the victim needs nurturing and protection. Being isolated from others, the victim must turn to the abuser for this needed nurturing and protection, if she turns to anyone."¹¹ When the abuser shows kindness, hope is created and the victim feels optimistic, denies her rage, and bonds to this positive aspect of the abuser. The victim takes on the perspective and perceptions of the abuser. "Because there is so much at stake, namely her survival, the victim is hyper vigilant to the abuser's needs, feelings and perspectives. Her own needs must take second place to the abuser's."¹² If the victim's needs and feelings were to surface, the terror would overwhelm her. Therefore, she sees the abuser as the "good" person and police or others who would help her as the "bad" people. This helps to explain why it can be so difficult to get a battered spouse to aid the police or the prosecution.¹³

1.5 WHY VICTIMS STAY WITH PERPETRATORS OF ABUSE

People who do not work or have contact with domestic violence victims may not understand why they stay in abusive relationships when the costs to the victim clearly are so high.

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.* at 122.

However, asking why they stay places the blame on the victim and not where it belongs, on the perpetrator of the abuse. The focus needs to change from the victims' behavior and why they stay, to the perpetrators' behavior and why they batter.¹⁴ In addition, the focus needs to switch to what can be done to prevent the violent behavior in the first place. The overwhelming amount of data show that victims are all different; the only commonality is that they are primarily female. Survivors often blame themselves for staying too long, but not for causing the abuse. They give that responsibility to the perpetrator.

Part of dealing effectively with victims and developing a good rapport with them is understanding some of the reasons why they remain in these relationships. Moreover, domestic violence victims need to understand that it is a myth that people don't leave violent relationships and that, commonly, it may take five to seven attempts at leaving before the victim is able to leave permanently.¹⁵ However, victims also need to be aware that they are in the greatest danger of abuse when they are leaving their violent partner.¹⁶

Listed below is a partial catalog of reasons why victims stay with abusive partners. It is not intended to be exhaustive.¹⁷

The victim may:

- Fear being beaten more severely
- Fear that the perpetrator will find and kill or harm the victim, children or other family members or has threatened to do so
- Depend on the perpetrator for food, shelter and other necessities
- Feel that there is no one to talk to who believes or understands her
- Believe that the children need two parents and may not want to raise the children alone
- Want to keep the family together and/or live up to a religious commitment to remain with the partner
- Fear not being able to take care of self or children alone

¹⁴Jones, *supra* note 5, at 131.

¹⁵ABA Comm'n on Domestic Violence, *Myths And Facts About Domestic Violence* (visited June 10, 2000) <<http://www.abanet.org/domviol/myths.html>>.

¹⁶*Id.*

¹⁷*Id.*

- Want to stand by the relationship and remain loyal to partner
- Fear that the perpetrator will commit suicide or the perpetrator has threatened to commit suicide if the victim leaves
- Believe that things will get better
- Believe that no one else will ever love the victim
- Fear that family and friends will be ashamed of the victim
- Feel ashamed, embarrassed and humiliated, not want anyone to know what has happened
- Believe that others will think the victim is “low class” or stupid for staying so long in the first place
- Believe that a relationship is necessary in order to be a complete person
- Fear deportation and/or having child taken away
- Fear “outing” if in a same sex relationship
- Fear that no one will believe the victim
- Believe that it is the victim’s job to make the relationship work and, if it does not, it is the victim’s fault
- Believe that by staying, the perpetrator can be “saved” and helped to get “better”
- The victim may still love the perpetrator, and simply want the abuse to stop.

1.6 CHILD VICTIMS OF DOMESTIC VIOLENCE

Children are often the silent victims of domestic violence. However, they are inextricably involved in the cycle of domestic violence and perhaps suffer its harshest results. The American Bar Association estimates that, in 2000, between three and ten million children will be harmed by domestic violence as unwilling witnesses or secondary targets of the perpetrator’s rage, or injured as a result of trying to protect the victim of the perpetrator’s rage.¹⁸ The best way for the justice system to contribute to the protection of children subjected to domestic violence and its effects may be to provide protection to the parent who is the victim.¹⁹

¹⁸ABA, Div. Of Media Relations and Pub. Aff., *Facts About Children and the Law - Question 28: How Does Domestic Violence Impact Children?* (visited Mar. 11, 2000) <<http://www.abanet.org/media/factbooks/ch28.html>>.

¹⁹UTAH ATT’Y GEN. OFF., DOMESTIC VIOLENCE 101: A USER-FRIENDLY MANUAL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT FOR PROSECUTORS AND LAW ENFORCEMENT OFFICERS at 24 (2nd ed.

- A national survey of over 6,000 American families has shown that 50% of men who frequently abused their wives also abused their children.²⁰
- In families where domestic violence is present, child abuse is 15 times more likely to occur.²¹
- Boys who witness their parents' domestic violence are 3 times more likely to grow up to abuse their own domestic partners than are the children of non-violent parents.²² The sons of the most violent parents are 100 times more likely to physically abuse their domestic partners.²³
- Children who observe violence at home frequently develop emotional and behavioral problems (e.g., nightmares, low self-esteem, withdrawal, self-blame, and aggression toward family, peers and property).²⁴
- The most significant difference between delinquent and non-delinquent youth is the frequent history of abuse or family violence among the delinquent youth.²⁵
- Every year, over 3 million children are in danger of exposure to parental violence.²⁶

1.7 DYNAMICS OF THE PERPETRATOR OF DOMESTIC VIOLENCE

A perpetrator of domestic violence is one who uses physical or psychological threats to coerce another intimate. The perpetrator is often described as Dr. Jekyll and Mr. Hyde.²⁷ One personality may be an upstanding leader in the community and a charming, loving and

1998).

²⁰Santa Clara County, *Violence in the Lives of Women and Children: Some Facts* (visited May 27, 2000) <<http://www.growing.com/nonviolent>>.

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷DONALD G. DUTTON, *THE BATTERER, A PSYCHOLOGICAL PROFILE* 35 (1995).

good provider, while the other may be denigrating, violent and threatening. Male perpetrators consistently use the same terminology to denigrate the victims: “Bitch,” “slut,” “whore,” and “cunt,” all sexual terms that indicate promiscuousness.²⁸

Characteristics of a Perpetrator of Domestic Violence²⁹

1. Denies having any problems or creating any problems:
 - (a) Blames mate;
 - (b) Mate is always the bad guy; or
 - (c) Accepts no blame for failures or for own violence.
2. Is very immature and self-centered.
3. May have learned only one way to deal with stress.
4. May also have the idea that it is okay to beat up on mate because mate needs or deserves discipline “a lesson,” etc.
5. May avoid taking responsibility for own conduct by minimizing, denying, lying about or justifying abusive tactics.
6. Is unable to express/accept feelings:
 - (a) Feelings of dependence and vulnerability are a threat to macho identity;
 - (b) Feelings that come with intimate relationships-dependency, vulnerability, inadequacy;
 - (c) Feelings of great vulnerability underneath it all; and
 - (d) Express vulnerability as anger.
7. Is highly jealous of mate’s time, affection, and attention.

²⁸ *Id.* at 16.

²⁹ *Adopted from* THE FAMILY VIOLENCE PREVENTION FUND, *Who Is The Perpetrator*, DOMESTIC VIOLENCE: A NATIONAL CURRICULUM FOR FAMILY PRESERVATION PRACTITIONERS, 62-63 (1995).

8. Is emotionally dependent.
9. Doesn't know how to form intimate relationships and is fearful of mate doing so.
10. Fears abandonment—leading to extreme jealousy and suspicion.

1.8 CYCLE OF VIOLENCE

The battering cycle consists of three phases. The first is called the Tension Building Phase and is marked by small episodes of anger and violence. These episodes escalate and become the second phase, which is the Acute Battering Phase. This is the out-of-control phase, with major discharge of the tension that is built up in phase one. Much more intense damage is done in this phase. The third phase is that of Remorse, and Loving Respite. This phase is marked by extremely contrite, loving, kind behavior that is the reward phase for the battering cycle.³⁰ Though common, not all victims experience this predictable cycle.

1.9 PROOF OF DOMESTIC VIOLENCE³¹

Courts accept many kinds of evidence as proof of battering, as described below. Note that the following lists of evidence in physical abuse and extreme cruelty cases may not be all-inclusive.

Categories of Evidence in Physical Abuse Cases

1. Law Enforcement Officer Material:
 - Officer reports, arrest reports, impound reports, incident reports, 911 tapes, dispatch logs, officers' notes taken at the scene of a domestic violence call and testimony or affidavits from police officers
 - Testimony of police officers, including what the officer witnessed, and the victim's , perpetrator's and witnesses' statements

³⁰ LENORE WALKER, *THE BATTERED WOMAN* (1979).

³¹ Ayuda, Inc., *Legal Aid in AMERICAN PROSECUTORS RESEARCH INSTITUTE (APRI), RURAL DOMESTIC VIOLENCE ISSUES 121* (1999).

2. Domestic Violence Protection Orders

- Copies of protection orders and temporary or emergency protection orders obtained by the victim issued alone or as part of a divorce, legal separation or custody decree
- Applications and affidavits in support of protection orders
- Motions to enforce protection orders
- Orders of contempt against the perpetrator

3. Medical Records

- All past and present medical records, including those from mobile emergency services providers
- Prescriptions or receipts for medication
- Testimony and affidavits from health professionals who processed, admitted, diagnosed and treated the victim

4. Photographs

- Photographs of the victim's size, emotional state, nursing an injury, injuries or indicia of injuries (discoloration, swelling, disheveled hair, welts, broken fingernails), disheveled, soiled or stained clothing, and of any damage or disturbance to the victim's residence, car or other personal property
- Photographs of anything else that corroborates the victim's story, including empty alcohol containers, drug paraphernalia used by the perpetrator, drag marks on a carpet, a disconnected and/or broken telephone, displaced wall hangings, objects that were the subject of the argument (especially if the perpetrator is saying the argument was about something else), objects thrown or spilled, etc.
- Photographs of the space in which the argument and any pushing or "throwing around" took place and which show how far the victim was pushed or thrown, the likelihood of the victim falling and hitting something harmful, what the victim was thrown or pushed against, the perpetrator "cornering" the victim, the victim's forbearance of an opportunity to use a weapon to hurt the perpetrator (knives, pans, hammers, heavy decorative or other items, etc.)

- Photographs of the perpetrator showing his size, intoxicated state, demeanor and any injuries or lack of injuries. (**Note:** If possible, when the perpetrator is “gone on arrival,” the officer should have the victim identify a photograph of the perpetrator and impound it in case the victim later recants, avoids service of a subpoena or otherwise becomes unavailable for testimony.)
- Photographs which show the victim’s vulnerability (pregnancy, diminutive size compared to the perpetrator’s size, handicap, prior injury/surgery, age, etc.).
- Note that photographs taken immediately after the incident may look less severe than those taken the next day when bruises may have developed

5. Material Evidence

- Any soiled, stained, disheveled or bloody clothing that was worn during an assault
- Other items that may have been argued over, broken, damaged or otherwise caused injuries during the assault
- Evidence of injuries on the victim’s body, including redness, swelling, discoloration, pulled hair, scratches, abrasions, welts, cuts, bruises, etc.
- Impounded towels, rags or other materials used to clean or treat the victim’s injuries, or clean materials thrown, spilled, spit or poured during the most recent assault
- Copies of lease, rental, utility or cable agreements showing victim on such agreements

6. Testimony / Affidavits Of Witnesses

- Anyone who heard or witnessed the assault, observed injuries, or heard the victim’s statements about the incident(s), including police personnel
- Witnesses who have observed or have information about past incidents
- Witnesses, including a neighbor, landlord or tenant who heard a fight going on, friend or relative, co-worker, child care provider, health care provider, persons who work at the victim’s children’s school or people who attend the victim’s church

- Witnesses to the victim's statements about plans for future safety and about the perpetrator's excessive control, including what the victim will do the next time any abuse occurs, requests to leave materials with witness, requests to stay with witness if the need arises, requests to take care of the children if anything happens to the victim, codes for signals for help, requests for food or clothing for the children (due to the perpetrator spending money on drugs/alcohol/gambling), comments about perpetrator's not "letting" the victim go to certain places, wear certain clothes, hair lengths or styles, have certain friends, etc.
- Persons who helped the victim flee the perpetrator or helped the victim obtain assistance, an ambulance medic, shelter workers, etc.
- Witnesses, including persons who have information about the abuser's history of abuse, including abuse toward other women in other relationships; and
- Statements made by the victim or someone else at or near the time of the domestic violence incident, while showing they were upset, in shock, fearful, in pain, or otherwise stressed by the most recent event between the victim and the perpetrator and its consequences, or showing the ongoing nature of the "event" (e.g., fear of the perpetrator's return, fear of the perpetrator's carrying through with threats, concern for immediate needs like food and shelter, etc.)

7. Criminal Records

- Copies of the perpetrator's criminal records, including criminal complaints, arrest records, records of conviction, sentencing reports, court orders, transcripts, pleadings, and any other related records from any jurisdiction

8. Civil Court Records

- Copies of pleadings, findings, court orders, or transcripts from civil and family court matters
- Relevant documents from civil protection order cases, and divorce, custody, child support, name change, child abuse, or termination of parental rights actions

9. Expert Testimony

- Reports and affidavits from police, judges, medical personnel, school officials and social services agency personnel, and from psychologists, psychiatrists, and other counselors or therapists
- Statements from therapists confirming that the victim and the children are undergoing counseling as a result of a history of domestic violence in the home. Many domestic violence victims suffer from post traumatic stress as a result of the abuse.

10. Statements From A Shelter

- Confirmation that a victim had to seek assistance from a domestic violence shelter and that the victim was offered shelter, including any injuries shelter workers observed, treatment they offered or other information they may have pertaining to the abuse
- Information from shelters about the perpetrator's behavior, including efforts to stalk the victim while living in the shelter

11. School Records

- School records documenting the physical injuries to the victim and children and providing evidence of the effects of domestic violence on the children
- School officials' reports of excited utterances, spontaneous statements, or other non-hearsay or exceptions to hearsay statements made by the victim's children
- School officials' affidavits concerning domestic violence incidents they witnessed at the school

12. Victim's Statements /Testimony

- The victim's statement in most cases will be the strongest and most comprehensive evidence of battering or extreme cruelty
- The victim's statement should be detailed as to events, dates, times, locations and witnesses (including points of contact). It will often include a previous history of domestic violence between the victim and the perpetrator, including threats of

harassment and physical abuse, sexual assaults, descriptions of destruction of property, harm to pets, injuries suffered, threats made to the children, annoying phone calls and contacts to the victim's place of employment, trespass on the victim's property, locking the victim out of the family home, threats to commit suicide, and other examples of psychological damage

13. Perpetrator's History of Drug and/or Alcohol Abuse

- Testimony of the abused victims, family members, or friends as to the perpetrator's history of substance abuse
- Court records, mental health records or records of substance treatment programs

14. Perpetrator's History of Mental Illness:

- Records from police, mental health professionals, or institutions demonstrating the perpetrator's history of mental illness

15. Other

- The types of evidence that a victim may present to prove the history of abuse will vary greatly from person to person and will depend on the history and nature of the abuse and the victim's ability to seek help in the past

Categories of Evidence in Extreme Cruelty Cases

Unlike physical violence, extreme cruelty or psychological abuse is difficult to measure because of the difficulty of definition. Extreme cruelty or psychological abuse functions to maintain control over another. Researchers who have studied domestic violence have found that perpetrators of domestic violence exert a pattern of power and control over their abused partners and children. These behaviors are summarized in the "power and control wheel" reproduced in Section 1.3 of this chapter. Evidence of these patterns of behavior may provide proof of extreme cruelty based on psychological abuse and may provide further corroboration in cases of physical abuse, sexual abuse, and threats. While the victim may be one source of such evidence, the victim's statements need to be corroborated to be viewed as credible in the eyes of the court. Examples of psychological abuse follow.

1. Social Isolation

- Evidence indicating that the perpetrator limits the victim's use of the telephone and contact with others; monitoring phone calls. Making the victim dependent on the perpetrator for transportation
- Making it hard or prohibiting the victim from going to work or school, to visit family and friends, or to partake in any other social or leisure activity; moving frequently

2. Obsessiveness And Possessiveness

- Jealousy and frequent accusations of infidelity, accusations that the victim is putting on makeup to go to work so as to be attractive to others
- Opening the victim's mail
- Calling the victim frequently at work and otherwise incessantly calling, driving or loitering around the victim's home or work
- Constantly writing letters
- Contacting the victim's friends, family, employer
- Interrogating the children or other family members
- Car chases
- Stalking

3. Perpetrator's Threats to Commit Harm

- Evidence that the perpetrator often scares the victim, e.g., standing very closely, clenching fists, other gestures, warning looks, displaying weapons, and driving recklessly when angry
- Destroying clothes and items of sentimental value, i.e., killing the family pet
- Threatening to report the victim to government agencies, including "welfare," "IRS," "INS"

- Coercing the victim to commit illegal acts, such as drug trafficking and prostitution
- Threatening to get custody, hurt children, conceal or kidnap the children
- Locking the victim out of the home or threatening to physically remove the victim from the home
- Vandalism and destruction of property
- Threatening to commit suicide or to kill the victim, children or other members of the victim's family

4. Economic Abuse

- Perpetrator able to work but doesn't
- Preventing the victim from getting or keeping a job
- Putting everything in the victim's name to preserve own credit
- Controlling all money
- Making the victim ask for money, not giving the victim access to checking accounts, taking the victim's money, not letting the victim have any access to family income
- Making the victim sign tax returns without letting the victim read before signing

5. Degradation Of The Victim

- Name-calling and other forms of humiliation, constant criticism, verbal belittling
- Forcing the victim to eat
- Strictly defining roles and limiting the victim to housework and child care
- Minimizing, denying and blaming
- Inducing altered states of consciousness, e.g., forced alcohol or drug use
- Convincing the victim that the victim cannot survive without the perpetrator

- Putting the victim’s friends and family down
- Treating the victim like a servant

1.10 DOMESTIC VIOLENCE STATISTICS

1.10.1 National Federal Domestic Violence (“Intimate Violence”) Statistics

The Department of Justice (DOJ), in a joint effort with the Department of Health and Human Services, released a comprehensive review of domestic violence between intimates in March 1998.³² The DOJ combined reports from the National Crime Victimization Survey, which provided annual estimates of crimes experienced without regard to whether a law enforcement agency was involved; the Uniform Crime Reporting Program, which collected aggregate data on eight categories of crime from law enforcement agencies nationwide; and the National Incident-Based Reporting Program, which collected information on 57 types of crime, including information on victim-offender demographics, relationship, time and place of occurrence, weapon use and victim injuries; Supplementary Homicide Reports, which are a component of the Uniform Crime Report program collecting information on homicides since 1961; and the Study of Injured Victims of Violence, which is a special collection of hospital emergency department data.³³

The information summarized below is intended to provide the “big picture” regarding domestic violence. The information provided is limited insofar as it does not include statistical prevalence of domestic violence as it occurs within same sex relationships.³⁴ It is important to be sensitive not only to victim issues generally, but

³²See LAWRENCE A. GREENFELD ET AL., U.S. DEP’T OF JUSTICE, VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS (1998).

³³*Id.*

³⁴While same sex intimate relationship violence is more under-reported than domestic violence between heterosexual intimates, most authorities believe that the prevalence of same sex domestic violence mirrors that of the heterosexual population. *See generally* Violence Against Women Online Resources, *Annual Report on Lesbian, Gay, Bisexual, Transgender Domestic Violence* (visited Mar. 11, 2000) <<http://www.vaw.umn.edu/FinalDocuments/glbtdv.htm>> (released Oct. 6, 1998 by the National Coalition of Anti-Violence Programs (NCAVP) suggesting that 25-33% of the gay and transgender population are abused by their domestic partners - rates comparable to those reported in the straight - or heterosexual - population).

to victim issues as they pertain to the gay culture,³⁵ in particular, the limited number of victim service providers targeted for gay domestic violence victims.³⁶

- More than 960,000 incidents of violence against a current or former spouse, boyfriend or girlfriend occur each year, and approximately 85% of the victims are women.
- Approximately every 9 seconds a woman is physically abused in this country.³⁷
- In 1996, there were approximately 2,000 murders attributable to intimates, down substantially from the nearly 3,000 murders recorded two decades ago in 1976. Decreases in domestic murders have occurred among men, among blacks (both male and female) and for murders involving firearms. However, white females murdered by nonmarital intimates represent the only category of victims to have experienced a slight increase between 1976 and 1996.
- Intimate murder now accounts for 9% of all murders that occur in the U.S.
- Females are substantially more likely than male murder victims to have been killed by an intimate. Since 1976, 52,000 men and women have been murdered by an intimate; two-thirds of these victims were female.
- During 1992-96, approximately 8 in 1,000 women and 1 in 1,000 men age 12 years or older experienced a violent victimization inflicted by an intimate.

³⁵The term “gay culture” as used in the text is meant to include gay, lesbian, bisexual and transgender populations.

³⁶*See infra*, §1.13.1 for a more detailed discussion of issues relating to gay, lesbian, bisexual, and transgendered domestic violence victims.

³⁷Santa Clara County, *Violence in the Lives of Women and Children: Some Facts* (visited May 27, 2000) <<http://www.growing.com/nonviolent>>.

- Females are 5 to 8 times more likely than males to be victimized by an intimate. Between 1992 and 1996, victimization by an intimate accounted for 21% of the violence experienced by females and 2% of the violence experienced by males.
- Rates of nonlethal violence are highest among black women, women aged 16 to 24, women in households in the lowest income categories, and women residing in urban areas.
- Three out of 4 women experiencing violence at the hands of an intimate report that the offense occurred at or near their home, and half report that the incident occurred between 6 p.m. and midnight.
- One in 50 women aged 16 to 24 years of age experienced intimate, nonlethal violence between 1992 and 1996.
- Approximately 3 out of 4 female victims of intimate violence defended themselves during the incident.
- About half of female victims reported the domestic violence incident to a law enforcement agency - black females being the most likely to call the police. Of those who did not report their crime to the police, 1 in 3 stated that they consider the victimization to be a “private or personal matter.”
- Victims report that, when notified, police responded to about 90% of the calls for assistance, and approximately 1 in 3 offenders identified by the victim were eventually arrested.
- About 160,800 female victims of violence are estimated to receive services from a victim services agency each year.
- About half of all female victims of intimate violence report an injury of some type, and about 20% of those seek medical assistance.
- Female victims of intimate violence suffer medical expenses and other costs of crime, which total about \$150 million annually. Medical expenses account for over half that amount.

- Domestic crimes against adults account for nearly 15% of total crime costs - \$67 billion per year - according to a 1996 study by the National Institute of Justice.³⁸
- Females accounted for 39% of the hospital emergency room visits for violence-related injuries in 1994, but 84% of the persons treated for injuries inflicted by intimates.

1.10.2. Nevada Domestic Violence Statistics

The Nevada Highway Patrol's Records and Identification Services Bureau, within the Department of Motor Vehicle and Public Safety administers the Uniform Crime Reporting (UCR) Program. Part of the UCR Program's responsibility is the statewide collection and publication of domestic violence statistics as reported by Nevada law enforcement. For questions regarding the most current domestic violence statistics, please call (775) 687-1600.

Statewide statistics are compiled by the Nevada Network Against Domestic Violence (NNADV) on a quarterly basis from domestic violence programs in Nevada.³⁹ These numbers reflect contact with victim service providers, not contacts by victims with law enforcement agencies.

For the first quarter of 2000, the NNADV statistics show:

- Nevada domestic violence programs reported 16,548 victim service contacts. Of that number, 8,764 were first time contacts.
- Nevada domestic violence victim service programs provided a total of 14,399 bed-nights for adults and children in shelters, shelter services, and motels.
- Victims ages 18 to 44 years accounted for over 75% of primary victim contacts by domestic violence agencies.
- Hispanic and Caucasian victims accounted for over 75% of primary victim contacts by domestic violence agencies.

³⁸*Id.*

³⁹20th ANNIVERSARY - WINTER EDITION, NETWORK NEWS (Nevada Network Against Domestic Violence, Reno, Nev.), Jan. 20, 2000, at 5.

- Clark, Washoe and Carson counties had the highest number of victim contacts associated with domestic violence for the first quarter of 2000. Eureka, Humboldt and Pershing counties had the lowest number of victim contacts.

1.11 DOMESTIC VIOLENCE MYTHS AND FACTS

Myths about domestic violence and the types of persons who fall prey to domestic abuse abound. It is important for all persons working with abuse victims to be aware of and sensitive to these myths when dealing with victims. The American Bar Association states that attorneys have a “duty to confront and challenge misperceptions about domestic violence because such stereotypes affect the relief that they can obtain on behalf of their clients.”⁴⁰ Moreover, victims of domestic abuse may be unaware of the facts of domestic abuse and adhere to the myths themselves.

The following provides a brief list of domestic violence related facts.⁴¹

Fact: Almost four million women are beaten in their homes each year by their male partners. Although the first violent incident may not be severe, once the battering begins, it tends to increase in severity and frequency, sometimes leading to permanent injury or death. What may begin as an occasional slap or shove may turn into a push down a flight of stairs, a punch to the face or a kick in the stomach.

Fact: Victims of domestic violence have historically been characterized as masochistic women who enjoy being beaten. Evidence does not support this anachronistic psychological theory. Rather, victims of domestic violence desperately want the abuse to end and engage in various survival strategies (i.e., calling the police, seeking help from family members) to protect themselves and their children.⁴² Silence may also be a survival strategy in some cases. Additionally, enduring a beating in order to keep the perpetrator from attacking the children may be a coping strategy but does not mean the victim “enjoys” being beaten.

⁴⁰ABA Comm’n on Domestic Violence, *supra* note 15.

⁴¹Santa Clara County Probation Dep’t, *supra* note 4; ABA Comm’n on Domestic Violence, *supra* note 15.

⁴²Mary Ann Dutton, *Post-Traumatic Stress Disorder Among Battered Women: Analysis of Legal Implications*, 12 BEHAV. SCI. & L. 215, 219 (1994), *cited in* ABA Comm’n on Domestic Violence, *supra* note 15.

Fact: Most victims of domestic violence leave their abusers - often several times. It may take a number of attempts to permanently separate because abusers use violence, financial control, or threats about the children to compel victims to return. Additionally, a lack of support from friends, family members, or professionals (i.e., the court, law enforcement officers, counselors or clergy members) may cause the victim to return. Since the risk of further violence often increases after the victim separates from the perpetrator, it can be even harder for victims to leave if they cannot obtain effective legal relief. Victims who receive appropriate legal assistance at an early stage increase their chances of obtaining the protection and financial security they need to leave permanently. While some victims may become involved with other partners who later begin to abuse them, there is no evidence that the majority of victims have this experience.

Fact: Domestic violence is not about anger or losing control. It is an intentional choice focused on maintaining power and control in a relationship. For example, perpetrators of domestic violence manage to avoid abusing and terrorizing their employers and friends when they are angry.

Fact: Alcohol and/or substance abuse does not *cause* perpetrators of domestic violence to abuse their partners. It is frequently used as an excuse for the abuse by the perpetrator, however. Substance abuse may increase the frequency or severity of violent episodes in some cases.⁴³ As substance abuse does not cause domestic violence, requiring perpetrators to attend only substance abuse treatment programs will not effectively end the violence. Such programs may be useful in conjunction with other programs (i.e., intervention programs).

Fact: Stress and unemployment do not cause perpetrators of domestic violence to abuse their partners. Since domestic violence cuts across all socio-economic lines, domestic violence cannot be attributed to unemployment or poverty. Similarly, advocates note that if stress alone caused domestic violence, perpetrators of domestic violence would assault their bosses or co-workers rather than their intimate partners. Domestic violence flourishes because society condones spouse or partner abuse and because perpetrators learn that they can achieve what they want through

⁴³Irene Jillson & Bettina Scott, *Violence, Women and Alcohol: Reducing the Risks, Redressing the Consequences*, DEP'T OF HEALTH AND HUMAN SVCS. (draft report) (Jan. 1996), cited in ABA Comm'n on Domestic Violence, *supra* note 15.

the use of force without facing serious consequences.

Fact: The perpetrator - not the victim - is responsible for the violence. Perpetrators use a multitude of excuses to justify beating their victims, for example, breaking an egg yolk while fixing breakfast, dressing or not dressing in a particular manner, or cooking the wrong meal. These incidents do not warrant or provoke violence. Even when the victim disagrees, violence should not be the end result. Victims of abuse do not want to be beaten.

Fact: Perpetrators of domestic violence do not abuse their victims because they are crazy or mentally ill. They generally lead “normal” lives except for their unwillingness to stop abusing their victims and control their behavior in intimate relationships.

Fact: Domestic violence occurs in a similar fashion and with similar prevalence in gay, lesbian, bisexual and transgender relationships as in heterosexual relationships. Homophobia allows society to trivialize domestic violence in same sex relationships, thereby compounding the effects of the violence for the victim.

Fact: Traditionally, police have been more likely to file a report where the offender was a stranger as opposed to an intimate partner. However, with recent amendments to state laws, in particular those regarding mandatory or warrantless arrests, this trend is changing.

Fact: There is a great deal of debate about the efficacy of particular actions by law enforcement and/or the judiciary (e.g., mandatory arrest policies, civil protection order issuance). Research on the usefulness of mandatory arrest or civil protection orders has yielded conflicting results. Most experts agree, however, that actions by one part of the system are effective only when the rest of the criminal and civil justice systems are functioning and that improved protocols can decrease domestic violence related homicides. Thus, law enforcement officers must make arrests, prosecutors must prosecute

domestic violence cases, and courts must enforce orders and impose sanctions for criminal convictions. It is important for perpetrators of domestic violence to receive the message from the community that domestic violence will not be tolerated and that the criminal and civil justice systems will be involved until the violence ceases.⁴⁴

Fact: Domestic violence crosses all economic, educational, ethnic, sexual, age and racial lines. There is no “typical” victim.

1.12 COORDINATED COMMUNITY RESPONSE

The advent of mandatory arrest policies and protection order statutes has put a strain on community agency resources and generated greater public scrutiny.⁴⁵ Growing numbers of victims and children are being referred to victim services agencies, and perpetrators of domestic violence increasingly are referred to accredited perpetrator intervention programs as conditions of probation or parole.⁴⁶ Counties may wish to form community coalitions to address the problem of domestic violence and to coordinate the use of community resources, by planning a coordinated community response.

A “coordinated community response” is defined as a system or institution responding to the issue of domestic violence that provides the following priorities: protecting victim safety, promoting victim autonomy and integrity, and holding the perpetrator accountable. Participants in a coordinate community response should include representatives from criminal justice, health care, education, the clergy, victim advocacy, government and the media. To see the full picture of a coordinated community response, a description of the contributions each participant can make follows in detail below.⁴⁷

1. Justice System

- Maintain adequate staffing levels
- Maintain and disseminate statistical records of domestic violence cases (names withheld) within the relevant jurisdiction.
- Utilize methods of intervention which do not rely on the victim’s involvement

⁴⁴ABA Comm’n. on Domestic Violence, *supra* note 15 (internal citations omitted).

⁴⁵McGUIRE, *supra* note 1, at §3-2.

⁴⁶*Id.* at §3-2 to 3-3.

⁴⁷*Adopted from* DOMESTIC VIOLENCE INSTITUTE OF MICHIGAN, DESIRE TO MAKE A DIFFERENCE. This Manual addresses only the Justice System and Victims Services.

- Devote a percentage of training equivalent to the number of domestic violence cases in the jurisdiction
- Vigorously enforce perpetrators' compliance, and protect victims' and children's safety with custody, visitation, and injunctive orders
- Adopt a "pro-arrest policy"
- Provide easily accessible and enforceable protection orders

2. Victim Services

- Design and deliver services which are responsive to victims' and children's needs
- Require staff to receive training on the etiology and dynamics of domestic violence
- Oppose the "pathologizing" of domestic violence and exclusive control of the "field" by "degreed professionals"
- Shift the focus from "trying to keep the family together at all costs" to the safety of victims and children

3. Clergy

- Speak out against domestic violence from the pulpit
- Routinely assess for domestic violence in premarital and pastoral counseling
- Seek out and maintain a learning and referral relationship with the domestic violence coordinated community response system
- Oppose the use of biblical or theological justifications for domestic violence
- Reject patriarchal dominance as a preferred social pattern

4. Education System

- Support and educate teachers to recognize and respond to symptoms of domestic violence in students' lives
- Teach violence prevention, peace-honoring, conflict resolution and communication skills
- Acknowledge gender bias in teaching materials and develop alternatives
- Require education about relationships at all levels
- Teach students that it is the civic duty of all citizens to oppose oppression and support those who are oppressed

5. Employers

- Condition perpetrators' continuing employment on remaining nonviolent
- Intervene against stalkers in the workplace
- Safeguard battered employees' employment and careers by providing flexible schedules, leaves of absence, and establishing enlightened personnel policies
- Provide employment security to battered employees
- Provide available resources to support and advocate for battered employees

6. Government

- Enact laws which define domestic violence as criminal behavior
- Enact laws which provide courts with progressive consequences in sentencing
- Adequately fund victim services agencies and violence prevention education
- Commute sentences of domestic violence victims who kill in self defense
- Heavily tax the sale of weapons and pornography to subsidize sexual and physical violence prevention and intervention efforts

7. Health Care System

- Develop and utilize safe and effective methods for identification of domestic violence
- Provide referral, education, and support services to victims and their children
- Refrain from overly prescribing sedative drugs to victims
- Utilize accountable documentation and reporting protocols for domestic violence
- Devote a percentage of training equivalent to the prevalence of domestic violence cases in the system

8. Media

- Prioritize subject matter which celebrates peace and nonviolence
- Spotlight efforts which promote nonviolence
- Devote an equitable proportion of media "product" to domestic violence victims' and children's needs
- Educate about the dynamics and consequences of violence

- Cease labeling domestic violence as “love gone sour,” “lover’s quarrel,” “family spat,” etc.
- Stop portraying the perpetrator’s excuses and lies as if they were the truth

Improving the System

One of the forerunners of modern domestic violence protocols, the Domestic Abuse Intervention Project (DAIP) of Duluth, Minnesota suggests that monitoring be done on a continual basis by an agency outside the domestic violence triad which is accountable to victim advocacy programs.⁴⁸ Monitoring by an agency outside the criminal justice system ensures that agencies involved in the community response to domestic violence can be judged in terms of the effectiveness of their intervention as it serves domestic violence victims, in contrast to traditional measures of “success,” such as conviction rates.⁴⁹ In determining the effectiveness of any intervention strategies, the outside agency should attempt to answer the following questions:⁵⁰

- Are the community agencies doing what they say they are doing?
- How do domestic violence victims experience the system?
- Does the community response reduce domestic violence victims’ vulnerability to continued abuse?

In an effort to improve the system, the Nevada Network Against Domestic Violence began an ambitious court monitoring program in 2000. The results of that effort can be obtained directly from the Nevada Network at (775) 828-1115.

1.13 DOMESTIC VIOLENCE IN SPECIAL POPULATIONS

1.13.1 Sexual Minorities

The term “sexual minorities” as used in this Manual includes gay, lesbian, bisexual and transgendered individuals who may be victims of domestic violence.⁵¹ It is critical that members of the Domestic Violence Triad – law enforcement, prosecutorial and judicial

⁴⁸McGUIRE, *supra* note 1, at 3-31, *citing* DOMESTIC ABUSE INTERVENTION PROJECT (DAIP), INTEGRATING THEORY AND PRACTICE: CRIMINAL JUSTICE REFORM WORK IN THE BATTERED WOMEN’S MOVEMENT (1987). *See also* Mary E. Asmus *et al.*, *Prosecuting Domestic Violence Abuse Cases in Duluth: Developing Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 HAMLINE L. REV. 115 (1991).

⁴⁹McGUIRE, *supra* note 1, at 3-31.

⁵⁰*Id.*

⁵¹*See* Glossary of Terms.

personnel – become sensitive not only to issues surrounding the perpetration of domestic violence in general, but also as domestic violence applies to those that may be, or consider themselves to be, alienated from the mainstream culture via lack of services, lack of acceptance or general misconceptions and prejudices.

Statistics

Although there are no firm statistics, it is estimated that approximately ten percent of the population is gay or lesbian.⁵² By their nature, homosexual relationships involve domestic relations between members of the same sex. Thus, denying that men can be victims of domestic violence or that women can be perpetrators of domestic violence perpetuates the myth that domestic violence does not occur within these relationships.⁵³ That said, it is estimated that the prevalence of domestic violence within the sexual minority culture mirrors that of the straight, or heterosexual, culture – occurring at an approximate rate of between 25 and 33% of the population.⁵⁴

The actual prevalence of domestic violence within sexual minority culture is difficult to estimate for a number of reasons. Statistics regarding violence within the gay, lesbian, bisexual and transgendered communities have been collected only since approximately 1987 and only in metropolitan and urban areas with a high percentage of sexual minorities.⁵⁵ Additionally, as in the straight culture, under-reporting is suspected, although such under-reporting, paradoxically, may have a lot to do with a lack of support within the sexual minority culture itself as it strives for more mainstream acceptance.⁵⁶ A further reason statistics may be inaccurate stems from a lack of acceptance of sexual minority relationships within the straight culture.⁵⁷ Thus, for example, an officer responding to the home of two gay men may be more likely to identify the situation as “mutual combat” than to determine who the primary aggressor was in the situation.

In 1996, the National Coalition of Anti-Violence Programs (NCAVP), a coalition of 25 lesbian, gay, bisexual and transgendered victim and documentation programs located throughout the United States, began investigating domestic violence within the sexual minority community. The purpose of the investigation was to determine how prevalent

⁵²Psychpage.com website, *Domestic Violence in Gay and Lesbian Couples* (visited Sept. 1, 2000) <<http://www.psychpage.com/learning/library/gay/gayvio.html>>.

⁵³*Id.*

⁵⁴Violence Against Women Online Resources, *Annual Report on Lesbian, Gay, Bisexual, Transgender Domestic Violence* (visited Mar. 11, 2000) <<http://www.vaw.umn.edu/FinalDocuments/glbtdv.htm>>.

⁵⁵Psychpage.com, *supra* note 52.

⁵⁶*Id.*

⁵⁷*Id.*

domestic violence was within the community and to determine the availability of the standard protections for straight persons who are subject to domestic violence (i.e., protection orders).⁵⁸ The NCAVP limited its inquiry of domestic abuse to domestic partnerships that were romantic in nature. Domestic abuse was identified as a pattern and escalation over time of the following: any non-consensual behavior that causes another to fear emotional, financial, or physical harm, or that restricts another's freedom, individual rights or privacy.⁵⁹ Common forms of abuse included threats, emotional or psychological abuse, physical abuse, sexual abuse, financial abuse and stalking.⁶⁰

In 1997, the NCAVP documented 3,327 cases of lesbian, gay, bisexual and transgender domestic violence.⁶¹ Of that number, 1,746 (52%) were reported by men and 1,582 (48%) were reported by women.⁶² Three percent (or 109) of these persons identified themselves as transgendered - 105 as transgendered women and 4 as transgendered men.⁶³ In contrast, in 1996, the NCAVP documented 2,352 cases of domestic violence within the sexual minority community. The 1997 statistics demonstrate an increase of 41% in the course of a single year.⁶⁴

Investigation and Prosecution Considerations

Law enforcement agencies and prosecutorial teams should investigate all domestic violence incidents involving sexual minorities in the same manner as domestic violence incidents in the straight community. That is, they should adhere to all law enforcement protocols and prosecutorial policies that are currently in effect for their jurisdiction. However, when the victims in a same sex relationship are not cooperative with arriving law enforcement personnel, the officers should be especially careful to articulate what they see at the scene that would lead them to believe that they are dealing with a same sex relationship (one bedroom, one bed, photographs, etc.)⁶⁵ Additionally, arriving officers should be sensitive to the fact that the victim and perpetrator may not be open about their relationship or may be reluctant to disclose the nature of their relationship due to work, neighborhood or family concerns.⁶⁶ Arriving officers and victim advocates should be able to advise the victim about community agencies that work with gays, lesbians, bisexual and transgendered

⁵⁸See Violence Against Women Online Resources, *supra* note 54.

⁵⁹*Id.*

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵San Diego Domestic Violence Council, *Domestic Violence Law Enforcement Protocol* (visited Mar. 11, 2000) <<http://www.sandiegodvcouncil.org/library-le-protocol.html>>.

⁶⁶*Id.*

persons.⁶⁷ Obviously, all criminal justice personnel should endeavor to avoid the use of derogatory or offensive terms whatever their personal feelings are regarding sexual minorities.⁶⁸

Recommendations for the Future

Operating from the belief that domestic violence is unacceptable and should not be tolerated, criminal justice agencies and victim advocate services should strive to broaden this view to include sexual minorities.⁶⁹ Specifically, sexual minorities should have equal access to the resources that have traditionally been available to victims of domestic violence.⁷⁰ In order to see this goal to fruition, local community-based resources (traditional providers of domestic violence services) should endeavor to include services for sexual minorities and seek increased funding to provide for such services.⁷¹ Additionally, all those who work with victims of domestic violence should engage in aggressive outreach and community education in conjunction with lobbying for legislative change, such as gender neutral domestic violence statutes or language that affirmatively includes same sex relationships. Finally, continuing training for criminal justice personnel is essential to any efforts to create mechanisms for positive change.

Contacts and Resources

Legal Services

Nevada Legal Services (800) 522-1070

Counseling and Other Assistance

Gay and Lesbian Community Center of Southern Nevada (702) 733-9800

Community Counseling Center (702) 369-8700

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*See* Violence Against Women Online Resources *supra* note 54.

⁷⁰*Id.*

⁷¹*Id.*

Gay Youth Outreach (Reno) (775) 784-1944

GBLT News in Northern Nevada (775) 747-8833

Transportation/Rural Nevada

State Rural Transportation Program (775) 687-4800

1.13.2 Tribal Issues

Understanding the Roots of Tribal Domestic Violence⁷²

Native Americans can look into their past and see times when domestic abuse did not exist. Domestic violence has primarily arisen as a problem in the Native American population in the 20th century, after the conquering of the Americas. In the days before, if domestic violence occurred it was not tolerated. Women and men were thought of as equal.

The roles shifted greatly when native people were conquered. In European cultures, men dominated, and they would communicate and do business only with Native American men. This behavior began to change the power dynamics in Indian homes in negative ways. In addition, Indian men experienced abuse in the boarding schools for trying to preserve their language and culture. Over the years, many Native American men have taken on the traits of the dominant culture, and because of that they are destroying their own people through domestic and other violence.

Common themes or issues for Native American men who have committed acts of domestic violence are the role of chemical dependency in their violence (some men only have problems with physical violence when they are using drugs or alcohol), a lack of development in communicating their emotions, low self-esteem, and an experience of growing up in abusive homes or foster homes, or exposure to generalized forms of violence on the reservation.

Many Native Americans can look back several generations and find family members who were killed due to their skin color, or they can remember growing up in alcoholic homes, or in foster homes where they were beaten for using their native language. As a result, they experience a lot of bitterness which, in combination with alcohol abuse, may lead to a perpetuation of violence.

⁷²Adapted from Bill Warters, *Native American Men and Domestic Violence, An Interview with Oscar Arredondo*, ENDING MEN'S VIOLENCE NEWSLETTER (Winter 1989).

Moreover, certain forms of psychological abuse in the Indian community are unfamiliar to non-native domestic violence workers. In many Indian traditions, men and women may focus their energy and powers on “cursing” their former partners or their former partners’ new lovers. This can create a context of fear and complicate already complex relationships. Counselors without knowledge of these Indian traditions will not be able to effectively direct perpetrators of domestic violence toward nonviolence.

Abuse in the Indian community is not solely a male issue and must be looked at as more than a gender issue - a human issue, a whole family issue. Some women are abusive to their loved ones and may involve other men in seeking revenge against their former partners. It is difficult, however, for men to get an order of protection issued for themselves, because judges often believe that the woman does not represent a direct threat to the man. In addition, many men generally have a great distrust of the police.

Ending men’s violence in the Indian community requires much more interaction between chemical dependency and employment programs. Many perpetrators of domestic violence are unemployed, and this compounds attempts to build self-esteem and prevent violence. The agencies within the social services community also must closely scrutinize their own issues of power and control.

NEVADA TRIBAL RESOURCES

Nevada Tribes

Fort Mojave Tribal
Council
500 Merriman Ave.
Needles, CA 92363
(619) 326-4591

Las Vegas Paiute Tribe
Number One Paiute Dr.
Las Vegas, NV 89106
(702) 386-3926

Moapa Band of Paiute
Indians
Box 340
Moapa, NV 89205
(702) 865-2787

Reno-Sparks Indian
Colony
98 Colony Road
Reno, NV 89502
(775) 329-2936

Walker River Paiute
Tribe
P.O. Box 220
Schurz, NV 89427
(775) 773-2306

Tribal Services

Tribe: Ely Shoshone Tribe
Ely, NV 89301
(775) 289-3013

SERVICE FOCUS	TYPES OF SERVICE
Child Physical Abuse	Crisis Counseling
Child Sexual Abuse	Follow-up Contact
DUI/DWI Crashes	Shelter/Safe House
Domestic Violence	Information & Referral (In-person)
Adult Sexual Assault	Criminal Justice Support/Advocacy
Adults Molested as Children	Emergency Financial Assistance
Survivors of Homicide Victims	Assistance in Filing Compensation Claims
Other Violent Crime	Personal Advocacy

Washoe Tribe of Nevada and California
 Gardnerville, NV 89410
 (775) 265-4191

SERVICE FOCUS	TYPES OF SERVICE
Child Physical Abuse	Crisis Counseling
Child Sexual Abuse	Follow-up Contact
DUI/DWI Crashes	Therapy
Domestic Violence	Crisis Hotline Counseling
Adult Sexual Assault	Shelter/Safe House
Elder Abuse	Information and Referral (In-Person)
Adults Molested as Children	Criminal Justice Support/Advocacy
Survivors of Homicide Victims	Emergency Financial Assistance
Assault	Emergency Legal Advice
Other Violent Crimes	Assistance in Filing Compensation Claim
	Personal Advocacy

Reno-Sparks Indian Colony
 98 Colony Road
 Reno, NV 89502
 (775) 329-2936

SERVICE FOCUS	TYPES OF SERVICE
Child Physical Abuse	Crisis Counseling
Child Sexual Abuse	Follow-up Contact
Domestic Violence	Information and Referral (In-Person)
Adult Sexual Assault	Criminal Justice Support/Advocacy
Survivors of Homicide Victims	Assistance in Filing Compensation Claim
	Personal Advocacy

Walker River Paiute Tribe
P.O. Box 220
Schurz, NV 89427
(775) 773-2306

SERVICE FOCUS	TYPES OF SERVICE
Child Physical Abuse	Crisis Counseling
Child Sexual Abuse	Follow-up Contact
DUI/DWI Crashes	Shelter/Safe House
Domestic Violence	Criminal Justice Support/Advocacy
Adult Sexual Assault	Emergency Financial Assistance
Adults Molested as Children	Assistance in Filing Compensation Claims
Survivors of Homicide Victims	

Contacts and Resources

Nevada Resources:

Las Vegas Indian Center
Las Vegas Paiute Tribe
2300 W. Bonanza Road
(702) 386-3926
(702) 471-0844

Moapa
(702) 865-2828
(702) 865-2822

Stop Violence Against Indian Women
Fallon Paiute Shoshone Tribe
8955 Mission Road
Fallon, NV 89406
(775) 423-6787

Inter-Tribal Council of Nevada
PO Box 7440
Reno, NV 89510
Tel: (775) 355-0600, Ext. 116
Fax: (775) 355-5212
Internet: scircle@sacredcircle.com

Inter-Tribal Council of Nevada
Elko
(775) 778-3499

Nevada Network Against Domestic Violence
(775) 828-1115
Reno-Sparks Indian Colony
Reno, NV 89502
(775) 329-5071

National Resources

National Resource Center to
End Violence Against Native Women
877-RED-ROAD (733-7623)
FAX: (605) 341-2472

The National Resource Center focuses on developing a coordinated agency response in Native American/Alaskan Native tribal communities regarding domestic violence and sexual assault.

Expertise on Tribal Issues:
Sacred Circle
(877) 733-7623

Mending the Sacred Hoop
(888) 305-1650

Northern Plains Tribal Judicial Institute
(701) 777-6176

American Indian Law Center
(505) 277-45462

Victim Assistance for Indian Nations

www.ojp.usdoj.gov/ovc/help/natamer.htm

The Bureau of Indian Affairs publishes a list of federally recognized Indian tribes in the Federal Register. The latest publication was on October 23, 1997, (60 F.R. 55270), which can be obtained from most libraries or accessed on the Internet, at www.doi.gov/bia/tribes/entry.html, under the heading "Federally Recognized Native American Tribes, 10/23/97." (Rev. 5/19/96).

Indian Affairs: www.lib.ua.edu/indians3.htm

1.13.3 Immigration Issues

The Violence Against Women Act and Self-Petitioning for Immigrant Women

In 1994, President Clinton signed the Violence Against Women Act⁷³ (VAWA) into law, enabling battered immigrant women to flee violent marriages without the risk of deportation. Under 8 U.S.C. §1154, the Violence Against Women Act affords abused spouses and children of U.S. citizens and lawful permanent residents the possibility of self-petitioning for independent legal residency. 8 U.S.C. § 1154 helps to prevent U.S. citizens or residents from using the residency process as a way to control an alien spouse or child by taking control away from the adverse party and permitting the victim(s) to remain in the U.S. *independent* of their abusive husband/parents.

VAWA offers battered immigrant women two avenues of relief:

- (1) Self-petition for permanent resident status; or
- (2) Apply for cancellation of removal (formerly called "suspension of deportation"). These empowering provisions help protect immigrant women and children from abusers who attempt to use immigrant status as a weapon to inflict physical, mental, emotional, and economic abuse, by enabling such women and children to obtain legal immigrant status independent of their citizen and resident abusers. Such relief is available to spouses, children and parents of children who have been victims of domestic violence.

A request for self-petition may be made without the commencement of removal proceedings; cancellation of removal can be requested only by people in removal proceedings. NOTE: No victim should attempt to turn herself in to INS for the initiation

⁷³Violence Against Women's Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. & 42 U.S.C.).

of removal proceedings to apply for cancellation of removal without first consulting an immigration attorney.

Domestic violence or stalking criminal convictions serve as a sufficient independent basis to remove an alien from the U.S., without exception. The fact that a protection order is issued or extended does not per se constitute grounds for removal, but violating the order does mandate removal.

Documentation Collection Checklist For Self-Petitioners⁷⁴

- Petitioner's children's birth certificates
- Petitioner's children's passports and I-94 cards (white card)
- Any documentation filed with or received from the Immigration and Naturalization Service (INS)
- Husband's birth certificate or green card
- Marriage certificate
- If petitioner or her husband were previously married, evidence of termination of the previous marriage (divorce decree, death certificate). If petitioner does not have any of these, the country, state and year of the divorce or death.
- Evidence petitioner has lived in the U.S. with husband, such as:
 - lease agreements with both names or name, address and telephone number of landlord or neighbors at each address where petitioner has lived
 - joint income tax returns
 - insurance policies naming the spouse as beneficiary
 - letters and cards addressed to both spouse
 - gas/electric/water/cable/rent bills

⁷⁴AMERICAN PROSECUTORS RESEARCH INSTITUTE (APRI), RURAL DOMESTIC VIOLENCE ISSUES, *Chapter 12, Immigration Concerns* 133 (1999)

- credit card bills
- joint bank accounts
- property deeds in both names
- magazine or newspaper subscriptions in both names
- names, addresses and telephone numbers of people who knew petitioner and spouse lived together
- legal documents with both names on them
- Evidence that petitioner married spouse in “good faith,” such as:
 - picture of petitioner and spouse together (before and after the wedding)
 - names, addresses and telephone numbers of people who knew petitioner and spouse as a married couple
 - birth certificates of children born to petitioner and spouse
 - letters or cards spouse sent to petitioner
 - letters or cards spouse sent to petitioner’s family members
- Evidence of the abuse, such as:
 - restraining order / civil protection order
 - police report of abuse
 - hospital records, even if petitioner did not tell health workers the cause of the injury
 - pictures of petitioner with bruises
 - names of battered women’s shelters where petitioner stayed
 - diary entries which petitioner wrote about the abuse

- names, addresses and phone numbers of people who:
 - saw petitioner with bruises
 - saw or heard husband scream at, hit or abuse petitioner
 - petitioner told about the abuse
 - petitioner stayed with to avoid abuse

Evidence In Support Of “Extreme Hardship” Claims⁷⁵

Findings of extreme hardship are very fact-based. Factors considered by courts for petitioners seeking to demonstrate extreme hardship when self-petitioning or applying for cancellation of removal include:

1. A need for access to courts and the criminal justice system in this country.

The victim may do this by presenting a record of:

- Existing, prior, or pending orders of protection which would lose effect if she leaves the U.S.
- Criminal investigations, pending criminal prosecutions, or convictions of abuser
- Calls to police about abuse, complaints by others about abuser’s violent behavior
- Records or affidavits about needed or pending family law proceedings
- Court orders on child support, maintenance, child custody and visitation

2. The existence of and need for services in the community. Affidavits by the victim, by service providers and by experts about:

- Existence of and requests for services and use of services by the abused

⁷⁵*Id.* at 131.

- Physical and emotional consequences of the abuse
 - Need for health care for physical and emotional problems flowing from the abuse
 - Impact of deportation on the victim's emotional and psychological health
3. The effect of the abuse on the victim's children. Records of or affidavits about:
- The existence of children in the household during abuse
 - Witnessing of abuse by abused's child
 - Abuse of the child as well as of the spouse
 - Non-citizen parent's role as primary caretaker of child
 - Impact of abuse of parent on the child
 - Services available for child who has suffered or witnessed abuse
4. Circumstances and conditions in country of deportation. Affidavits about and documentation of:
- Potential abuse or ostracism by abuser's family or friends in country of deportation
 - Ability of abuser to travel to country of deportation
 - Absence of laws or failure by authorities to enforce laws in the home country to protect victim from further incidents of abuse
 - Laws or societal practices penalizing or ostracizing the victim for leaving the abusive spouse or parent or for being abused
 - Lack of support services for abused women in the country to which the victim would be deported
5. The behavior of the abuser. Affidavits, police records and other evidence of:
- The abuser's behavior, including stalking, criminal activity, threats of

violence and violent behavior toward the victim and others, particularly those seeking to help the victim

- Abuser's drug abuse
- Immigration petitions previously filed and not completed by the abuser
- Abuser's use of the victim's immigration status to perpetuate abuse
- Abuse of other family members

6. The nature and extent of the abuse.

- Affidavits by the applicant, neighbors, community members, co-workers, clergy, etc., about the emotional, physical and social hardship the victim suffered
- Medical records
- Photographs
- Reports from community and service groups that assisted the victim

7. Hardship to the victim if returned. Affidavit by the victim about emotional, physical and social hardship she would suffer if deported, including:

- Her age
- Length of time in U.S.
- Family ties in U.S.
- Absence of ties in home country
- Immigration history
- Special medical needs requiring U.S. treatment
- Severe economic hardship if returned
- Affidavit of a person in the victim's home country corroborating evidence about the home country

- Documentation about treatment of women in the victim's home country, especially divorced women and women who challenge abuse by their husbands
8. Trauma to the child if he or she is returned. Affidavit by the victim about the trauma to the children if they are returned to another country, including:
- Living in an unfamiliar culture
 - Lack of language skills
 - Lack of family or friends in home country
 - Inadequate schooling, health care and social services in home country
 - Affidavit of a person in the victim's home country corroborating evidence about the home country
9. Trauma to the child if the parent is returned. Affidavit by the victim about the effect of separation from the primary care giver on the child, and affidavits of others in the U.S. about the trauma to the children if they are separated from their parent.
10. The following situations alone are insufficient to constitute extreme hardship:
- Economic deprivation
 - Loss of employment
 - Readjustment to life in the native country

Critical Points for Immigration Advocates, Shelter Workers and Attorneys for Battered Women to Understand⁷⁶

1. For immigrant victims of domestic violence, concerns over immigration status predominate. These concerns may cause a victim to be very reluctant to report incidents of abuse or cooperate with prosecutors for fear of deportation and separation from children and family. An awareness of such underlying concerns and of the adverse party's tactics in abusing immigrant women can clarify the victim's perceived lack of cooperation.⁷⁷

⁷⁶*Id.* at 10.

⁷⁷*Id.* at 159.

2. No one should apply for either self-petitioning or cancellation of removal without the assistance of an immigration advocate or attorney who understands the constantly changing law.

3. Persons in removal proceedings may wish to ask for a continuance or administrative closure to allow them to self-petition with the INS, if they are eligible. Clients who opt to proceed in removal proceedings should request that the court take evidence on extreme hardship.

4. Persons anticipating divorce must properly file their self-petition prior to the termination of their marriage. If a divorce case is pending, victims applying for VAWA must stave off divorce until after they have filed their self-petition.

5. Advocates or attorneys for all VAWA applicants should start preparing documentation for their self-petition cases and should obtain civil protection orders for all clients where orders are available under state law given the circumstances.

6. Safety planning with a battered immigrant woman should include making copies of the documents indicated in the checklist included in this chapter, and helping the client identify a safe place to store these documents.

7. Advocates and attorneys who do not speak the language of the battered immigrant woman should ALWAYS find a sensitive and qualified interpreter to assist them and ensure that the interpreter's dialect corresponds to the victim's. The battered immigrant victim's children or the person who accompanies the victim should not be used as translators.

8. Advocates and attorneys for battered immigrant women should identify other community or church based organizations that work with minority populations, develop relationships with representatives of those organizations, train their staff on domestic violence, and seek help of their trained staff or volunteer interpreters.

9. Note that a variety of factors may make it difficult for battered immigrant women to relate the history of violence before a court or adjudicatory body.

- She may fear retaliation from her abuser.
- Her abuser may have convinced her that no one will believe her.
- She may have limited language skills.
- She may be unfamiliar with the U.S. legal system (particularly the fact that

her testimony is valid evidence).

- She may have low self esteem as a result of the abuse.
- She may have minimized the violence over time in order to survive.

Difficulties In Documenting Domestic Violence Claims:⁷⁸

In some jurisdictions the police do not file a formal report unless the victim is willing to file criminal charges or request that a report be made. The manner in which officers handle domestic violence calls becomes known in an immigrant community, and in some cases this may deter many victims from calling the police for assistance.

In some jurisdictions, the police make dual arrests, whereby the victim's right of self-defense is overlooked by the officer's failure to fully investigate which party was the primary perpetrator of the domestic violence, and which party acted in self-defense. To discourage the dual arrest practice, VAWA provides that police agencies who permit this practice will not be eligible for VAWA funding.

RESOURCES

Nevada Resources

Catholic Charities of Southern Nevada
Immigration Services
(702) 383-8387

Nevada Association of Latin Americans
(702) 382-6252

National Resources

American Immigration Lawyers Association
(202) 371-9377

Ayuda in Washington, D.C.
(202) 387-0424
Fax (202) 387-0324

National Lawyers Guild - San Francisco
National Immigration Project
(415) 421-0860
Fax (415) 421-0772

⁷⁸*Id.* at 129.

National Lawyers Guild - Boston
National Immigration Project
(617) 227-9727
Fax (617) 227-5495

New York Main Street Legal Service
(718) 575-4300; fax (718) 575-4478

Legal Aid Society of Central Texas
(512) 476-7244, ext. 334
Fax (512) 476-3940

San Francisco - Family Violence Prevention Fund
(415) 252-8900
Fax (415) 252-8991

Seattle - Northwest Immigrants Rights Project
(206) 587-4009
Fax (206) 587-4025

Legal Aid Foundation of Los Angeles
(213) 266-6451
Fax (213) 265-4025

To order information regarding cancellation of removal under VAWA, contact the Washington D.C. Bar Association, (202) 737-4700 and obtain a copy of *Assisting Immigrant Women and Children Filing Immigration Claims Under the Violence Against Women Act: A Manual for Immigration Attorneys, Domestic Violence Advocates, and Family Lawyers*.

1.13.4 The Elder Population

Senior domestic violence victims face challenges similar to those of younger victims of domestic violence, and do not report domestic violence for many of the same reasons, including fear, isolation, embarrassment, and denial. Seniors, especially those with fixed incomes, also have the problem of limited resources. Moreover, their danger may be compounded by poor health, physical dependence on the perpetrator of the abuse, and generational beliefs that keep the victim in the marriage or family situation. Programs to assist senior victims of domestic violence have to be tailored to take these compounding elements into account.

Nevada has one of the most rapidly growing elder populations in the country and is facing an increase in reported incidents of abuse directed toward the elderly. To combat this problem, the state has enacted legislation directed at domestic and institutional elder abuse, in addition to reporting systems to identify such cases.⁷⁹ Nevada also has laws authorizing the Long Term Care Ombudsman Program, which is responsible for advocating on behalf of long term care facility residents who are abused or who experience other problems.⁸⁰ The Nevada statutes delineating elder abuse violations are as follows:

Potential Elder Abuse Violations - NRS 200.5099 and 200.5092⁸¹

NRS 200.5099(1)

and 200.5092(1) Elder abuse and penalty

NRS 200.5099(1),(6)

NRS 200.5092(1) Elder abuse with substantial bodily harm or death and penalty

NRS 200.5099(2)

NRS 200.5092(4) Neglect of an older person and penalty

NRS 200.5099(2)(7)

NRS 200.5092(4) Neglect of an older person that results in substantial bodily harm or death and penalty

⁷⁹NEV.REV.STAT.ANN. §§200.5091-50995 (Michie 1999) (elder abuse); §§427A.125-165 (Michie 1999) (long-term care ombudsman program).

⁸⁰*Id.* §427A.125 *et seq.*

⁸¹NEVADA ELDER ABUSE PREVENTION COUNCIL, ELDER ABUSE, NEGLECT, EXPLOITATION AND ISOLATION PROTOCOL (1997).

NRS 200.5092(2) NRS 200.5099(3)(a), (b) or (c)	Exploitation of an older person (charging depends on combined value of the money, assets and/or property) and penalty
NRS 200.5092(3) NRS 200.5099(5)	Isolation of an older person and penalty
NRS 200.5099	Conspiracy to commit abuse, exploitation or isolation of an older person and penalty
NRS 200.50995(1) or (2)	Conspiracy to commit abuse, exploitation or isolation of an older person; first or subsequent offense; penalties
NRS 193.167	Sentencing enhancements for certain crimes if victim is 65 years of age or older

Indicators of Domestic Violence Against Elderly Victims

The following list of indicators is not exclusive, but provides examples of signs to look for when investigating alleged elder domestic violence.

1. Physical Abuse
 - malnutrition
 - old and new bruising
 - object bruising
 - frequent injuries
 - poor person hygiene
 - unkempt appearance
 - evidence of over or under medication

2. Behavioral Abuse
 - disorientation
 - depression
 - anxiety
 - sudden mood changes
 - withdrawal from others

- inappropriate behaviors towards others

Handling Elder Domestic Violence Cases

The Nevada Elder Abuse Prevention Council (NEAPC) has developed a protocol for elder abuse, including domestic violence, neglect, exploitation and isolation. A copy of the protocol is attached as Appendix A.

The American Bar Association recommends the following to enhance the courts' ability to handle elder domestic violence cases.

- Create appropriate judicial solutions that respect the values and wishes of elder domestic violence victims while protecting their welfare;
- Ease victim access to the court system; and
- Enhance coordination among the court system, state and local agencies, and the elder network.

Resources

Nevada Department of Human Resources
Division for Aging Services
(800) 243-3638
(702) 486-3545 (Monday-Friday, 9:00 a.m. - 4:00 p.m.)

Nevada Attorney General's Office
Medicaid Fraud Unit
(775) 688-1818

Long-Term Care Ombudsmen

Division of Aging Services
Las Vegas, NV
(702) 486-3000

City of Las Vegas Senior Citizens Law Project
(702) 229-6596

Report Elder Abuse:
Statewide - (800) 243-3638
Local law enforcement agency
In Clark County - Senior Protective Services
(702) 455-8672

1.14 ACKNOWLEDGMENTS

Special thanks are extended to the many people who contributed their time and effort to the completion of this chapter, including: Hon. Victoria Van Meter, Second Judicial District Court - Family Court, Hon. Patricia Donniger and Wendy Wilkerson of the Eighth Judicial District Family Court, Kathleen Brooks of SafeNest/TADC, Hon. Betsy Kolkoski, formerly Elder Rights Attorney, State of Nevada, Division for Aging Services; Annelle Lerner, Board member and Sue Meuschke, Executive Director of Nevada Network Against Domestic Violence. Thank you also to Grace George of the State of Nevada Department of Motor Vehicles, Central Repository.

CHAPTER 2

DOMESTIC VIOLENCE LAWS

- 2.1 INTRODUCTION
- 2.2 NEVADA STATUTES
 - 2.2.1 Relationships That Meet the Statutory Definition
 - 2.2.2 Criminal Activities That Constitute Domestic Violence
 - 2.2.3 Nevada Statutes Pertaining to Domestic Violence
 - 2.2.4 Full Faith and Credit
- 2.3 NEVADA CASE LAW
- 2.4 FEDERAL LAW
 - 2.4.1 The Violence Against Women Act
 - 2.4.2 Firearms Offenses
 - 2.4.3 Other Relevant Statutes
 - 2.4.4 Full Faith and Credit
- 2.5 RESOURCES

2.6 ACKNOWLEDGEMENTS

2.1 INTRODUCTION

Both state and federal laws contain provisions which specifically target the problem of domestic violence. These laws create options for victims of domestic violence which supplement prior, more general laws pertaining to the issuance of restraining orders, criminal offenses, and the duties and authority of law enforcement and the courts. This chapter presents an overview of domestic violence law, beginning with Nevada statutes and case law, followed by federal laws. Because the law relating to domestic violence is still evolving and no doubt will be for many years, those who assist domestic violence victims cannot rely entirely on the materials presented here, but must conduct their own independent research. What follows is a compendium of current state and federal domestic violence laws.

2.2 NEVADA STATUTES

The Nevada Revised Statutes¹ define acts which constitute domestic violence. Nevada law specifies separately the types of relationships and criminal activities that qualify for domestic violence treatment. See Chapter 4 for other potential charges related to domestic violence crimes.

2.2.1 Relationships That Meet the Statutory Definition under NRS §33.018

Former spouse

Any person to whom the perpetrator is related by blood or marriage

A person with whom the perpetrator has had or is having a dating relationship

A person with whom the perpetrator has a child in common

The minor child of any of the above persons

The minor child of the perpetrator

Under Nevada law, a “dating relationship” is one typified by frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. A dating relationship does not include casual relationships or the ordinary association between persons in a business or social context.²

¹NEV. REV. STAT. ANN. §33.018 (Michie 1999).

²NEV. REV. STAT. ANN. §33.018(2) (Michie 1999).

2.2.2 Criminal Activities That Constitute Domestic Violence in the Context of a Defined Relationship under NRS 33.018

Battery

Assault

Compelling the other by force or threat of force to perform an act from which the other has the right to refrain or to refrain from an act which the other has the right to perform.

Sexual Assault

A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to:

1. Stalking
2. Arson
3. Trespassing
4. Larceny
5. Destruction of private property
6. Carrying a concealed weapon without a permit

False imprisonment

Unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.

Unless a greater penalty is provided pursuant to NRS 200.481,³ a person convicted of battery that constitutes domestic violence is guilty of a misdemeanor for a first offense and for a second offense within the immediately preceding seven years.⁴ A person convicted of a battery for the third and any subsequent offense within the seven immediately preceding years is guilty of a category C felony.⁵ See the Prosecution Chapter for a detailed list of penalties.

³NEV. REV. STAT. ANN. §200.481 (Michie 1999) (battery definitions and penalties).

⁴NEVADA JUDGES ASS'N., ADMIN. OFF. OF THE CT., NEVADA BENCHBOOK FOR JUSTICE AND MUNICIPAL COURTS §12-12 (rev. 1998).

⁵*Id.* at 12-13. See also NEV. REV. STAT. ANN. §200.485 (Michie 1999) (penalties).

2.2.3 Nevada Statutes Pertaining to Domestic Violence⁶

NRS 33.017	Definitions of Temporary and Extended Orders of Protection for Domestic Violence
NRS 33.018	Acts which constitute Domestic Violence (lists relationships between parties)
NRS 33.020	Temporary Protection Order against Domestic Violence (TPO)
NRS 33.020(5)	Emergency Temporary Protection Order against Domestic Violence (ETPO)
NRS 33.030	Contents of Protection Orders
NRS 33.070	Police to make probable cause arrests for violations of Temporary and Extended Orders of Protection for Domestic Violence
NRS 33.080(3)	Extended Protection Order against Domestic Violence
NRS 33.090	TPO Full Faith and Credit (Federal Regulations)
NRS 33.095	Department of Motor Vehicles - Public Safety (DMV-PS) Central Repository
NRS 33.100	Penalties for violation of Protection Orders
NRS 125.560	Penalties for violating TPO or/if accompanied by physical violence
NRS 171.1225	Police to provide information to victim of Domestic Violence
NRS171.1227	Police to submit written report with copy to DMV-PS
NRS 171.1229	Fingerprint and report to DMV-PS when cited for Domestic Violence

⁶SOUTHERN NEVADA DOMESTIC VIOLENCE TASK FORCE, DOMESTIC VIOLENCE PROTOCOL POLICY (1999).

NRS 171.137	Probable cause arrest required within 24 hours of occurrence; determining the primary physical aggressor; and relationships listed and described for parties involved in domestic violence occurrence
NRS178.484	Mandatory 12 hour hold prior to setting bail or release
NRS 199.230	Dissuading a witness from testifying
NRS 199.280	Resisting a public officer
NRS 199.305	Preventing or dissuading a person from reporting a crime
NRS 199.310	Malicious prosecution
NRS 200.010-030	Murder
NRS 200.320-330	Kidnapping
NRS 200.359	Violation of child custody rights
NRS 200.359(8)	Removing a child for protection
NRS 200.366	Sexual assault
NRS 200.373	Spousal sexual assault
NRS 200.400	Assault and/or battery with intent to commit sexual assault
NRS 200.460	False imprisonment
NRS 200.471	Assault/assault with a deadly weapon
NRS 200.481	Battery
NRS 200.481(2)(c)	Battery with a deadly weapon
NRS 200.485	Battery constitutes Domestic Violence
NRS 200.485(5)	Prosecuting attorney will not dismiss case

NRS 200.571	Harassment/Stalking defined
NRS 200.575	Stalking defined and penalties
NRS 200.591	Harassment/Stalking Protection Orders
NRS 200.591(5)(a)	Violation of Stalking TPO
NRS 200.591(5)(b)	Violation of Stalking Extended TPO
NRS 201.255	Annoying and threatening phone calls
NRS 202.280	Discharging a firearm
NRS 202.285	Discharging a firearm at or into a structure or vehicle
NRS 202.290	Aiming a firearm in a threatening manner
NRS 202.320	Drawing a weapon in a threatening manner
NRS 202.350	Carrying a concealed weapon without a permit
NRS 202.350	Carrying a loaded rifle, shotgun in or on a vehicle where prohibited
NRS 202.360	Ex-felon not to possess a firearm
NRS 205.010-025	Arson (first, second, third and fourth degrees)
NRS 205.060	Burglary
NRS 206.067	Home invasion
NRS 205.070	Commission of another crime while committing burglary
NRS 206.310	Malicious destruction of private property
NRS 207.280	False reporting of a crime
NRS 217.475	Domestic Violence deaths; team review

NRS 574.100 Cruelty to animals; penalties

NRS 707.320 Interception or delay of message over telephone line

2.2.4 Full Faith and Credit Under NRS 33.090⁷

Nevada law recognizes the importance of full faith and credit. NRS 33.090(1) states: “A valid order for protection against domestic violence issued by a court of another state, territory or Indian tribe within the United States must be accorded full faith and credit by the courts of this state and enforced as if it were issued by a court in this state, regardless of whether the order has been registered in this state. Moreover, a temporary or extended protection order of another state, territory or Indian tribe which appears authentic on its face must be presumed valid.⁸ A court or law enforcement officer who enforces an order based upon a reasonable belief that the order is valid is immune from civil liability for any action taken based on that belief.⁹

NRS §33.090 provides as follows:

1. A valid order for protection against domestic violence issued by a court of another state, territory or Indian tribe within the United States must be accorded full faith and credit by the courts of this state and enforced as if it were issued by a court in this state, regardless of whether the order has been registered in this state.
2. A person may apply to a court of this state to register an order for protection against domestic violence issued by the court of another state, territory or Indian tribe within the United States by presenting a certified copy of the order to the clerk of the court in a judicial district in which the person believes that enforcement may be necessary.
3. Except as otherwise provided in subsection 5, upon application by the protected party pursuant to subsection 2, a court of competent jurisdiction in this state shall register such an order if:
 - (a) The court determines that the issuing court had proper jurisdiction over the parties and the subject matter under the laws of the state, territory or tribe; and

⁷Section 33.090 mirrors the full faith and credit provisions of the Federal Violence Against Women Act, which are discussed more fully in Section 2.4.4

⁸NEV.REV.STAT.ANN. §33.090(6) (Michie 1999).

⁹*Id.* §33.090(7).

- (b) The court determines that the adverse party was given reasonable notice and an opportunity to be heard before the order was issued or, in the case of an ex parte order, the adverse party was given reasonable notice and an opportunity to be heard as soon as possible after the order was issued.
- 4. An order that is registered has the same effect and must be enforced in like manner as an order for protection against domestic violence issued by a court of this state.
- 5. If the order for protection against domestic violence issued by the court of another state, territory or Indian tribe was a mutual order for protection against domestic violence and:
 - (a) No counter or cross-petition was filed seeking such protection order;
 - (b) A counter or cross-petition was filed and the court did not make a specific finding of domestic violence by both parties; or
 - (c) The person who is applying to register the order has violated a law of the State of Nevada relating to a different protection order issued against him,the court may refuse to register and enforce the order and may determine whether to issue its own temporary or extended order.
- 6. A temporary or extended order of another state, territory or Indian tribe presented pursuant to this section which appears authentic on its face must be presumed valid.
- 7. A court, law enforcement officer or any other person who enforces an order for protection against domestic violence based upon a reasonable belief that the order is valid is immune from civil liability for any action taken based on that belief.

Judges' Bench Cards for Issuing and Enforcing Orders

The National Center for State Courts, the Department of Justice, and the National Council of Juvenile and Family Court Judges have collaborated in the preparation of “at-a-glance” bench cards to provide guidance on full faith and credit matters to judges who issue and enforce orders for protection. See Appendix B.

Full Faith and Credit and Child Custody

See Section 6.4 for a discussion of full faith and credit issues in the context of Indian child

custody matter.

2.3 NEVADA CASE LAW

Relevant Domestic Violence Case Law

The following Nevada cases directly address domestic violence. See Section 4.9 of this Manual for Nevada case law pertaining to evidentiary issues which may arise in domestic violence related trials.

Battered Woman Syndrome and Right to Jury Instruction

Boykins v. State, 116 Nev. Adv. Op. No. 17 (2000)

Nevada recognizes the Battered Woman Syndrome, as provided in NRS 48.061. While the syndrome is not a complete defense, the Nevada Supreme Court in *Boykins* held that the “beliefs, behavior, and perception” of a defendant who has been the victim of domestic violence are admissible to show “the defendant’s state of mind.” Furthermore, the supreme court held that the defendant in a criminal case is entitled, upon request, to a jury instruction on the theory of her case so long as there is some evidence, no matter how weak or strong, to support that theory. The supreme court held that the trial court failed to properly instruct the jury on the defendant’s theory that battered woman syndrome should be considered by the jury as to the reasonableness of the defendant’s conduct and as to the state of mind of the defendant at the time of the shooting. The court reversed the conviction of involuntary manslaughter with a deadly weapon and remanded for a new trial.

Domestic Violence Convictions and Child Custody Actions

McDermott v. McDermott, 113 Nev. 1134, 946 P.2d 177 (1997)

It was an abuse of discretion for a trial court judge to fail to consider a conviction for domestic violence in a case involving a change of child custody. Under NRS 125.480, Nevada law directs that the court shall consider certain factors when determining a change in the custody status of a child. Pursuant to NRS 125.480(5) and (7), if the court finds by clear and convincing evidence that one of the parents committed an act of domestic violence “upon a parent of the child,” as defined under NRS 33.018, a rebuttable presumption is created that “sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interests of the child.”

Sufficiency of Evidence in the Penalty Phase of a Domestic Violence-Related Murder

Browne v. State, 113 Nev. 305, 933 P.2d 187 (1997)

The Nevada Supreme Court upheld defendant Browne's conviction of first degree murder and a sentence of death for the beating death of his wife. Browne had been sentenced to death due to the aggravating factor of mutilation surrounding the beating of his wife with a baseball bat. Browne asserted that the State did not prove mutilation beyond a reasonable doubt, as required by law. The court held that mutilation requires an act beyond the act of the killing itself. The court compared its holding in the instant case with *Parker v. State*,¹⁰ wherein the court also found mutilation as an aggravating factor. The court concluded that both cases adhered to the same standard for mutilation: mutilation involves the permanent destruction of an essential part of the victim's body [beyond that required to accomplish the killing]. In both cases, the defendants engaged in "overkill" by continuing to beat the victims after they had lost consciousness.

Duty to Retreat, Jury Instruction and Prosecutorial Misconduct

Earl v. State, 111 Nev. 1304, 904 P.2d 1029 (1995)

The Nevada Supreme Court reversed a conviction of second degree murder with use of a deadly weapon and remanded for a new trial based upon the failure of the trial court to instruct the jury on defendant's theory of the case and for prosecutorial misconduct and judicial bias.

The defendant asserted that she was entitled to an instruction on the "no duty to retreat" rule of self-defense based upon the aggressive behavior of her domestic partner and past instances of domestic violence against her and other women. The supreme court held that the defendant was entitled to have the jury instructed on her theory of the case, no matter how weak or incredible the evidence in support of her theory. The court further held that the prosecutor's statements, interjecting his personal beliefs about the defendant's testimony being "malarky," and the trial court's failure to render a decision on the objection without personally commenting on the prosecutor's statement constituted judicial bias and prosecutorial misconduct.

¹⁰109 Nev. 383, 849 P.2d 1062 (1993).

2.4 FEDERAL LAWS

2.4.1 The Violence Against Women Act

As part of the 1994 Crime Bill, the Congress of the United States enacted legislation empowering the federal government to participate in the fight against domestic violence. This legislation, called the Violence Against Women Act (“VAWA”), recognized that “violence against women is a crime with far-reaching, harmful consequences for families, children and society.”¹¹ To combat this violent crime problem, VAWA created federal domestic violence crimes to be prosecuted by the Department of Justice. Consistent with this federal initiative, the Crime Bill also amended the Gun Control Act to include domestic violence related crimes. Congress reaffirmed its commitment to fight domestic violence crimes by the enactment in 1996 of additional federal domestic violence crimes in both VAWA and the Gun Control Act. Questions regarding the applicability of these statutes to specific situations should be referred to the United States Attorney’s Office.¹² It is the intention of the United States Attorney’s Office to assist state prosecutors and local law enforcement agencies in their efforts to combat domestic violence within Nevada.¹³

Historically, the federal government had generally lacked jurisdiction over many domestic violence crimes. These crimes, however, pose a serious problem in our communities nationwide. Accordingly, while domestic violence remains primarily a matter of state and local jurisdiction, both VAWA and the Gun Control Act provide federal tools to prosecute domestic violence offenders in certain situations involving firearms or interstate travel or activity.

This section provides a concise summary of the federal offenses and statutes now available in both VAWA and the Gun Control Act to prosecute domestic violence offenders in federal court. These statutes strive to achieve the Congressional goal of treating violence against women as a major law enforcement priority, taking aim at the attitudes that nurture violence against women, and providing the help that

¹¹DOMESTIC AND SEXUAL VIOLENCE DATA COLLECTION, A REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT 1 (1996).

¹²See GROBAN, MARGARET S., UNITED STATES ATTORNEY’S OFFICE, DISTRICT OF NEVADA, THE FEDERAL DOMESTIC VIOLENCE LAWS AND THE ENFORCEMENT OF THESE LAWS (1999). *See also* SOUTHERN NEVADA DOMESTIC VIOLENCE TASK FORCE, DOMESTIC VIOLENCE PROTOCOL POLICY (1999).

¹³*Id.*

survivors need.¹⁴ Through enforcement of these laws,¹⁵ the Department of Justice can and will assist state and local jurisdictions in their efforts to combat domestic violence.

NOTE: In *United States v. Morrison*, 120 S.Ct. 1740 (2000), the United States Supreme Court invalidated the civil remedies provision of VAWA, based on the Court's conclusion that Congress had exceeded its authority under the Commerce Clause in enacting that provision. This reasoning probably does not apply to the VAWA provisions discussed herein. Those assisting domestic violence victims should be alert to the development of the law in this dynamic area.

Interstate Travel to Commit Domestic Violence, 18 U.S.C. §2261

Under subsection (a)(1) of 18 U.S.C. §2261, it is a federal crime for a person to travel interstate (or leave or enter Indian country) with the intent to injure, harass or intimidate that person's intimate partner when in the course or as a result of such travel the defendant intentionally commits a violent crime and thereby causes bodily injury. The law requires specific intent to commit domestic violence at the time of interstate travel. The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabitated as spouses), and parents of a child in common. The intimate partner definition does not include a girlfriend or boyfriend with whom the defendant has not resided unless protected by state law. There must be bodily injury for prosecution under this statute.

Example: The defendant was convicted of traveling from New Jersey to New York with a co-defendant to murder her estranged husband. The defendant brought an ax and hatchet with her to New York. These weapons were used to commit the murder against the estranged husband. The defendant was convicted under 18 U.S.C. §2261(a)(1) and sentenced to life without possibility of parole. *United States v. Gluzman*, 953 F.Supp. 84 (S.D.N.Y. 1997), *aff'd*, 154 F.3d 49 (2nd Cir. 1998).

Under subsection (a)(2) of 18 U.S.C. §2261, it is a federal crime to cause an intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud during which or as a result of which, there is bodily harm to the victim. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel

¹⁴S.Rep.No. 102-197, at 34-35 (1991).

¹⁵The Federal Bureau of Investigation is the lead federal investigative agency for VAWA violations. The Department of Treasury Bureau of Alcohol, Tobacco & Firearms (ATF) is the lead federal investigative agency for Gun Control Act violations.

resulted from force, coercion, duress or fraud. As in subsection(a)(1), the defendant must intentionally commit a crime of violence during the course or as a result of the travel, and there must be bodily injury to the spouse or intimate partner.

Example: The defendant severely beat his wife in their West Virginia home. He locked her inside the trunk of his car and, despite her bleeding head wound, drove her to Kentucky. Several days later, he took her to a hospital in Kentucky. Because of the delay in treatment, the victim is now in a permanent vegetative state. The defendant was convicted under 18 U.S.C. §2261(a)(2) and sentenced to life imprisonment. *United States v. Bailey*, 886 F.Supp. 7 (S.D.W.Va. 1995), *aff'd*, 112 F.3d 758 (4th Cir. 1997).

Interstate Stalking, 18 U.S.C. §2261A

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

Example: The defendant was traveling from Utah to Arizona to threaten his former boss. The complaint described the vulgar threats and profanities written by the defendant at the Glen Canyon Recreation Area that identified the boss by name and placed her in reasonable fear that the defendant would physically attack her. The defendant was convicted under 18 U.S.C. §2261A and sentenced to 6 months. *United States v. Sterkel* (D. Ariz. 1997).

Interstate Travel to Violate a Protection Order, 18 U.S.C. §2262

Section 2262(a)(1) prohibits interstate travel (or travel into and out of Indian country) with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. To establish a violation of this statute, the government must demonstrate that a person had the specific intent to violate the protection order at the time of the interstate travel and that a violation actually occurred. This statute does not require an intimate partner relationship – although this relationship may be required by the state or other governmental body issuing the order – nor does it require bodily injury.

Example: A Massachusetts protective order forbade the defendant to stalk or

harass his former girlfriend. When the victim moved to New York, the defendant followed and continued to stalk and harass her on the phone. In one night, he called her approximately 40 times. The defendant was convicted under 18 U.S.C. §2262(a)(1) and sentenced to 37 months. *United States v. Casciano*, 927 F.Supp. 54 (N.D.N.Y. 1996), *aff'd*, 124 F.3d 106 (2nd Cir. 1997).

Under 18 U.S.C. §2262(a)(2), it is also a federal crime to cause a spouse or intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud during which or as a result of which, there is bodily harm to the victim in violation of a valid order of protection. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. The Government must also prove that a person intentionally injured an intimate partner in violation of a protection order during the course or as a result of the forced or coercive travel. This subsection, unlike corollary Section 2262(a)(1), requires an intimate relationship between the parties.

Example: The defendant went to the home of his ex-wife in Tennessee in violation of a valid protection order. He threatened to kill her and dragged her and their son into a car. He was captured after a high speed chase in Virginia. He was convicted under 18 U.S.C. §2262(a)(2) and sentenced to 151 months. *United States v. Romines*, 139 F.3d 895 (4th Cir. 1998).

The Department of Justice recognizes that under both §§2262(a)(1) and (a)(2), law enforcement may be unable to verify the validity of a protection order at the time of arrest. The national data center from which law enforcement and prosecutors now can instantaneously verify protection orders will be of enormous benefit to federal authorities in the prosecution of criminal cases under Section 2262. However, because participation in the protection order registry is voluntary and not all states are participating, it is important to consult with the United States Attorney's Office for guidance in these cases. To determine whether prosecution is viable under Section 2262, it is necessary to examine the protection order at issue.

Penalties

Penalties for violations of Sections 2261, 2261A and 2262 hinge on the extent of the bodily injury to the victim. Terms of imprisonment range from five years for bodily injury to life if the crime of violence results in the victim's death.

2.4.2 Firearms Offenses

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

It is illegal for a person to possess a firearm¹⁶ while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The protection order must have been issued following an evidentiary hearing as to which the defendant had notice and an opportunity to appear. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury. The statutory language of Section 922(g)(8), in addition to the language of Section 2262, provides additional justification for review of the protection order to determine whether it conforms with the federal requirements. Any questions about the applicability of this statute should go to the United States Attorney's Office.

Example: A South Dakota protection order prevented the defendant from harassing or threatening his estranged wife. After he was found with a .22 caliber revolver, he was convicted under 18 U.S.C. §922(g)(8) and sentenced to 12 months. *United States v. Goben* (D.S.D.).

Transfer of Firearm to Person Subject to Prosecution Order, 18 U.S.C. §922(d)(8)

It is illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish absent a fully operational central registry for protection orders.

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

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

¹⁶The Nevada Supreme Court has adopted standardized forms for protection orders, Form 7 of which warns perpetrators about the consequences of possessing a firearm. The supreme court's order and a complete set of the standardized forms both voluntary and mandatory, are reproduced in Appendices F & G.

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

It is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date. A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon. For example, a conviction for a misdemeanor violation of a protection order will not qualify, even if the violation was committed by a violent act, if the statute does not require the use or attempted use of physical force or the threatened use of a deadly weapon. The United States Attorney's Office can assist in determining which misdemeanor convictions will qualify.

In addition, Section 922(g)(9) contain the due process requirements of counsel and jury trial. Absent compliance with these elements of due process, the misdemeanor conviction will not qualify as a domestic violence conviction for purposes of Section 922(g)(9). Moreover, a person may be able to possess a firearm if the conviction has been expunged or set aside.

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

It is also illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence. A violation of Section 922(d)(9) must be knowing. Assistance in satisfying the knowledge requirement is provided by an amendment of the Brady statement to require a purchaser of a firearm to state that he/she has not been convicted of a misdemeanor crime of domestic violence.

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

The official use exemption does not apply to Sections 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties. Additional questions about this statute should be referred to the United States Attorney and/or the Alcohol, Tobacco & Firearm Office (ATF).

Penalties

The maximum term of imprisonment for a violation of Sections 922(d)(8), 922(g)(8), 922(d)(9), or 922(g)(9), is 10 years.

2.4.3 Other Relevant Statutes

Amendment of the Brady Statement, 18 U.S.C. §922(s)

The Brady statement requirements were amended as of September 30, 1996, to include a statement that the recipient of the firearm has not been convicted in any court of a misdemeanor crime of domestic violence. The Brady statement still does not require that the firearm recipient state whether he or she is currently subject to a valid protection order. The recipient will be compelled to fill out, at the time of receipt of the firearm, an ATF form requiring certification that he or she is not subject to a valid protection order.

Right of Victim to Speak at Bail Hearing, 18 U.S.C. §2263

The victim of a VAWA crime has the right, a right that need not be exercised, to be heard at a bail hearing with regard to the danger posed by the defendant. In addition, depending upon the circumstances of the case, the United States Attorney's Office may move for pre-trial detention of the defendant.

Other Victims' Rights, 42 U.S.C. §10606(b)

All federal crime victims, including a domestic violence victim, have the following rights:

- The right to be treated with fairness and with respect for the victim's dignity and privacy.
- The right to be reasonably protected from the accused offender.
- The right to be notified of court proceedings.
- The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- The right to confer with the attorney for the Government in the case.
- The right to restitution.
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.

Restitution, 18 U.S.C. §2264

In a VAWA case, the court must order restitution after conviction to reimburse the victim for the full amount of losses. These losses include costs for medical and psychological care, physical therapy, transportation, temporary housing, child care, lost income, attorney's fees, costs incurred in obtaining a civil protection order, and any other losses suffered by the victim as a result of the offense. In a conviction under the Gun Control Act, the Court *may* order restitution

2.4.4 Full Faith and Credit¹⁷

Simply stated, full faith and credit means that a valid order of protection is enforceable where it is issued and in all other jurisdictions. This includes all 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands and Guam.

Full Faith and Credit Under VAWA

Under VAWA, jurisdictions must give full faith and credit to valid orders of protection issued by other jurisdictions. Pursuant to 18 U.S.C. §2265, any protection order issued by the court of one State or Indian tribe must be accorded full faith and credit by the court of another State or Indian tribe.

Pursuant to subsection (b) of 18 U.S.C. §2265,

- The court that issued the order must have had personal jurisdiction over the parties and subject matter jurisdiction over the case; and
- The respondent must have had notice and an opportunity to be heard.

Full faith and credit helps to protect freedom of movement by requiring the justice system to enforce orders of protection throughout the country. If an abuser travels across state or tribal lines and violates a protection order, the abuser can be punished under the laws of the jurisdiction where the violation occurred and also may be charged with federal crimes.

The full faith and credit provisions of Nevada Law and VAWA can enable survivors of abuse to call on law enforcement officers and the courts to enforce their orders of protection across state or tribal lines. When survivors cross jurisdictional lines to work, travel, or relocate, they often find themselves in on-going danger, since frequently they are

¹⁷Adopted from U.S. DEP'T OF JUSTICE, AN ADVOCATE'S GUIDE TO FULL FAITH AND CREDIT FOR ORDERS OF PROTECTION.

pursued or stalked by their abusers. For this reason, VAWA establishes nationwide enforcement of orders of protection, which Nevada has incorporated into its statutes.

The full faith and credit provision of VAWA requires police and courts in the enforcing jurisdiction to treat the order as if it were issued in their own state or tribe. This means that if the abuser violates the order, he or she can be arrested and prosecuted if the laws of the enforcing jurisdiction allow this type of enforcement for violations of protection orders.

Tribes do not have criminal jurisdiction over non-Indians. Tribal police do have authority to stop, detain and transport non-Indian offenders to state or federal authorities who have criminal jurisdiction over non-Indian crimes. However, some tribes use their civil laws to impose civil fines or orders of exclusion to escort non-Indian abusers off tribal lands.

2.5 RESOURCES

ADMINISTRATIVE OFFICE OF THE COURTS -
SUPREME COURT OF NEVADA
(775) 684-1700

U.S. ATTORNEY'S OFFICE
(702) 388-6336

U.S. DEPARTMENT OF TREASURY
BUREAU OF ALCOHOL, TOBACCO & FIREARMS
(702) 388-6978

2.6 ACKNOWLEDGEMENTS

A special thank you to Abbi Silver, Deputy District Attorney, and Jeani Weithop, Boyd School of Law Extern, both of the Special Victims Unit of the Clark County District Attorney's office, who were very helpful in providing Nevada case law and other information concerning Nevada domestic violence law and its enforcement; and to Assistant U.S. Attorneys Colette Rausch and Margaret S. Groban, Violence Against Women Act Specialist, U.S. Attorney's Office, who provided an excellent overview of Federal domestic violence laws.

CHAPTER 3

LAW ENFORCEMENT

This chapter contains the following:

- 3.1 INTRODUCTION
- 3.2 OVERVIEW OF THE STATE
- 3.3 SUMMARY OF THE SOUTHERN NEVADA LAW ENFORCEMENT PROTOCOLS (SNLEP) FOR RESPONSE AND INVESTIGATION OF DOMESTIC VIOLENCE INCIDENTS
 - Definitions
 - Authorities
 - Potential Domestic Violence Charges
 - Emergency Dispatcher Response
 - Patrol Officer Response and Investigation
 - Domestic Violence Advocates
 - Investigating Harassment and Stalking Cases
 - Domestic Violence and Child Witnesses
 - Enforcement of Restraining and Protection Orders
 - Reporting Parole and Probation Violations
 - Juvenile Offenders
 - Officer Involved Domestic Violence Procedures
 - Courtesy Reports
 - Nevada Highway Patrol
 - Federal Domestic Violence Laws
- 3.4 SOUTHERN NEVADA DOMESTIC TASK FORCE LAW ENFORCEMENT PROTOCOLS
- 3.5 EVIDENCE-BASED PROSECUTIONS
- 3.6 SPECIAL POPULATIONS

- 3.7 NEVADA'S DOMESTIC VIOLENCE STATISTICAL PROGRAM
- 3.8 SERVICE OF DOMESTIC VIOLENCE PROTECTION ORDERS
- 3.9 LAW ENFORCEMENT ISSUES REGARDING PROTECTION ORDERS
- 3.10 POLICE OFFICERS STANDARDS AND TRAINING (POST)
- 3.12 RESOURCES
- 3.13 ACKNOWLEDGMENTS

3.1 INTRODUCTION

The purpose of this chapter is not to supplant systematic law enforcement training in issues of domestic violence. A number of law enforcement agencies throughout the State have developed their own policies, procedures and protocols; however, there is no uniform procedure or policy across the State.

Much of the information in this Chapter was compiled by the authors of the Southern Nevada Domestic Violence Task Force Law Enforcement Protocols (SNLEP) which are incorporated in their entirety as Section 3.4 of this Chapter. These protocols were drafted by a sub-committee of the Southern Nevada Domestic Violence Task Force, which was comprised of representatives from a number of Southern Nevada law enforcement agencies. The sub-committee reviewed protocols produced at a national level and applied them to the needs of Nevada agencies. The work was begun by the sub-committee in 1998, and the protocols were released in 1999. The principles of the protocols were intended to be embraced by the Southern Nevada law enforcement community.¹

While the Nevada statutory law contained in the protocols is applicable throughout the State, certain procedures of sub-sections of the protocols may not be applicable for every law enforcement agency. They are provided as a starting point for an agency to turn to in creating its own protocols, and as a reference showing what other law enforcement agencies are doing. Any agency which chooses to adopt the SNLEP should revise them as required for local jurisdictional needs. The protocols also should be read in conjunction with the chapter on prosecution of domestic violence incidents. It is suggested that prosecutors and representatives of law enforcement agencies at the local level meet and work together to adapt these protocols to their own needs.

3.2 OVERVIEW OF THE STATE

In addition to the SNLEP, several law enforcement agencies around the State have established policies and procedures for domestic violence incidents. Most recently, the Washoe County Sheriff's Department adopted a Domestic Violence Policy which was effective August 14, 2000. The addition, Sparks Police Department has drafted a model policy on Domestic Violence and Protective Orders which was being finalized as this Manual was being written. The Lyon County Sheriff's Department in Yerington furnished a copy of his department's Policy and Procedures in Domestic Violence Cases effective

¹The background information contained here was adapted from a letter from Kathleen Brooks, President of the Southern Nevada Domestic Violence Task Force, dated October 20, 1999, and from a short introductory section of the protocols themselves.

April 22, 1999. The Carson City Sheriff's Department provided their procedures, "Handling Domestic Violence and Domestic Battery Cases; Protective Orders Against Domestic Violence." The Las Vegas Metropolitan Police Department provided copies of their internal procedures for "Domestic Abuse and DUI Violations by Employees," along with other related Domestic Violence Policies. The North Las Vegas Police Department provided its Domestic Violence Incident Procedures. All of the above documents are attached as Appendix C.

3.3 SUMMARY OF THE SOUTHERN NEVADA LAW ENFORCEMENT PROTOCOLS (SNLEP) FOR RESPONSE AND INVESTIGATION OF DOMESTIC VIOLENCE INCIDENTS

The Southern Nevada Law Enforcement Protocols (SNLEP) describe suggested procedures for response and investigation of domestic violence incidents. The following is an overview of the protocols:

Definitions

The SNLEP contain basic definitions related to domestic violence. Definitions of battery, domestic violence, temporary protective orders, mitigating circumstances, and who is considered an officer are all included. They should be referenced not only for assistance in using the SNLEP, but also for the remainder of this Manual.

Authorities

The SNLEP contain five basic Nevada Revised Statutes covering domestic violence.

Potential Domestic Violence Charges

The SNLEP also list a number of other Nevada Revised Statutes related to possible charges that may arise out of a domestic violence situation. Related statutes include those dealing with bail, kidnapping, sexual assault, false imprisonment, harassment, stalking, and weapons charges. This section, however, lists only the statute section numbers and short titles, and does not contain any descriptions of the statutes.

Emergency Dispatcher Response

The SNLEP contain response protocols for emergency dispatchers, including dispatch of officers, questions to ask the victim, and a reminder about the serious danger involved in a domestic violence incident.

Patrol Officer Response and Investigation

The Patrol Officer portion of the SNLEP is divided into five sections: Enforcement of Laws In Domestic Violence Incidents; Preliminary Investigation of Domestic Violence Cases; Primary Aggressor Rule; Dual Arrests; and Follow-Up Investigation.

Enforcement of Laws In Domestic Violence Incidents

The SNLEP contain basic investigative procedures for patrol officers responding to reports of domestic violence, including applicable statutes, such as mandatory reporting requirements. Although the statute requires a written report anytime a situation that comprises domestic violence under the statute is investigated by a peace officer, some jurisdictions require that a written report be completed even when the situation does not constitute domestic violence under the statute. This allows a department to keep accurate statistics of responses to reported incidents of domestic violence, whether they are substantiated by investigation or not.

Preliminary Investigation of Domestic Violence Cases

This section details officer actions on arrival at the scene and preliminary investigations, including dealing with the victim, witnesses, suspect, evidence, and, if necessary, medical treatment.

Primary Aggressor Rule

This section details the officers' responsibility to attempt to determine who is the "primary physical aggressor" in the incident.

Dual Arrests

This section details how dual arrests, that is, arresting both parties to the incident, while not forbidden by statute, is discouraged.

Follow-Up Investigation

This section details the steps that should be taken in a follow-up investigation to a domestic violence incident.

Domestic Violence Advocates

The SNLEP discuss the use of domestic violence advocates to assist victims of domestic violence.

Investigating Harassment and Stalking Cases

The SNLEP have detailed procedures for the investigation of harassment and stalking cases, including the relevant statutes, how to recognize a case of harassment or stalking, and the actual investigation of a harassment or stalking case.

Domestic Violence and Child Witnesses

The SNLEP discuss techniques for conducting an effective child-witness interview.

Enforcement of Restraining and Protection Orders

The SNLEP outline the types of protection orders available under Nevada law, and details arrest procedures for officers.

Reporting Parole and Probation Violations

The SNLEP identify the relevant statutes and Division of Parole and Probation policy regarding parolees and probationers who violate the conditions of their release by domestic violence.

Domestic Violence with Juvenile Offenders

The SNLEP discuss domestic violence situations in which the aggressor or victim is a juvenile.

Officer Involved Domestic Violence Procedures

The SNLEP outline procedures for domestic violence incidents in which a peace officer is involved as an aggressor, victim, or witness, and contain sections dealing with officers both within and from outside the responding agency. The section is a brief overview, and the drafters recommend that each agency develop more detailed procedures compatible with the Peace Officer's Bill of Rights.

Courtesy Reports

Because a domestic violence situation may occur in another jurisdiction, the SNLEP outlines dealing with reports by victims of incidents of domestic violence from other jurisdictions.

Nevada Highway Patrol

Although they may not commonly deal with domestic violence situations, it is possible that Highway Patrol Troopers will discover a domestic violence incident during the performance of their duties. The protocols include a brief summary of procedures for Troopers.

Federal Domestic Violence Laws

The SNLEP discuss a variety of relevant federal statutes dealing with domestic violence, including the Violence Against Women Act and various firearms offenses. As with the Nevada statutes provided earlier in the protocols, these statutes should not be seen as all inclusive.

3.4 SOUTHERN NEVADA DOMESTIC TASK FORCE LAW ENFORCEMENT PROTOCOLS

INTRODUCTION

This protocol is intended to assist in implementing the coordinated response necessary to protect the people of this region.

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

This protocol embodies a commitment to pursue effective intervention in domestic violence incidents. It is intended to serve as a guide in promoting victim safety and abuser accountability.

BACKGROUND

In 1998, a Law Enforcement sub-committee of the Southern Nevada Domestic Violence Task Force first began drafting a law enforcement protocol for the handling of domestic violence cases in southern Nevada. The Law Enforcement sub-committee was made up of representatives from various law enforcement agencies in Clark County. The first draft protocol was completed in the Summer of 1999.

DOMESTIC VIOLENCE PROTOCOL POLICY STATEMENT

This document is intended to assist police officers in handling an incident of domestic violence from the initial call through prosecution. It embodies the standards which all agencies should meet when responding to a call of domestic violence. By signing this document, all agencies agree with and endorse the following principles:

- All law enforcement agencies will respond to acts of domestic violence as a crime.
- Victims of domestic violence will be treated with respect and dignity and will be given appropriate assistance by law enforcement personnel responding to an incident of domestic violence.

- The decision to prosecute a batterer lies within the discretion of the District Attorney and the City Attorney. Victims do not “press charges”, “drop charges” or “prosecute” their batterers.
- Law enforcement officers shall arrest batterers in all situations where an arrest is legally permissible for acts of domestic violence.
- Training will be provided regularly to enhance law enforcement’s response to domestic violence incidents.

TABLE OF CONTENTS

DEFINITIONS

AUTHORITIES SECTION

POTENTIAL DOMESTIC VIOLENCE CHARGES

DISPATCHER RESPONSE

PATROL OFFICER RESPONSE/INVESTIGATION

Enforcement of Laws in Domestic Violence Incidents

Investigation of Domestic Violence Cases

Primary Aggressor Rule

Dual Arrests

Follow-up Investigation

DOMESTIC VIOLENCE ADVOCATES

INVESTIGATING HARASSMENT AND STALKING CASES

DOMESTIC VIOLENCE AND CHILD WITNESSES

ENFORCEMENT OF RESTRAINING AND PROTECTIVE ORDERS

PAROLE AND PROBATION GUIDELINES

DOMESTIC VIOLENCE WITH JUVENILE OFFENDERS

OFFICER INVOLVED DOMESTIC VIOLENCE PROCEDURES

COURTESY REPORTS

NEVADA HIGHWAY PATROL RESPONSE

FEDERAL DOMESTIC VIOLENCE LAWS AND THEIR ENFORCEMENT

DEFINITIONS

ADVOCATE

A person who speaks for or assists the victims of domestic violence. This assistance comes in many forms: information on how to deal with the criminal justice system, counseling, family support, and other areas also.

BATTERY

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

DOMESTIC VIOLENCE (NRS 33.018)

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

1. A battery
2. An assault
3. Compelling the other by force or threat of force to perform an act from which he has the right to refrain or to refrain from an act, which he has the right to perform.
4. A sexual assault
5. A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include but is not limited to:
 - a. stalking
 - b. arson
 - c. trespassing
 - d. larceny
 - e. destruction of private property
 - f. carrying a concealed weapon without a permit
7. A false imprisonment
8. Unlawful entry of the other's residence or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.

As used in this section, "dating relationship," means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not

include a casual relationship or an ordinary association between persons in a business or social context.

DOMESTIC VIOLENCE TEMPORARY PROTECTIVE ORDER (TPO)

An order issued by Family Court which is effective not to exceed 30 days. The order prohibits the adverse party from making any contact with the victim. This order must be served on the adverse party before an arrest can be made for violating this order. A violation of this order is a misdemeanor crime.

DOMESTIC VIOLENCE EMERGENCY TPO (ETPO)

A protective order issued in an emergency situation, this order can be obtained 24 hours a day seven days a week. The order can only be requested when a suspect is arrested and charged with an act of Domestic Violence. The suspect is served with the order prior to being released from custody. These orders are valid not to exceed 30 days. A violation of this order is a misdemeanor crime.

DOMESTIC VIOLENCE EXTENDED PROTECTIVE ORDER

A protective order issued by family court not to exceed one year. A violation of this order is a misdemeanor crime.

DUAL ARREST

The arrest of both parties during a domestic violence incident. Dual arrest will be discouraged. The officer’s responsibility is to identify the primary aggressor and arrest only that person.

MITIGATING CIRCUMSTANCES

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

OFFICER

Any peace officer employed by a state or local police department or sheriff’s office, in accordance with Nevada Revised Statute **NRS 169.125**.

PRIMARY PHYSICAL AGGRESSOR (NRS 171.137)

The person who is the most significant, rather than the first, aggressor.

PRO-ARREST POLICY

This refers to the philosophical position, which prioritizes arrest over any other type of enforcement action in regards to domestic violence cases.

STALKING

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

AUTHORITIES SECTION

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

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

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

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

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

POTENTIAL DOMESTIC VIOLENCE CHARGES

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

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

Listed/Described

NRS 178.484	Bail - Mandatory 12 Hour Hold
NRS 199.230	Dissuading a Witness from Testifying
NRS 199.280	Resisting a Public Officer
NRS 199.305	Preventing or Dissuading a Person from Reporting a Crime
NRS 199.310	Malicious Prosecution
NRS 200.010-030	Murder
NRS 200.320-330	Kidnapping
NRS 200.359	Violation of Child Custody Rights
NRS 200.359 (8)	Removing of Child for Protection
NRS 200.366	Sexual Assault
NRS 200.373	Spousal Sexual Assault
NRS 200.400	Assault With Intent to Commit Sexual Assault
NRS 200.400	Battery With Intent to Commit Sexual Assault
NRS 200.460	False Imprisonment
NRS 200.471	Assault/Assault With a Deadly Weapon
NRS 200.481	Battery
NRS 200.481 (2c)	Battery With a Deadly Weapon BWDW
NRS 200.485	Battery Constitutes Domestic Violence
NRS 200.485 (5)	Prosecuting Attorney Will Not Dismiss Case

NRS 200.571	Harassment/Stalking
NRS 200.575 1a & 2b	Harassment 1 st & 2 nd or Spousal Stalking
NRS 200.575 3a	Aggravated Stalking
NRS 200.591	Harassment/Stalking Protection Orders
NRS 200.591 5a	Violation of Stalking Temporary Protective Order
NRS 200.591 5b	Violation of Stalking Extended Protective Order
NRS 201.255	Annoying Phone Calls and Threatening Phone Calls
NRS 202.280	Discharging a Firearm
NRS 202.285	Discharging a Firearm at/into a Structure
NRS 202.285	Discharging a Firearm at/into a Vehicle
NRS 202.290	Aiming a Firearm in a Threatening Manner
NRS 202.320	Drawing Weapon in Threatening Manner
NRS 202.350	Carrying a Concealed Weapon Without a Permit
NRS 202.350	Carrying a Loaded Rifle, Shotgun in or on Vehicle Where Prohibited
NRS 202.360	Ex-Felon Not to Possess a Firearm
NRS 205.010-025	Arson (1 st , 2 nd , 3 rd and 4 th)
NRS 205.060	Burglary
NRS 205.067	Home Invasion
NRS 205.070	Commission of Another Crime While Committing Burglary
NRS 206.310	Malicious Destruction of Private Property

NRS 207.280

False Reporting of a Crime

NRS 217.475

Domestic Violence Deaths; Team Review

NRS 707.320

Interception or Delay of Message Over
Telephone Line

911 OPERATOR/DISPATCHER RESPONSE

- I. A dispatcher who receives a domestic violence incident call will dispatch officers to every reported incident. The dispatcher will, when warranted, give a domestic violence incident call the same priority as any other life threatening call and will, whenever possible, dispatch two officers to the scene.

- II. When speaking to a victim of domestic violence, no dispatcher or 911 operator will discuss the victim's desire to "press charges", "drop charges", or "prosecute." Any comment or statement, which seeks to place the responsibility for enforcement actions with the victim, is inappropriate.

- III. During the initial call for assistance, the call taker should ask these questions (not necessarily in this order)
 - A. Where is the emergency? What address? What apartment number?
 - B. What has happened?
 - C. With whom am I speaking?
 - D. Are you the victim? If no, are you a witness?
 - E. Has anyone been injured? Is an ambulance needed? What are the injuries?
 - F. Who is the suspect?
 - G. Describe the suspect.
 - H. Is the suspect present?
 - I. If the suspect is not present, do you know where he/she may be?
 - J. Are weapons involved? If yes, what kind? Where are they located?
 - K. Is the suspect under the influence of drugs or alcohol? If yes, what substance?
 - L. Are children present?
 - M. Have the police been to the address before? If yes, how many times?
 - N. Do you have a protective order?

- IV. The safety of domestic violence victims, whether the threat of violence is immediate or remote, should be the primary concern of 911 operators. 911 operators will advise the victim to ensure his/her safety including, but not limited to, waiting for officers at a friend's home or simply leaving the residence if the batterer returns.

- V. **NRS 33.080:** The terms and conditions of the protective order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

PATROL OFFICER RESPONSE/INVESTIGATION

I. ENFORCEMENT OF LAWS IN DOMESTIC VIOLENCE INCIDENTS:

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

3. Domestic violence occurs when a person commits one of the following acts against or upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child:
 - a. a battery
 - b. an assault
 - c. compelling the other by force or threat to perform an act from which he has the right to refrain or to refrain from an act, which he has the right to perform;
 - d. a sexual assault
 - e. a knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to:
 - 1) stalking
 - 2) arson
 - 3) trespassing
 - 4) larceny
 - 5) destruction of private property
 - 6) carrying a concealed weapon without a permit
 - f. a false imprisonment
 - g. unlawful entry of the other's residence or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.

D. Temporary/Extended Protective Orders: Pursuant to **NRS 33.070**, every temporary or extended order must include a provision ordering any law enforcement officer to arrest an adverse party if the officer has probable cause to believe that the adverse party has violated any provision of the order.

If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and order, the officer will:

1. inform the adverse party of the specific terms and conditions of the order;
2. inform the adverse party that he now has notice of the provisions

of the order and that a violation of the order will result in his arrest; and

3. inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order.

E. Reporting Requirements: Pursuant to **NRS 171.1227**, if a peace officer investigates an act that constitutes domestic violence pursuant to **NRS 33.018**, he will prepare and submit a written report of his investigation to his supervisor or to another person designated by his supervisor, regardless of whether the peace officer makes an arrest. If the peace officer investigates a mutual battery that constitutes domestic violence pursuant to **NRS 33.018** and finds that one of the persons involved was the primary physical aggressor, he will include in his report:

1. the name of the person who was the primary physical aggressor; and
2. a description of the evidence which supports his finding.

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

F. Officer required to Provide Information: When investigating an act of domestic violence, a peace officer will make a good faith effort to explain the provisions of NRS pertaining to domestic violence and advise the victim of all reasonable means to prevent further abuse, including advising said person of the availability of a shelter or other services in the community. The officer will also provide a person suspected of being a victim of an act of domestic violence with a pre-printed card that provides them with information and laws relating to domestic violence.

NRS 171.1225

G. Locating the Suspect: If the suspect has left the scene prior to the officer's arrival, all reasonable efforts should be made to locate the suspect and make arrest within a 24-hour time frame.

II. PRELIMINARY INVESTIGATION OF DOMESTIC VIOLENCE CASES

Officers arriving at a domestic violence scene should conduct a thorough

investigation and submit reports of all incidents of domestic violence and crimes related to domestic violence. These steps should not be considered all inclusive of actions taken at the scene, but considered guidelines.

A. Arrival at Scene:

1. Determine location and condition of victim
2. Determine if suspect is still at scene
3. Determine if any weapon is involved
4. Determine what, if any, crime has occurred
5. Summon ambulance if injuries require
6. Separate the victim, suspects and witnesses
7. Prevent communication between the parties.
This includes removing victim and witnesses from suspect's line of sight and range of hearing.

B. Preliminary Investigations:

1. Determine primary aggressor. (**NRS 171.137**) The "primary aggressor" is the person determined to be the most significant, rather than the first aggressor.
2. Interview victim and witnesses separately, including any children who may have witnessed the incident or any prior incidents. An officer will make no statements that tend to discourage a victim from reporting an act of domestic violence.
 - a. Victim: Note and document the following:
 - 1) Note the victim's physical condition, including
 - a) any injuries--describe in detail. Determine if medical treatment is necessary and seek appropriate care
 - b) torn clothing
 - c) smeared makeup
 - 2) Note the victim's emotional condition
 - 3) Document any evidence of substance/chemical abuse by victim
 - 4) Determine victim's relationship to suspect

- 5) Conduct a lethality assessment by considering the following factors:
 - Is there a history of abuse?
 - Does the suspect have obsessive or possessive thoughts?
 - Has the suspect threatened to kill the victim?
 - Does the suspect feel betrayed by the victim?
 - Is the victim attempting to separate from the suspect?
 - Have there been prior calls to the police?

 - Is there increasing drug or alcohol use by the suspect?
 - What is the prior criminal history of the suspect?
 - Is the suspect depressed?
 - Does the suspect have specific "fantasies" of homicide or suicide?
 - Does the suspect have access to or a fascination with weapons?
 - Has the suspect abused animals/pets?
 - Has the suspect demonstrated rage or hostile behavior toward police or others?

 - Has there been an increase in the frequency or severity of the abuse? (documented or not)
 - Has the suspect been violent toward children?
- 6) Record any spontaneous statements of the victim
- 7) Obtain emergency contacts, telephone numbers, and pager numbers for the victim
- 8) Determine if there was strangulation involved and ask the questions contained in Appendix A. Strangulation cases should be evaluated as felony incidents.
- 9) Note any statements made by suspect to victim during incident.

b. Witnesses:

- 1) Interview all witnesses separately and record names, addresses, phone numbers and emergency contacts.
- 2) List the names and ages of children present.
- 3) Interview all children pursuant to protocol.
- 4) Record names and addresses of emergency personnel.
- 5) Interview neighbors (ear-witnesses).
- 6) Determine from witnesses if they are aware of a history of abuse.

c. Suspect:

- 1) Describe suspect's location on arrival.
- 2) Describe suspect's physical condition.
- 3) Describe suspect's emotional condition.
- 4) Document evidence of substance/chemical abuse by suspect, conduct examination and add charge if appropriate.
- 5) Record spontaneous statements.
- 6) Document, describe and photograph any injuries.

- 7) Mirandize after arrest; obtain rights waiver.
- 8) Interview suspect.

d. Evidence:

- 1) Describe crime scene. Note signs indicating struggle such as overturned furniture, hair that has been pulled out, blood, broken fingernails, holes in walls, damaged telephones, etc.
- 2) Photograph crime scene if applicable.
- 3) Determine if firearms or other deadly weapons are present.
- 4) Ensure that victim's and suspect's injuries are photographed clearly.
- 5) Impound and photograph all weapons and other evidence including all instrumentalities of the crime (i.e. belts, phone cords, hangers, gas cans,

lighters, broken lamps, etc.).

- e. Medical Treatment: (if necessary)
 - 1) Transport or have victim transported to hospital.
 - 2) Obtain names, addresses and telephone numbers of ambulance or paramedic personnel treating the victim.
 - 3) Document complaints of pain and injuries.
 - 4) Obtain signed medical release from victim.
 - 5) Obtain copy of medical treatment form including doctor's name, address and telephone number.
 - 6) Interview treating physician and confirm nature and severity of injuries.
 - 7) Determine if victim made statements to treating personnel regarding injury, incident or prior abuse.
 - 8) Document all information.

 - f. Completing Crime Report: Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
 - 1) Ensure that elements of all involved crimes are included in report.
 - 2) Document any injuries victim has sustained on DV Supplemental form. (see attachment.)
 - 3) Make sure the victim was photographed. If a Polaroid camera was used, make sure the photographs clearly depict the injury or any object photographed. Photograph all children present, and the crime scene, if appropriate.
 - 4) Document all evidence collected.
 - 5) Document, in detail, any past history of physical violence. Describe the nature of the violence and whether it was reported or unreported.
3. Victim's Rights/Officer's Duty to Advise: Give victim the information required in **NRS 171.1225** contained on a pre-printed card.

- a. The decision to prosecute is made by the District Attorney or the City Attorney. The victim and suspect should be advised that he/she has no control over the decision to prosecute.
 - b. Verify and enforce court issued protective orders.
 - c. Exercise reasonable care for the safety of the officers and parties involved. No provision of this protocol will supersede that responsibility.
4. Bail Issues: Consider requesting a bail enhancement in situations where the amount listed in the bail schedule is insufficient to ensure the victim's safety.

III. PRIMARY AGGRESSOR RULE

- A. Per **NRS 171.137**, the officer will, in the event of mutual battery, make reasonable efforts to determine which person was the “primary physical aggressor.” If the officer can determine which person was the primary physical aggressor involved in the incident, the peace officer is not required to arrest any other person believed to have committed a battery during the incident. In determining whether a person is the primary physical aggressor, the peace officer will consider:
 1. prior domestic violence involving either person (i.e. SCOPE record);
 2. the relative severity of injuries inflicted upon the persons involved;
 3. the potential for future injury;
 4. whether one of the alleged batteries was committed in self-defense;
 and
 5. any other factor that may help the peace officer decide which person was the primary physical aggressor.
- B. Other factors law enforcement personnel should consider:
 1. Height/weight of the parties
 2. Criminal history
 3. Level of violence
 4. Corroborating witnesses
 5. Demeanor
 6. Use of alcohol/drugs

7. Offensive/defensive injuries (injuries consistent with explanation)
8. Seriousness of injuries
9. Corroborating evidence
10. Presence of fear
11. Existing court orders.
12. 911 reporting party
13. Injuries consistent with explanation

IV. DUAL ARRESTS

Dual arrests will be discouraged but are not prohibited per **NRS 171.137**. It is the duty of the law enforcement personnel to identify and arrest only the “primary physical aggressor.” It is the purpose of this countywide protocol to encourage all agencies to adhere to the intent of this mandate and refrain from making dual/mutual arrests. Dual arrests should be the extreme exception and should only be utilized as a last resort when all other investigative efforts fail. It may be the policy of individual law enforcement agencies to adopt a policy encouraging arresting officers to contact their supervisor prior to making such an arrest.

V. FOLLOW-UP INVESTIGATION

- A. All domestic violence reports prepared pursuant to **NRS 171.1227** will be reviewed for completeness and for any follow-up investigation as needed.
 1. "Investigative personnel" refers to a detective, investigative specialist, or other designated law enforcement personnel.
 2. Investigative personnel receiving domestic violence related crime and arrest reports will process them in the same manner as all other criminal violations.
- B. Follow-up investigations should consist of the following steps:
 1. Review patrol reports and determine whether all steps outlined above were completed. If patrol officer failed to complete any of the above, make sure the work is completed.
 2. Re-interview the victim, witnesses and children.

- a. Do not simply "confirm" what is in the patrol officer's report.
- b. Interview the victim or witness in detail and document the information received in your follow-up report.
- c. Whenever possible, interview the victim in person.
- d. Obtain subsequent photographs of the victim even if the patrol officer took photographs.
- e. Obtain copies of medical reports if available.
- f. If appropriate, obtain a copy of the 911 tape and the printout involving the original call for assistance.
- g. Locate and interview other corroborating witnesses (such as neighbors) who may have heard the incident, yet had not become involved.
- h. Inform the victim and witnesses of the status of the case and the intended referral to the District Attorney or the City Attorney.
- i. Record the names, addresses and telephone numbers of alternate means of contact for the victim, which is not for public dissemination, who will know of her/his whereabouts at all times during and after the investigation.
- j. Conduct a complete criminal history of the suspect and attach it to the investigator's report
- k. Interview the suspect unless he has requested counsel.

DOMESTIC VIOLENCE ADVOCATES

- I. Contact may be initiated by direct referral from police, a community agency or the Victim Information Guide, distributed when a police report is initiated. Victim Advocates may also initiate contact from Domestic Violence reporting forms generally within 72 hours of the report.
 - A. Advocate will interview the victim either on the telephone or in person to determine the relationship between the parties, to assess the situation for lethality and to determine victim need.
 - B. Based upon information provided in the report and by the victim, the Advocate will develop an individualized safety plan and make appropriate referrals which may include contact with the Temporary Protective Office, a shelter, social services and/or medical and mental

health services. Referrals may also include law enforcement, the prosecutors' office and Nevada State Victims of Crime Compensation (to assist with medical costs not covered by insurance).

C. Additional services provided may include emergency transportation to criminal justice related and medical appointments, court accompaniment, assistance with protective order and compensation paperwork in the field and hospital accompaniment. Priority in the field is given to those victims who are elderly and/or temporarily disabled. Bus tokens are also provided to assist victims with emergency transportation needs. Advocates may also arrange for residential and vehicle lock replacement when there are no other financial resources available to the victim. The Advocate acts as a liaison between the victim and law enforcement, the courts and other related agencies. In some cases that may include interaction with a landlord and/or employer to increase level of safety and credibility to the victim's need for support and understanding while in the midst of a domestic crisis.

II. Advocates are also trained to provide post-certified instruction to law enforcement as well as to community and civic groups. Advocates instruct both in training academies and at in-service classes. They also participate in various community organizations and associations, which deal with victim issues.

INVESTIGATING HARASSMENT AND STALKING CASES

I. HARASSMENT/STALKING DEFINED:

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

NRS 200.571 defines harassment as: "A person is guilty of harassment if: (A) Without lawful authority, the person knowingly threatens: (1) to cause bodily injury in the future to the person threatened or to any other person; (2) to cause physical damage to the property of another person; (3) to subject the person threatened or any other person to physical confinement or restraint; or (4) to do any act which is intended to substantially harm the person threatened or any other

person with respect to his physical or mental health or safety; and (B) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.”

II. RECOGNIZING THE HARASSMENT/STALKING CASE

Anytime a victim reports any type of "harassing" behavior, the responding officer should be thinking about the possibility of stalking. Additional inquiry must be made to determine whether this is an isolated incident or repeated conduct.

III. INVESTIGATING THE HARASSMENT/STALKING CASE

There are two parts to any harassment/stalking investigation:

- Assessing the Stalker
- Gathering evidence (corroboration)

A. Assessing the Stalker:

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

1. Any prior threats made.
2. Any actual pursuit or following of the victim.
3. Any history of violence against the victim or others.
4. Any information regarding the suspect's tendency towards emotional outburst or rage.
5. Prior history of mental illness.
6. Substance abuse problems.
7. Possession or knowledge of or fascination with weapons.
8. Any history of TPO/EPO violations.
9. Suspect's prior criminal history and/or prior contacts with law enforcement.

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

1. Search Warrants: Items to look for when serving warrants include but are not limited to:
 - a. Photographs of the victim.
 - c. Photos, diagrams, or drawings of the victim's home or workplace.
 - d. Writings, logs or diaries kept by the suspect that describe his stalking activities or thoughts/fantasies about the victim or other victims.
 - e. Personal items belonging to the victim.
 - f. Video or audiotapes that might have information concerning the stalking, such as surveillance footage.
 - g. Books describing stalking techniques or having subject matter dealing with stalking, harassment or violence.
 - h. Any equipment that appears to have been used to "stalk" the victim, such as: cameras, binoculars, video recorders, computers, digital imaging, etc.

2. Items from the Victim: Seize any tangible items of evidence from the victim that substantiate the stalking behavior such as:
 - a. Any taped phone messages.
 - b. Any letters or notes written by the suspect to the victim.
 - c. Any objects sent to or left for the victim.
 - d. Any "Caller ID" telephone records.

3. Obtaining Corroboration: Corroborative evidence is crucial for a successful prosecution for stalking. Investigators should:
 - a. Photograph any items vandalized, damaged, written on, etc.
 - b. Check for fingerprints on vandalized items or other objects sent to or left for the victim.
 - c. Advise the victim to put a trap on her phone.
 - d. Obtain phone records from the victim and suspect's residence.
 - e. Have the victim obtain a telephone answering machine.
 - f. For any incident of harassment, determine whether witnesses were present and interview them.
 - g. Research suspect's whereabouts during times of alleged acts to deter "alibi" defenses.
 - h. Consider surveillance in serious cases.

4. Proof of Victim's State of Mind: The crime of stalking requires that the victim feel terrorized, frightened, intimidated or harassed because of the stalker's conduct. Investigators must document any evidence of the victim's response to the harassment. For example, has the victim:
 - a. Moved to a new location or obtained a new phone number?
 - b. Put a trap on the phone?
 - c. Told friends, family, co-workers or building security of the harassment?
 - d. Given photos of suspect to security?
 - e. Asked to be escorted to the parking lot and work site?
 - f. Changed work schedule or route to work?
 - g. Stopped visiting place previously frequented?
 - h. Taken a self-defense course?
 - i. Purchased pepper spray or a gun?
 - j. Installed an alarm system?
 - k. Seen a counselor or therapist?
 - l. Has the victim obtained an Emergency Protective Order or Temporary Restraining Order?
 - m. Has the victim moved to a shelter?
 - n. Is the victim staying with a friend?

5. Suspect Interview: Suspect interviews can be extremely important in assessing the dangerousness of the suspect and in obtaining information that will ultimately help prove a stalking case.
 - a. Video tape the interview whenever possible. Body language, gestures, voice tone, eye contact, etc. are important aspects in evaluating the stalker.
 - b. Research the suspect's background before the interview.

- c. Gather as much information as possible about the suspect's thinking, behavior patterns, and activities regarding the victim.
 - d. **CAVEAT:** Be aware that in some cases, interviewing the suspect may serve to intensify his interest in the victim. Precautions must be taken whenever a suspect interview takes place.
6. Police/Prosecutor Procedures: Investigators assigned a stalking case should contact the District Attorney/City Attorney at the earliest practical opportunity. Time is of the essence in evaluating a stalking case. Because of the particular dynamics of stalkers, it is always advisable not to arrest until it is clear the evidence is sufficient for prosecution. A stalker who is arrested but quickly released for lack of evidence may be "empowered" and thus increase the risk to the victim.

DOMESTIC VIOLENCE AND CHILD WITNESSES

Often there are children in the homes where domestic violence occurs. It is the responsibility of the responding officer to interview all witnesses, including the children present in the home. Sometimes the children may not be physically present in the room where the domestic violence takes place; however, they should still be interviewed to determine if they heard or had knowledge of the current incident, as well as of any prior incidents.

BASIC GUIDELINE FOR THE CHILD-WITNESS INTERVIEW

- I. Separate the children from the suspect and victim.
- II. Interview each child individually.
- III. Ask simple, open-ended questions:
 - A. What happened? (hitting, yelling, etc.)
 - B. Who was there? (mommy, daddy, etc.)
 - C. Did anyone get hurt? (get description of injury "owie")
 - D. Who did the hurting? (mommy, daddy, both, etc.)
 - E. What was mommy/daddy hurt with? (description of mechanism, fist, belt,

etc.)

- F. When did it happen? (day, night, etc.)
- G. Where did it happen? (location in the house)
- H. Has it happened before? (if yes, document frequency)
- I. Are you hurt? (If yes, refer to child victim/witness protocol)

IV. When interviewing children, these basic techniques should be applied:

- A. Try to establish a rapport with the child. Let the child know they are not at fault.
- B. Use single sentences (compound questions will confuse young children).
- C. Use simple words.
- D. Keep your voice inflection non-judgmental.
- E. Try to lower your profile (do not "tower" over the child; try to sit level with the child).
- F. For more details, refer to the Child Victim/Witness Protocol.
- G. When an arrest is made, explain to the child that they are not responsible, at fault or to blame.

V. In a case where domestic violence results in a homicide or attempted homicide, all children living in the home should be interviewed as soon as possible by a trained investigator.

VI. Record the child's age and parent or guardian's name and address so that the child may be subpoenaed to court if necessary.

VII. If the situation dictates, a copy of the report will be forwarded to Child Protective Services.

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

ENFORCEMENT OF RESTRAINING AND PROTECTIVE ORDERS

I. INTRODUCTION

In the State of Nevada, there are laws regarding Protective Orders that can be

issued when a person has reason to fear for his/her safety. Protective Orders are issued through the courts and are free of charge. The victim/plaintiff must complete an application documenting events that cause them to be fearful for their safety or the safety of their minor children.

- A. It is the general policy of this provision that an arrest will be made when there is a violation of a temporary or extended order for protection reference domestic violence, restraining order or stalking/harassment order.
- B. There are several types of orders for protection that victims may apply for. All orders have basic “rules” outlined to them.
 - 1. Serves as an eviction notice.
 - 2. Advises adverse party to stay away from victim’s home, work or other premises that the victim or minor children frequent.
 - 3. Are ordered to stay away from children’s school.
 - 4. May not use a third party to contact victim.
 - 5. Orders suspect not to threaten, harass and/or physically injure victim/children.
 - 6. Cannot contact victim by phone or mail.

II. TYPES OF PROTECTIVE ORDERS

- A. Emergency Temporary Protective Order (ETPO)

This type of order against domestic violence is available to victims 24 hours a day when the suspect has been arrested for a domestic violence related crime. This order is obtained by telephone through Safe Nest, the domestic crisis program (702) 646-4981. This information is also available to victims on the domestic violence blue cards. The suspect will be served with notice prior to release from custody. Both parties are required to appear in court at an established time within one week of the date of issue. There is no fee associated with this order.

- 1. Valid from 3 to 30 days.
- 2. Served upon the adverse party when being released from jail.
- 3. Provides for a one-time provision to request officers to stand by while suspect gathers personal property from house.

4. If officer has probable cause to believe that suspect violated order, officers can make an arrest even if committed outside of officer's presence.
5. Violation is a misdemeanor.

F. Temporary Protective Order (TPO)

A temporary order for protection against domestic violence may be granted without notice to the adverse party. It is generally valid for thirty days or until the scheduled court appearance indicated on the back side of the order. Applications must be completed in person at the Temporary Protective Order Office, Family Court Complex, Room 54, 601 North Pecos between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday (except holidays). These orders do not have a fee associated with them. The violation of any domestic violence protective order is a misdemeanor.

1. Valid up to 30 days. A hearing is automatically scheduled regarding the issuance of an Extended TPO prior to the expiration date of the temporary TPO.
2. Granted with or without a hearing. The application is used as basis for granting.
3. Provides a provision for officers to standby for a move out.
4. Officers can make an arrest for violations that did not occur in their presence with probable cause.
5. Valid only upon service to the adverse party.
6. Violation is a misdemeanor.

G. Extended Protective Order (EPO)

An extended order for protection against domestic violence may only be granted after notice to the adverse party. It is effective for a maximum of one year as indicated on the order itself. Extended orders are issued at the court hearing prior to the expiration of the temporary order.

1. Valid for up to a year.
2. Granted only with a hearing.
3. Provides same provision for a move out.
4. Officers can make an arrest with probable cause that did not occur in their presence.
5. Valid upon service to the adverse party.

6. Violation is a misdemeanor.

G. Civil Restraining Order

A restraining order may be obtained for relief regardless of the relationship between the two parties. There is a filing fee associated with this order. It can be completed by an attorney or by an individual who obtains the necessary paperwork from the local law library.

E. Temporary Stalking/Harassment Order (TSHO)

This order is granted to victims requesting relief regardless of the nature of their relationship with the suspect. The victim must file a crime report demonstrating a series of events. Justice Court issues these orders. There is no fee associated with this order. Initially, a temporary order will be issued for up to thirty days. The violation of a Temporary Stalking/Harassment Order is a gross misdemeanor, per **NRS 200.591**.

F. Extended Stalking/Harassment Order (ESHO)

Per **NRS 200.591**, this order is also granted to victims requesting relief regardless of the nature of their relationship with the suspect. An extended order may be issued only after notice to the adverse party and a hearing on the petition. Once the order has been extended for up to one year the charge for any violation is a felony.

III. ARREST PROCEDURES

A. Domestic Violence Orders of Protection (**NRS 33.070**)

Every Domestic Violence temporary or extended orders of protection must include a provision ordering any law enforcement officer to arrest an adverse party if the officer has probable cause to believe that the adverse party has violated any provision of the order.

B. Stalking/Harassment Orders (NRS 200.591)

Every stalking/harassment order must contain a warning that violation of the order subjects the person to immediate arrest.

C. An officer responds to a situation and determines the existence of a valid stalking/harassment, restraining or Domestic Violence protection order by contacting Police Records Section and/or checking the SCOPE record of the adverse party. The date on the end of the notification line in SCOPE is the expiration date.

1. The officer attempts to verify that the adverse party has been served with a copy of the order. If verified, the officer arrests the subject for violation of the order.
2. If verification cannot be made:
 - a. Advises adverse party of the specific terms of the order.
 - b. Advises him/her that he/she now has notice and further violation will result in arrest.
 - c. Completes Proof of Service form and forward to issuing court.
 - d. Notifies Police Records or Dispatch of service so appropriate entry can be made into SCOPE.
3. When an officer is dispatched to a call in which there has been an alleged violation of a temporary or extended restraining or protection order in a domestic situation (a misdemeanor) or a violation of a stalking/harassment order (a gross misdemeanor) and the suspect is “gone on arrival”, a crime report must be taken if the situation dictates (i.e. corroborating witnesses, property damage, justified belief of suspect’s imminent return or a violation of the order for which the suspect could be prosecuted). The responding officer will take the report in the field ensuring that witness statements are obtained whenever possible (necessary for consideration by the City or District Attorney’s Office).

The officer taking the report must then advise the victim that the crime report will be submitted to the City Attorney, District Attorney or Detective Bureau.

REPORTING VIOLATIONS OF PROBATION TO THE COURT AND VIOLATIONS OF PAROLE TO THE PAROLE BOARD

I. AUTHORITY

- A. **NRS 289.180 (a & b)** authorizes and designates parole and probation officers as sworn peace officers with full arrest powers in the performance of their duties.
- B. **NRS 176A.500 (3)** authorizes probation officers to arrest probationers who violate the terms and conditions of the probation order. Probationers will be arrested and brought back before the sentencing Court of Record for all violations involving Domestic Violence.
- C. **NRS 213.151 (3)** authorizes parole officers to arrest parolees who violate the terms and conditions of their parole agreement. Parolees will be arrested and brought back before the Parole Board for all violations involving Domestic Violence.

I. POLICY: DOMESTIC VIOLENCE CASES

- A. Due to the violent nature of Domestic Violence cases, the Division of Parole and Probation maintains a “zero tolerance” policy in regards to parolees and probationers committing the crime of Domestic Violence. A mandatory arrest will be effected for all probationers or parolees identified as the aggressor in Domestic Violence incidents. A Parole or Probation “no bail” hold will be placed on those already in custody.
- B. The following violations will be promptly reported to the Court or Parole Board in accordance with Division Policy and Procedure:
 - 1. All felony and misdemeanor arrests for Domestic Violence.
 - 2. All convictions arising out of said arrests.
 - 3. Association/contact with a specific person(s) when ordered not to do so by the Court or Parole Board.
 - 4. Threats of, or actual acts of violence. Documentation such as arrest reports are required, or if the incident is not reported to law enforcement, victim’s statements will suffice.

5. All violations of restraining orders or TPO's whether emergency, temporary or extended.

DOMESTIC VIOLENCE WITH JUVENILE OFFENDERS

I. JURISDICTION

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

II. POLICE RESPONSE

- A. Arrest: Mandatory arrest policies equally apply to "domestic violence" cases where a juvenile is the offender. When a juvenile is incarcerated, there is no bail. The juvenile will stay in Juvenile Hall for a minimum of twelve (12) hours as required by **NRS 178.484** until he or she is arraigned.
- B. Victim Information: As in any other Domestic Battery case, the victim must be provided with a pre-printed card outlining information and laws relating to Domestic Violence **NRS 171.1225**.

III. PROTECTIVE ORDERS FOR TEENS

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

IV. PROSECUTION

The Clark County District Attorney's Juvenile Division prosecutes a juvenile arrested for a Domestic Violence offence.

V. DIVERSION

When diverting or sentencing a juvenile offender in a Domestic Violence case, the following conditions are encouraged: batterer's counseling, protective orders, weapon restrictions, drug and/or alcohol treatment, drug testing, and frequent review hearings.

OFFICER INVOLVED DOMESTIC VIOLENCE PROCEDURES

Domestic violence is a universal problem that affects people from all walks of life. Police officers are not immune. No person, because of his or her occupation, should be exempt from the application of the laws concerning domestic violence. When responding to a domestic violence call involving another officer, the following procedures are recommended:

I. INVESTIGATIONS INVOLVING OFFICERS FROM OTHER AGENCIES

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

II. INVESTIGATIONS INVOLVING OFFICERS WITHIN AGENCY

- A. These investigations will be handled according to Domestic Violence Laws, Departmental policies, and this protocol.

- B. These are guidelines only. Each agency should develop and follow specific Department Policies and Procedures regarding Officer Involved Domestic Violence consistent with the Peace Officer's Bill of Rights.

COURTESY REPORTS

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

I. POLICE RESPONSE TO OUT OF JURISDICTION CRIMES

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

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

assigned to the case to meet the reporting requirements set forth in **NRS 171.1227**.

5. It must be clearly noted that this is a courtesy report and to forward to appropriate agency.

II. COMPLETED COURTESY REPORT

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

NEVADA HIGHWAY PATROL

If a sworn member of the Nevada Highway Patrol (NHP) determines that a domestic violence incident has occurred, the law enforcement agency with investigative jurisdiction will be notified and requested to respond to conduct the investigation.

- I. NHP officers will assist the responding officer upon arrival, if needed or requested. This includes not only officer safety requests but for assistance in follow-up investigation if necessary.
- II. If the law enforcement agency is unable to respond, NHP officers will:
 - A. Initiate investigation
 - B. Complete all follow-up that requires immediate action
 - C. Forward all corresponding documentation from the investigation to the law enforcement agency of jurisdiction pursuant to the guidelines established in this protocol under "Courtesy Reports."

THE FEDERAL DOMESTIC VIOLENCE LAWS AND THE ENFORCEMENT OF THESE LAWS

In 1994, the Congress of the United States, as part of the Crime Bill, enacted legislation empowering the federal government to participate in the fight against domestic violence. This legislation, called the Violence Against Women Act (VAWA) is outlined below.

I. THE VIOLENCE AGAINST WOMEN ACT

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

1. 18 U.S.C. §2261(a)(1)

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

2. 18 U.S.C. §2261(a)(2)

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

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

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

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

1. 18 U.S.C. §2262(a)(1)

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

2. 18 U.S.C. §2262(a)(2)

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

violation of a protection order during the course of or a result of the forced or coercive travel.

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

II. FIREARM OFFENSES

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

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

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

It is illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing.

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

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

D. Possession of Firearm After Conviction of Misdemeanor

Crime of Domestic Violence, 18 U.S.C. §922(g)(9)

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

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

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

It is illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence. A violation of Section 922(d)(9) must be knowing.

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

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

III. OTHER RELEVANT STATUTES

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

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

cross or counter petition seeking a protective order or (b) if such a cross or counter petition was filed, but the court did not make specific findings that each party was entitled to such an order.

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

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

3.5 EVIDENCE-BASED PROSECUTIONS

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

Law enforcement agencies should work closely with local prosecutors to develop a form that gives the prosecutor enough information to overcome probable defense challenges in court, such as hearsay objections to out of court statements made by the victim or suspect. As mentioned above, the goal is to conduct evidence-based prosecutions. Therefore, evidence that stands alone is better than evidence that does not. Written statements are better than oral ones, and photographs are better than written descriptions of injuries. The protocols reproduced in §3.4 of this Chapter describe investigations of the scene in some detail and should be consulted for further information.

3.6 SPECIAL POPULATIONS

A careful reading of the domestic violence statute² reveals that domestic violence can occur not just in the traditional marriage, but in any number of dating or familial relationships. Gay, lesbian, bisexual and transgendered partners, teenagers dating, and elderly persons are just some of the non-marital populations that may experience domestic violence. Officers need to take care in understanding each situation they encounter, and not make statements that may appear to be prejudicial against any particular domestic situation or may discourage future reporting of domestic violence incidents.

The SNLEP incorporated in Section 3.4 of this Chapter discuss some of these special populations, including juveniles. However, the SNLEP barely begin to cover the wide array of different groups that officers may encounter. Certain discrete populations are often served by various particular governmental and private agencies and organizations, and law enforcement agencies should consider consulting such organizations.

For example, the State of Nevada Division for Aging Services has suggested investigative protocols for dealing with the investigation of elder abuse (See Appendix “A.”), some aspects of which could constitute domestic violence under the Nevada Revised Statutes. The Division has drafted suggested charging language for use by law enforcement officers when completing a report in support of probable cause to arrest a person for violating provisions of Nevada’s elder abuse statutes in NRS 200.5099 and 200.5092. That language is as follows:

Allege: (Name of Suspect) willfully and unjustifiably (describe how suspect inflicted pain, injury or mental anguish) upon (Name of Victim), who is (number) years old, causing (Name of Victim) to suffer unjustifiable pain or mental suffer,

OR,

²NEV.REV.STAT.ANN. §33.018 (Michie 2000) provides:

Domestic violence occurs when a person commits [an enumerated offense, including battery, assault, a sexual assault, or other listed offenses]...against or upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child.

Allege: (Name of Suspect) willfully and unjustifiably deprived (Name of Victim), who is (number) years old, of (describe food, shelter, clothing, and/or services) which are necessary to maintain the physical or mental health of (Name of Victim), causing (Name of Victim) to suffer unjustifiable physical pain or mental suffering.

Officers should cite NRS 200.5099(1) and NRS 200.5092(1). If substantial bodily or mental harm or death results to the older person, the sentence is increased, and officers should cite NRS 200.5099(1) and (6) and NRS 200.5092(1). Consult Chapter 1 of this Manual.

The State of Nevada also has a substantial Native American population. Although Reservations are generally supported by federal law enforcement agencies, including Tribal Police or Bureau of Indian Affairs officers, state law enforcement officers should also be aware of the dynamics involved, and are referred to Chapter 1 of this Manual.

Another important cultural group in southern Nevada in particular is the immigrant and undocumented alien population. Domestic violence is a subject of grave concern to many women facing deportation or arriving in this country from other countries where they have suffered abuse. Certain federal laws provide avenues of relief for these domestic violence victims. For further information, see Chapter 1 of this Manual.

The gay, lesbian, bisexual, and transgender population of the State increases every year, particularly in the larger metropolitan areas. Officers can obtain information concerning domestic violence in this population from Chapter 1 of this Manual.

3.7 NEVADA'S DOMESTIC VIOLENCE STATISTICAL PROGRAM

The Nevada Highway Patrol's Records and Identification Services Bureau, within the Department of Motor Vehicle and Public Safety, administers the Uniform Crime Reporting (UCR) Program. Part of the UCR Program's responsibility is the statewide collection and publication of domestic violence statistics as reported by Nevada law enforcement.

To facilitate the collection of domestic violence crime statistics in a uniform manner, the UCR Program encourages reporting agencies to use the "State of Nevada Domestic Violence Statistical Form." Appendix D provides a copy of the form. The report was designed so that an officer responding to a domestic violence incident can quickly fill in the needed information and have it forwarded to the UCR Program. Nevada's domestic violence reporting includes any crimes of domestic violence, from trespassing to murder, when the crime is committed against persons related in the following manner: spouse,

former spouse, parent, child, blood relative, related by marriage, co-habitant, former co-habitant, child in common, and dating or former dating relationship.

Mail all State of Nevada Domestic Violence Statistical Forms to the following address:

Uniform Crime Reporting Program
808 W. Nye Lane
Carson City, Nevada 89703

Reports are compiled quarterly and sent to all contributing law enforcement agencies for review of their statistics. A report also is prepared for and submitted to the Attorney General's Domestic Violence Ombudsman. A final report is published in the Crime and Justice in Nevada annual publication which is distributed to the Governor and all legislators, libraries, law enforcement and criminal justice agencies, media and the public. For questions regarding domestic violence statistics, please call (775) 687-1600.

Law Enforcement Agencies can access the status of TPO's via the Central Repository through Nevada Criminal Justice Information System (NCJIS). Additional information about the Central Repository is contained in the Judiciary Chapter.

3.8 SERVICE OF DOMESTIC VIOLENCE PROTECTION ORDERS

On January 12, 2000, the Office of the Nevada State Attorney General issued Opinion No. 2000-02 regarding service of an order of protection. Opinion No. 2000-02 addressed several questions raised by Colonel Michael E. Hood, Chief of the Highway Patrol Division of the Nevada Department of Motor Vehicles and Public Safety, concerning NRS 33.070, which is reproduced directly below. Following the statute is an overview of Opinion 2000-02, which is attached in its entirety in Appendix E.

NRS 33.070 - Orders for Protection Against Domestic Violence

1. Every temporary or extended order must include a provision ordering any law enforcement officer to arrest an adverse party if the officer has probable cause to believe that the adverse party has violated any provision of the order.
2. If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and order, he shall:
 - (a) Inform the adverse party of the specific terms and conditions of the order;
 - (b) Inform the adverse party that he now has notice of the provisions of the order and that a violation of the order will result in his arrest; and
 - (c) Inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order.
3. Information concerning the terms and conditions of the order, the date and time of the notice provided to the adverse party, and the name and identifying number of the officer who gave the notice must be provided in writing to the applicant and noted in the records of the law enforcement agency and the court.

The first two issues Opinion 2000-02 addresses pertain to the form and content of the notice officers are required by NRS 33.070 to provide. The opinion first addresses whether verbal notice and personal delivery of an order for protection constitute notice pursuant to NRS 33.070. The opinion concludes that either method satisfies the statutory requirement of “notice.” The second issue addressed is whether an officer must read verbatim the statements appearing in the “YOU ARE NOTIFIED” box on the protection order. The Attorney General concluded that a verbatim reading is not required, but that officers should read the statements verbatim anyway or employ a standard set of phrases to convey the contents of the notice.

The other issues addressed by Opinion 2000-02 relate to the protection order database and concern whether the “inquiry” and “notice of service” functions of the database satisfy specific notice requirements of NRS 33.070. The Attorney General’s conclusions do not lend themselves to a clear cut summary; therefore, officers should consult Appendix E to

review Opinion 2000-02 in its entirety.

3.9 LAW ENFORCEMENT ISSUES REGARDING PROTECTION ORDERS

On June 7, 2000, the Nevada Supreme Court adopted seven mandatory standardized forms to be used in all cases involving orders for protection against domestic violence and five voluntary standardized forms.³ The Study Committee that developed the standardized forms anticipates that the use of the new forms will resolve most of the issues noted below.

Exclusion of Adverse Party from Residence

Standardized Form 2, Temporary Order for Protection Against Domestic Violence, excludes the adverse party from the applicant's residence in paragraph number 1, page 2. The Committee added paragraph (c) on page 4 of the Temporary Order for Protection, in the section Order to Law Enforcement. This provision expressly orders the law enforcement officer to exclude the adverse party from the applicant's residence, without the need for a specific court order. Under the newly adopted paragraph (c), it is the law enforcement officer's duty to exclude the adverse party from the residence if the officer serves a protection order to the adverse party at the applicant's residence.

Personal Property in Dispute

Paragraph 2 of the Temporary Protection Order, states that "any property in dispute shall remain in the residence unless it is specifically identified in this order." If "tools and writing paper" is written in the space provided, that is all the adverse party take only, unless the applicant is present at the time and agrees to other items mentioned by the adverse party. If the applicant is not present at the time, the adverse party may only take what is written in the order. The officer should advise the adverse party that fifteen minutes is the time limit for obtaining property specifically identified in the order or permitted by the present applicant.

³The standardized forms are produced in their entirety in Appendix F and G.

Modified Orders

If the Temporary and/or Extended Order is modified, the word “modified” will not appear on the form. Law enforcement should note that if there is an original and a modified order, the modified order can be determined by the date the order went into effect.

Mutual or Reciprocal Orders of Protection

NRS 33.030 expressly forbids the issuance of a temporary protection order unless each party has filed a verified application. NRS 33.030 allows a judge to order such relief as deemed necessary in an emergency situation. Some judges utilize this provision to prohibit the applicant from contacting the adverse party, and issue a mutual order as an effective tool to accomplish this goal. Neither state nor federal law permits a mutual protection order unless both parties file applications. Officer’s Dilemma: Should the officer arrest the adverse party even though the applicant invited him to her residence, just to call the police moments later for the violation? The Committee responded to this dilemma with the addition of the “notice” provision on page 1 of the Order, which gives notice to the adverse party that he “can be arrested even if the person obtaining the order invited or allows you to contact them.”

3.10 POLICE OFFICERS STANDARDS AND TRAINING (POST)

Presently all that Nevada POST regulations require across the State is that POST Academies cover domestic violence. Until this year, there have been no compulsory standards for length of the course, methodology, or content. In early 2000, through a Violence Against Woman Act grant, POST began developing “Mandatory Performance Objectives in Domestic Violence Cases.” The objectives were not completed when this Manual was submitted for printing. To obtain a copy, contact Nevada POST (775) 684-7678, ext. 229.

3.12 RESOURCES

Nevada Attorney General
(775) 684-1100 (Carson City)
(702) 486-3420 (Las Vegas)

Nevada Sheriffs and Chiefs Association
c/o Nevada Association of Counties
(775) 883-7863

Victim Witness Advocate
Office of the City Attorney
City of Las Vegas
400 E. Stewart Avenue
Las Vegas, NV 89101
(702) 229-4807

POST
(Police Officers Standards & Training)
(775) 684-7678, ext. 229

Crimes Against Youth and Families Section
Las Vegas Metropolitan Police Department
(SNLEP)
3010 W. Charleston, #120
Las Vegas, NV 89102
(702) 229-5702

Sparks Police Department
(Model Domestic Violence Policy)
(775) 824-1109 (pager)

Department of Justice
Website for Violence Against Women Office
www.usdoj.gov/vawo

International Association of Chief of Police
(Law Enforcement Officers Guide to Enforcing Orders
of Protection Nationwide)
(703) 836-6767

Department of Motor Vehicles
Central Repository
(775) 687-1600, ext. 268

3.13 ACKNOWLEDGMENTS

This project has received tremendous support from a great many people. The authors would particularly like to acknowledge Abbi Silver, Chief Deputy District Attorney, Special Victims' Unit, Clark County District Attorney's Office; Brad Jerbic, Las Vegas City Attorney; Hon. Betsy Kolkoski, formerly with the State of Nevada Division for Aging Services; and the members of the Southern Nevada Domestic Violence Task Force for their outstanding support and contributions, which greatly eased the task of compiling this Manual. Special thanks to Lt. Brad Simpson, Las Vegas Metropolitan Police Department, who graciously provided the protocols that are the primary basis for this chapter and consented to freely reproduce it, Lt. Tami Evans, City of Sparks Police Department, for providing the Draft Model Policy on Domestic Violence and Protection Orders; Michelle Gamble, Nevada Sheriffs and Chiefs Association, who sent out a request to all members to contribute information to this project; Donald Reed, Las Vegas Metropolitan Police Department; the Carson City Sheriff's Office; Sheriff Sid Smith from Lyon County; and Washoe County Sheriff Dennis Balaam. Grace George from the DMV provided assistance on the Central Repository and Nevada's Domestic Violence Statistical Program.

CHAPTER 4

PROSECUTION

This chapter contains the following:

- 4.1 INTRODUCTION
- 4.2 THE DOMESTIC VIOLENCE TRIAD - LAW ENFORCEMENT, PROSECUTION AND THE ADVOCATES
 - 4.2.1 The Triad
 - 4.2.2 Goals of Prosecution
 - Ending the Violence
 - Enhancing Victim and Child Safety
 - Holding the Batterer Accountable
- 4.3 APPROACH AND POLICY ISSUES FOR PROSECUTORS
 - 4.3.1 Unique Role of the Prosecuting Attorney
 - 4.3.2 Statements of Departmental Intent
 - 4.3.3 Written Departmental Policy
 - 4.3.4 Continued Domestic Violence Training
- 4.4 PROSECUTORIAL AND CHARGING DECISIONS
 - 4.4.1 Screening

- 4.4.2 Model Standard for Filing a Complaint
- 4.4.3 Pleas and Cases Not Charged
 - Plea Bargains
 - Cases Not Charged
 - Agency Discretion to Prosecute
- 4.4.4 Avoiding Prosecutorial Frustration in Domestic Violence Cases
- 4.5. CASE PREPARATION
 - 4.5.1 Law Enforcement Agency Investigation
- 4.6 PRE-TRIAL ISSUES
 - 4.6.1 Bail and Initial Appearance Issues
 - Bail
 - Initial Appearance
 - 4.6.2 Parole and Probation Status
 - Pre-Sentence Investigations and Reports
 - Procedures for Probationers and Parolees Arrested for Domestic Violence Crimes
 - Authority of the Division
 - Release of a Probationer or Parolee
 - 4.6.3 Mentally Ill Defendants
- 4.7 PROTECTING THE VICTIM
 - 4.7.1 Confidentiality
 - 4.7.2 Interview Rapport
 - Explaining the Prosecution Process and Domestic Violence Process
 - Use of Victim Advocates
 - 4.7.3 Service Issues
 - 4.7.4 No Contact Orders

4.7.5 Child Custody Arrangements

- 4.7.6 Victims' Rights
 - Notification
 - Victim Impact Statements
 - Compensation and Restitution Fund
- 4.7.7 Failure To Appear Problems
 - Factors That Influence a Victim/Witness to Cooperate with the Prosecutor

4.8 TRIAL ISSUES

- 4.8.1 Theory of the Case
- 4.8.2 Preparation of Witnesses
- 4.8.3 Voir Dire Issues and Jury Selection
- 4.8.4 Opening Statements
- 4.8.5 Presentation of Evidence
 - Reluctant or Hostile Victim Witness
 - Use of Child Witnesses and Issues of Competency
- 4.8.6 Cross Examination of Defense Witnesses
 - Cross-Examination of Character Witnesses
 - Cross-Examination of the Defendant
- 4.8.7 Defenses
 - Self-Defense
 - Provocation
- 4.8.8 Closing Argument

4.9 EVIDENTIARY ISSUES

- 4.9.1 Character and Conduct Evidence Generally
 - Prior Bad Acts of Defendant

Admissibility of Bad Act Evidence -The Three Step
Process

The *Tinch* Test As Applied
Nevada Case Law Examples - Admission of Prior Bad
Act Evidence

Victim's Character
Nevada Case Law Examples - Victim Character
Evidence

Defendant's Character

4.9.2 Impeachment
Nevada Case Law Examples - Impeachment on
Character or Conduct Evidence

Impeachment Regarding Prior Convictions
Nevada Case Law Examples - Impeachment
Regarding Prior Convictions

4.9.3 Privileges
Spousal Privilege
Nevada Case Law Examples
Doctor-Patient Privilege
Nevada Case Law Examples
Waiver of Privilege
Exceptions to Privilege

4.9.4 Medical Evidence
Exceptions to Medical Evidence Privilege

4.9.5 Hearsay Exceptions
Excited Utterance
Nevada Case Law Examples
Present Sense Impressions
Statements Made for Medical Diagnosis or Treatment
Existing Mental, Emotional or Physical Conditions

4.9.6 Documentary or Tangible Evidence
Photos and Videos
911 Tapes or Transcripts
Law Enforcement Reports
Medical Records

- 4.9.7 Use of Expert Testimony
 - Admissibility
 - Battered Woman Syndrome Theory of Defense

4.10 DISPOSITIONS

- 4.10.1 Sentencing Recommendations
 - Restitution
 - Parole and Probation Suspended Sentences
 - Division of Parole and Probation Policy on Domestic Violence
 - Parole Applications

4.10.3 Negotiated Pleas

4.10.4 Dismissals

4.10.5 Future Prosecutions

4.11 ACKNOWLEDGMENTS

4.1 INTRODUCTION

The purpose of this chapter is to assist attorneys with the prosecution of domestic violence cases. It recognizes that the prosecuting attorney is in a unique position as a community leader with particular responsibilities and duties.¹ Specifically, the prosecutor is the lead law enforcement officer in the city or county with a great deal of discretion in determining how court resources are utilized in the fight against crime.² Thus, prosecutorial offices and their attorneys send a message to the community about the importance of particular crimes, and these messages have a far reaching effect on victims' lives. To that end, it is critical that individual prosecutors thoughtfully examine their beliefs and attitudes about domestic violence as these will be communicated not only to the public but, more importantly, to the victims of domestic violence.³

Limitations

This chapter recognizes that domestic violence crimes, like many other types of crime, have influences outside the criminal justice system. Domestic violence involves socioeconomic concerns, psychological factors, parenting issues, political issues, community resource issues and many other factors. It may, however, be one of the few crimes where effective prosecution ties together so many of these resources to reach a successful end.

This chapter is not intended to be, nor is it a substitute for, the individual judgment of a prosecutor dealing with a particular case. It is intended merely to provide general guidelines and considerations for the urban and rural counties that comprise Nevada's population. While it is critical that criminal justice entities in Nevada have a uniform approach to the investigation and prosecution of domestic violence, this chapter also recognizes that each domestic violence case presents unique issues and, to some extent, must be reviewed on a case by case basis.

There is a paucity of case law specifically relating to domestic violence in Nevada. However, where such case law exists, this chapter contains citations to those cases. While the emphasis is placed on Nevada law whenever the court has decided a

¹See generally LINDA A. MCGUIRE, PROSECUTION OF DOMESTIC VIOLENCE IN IOWA: A PROSECUTION MANUAL (3rd ed. 1998).

²*Id.*

³*Id.*

specific issue, references are also made to decisions from other courts as a sample of the *probable* answer or the answer embraced by other jurisdictions.⁴

Federal jurisdiction may arise in cases involving crimes committed by one leaving, entering or on Indian lands or military installations, offenses involving persons with immigration status, or crimes which fall under federal statute and pertain to domestic violence. Prosecutors should be aware that while domestic violence cases are primarily the concern of the state jurisdictions, recent enactments under the Violence Against Women Act and the Brady Gun Control Act exist and may provide the prosecutor with additional tools in the fight against domestic violence crimes.⁵

This manual is *not* intended for use where a perpetrator of domestic violence has murdered a victim in the course of a domestic violence incident. A case of such complexity is clearly beyond the scope of this manual.

General Principles of Domestic Violence

Domestic violence differs from other crimes against a person due to the nature of the relationship between the victim and the perpetrator. Rather than being characterized by violence perpetrated by a stranger, domestic violence involves violence perpetrated by an intimate. As such, the prosecutor should be aware of the implications the relationship between the victim and perpetrator will have not only for the prosecution of the offender but for the victim, as well. Critical to these implications is an understanding of the nature of domestic violence.⁶

4.2 THE DOMESTIC VIOLENCE TRIAD - LAW ENFORCEMENT, PROSECUTION AND THE ADVOCATES

4.2.1 The Triad

Starting in the mid-1980's, a national trend that recognized the devastating results domestic violence perpetrates on the victims and children of domestic violence, as well as the toll the crime takes on the community, led to changes in the way domestic violence is investigated

⁴THOMAS L. LEEN, THE LAW OF ARREST, SEARCH AND SEIZURE FOR NEVADA POLICE OFFICERS 1 (1997). The author wishes to express her appreciation to Thomas L. Leen, who authored *the* benchbook on search and seizure law. The book was frequently suggested as the model upon which this chapter should be based and to which the author referred for style and semantics.

⁵See Chapter 2 of this Manual for more detailed information on issues of federal jurisdiction and federal crimes.

⁶See §1.8 of this Manual for a discussion of the cycle of violence common to domestic violence.

and prosecuted.⁷ These changes recognized the importance of a coordinated community response to the crime of domestic violence and created the domestic violence triad – law enforcement, prosecutorial teams, and victim advocates. With the triad came a focus on early intervention at the misdemeanor level before aggravated assaults turn into domestic violence related homicides, the development of investigatory policies and protocols that shift the focus from the victim to the perpetrator, thus preventing the “re-victimization” of the domestic violence victim, and a focus at the prosecutorial level on long-term accountability for crimes of domestic violence for the perpetrator rather than quick fixes, fines or other counter-productive programs.⁸

4.2.2 Goals of Prosecution

In light of the changes outlined above, criminal justice agencies are adopting the following goals in their handling of the crime of domestic violence.

Ending the Violence

The primary goal of criminal justice agencies – ending the violence – recognizes the impact that domestic violence has on the victims of the crime and treats it as a crime of violence. This attitude of “zero tolerance” towards domestic violence is best effectuated where the community as a whole (law enforcement, victim advocates, prosecutorial teams, and the community at large) responds to the crime as unacceptable. Prosecutors may be in the best position to send a message to the community at large that crimes of domestic violence will not be tolerated and will be prosecuted to the fullest extent allowed under the law. Ending the violence by adopting an attitude of zero tolerance recognizes the silent victims of domestic violence – the children who are subject to its effects – and who are least able to defend themselves.

Enhancing Victim and Child Safety

By focusing on enhancing victim and child safety, criminal justice agencies develop policies and investigatory and prosecutorial strategies that recognize and balance the vulnerability of the victim, the economic reliance the victim may have on the abuser, and the potential safety issues that may arise as a result of prosecution. It is imperative that the system not re-victimize the victim of domestic violence, and it best accomplishes this by facilitating understanding of the nature of domestic violence. It is also imperative that criminal justice agencies understand that the best way for children subject to domestic violence to be

⁷See Casey G. Gwinn & Anne O’Dell, *Stopping the Violence: The Role of the Police Officer and the Prosecutor*, 20 WESTERN ST. U.L. REV. 1502 (1993).

⁸*Id.*

protected is to enable the mother to protect her own children.

Holding the Perpetrator Accountable

Wherever possible, criminal justice agencies should seek to hold the perpetrator accountable for his actions to the fullest extent allowed under the law. In order to effectuate this policy, investigators and prosecutors should be aware of their own biases, seek to understand the crime of domestic violence through continued training, and utilize the law to achieve accountability (e.g., in cases where the victim is reluctant to assist the prosecutor, being able to employ the laws of evidence to obtain a conviction).

4.3 APPROACH AND POLICY ISSUES FOR PROSECUTORS⁹

4.3.1 Unique Role of the Prosecuting Attorney

The prosecuting attorney is in a unique position as a public servant and, perhaps, an elected official, to send the community a message regarding the unacceptability of domestic violence.¹⁰ Thus, as the lead law enforcement officer in the area, the prosecutor can exert tremendous influence over the well-being of the community at large.¹¹ To best fulfill that duty, the prosecutor should endeavor to be aware of his or her own biases and attitudes about domestic violence and should seek to obtain, for all prosecutorial staff and law enforcement personnel, specialized training on the nature of domestic violence and how victims respond to domestic violence.¹²

4.3.2 Statements of Departmental Intent

Criminal justice agencies may wish to consider adopting a statement of intent, which can serve as a foundation for the agency's handling of domestic violence cases and for the development of written agency policies.¹³

The following is a model statement of intent which criminal justice agencies may wish to consider adopting:¹⁴

⁹*Adapted from* MCGUIRE, *supra* note 1, at §§3-1 to 3-10.

¹⁰*Id.* at §3-1.

¹¹*Id.*

¹²*Id.*

¹³*Id.* at §3-2.

¹⁴*Id.*

- (1) Domestic violence is a crime that deserves priority assignment of criminal justice resources because:
 - The violence often escalates over time and every incident is potentially life threatening.
 - It affects all persons in the home including the perpetrator, the victim and the children. Since battering is a learned behavior, and children learn what they see and hear, unchecked abusive behavior in the home can perpetrate violence in future generations.
 - Domestic violence disproportionately affects women, children, and the elderly who are disempowered economically and socially, and vigorous prosecution helps equalize power in the relationships.
- (2) The goals of the criminal justice intervention are to prevent further domestic assaults and to hold offenders accountable for the criminal behavior. The marriage or intimate relationship is not more sacred than the rule of law, which includes the right to safety in one's own home.
- (3) Community involvement beyond the legal system should be mobilized to hold perpetrators accountable, to protect victims from further harm, and to provide victims with free access to safe emergency housing and with the broadest possible access to legal information and remedies.

4.3.3 Written Departmental Policies

Criminal justice agencies should consider adopting written policies concerning the handling of domestic violence crimes. Such policies will provide a guidepost for the community and the agency regarding how crimes of domestic violence will be handled and assist new attorneys and law clerks in prosecuting domestic violence cases.¹⁵ Furthermore, in rural areas or smaller communities where the use of specialized law enforcement and prosecutorial teams is not feasible, written policies and protocols can be of great use in achieving a consistent approach to domestic violence.¹⁶

¹⁵*Id.* at §3-3.

¹⁶*Id.*

While no written policy can address every contingency, the policy can enhance prosecutorial decision-making by removing arbitrariness and setting objective standards.¹⁷ The following lists several elements that should be included in a policy statement:¹⁸

- (1) Statement of intent regarding domestic violence.
- (2) Standards or principles to guide prosecutors' discretionary decisions and special procedures to be used in domestic violence cases, including:
 - Pre-charging role and duties: advising and training law enforcement agencies and reviewing uncharged reports (e.g., incident reports) and complaints.
 - Protective orders and conditions of release: obtaining and lifting no-contact orders and enforcement of no-contact orders.
 - Communications with victims: first interview; plea negotiations and dispositions; involvement of victim-witness coordinators and/or victim advocates; and use of subpoenas and sanctions.
 - Post-charging role and duties: case preparation and investigation and case processing time standards.
 - Dispositional guidelines: victim input into decision-making; plea bargaining parameters; and sentencing guidelines (e.g., jail time, probation terms and conditions; fines and/or restitution).
- (3) Law enforcement coordination: explanation of the use of protocols and the expectations for any relationship between police and the prosecutor; the prosecutor's role in any law enforcement related training pertaining to domestic violence and support for training by victim advocates.
- (4) Evaluation mechanisms to judge the effectiveness of law

¹⁷*Id.*

¹⁸*Id.* §§3-7 to 3-8.

enforcement, prosecution and judicial intervention.

- (5) Appendices which may include community resources, reading materials and resource referrals.

4.3.4 Continued Domestic Violence Training

For those criminal justice agencies that are large enough to accommodate specialized domestic violence units, annual training for attorneys and law enforcement personnel will probably not be difficult and is highly recommended. Such training also benefits new attorneys who are entering criminal justice agency practice as well as for those who are starting to practice in specialized domestic violence units. Continued training for law enforcement personnel is also highly recommended in addition to instruction at the new recruit level (i.e., P.O.S.T. instruction).

Domestic violence training should inform participants about the domestic violence cycle and why victims stay with abusers, and, most importantly, should make participants aware of their own biases and attitudes so that they may more effectively deal with victims of domestic violence.¹⁹

4.4 PROSECUTORIAL AND CHARGING DECISIONS

4.4.1 Screening

The National District Attorneys Association has promulgated standards stating that the discretion to prosecute, or not, lies solely with the prosecutor, subject only to the requirement that he or she not file charges as a leverage device to obtain guilty pleas to lesser charges.²⁰ In the past, prosecutors have been criticized for rejecting domestic violence cases that have survived intense screening and review by police agencies.²¹ This problem is generally avoided by utilizing vertical prosecution, specialized domestic violence units within the police and prosecutorial agencies, and agreed upon domestic violence protocols.²²

¹⁹See §1.3 *supra* on the domestic violence cycle and Chapter 7 on victim service advocates and training.

²⁰MCGUIRE, *supra* note 1 at §3-12.

²¹*Id.*

²²See Chapter 3 of the Manual (regarding law enforcement and the use of domestic violence protocols). In rural areas where specialized units are not feasible, criminal justice agencies may find reliance on the use of a domestic violence protocol, including the use of standardized forms specific to domestic violence, especially useful. In addition, joint law enforcement prosecution

It is improper for screening decisions to be based upon subjective factors, such as the prosecutor's personal views about domestic violence or domestic violence victims, or unsubstantiated expectations of evidentiary problems, or opinions regarding victim reluctance to assist the prosecutor.²³ Filing decisions should be based upon objective factors such as the weight of the evidence, the extent or seriousness of the injuries, the perpetrator's prior criminal behavior or history of violence, the perpetrator's use of or threat to use a weapon, and the potential dangerousness of the situation to the victim and others.²⁴ The prosecutor may also wish to include a policy regarding those factors that are not to be considered in the screening decision, such as the relationship between the victim and the perpetrator and the victim's desire to drop the charges or otherwise not proceed with the prosecution.²⁵

Prosecutorial agencies should utilize a screening standard which relies on independent corroboration.²⁶ Under the independent corroboration standard, the reviewing attorney would consider the following factors, among others, when making a decision regarding what, if any, charges to file in a domestic violence case.²⁷

General Indicia Of Excessive/Unnecessary Force Upon The Victim

- Victim's demeanor which exhibits the stress of the event:
 - victim called police
 - victim requested medical assistance or assented to it
 - victim ran to neighbors, store, security office, friends
 - victim was observed to be upset, in shock, crying, shaking, hiding, cowering, or was using unusual speech patterns, and avoiding contact with the perpetrator
 - victim made declarations of fear or appeared confused or desperate to police, neighbors, children or other witnesses
 - victim expressed a willingness to receive information as to crisis intervention resources

training programs may assist law enforcement officers and prosecutors in the prosecution of domestic violence as well as in furthering a cooperative atmosphere between the two criminal justice agencies.

²³McGUIRE, *supra* note 1, at §3-12.

²⁴*Id.*

²⁵*Id.*

²⁶*Adapted from* OFFICE OF THE CITY ATTORNEY, CITY OF LAS VEGAS, DOMESTIC VIOLENCE PROTOCOLS 10-11 (1996).

²⁷*Id.*

- Victim's demeanor or statements showing the desired outcome is for the perpetrator to cool down, stop contact or just leave the victim alone, not to have the perpetrator arrested

- Perpetrator's aggression toward police, neighbors, witnesses, relatives, pets, children
- Indicia of victim's unique vulnerability
 - recent operation
 - accidental injury
 - illness
 - age
 - pregnancy
 - diminutive size
 - mental or physical handicap
- Presence of physical evidence which is consistent with the victim's statements
 - injuries/indicia of injuries (swelling, discoloration, etc.)
 - property damage (clothing, doors, walls, windows, furniture, pictures, telephone, vehicles and other personal items)
 - disarrayed or disturbed items (wall hangings, furniture, clothing, collectibles, candles, paperwork)
 - soiled, stained, bloody or wet items (cloths, carpet, furniture, walls, appliances)
 - weapons
 - items seized for self-defense (pots, pans, knives, brooms, bats, pokers) or which could have been seized by the victim to use as an excessive response but were not
 - items thrown toward, spilled or poured on or grabbed from the victim
 - items which were used to clean items thrown toward, spilled or poured on or grabbed from the victim
 - items which were the subject of the dispute (letter, telephone number, high utility bill, food items, computer accessories, stereos, cds, collectibles, the victim's personal property which the perpetrator wanted to take without permission)
 - recordings (answering machine tapes, security video tapes, 911 recordings and dispatch records)
 - marks on carpeting or linoleum
 - drug paraphernalia or alcoholic beverage containers
 - copies of lease, rental, utility or cable agreements showing victim was on such agreements and therefore negating the "defense" that

- the victim was trespassing so such force was necessary
- medical reports of hospitals and emergency medical service providers
- photographs
 - of any of the above
 - of the space in which the argument and any pushing or “throwing around” took place and which show how far the victim was pushed or thrown, the likelihood of the victim falling and hitting something harmful, what the victim was thrown or pushed against, the defendant “cornering” the victim, the victim’s forbearance of an opportunity to use a weapon to hurt the abuser (knives, pans, hammers, heavy decorative or other items)
 - of the perpetrator showing body size, intoxicated state, demeanor and any injuries or lack of injuries. **Note:** If possible, where the perpetrator is “gone on arrival,” the officer should have the victim identify a photograph of the perpetrator and impound it in case the victim later recants, avoids service of a subpoena or otherwise becomes unavailable for testimony.

Indicia of Absence of Accidental Force, Self-Defense or Other Defense by the Abuser

- Any of the above
- Prior history of violence by the perpetrator, whether toward the victim or not (subject to case law and statutory limitations)
- Witnesses who:
 - heard the victim speak of the perpetrator being controlling (not letting the victim see or talk to certain friends or to family members, not letting the victim wear certain clothes, not letting the victim have access to money, not letting the victim go places without the perpetrator, extreme jealousy, wanting to know everything the victim does, and willingness to do anything to keep the victim)
 - heard the perpetrator being controlling and/or the victim being submissive or compromising in prior contacts
 - heard the victim plan for future safety or provisions for shelter, food, child care and other things of primary importance in contemplation of additional violence

- saw the lack of injuries on the perpetrator and victim prior to the argument
- saw or heard the argument, including the demeanor of the victim, perpetrator and any witnesses present, what the argument was about, any threats communicated
- saw or heard the escalation of the argument
- heard the use of force - slapping, grunts, groans, pleas, bumps, thumps, screams
- saw the environment of the escalating argument and saw how far the victim was pushed or thrown, the likelihood of the victim falling and hitting something harmful, what the victim was thrown or pushed against, the perpetrator "cornering" the victim, the victim's forbearance of an opportunity to use a weapon to hurt the perpetrator (knives, pans, hammers, heavy decorative or

o t h e r
items)

- saw pre-existing injuries which made the victim more vulnerable or made any force used less reasonable than it otherwise would have been
- saw the actual use of force or violence upon the victim, a witness, a pet, a security guard, a police officer or on some piece of property
- heard the victim describe the use of force or violence which the victim was subject to and observed the victim's demeanor to be fearful, confused, desperate (including, but not limited to, 911 dispatchers, neighbors, interpreters, children, emergency medical providers, landlords, security guards)
- heard the victim minimizing the violence shortly after the perpetrator's use of force or shortly before being due in court to testify
- heard the perpetrator make incriminating statements or false exculpatory statements
- saw the perpetrator hurriedly leave after the police were called
- saw the victim's injuries, indicia of injuries or nursing an injury
- heard the perpetrator threaten the victim after the use of force was over
- heard the perpetrator attempt to threaten or intimidate the victim into not cooperating with law enforcement
- have observed the victim "identifying with the perpetrator" – still living with the perpetrator, still in love with the perpetrator, still controlled by the perpetrator, still dependent upon or fearful of the perpetrator

Some forms of evidence should be looked into or searched for prior to making a determination as to whether the case can be proven at trial and therefore approved for prosecution. Such corroborative evidence also may be crucial in providing proof that the "event" and the victim's stress were ongoing at the time of any relevant victim's statements. For example, a 911 declaration by the victim requesting medical attention police assistance "before he returns" amply demonstrates a victim under the stress of the "event." Obviously, the more evidence the better, so the search for more and better evidence continues through trial.²⁸ If the victim is reluctant to testify at trial, the prosecutor should consider utilizing a victim advocate to talk further with the victim to assess her willingness

²⁸*Id.* at 11.

to assist the prosecutor in any way.²⁹

4.4.2 Model Standard for Filing a Complaint:

The Attorney General's office for the State of Utah suggests the following as a general standard for determining whether to file a complaint charging crimes of domestic violence.³⁰

STANDARDS	RESPONSE
Can the prosecutor prove the case without the victim?	If YES, then FILE.
If the prosecutor cannot, is the victim cooperative?	If YES, then FILE if the case can be proven <u>with</u> the victim's cooperation.
If the case is not provable at trial due to a lack of victim cooperation or otherwise	You have until the statute of limitations runs. The cycle of domestic violence will continue to run its course, so there is hope of victim cooperation and/or a strengthening of the prosecutor's case.

²⁹*Id.*

³⁰UTAH ATTY GEN. OFF., DOMESTIC VIOLENCE 101: A USER-FRIENDLY MANUAL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT FOR PROSECUTORS AND LAW ENFORCEMENT OFFICERS 64 (2nd ed. 1998).

4.4.3 Pleas and Cases Not Charged

Plea Bargains

Prosecutorial agencies may wish to consider a policy affirmatively prohibiting the use of plea bargains, diversion programs, or fines in domestic violence crimes. The rationale behind the prohibition recognizes that plea bargains and diversion programs fail to hold the perpetrator accountable for the crime of domestic violence and degrade affirmative policies of zero tolerance for domestic violence. Furthermore, fines, in addition to failing to hold the perpetrator accountable for the crime of domestic violence, may take needed economic support away from the victim and children, thus further victimizing the victim for the perpetrator's crime.³¹ Money may be the focal point of the perpetrator's power and control over the victim. Even worse, the victim may be the sole breadwinner in the family, and forcing the victim to contribute to payment of the fine is yet another re-victimization.³²

While the major disadvantage of plea bargaining is the danger of diminishing the seriousness of the perpetrator's crime, prosecutorial agencies may consider using such prosecutorial tools where there is an articulable basis for the reduction and the pled charge is another violent crime charge.³³ The benefit of plea bargaining in such cases is that the perpetrator must acknowledge the criminality of the conduct by pleading guilty, and the victim is spared having to testify.³⁴ Such use of plea bargaining may present a positive alternative for the prosecutor who has a victim who is reluctant to testify or otherwise provide assistance and does not have sufficient evidence to proceed with a victimless prosecution.³⁵

The following is a model standard regarding the use of plea bargains in domestic violence cases:³⁶

³¹McGUIRE, *supra* note 1, at §3-30.

³²*Id.* Similar problems exist when a probationer or parolee is ordered to pay his monthly supervision fee and restitution monies. While prosecutors can do little to avoid this particular situation, it is important that they be aware of the problem as it applies to the victim and children.

³³*Id.* at §3-24. McGuire states that, for example, the Denver City Attorney's Office adheres to a policy of only accepting reduced-charge pleas in domestic abuse cases to other violent crimes. Thus, simple misdemeanor assault is acceptable, but a charge of disorderly conduct or public intoxication is not.

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

- Plea bargains should be approached with the intent of expediting the goals of prosecution: ending domestic violence, protecting the victim, reinforcing the serious criminal nature of the domestic violence, and holding the offender accountable.
- The victim should be consulted to provide background information and input about plea bargaining before negotiations with the defense begin.
- Early plea negotiation (before the arraignment), should be attempted, in appropriate cases, to reduce family trauma and begin defendant rehabilitation.
- Factors which may be considered as providing an acceptable basis for charge reduction are: the seriousness of the offense, including injuries inflicted; the presence of children; the use or threat of use of a weapon; history of abuse; prior criminal record; the strength of the evidence; and the victim's wishes regarding prosecution.³⁷ A notation of which of these factors is present should be made in the file.
- Plea bargains should not result in a disposition substantially different from the sentencing guidelines of the office.
- If at all possible, the reduced charge should reflect the nature of the crime: personal violence and/or property damage. For example, assault is preferable over disorderly conduct or public intoxication.
- Plea bargains based partially on the need for timely counseling should emphasize the importance of timeliness of counseling (including any concessions given) so that, if the perpetrator is dilatory, the prosecutor has firmer grounds to argue that the state is not getting the "benefit of the bargain" without timely enforcement of this term.

Cases Not Charged

Unfortunately, not every case can be prosecuted, whether due to difficulties in determining who was the primary aggressor (mutual combat arrests), lack of independent witnesses, or incomplete forms or investigations. In such situations, arrest may be the only achievable

³⁷While getting the victim's input is important to the establishment of prosecutor-victim rapport, prosecutors should be wary of relying, or giving the impression of relying, on the victim's opinion, in making any prosecutorial decisions.

vehicle of perpetrator accountability.³⁸ Such arrests and any uncharged incident reports may assist the prosecutor who seeks later to have the information admitted as evidence of the prior bad acts of the defendant.³⁹ This means that the prosecutor must file a written opposition to any defense motion to seal the perpetrator's prior records, including incident reports and records of arrests that did not result in prosecution.

When a criminal justice agency opts not to prosecute a domestic violence case, the prosecutor should:⁴⁰

- Keep a record of the case and the reasons why charges were not filed.
- Where appropriate, clearly explain to the victim the basis for not filing charges.
- Give the victim information on local battered women's programs and other appropriate social service and legal assistance organizations.
- Inform the victim of other options, such as filing for a Temporary Protective Order.

Agency Discretion to Prosecute

The Nevada Legislature has mandated arrest where the primary aggressor in a domestic battery incident can be determined. Prosecutors retain discretion when screening the case for prosecution. However, the legislature's policy of mandatory accountability for the domestic perpetrator should be weighed heavily when screening these types of arrests. Certain prosecutorial offices have adopted a policy of charging batteries as those which constitute an act of domestic violence whenever the perpetrator is apparently trying to control the victim through the mechanisms

³⁸Memorandum from Abbi Silver, Chief Deputy District Attorney, Domestic Violence Unit, Clark County Nevada (Mar. 7, 2000) (on file with the author) (noting that for cases where no injury is present, no independent witness was present, or law enforcement officers could not determine the primary aggressor, the trier of fact or court will also be unable to resolve the situation positively and acquittal will result and that poorly put together cases take away from investigatory and prosecutorial resources for stronger cases).

³⁹See Evidentiary Issues, *infra* §4.9.

⁴⁰WASHOE COUNTY DOMESTIC VIOLENCE TASK FORCE, PROSECUTION SUBCOMMITTEE, DOMESTIC VIOLENCE PROSECUTION PROTOCOL (1996).

previously discussed in this manual.⁴¹ This policy focuses on perpetrator conduct, takes the focus off the victim, and thus prevents the perpetrator from ostensibly controlling the course of the prosecution.

Criminal justice agencies and victims, as well, should be advised of the following:⁴²

The victim does *not* have the right to “drop charges” against the perpetrator.

- Police, *not the victim*, are responsible for the arrest.
- The prosecutor, *not the victim*, is responsible for filing charges.
- The trier of fact, *not the victim*, is responsible for adjudicating the case.
- The judge, *not the victim*, is responsible for sentencing the perpetrator.

Among others, two important precepts which substantiate the above are (1) a desire to displace the victim as the focus of blame for the perpetrator’s being held accountable, and (2) a recognition that others besides the victim in question are impacted by the perpetrator’s learned violent behavior, including family, witnesses and other potential victims.

4.4.4 Avoiding Prosecutorial Frustration in Domestic Violence Cases.

Because the agency, not the victim, decides whether to prosecute the case, prosecutors should take precautionary steps to avoid, or at least diminish, the frustrations inherent in prosecuting domestic violence cases. The following are general reminders for prosecutors charged with handling domestic violence cases.⁴³

1. Revisit and constantly update the forms of evidence and independent

⁴¹*Id.* at 65. See also SOUTHERN NEVADA DOMESTIC VIOLENCE TASK FORCE, DOMESTIC VIOLENCE PROTOCOL POLICY at (i) (1999); WASHOE COUNTY DOMESTIC VIOLENCE TASK FORCE, PROSECUTION SUBCOMMITTEE, DOMESTIC VIOLENCE PROSECUTION PROTOCOL (1996); OFFICE OF THE CITY ATTORNEY, CITY OF LAS VEGAS, DOMESTIC VIOLENCE PROTOCOLS at 9 (1996) (stating “The City Attorney’s [office] functions under the premise that violent behavior in the home or in intimate relationships is criminal behavior and will not be tolerated, minimized, or mediated. The application of this premise impacts prosecutors’ interaction with victims, screening of cases, offer guidelines, trial tactics, and sentencing recommendations. We work to function under objective, consistent, and definable policies which are not impacted by the subjective considerations of reluctant victims.”)

⁴²UTAH ATTY GEN. OFF., *supra* note 32, at 65.

⁴³*Id.*

corroboration which are sought and utilized (see Sections 2.11 and 4.4.1 above). Every time some new piece of evidence or corroboration is learned or some new use for traditional types of evidence is discovered during trial, at a seminar or in discussions with comrades, it should be noted for future use.

2. Assume the victim will recant, avoid service and not appear or will attempt to invoke the Fifth Amendment:

- Remember that the cycle of violence can work toward victim cooperation as well and do not give up the hope of cooperation at trial.
- The perpetrator will be feeding the victim horror stories about the prosecutor seeking lots of jail time. Assure and re-assure the victim that you only want the perpetrator held accountable so that this will not happen again with this victim or anyone else (including violence toward ordinary citizens). Often you may be able to honestly state that you only want the conviction and counseling. Negate concern over the perpetrator losing his job, if possible by offering to speak/check with the employer without naming names.
- Obtain a detailed written statement from the victim, giving the victim the opportunity to let you know of the perpetrator's guilt or innocence. The taking of the statement should be witnessed by a police officer or investigator. If the victim says the perpetrator is guilty, you have a prior inconsistent statement with which to impeach a recanting victim. If the victim says that the perpetrator is innocent and why, you have notice of the defense. **Produce the statement in discovery.**
- Plan the foundation for treating the victim as a hostile witness so that you can ask her leading questions. NRS 50.115(4)(b). Show that the victim identifies with the perpetrator through testimony about emotional attachment (including intimate relations) with the perpetrator, children in common, financial dependence, control mechanisms (who writes the bills, what the perpetrator lets the victim do or not do, who decides what they do together, what friends the victim had before meeting the perpetrator and who the victim has as friends now, whether the victim visits friends and relatives freely, whether the victim and the defendant came to court together . . .) and whether the victim has discussed the trial testimony with the perpetrator and the perpetrator's counsel.
- Note the victim's prior statements of the perpetrator's guilt, who witnessed them, the victim's demeanor at the time, the time between the "event" (broadly defined) and the statements. Gather relevant case law which supports the admission of the statements as prior inconsistent or consistent statements, excited utterances, present sense impressions,

statements of then existing mental, emotional or physical condition, or under any other evidentiary rule.

- Outline and investigate foundational indicia for all statements to be admitted under one of the above hearsay exceptions
 - Note the victim's reluctance to have the perpetrator arrested, flight, hiding, request for or assent to medical attention and other circumstantial evidence inconsistent with the recanting testimony
 - Note any friends or relatives disclosed by the victim and invoke their assistance in procuring victim cooperation
 - Attempt to obtain a signed medical release and certified copies of medical records
 - Attempt to obtain updated photographs of the victim and visible injuries. Even if the victim refuses, the refusal will go against the perpetrator's case when the victim testifies and recants
 - Give the victim invoking the Fifth Amendment (because of earlier "lies to the police") use immunity
3. Assume that the child witnesses will recant or become unavailable.
- Note the child's demeanor and any excited utterances or present sense impressions of the child
4. Assume that any injury or indicia of injury will be insufficiently preserved.
- Have new photographs taken if possible. Bruises will be more apparent two-to-three days after they are inflicted.
5. Assume that anything broken will be fixed or thrown away shortly after the incident.
- Have such items videotaped, photographed or removed from the garbage and impounded
6. Assume that the perpetrator will contact the victim as soon as possible and attempt to influence the victim.
- Contact the victim as soon as possible after notice of the incident
7. Note and document the victim's unique vulnerability. This will be a favorable factor in extending the time a reasonable victim like yours is stressed by the event or condition, will make self-defense less likely and excessive response more likely, and will

be an aggravating factor at sentencing.

8. Look for possible felony prosecutions – coercion, substantial bodily injury, victims over 60, use of a deadly weapon, kidnapping, robbery, sexual assault, malicious destruction of property – and refer cases to the appropriate prosecutive agency as warranted.

9. Look for collateral misdemeanor crimes like coercion, trespass, malicious destruction of property, disturbing the peace, assault, violation of a protective order, DUI, possession of drug paraphernalia, etc.

10. Get all discovery out in a timely manner, including updated discovery.

11. Always talk to the police at trial or preliminary hearing and reinforce what they did right, suggest what could have been done better, and advise that you’re there to aggressively prosecute their investigations. This will minimize the need for the prosecutor to conduct follow-up efforts which are a substitute for deficient police investigations. An “atta girl” or “atta boy” letter will be a little effort which will go a long way.

4.5 CASE PREPARATION

Once the prosecutor has made the decision to proceed with filing a complaint against the perpetrator, it is likely that he or someone in his office has at least cursorily reviewed the evidence. The following is a brief description of information that should be gathered and completed, where necessary, prior to trial. For a more detailed discussion of evidentiary issues, see §2.11, *infra*.

4.5.1 Law Enforcement Agency Investigation

The prosecutor’s case is largely defined by the law enforcement agency’s response at the scene of the domestic violence incident. Almost all of the forms of evidence and independent corroboration discussed in Section 1.9 and this Chapter should be collected by law enforcement during its initial investigation or during a timely follow-up by a specialized unit, or the opportunity will be lost. To facilitate the prosecution of domestic violence crimes, it is helpful for prosecutors’ offices and law enforcement agencies to use specific protocols when investigating crimes of domestic violence.⁴⁴ The use of investigatory protocols, coupled with domestic violence training, ensures that prosecutors

⁴⁴See §3.4 (example of a law enforcement protocol currently in use in southern Nevada).

have a consistent record before them when they make screening decisions and that the response to crimes of domestic violence is consistent. Much

of the information listed below is included on standardized department forms or is used in domestic violence training for law enforcement personnel.

- **Completeness**

Particularly where standardized investigatory forms are used, it is imperative that officers and investigators completely fill out departmental forms by, for example, marking injuries and indicia of injuries on any diagrams and noting any statements that would constitute an excited utterance or present sense impression. Failure to fill out the form as completely as possible may result in the case being screened out for prosecution or marked as “solved by arrest.”⁴⁵

- **Locating the Victim**

Field officers and investigators should make every attempt to obtain victim contact information so that the victim may be contacted by a victim advocate or investigator subsequent to any arrests that are made. Victims should be informed that while the prosecutors’ office respects victim confidentiality and will try to protect it as much as possible, under the law, information which will aid the perpetrator in preparing a defense or aid in lessening sentencing must be disclosed to the perpetrator. Criminal justice agencies should advise all of their members of the necessity of keeping domestic violence victim information confidential to the fullest extent possible under the law and should develop a policy which safeguards such information.

- **Injuries/Indicia of Injuries and Other Physical Evidence**

Ideally, investigators should obtain a release of medical information when first responding to the scene of the domestic violence crime. Some jurisdictions use a standardized form that includes a space for a victim of domestic violence to release medical information to criminal justice entities. In addition, first responders should endeavor to take pictures and/or videos at the scene, including pictures of the victim’s injuries; indicia of injuries (including discoloration, redness, swelling, victim nursing injuries); the victim’s upset state; property damage (clothing, doors, walls, windows, furniture, pictures, telephone, vehicles and other personal items); disarrayed or disturbed items (wall hangings, furniture, clothing, collectibles, candles, paperwork); soiled, stained, bloody or wet items (clothes, carpet, furniture, walls, appliances); weapons; items seized for self-defense (pots, pans, knives, brooms, bats, pokers) or which could have been seized by the victim to use as an excessive response but were not; items thrown toward, spilled or poured on or grabbed

⁴⁵See Memorandum from Abbi Silver, *supra* note 40 and accompanying text.

from the victim; items which were used to clean items thrown toward, spilled or poured on or grabbed from the victim; items which were the subject of the dispute (letter, telephone number, high utility bill, food items, computer accessories, stereos, cds, collectibles, the victim's personal property which the perpetrator wanted to take without permission); marks on carpeting or linoleum; drug paraphernalia or alcoholic beverage containers; the space in which the argument and any pushing or "throwing around" took place and which show how far the victim was pushed or thrown, the likelihood of the victim falling and hitting something harmful, what the victim was thrown or pushed against, the defendant "cornering" the victim, the victim's forbearance of an opportunity to use a weapon to hurt the perpetrator (knives, pans, hammers, heavy decorative or other items) and the perpetrator showing his size, intoxicated state, demeanor and any injuries or lack of injuries. **Note:** If possible, where the perpetrator is "gone on arrival," the officer should have the victim identify a photograph of the perpetrator and impound it in case the victim later recants, avoids service of a subpoena or otherwise becomes unavailable for testimony. Where possible, investigators should also attempt to obtain photographs of the victim's injuries 2 to 4 days after the incident, as bruising and abrasions and other soft tissue damage show up differently on each individual. Such photos are important for corroborating the victim's statements, identifying the aggressor, and establishing an excessive response by the perpetrator.

- **Victim and Witness Statements**

First responders and subsequent investigators should ascertain the presence of any witnesses and obtain complete victim and witness statements as to what they saw or heard before, during and after the violent acts. Such information can be used later to independently corroborate the domestic violence if the victim is reluctant to assist in the prosecution of the perpetrator. Victims and witnesses should be encouraged to provide truthful and detailed statements in their own words. Spanish or other primary alternative language forms should be adopted.

- **Protection Orders**

Prosecutors' case files should contain copies of prior and pending applications for protection orders (including supporting affidavits) and prior protection orders subsequent to the issuance of a protection order.⁴⁶

- **Criminal Histories and Domestic Violence Histories**

⁴⁶See §§5.3-5.11 *infra* (regarding the issuance of protection orders).

Prosecutors should obtain criminal histories for all actors involved in the assault. In addition, the prosecutor or investigator should obtain any incident reports or past

history of violence committed by the defendant for use at trial, subject to evidentiary limitations.⁴⁷

4.6 PRE-TRIAL ISSUES

4.6.1 Bail and Initial Appearance Issues

Bail

Pursuant to NRS 178.484, any person arrested for a domestic violence offense is subject to a mandatory delay in admission to bail for a period of 12 hours.⁴⁸ Persons with criminal justice status (i.e., parolees or probationers) are subject to a “no bail” hold. The prosecutor may wish to consider potential bail enhancements including particularized conditions of release such as “No Contact Orders,” travel restrictions, and counseling for drug and alcohol problems in situations where the amount listed in the bail schedule is insufficient to ensure the victim’s, another person’s, or even the perpetrator’s safety.⁴⁹

When considering whether to request a higher amount of bail⁵⁰ or no bail, the prosecutor may wish to consider the following issues related to a lethality assessment of the perpetrator.⁵¹

- Any history of abuse or violence as documented by reports or convictions.
- The seriousness of the current offense, including the frequency of violence and any escalation of force.

- Death threats or threats of retaliation to victims or their children or other family members of the victim.
- Substance use or abuse.
- Use of weapon or threat to use a weapon.

⁴⁷See §4.9.1 (discussion of evidentiary issues concerning the use of information about the defendant’s past conduct).

⁴⁸See NEV. REV. STAT. ANN. §178.484 (Michie 1999); 1986 Nev. Op. Atty Gen. 1 (constitutionality of twelve hour delay in admission to bail).

⁴⁹See DOMESTIC VIOLENCE PROTOCOL POLICY, *supra* note 41.

⁵⁰See NEV. REV. STAT. ANN. §178.499 (Michie 1999) (stating that at any time after the court has ordered bail to be set at a specific amount, the court may, upon its own motion or upon the motion of the district attorney and after notice to the defendant’s attorney of record, or if none, to the defendant, increase the amount of bail for good cause and, if the defendant has been released on bail prior to the motion for an increase in bail being granted, the defendant shall return to custody or give the additional amount of bail).

⁵¹UTAH ATTY GEN. OFF., *supra* note 30, at 67.

- Victim's fears and the reasonableness of those fears.
- Defendant's mental and physical health.
- Defendant's threats of suicide.
- Defendant's access to victim and children via return to the shared residence and child visitation arrangements.⁵²
- Access to victim's workplace or co-workers.
- Defendant's prior criminal history and any other history of violence.

When the prosecutor makes a request to modify standard bail, the court may conduct a hearing specifically to determine what amount of bail would be proper.⁵³ This hearing may be held as part of the first appearance or, arraignment, or at some other time.⁵⁴ The only constitutional limitation on the amount of bail is that it not be excessive or intended to be a corrective or punitive device.⁵⁵ Thus, bail is limited to the amount reasonably designed to ensure the defendant's presence before the court.⁵⁶

Many courts rely on the use of pre-determined bail schedules, thus allowing the defendant to post bond before appearing before the judge.⁵⁷ However, in those cases where higher bail is requested, the judge may consider such factors as the defendant's character and reputation; ties and responsibilities to family and the community; the court's prior experience with the defendant; the danger to any person and the community posed by the defendant's release;⁵⁸ and the likelihood the defendant will engage in additional criminal conduct.⁵⁹

When a person with no prior convictions is charged with a misdemeanor offense, as with misdemeanor domestic violence, the person may be released without bail at the discretion of the sheriff, chief of police or a designated deputy, pursuant to guidelines established by a court of competent jurisdiction, by filing an agreement to appear at the time and place specified in the agreement.⁶⁰

⁵²Shared child care arrangements are the most commonly overlooked factor in reviewing potential lethality of the perpetrator and contacts with the victim and the children. The prosecutor may wish to consider the necessity for supervised visitation or supervised exchanges in a neutral location.

⁵³NEVADA JUDGES ASS'N., ADMIN. OFF. THE CT., NEVADA BENCHBOOK FOR JUSTICE AND MUNICIPAL COURTS §1-13 (rev. 1998).

⁵⁴*Id.* at §1-18.

⁵⁵*Id.* at §1-13.

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸*See* NEV. REV. STAT. ANN. §178.4853(8)(9) (Michie 1999).

⁵⁹NEVADA JUDGES ASS'N., *supra* note 53, at §1.13.

⁶⁰*Id.* at §2-14.

As of 1998, the following bail schedule existed for domestic violence arrests absent any requests for an increase in the amount of bail.⁶¹

- If the perpetrator has no previous convictions of battery and there is no reason to believe the battery from which the arrest resulted caused substantial bodily harm, then bail shall be set at \$3,000.00; or
- If the perpetrator has no previous convictions of battery but there is reason to believe the battery from which this arrest resulted caused substantial bodily harm, or the perpetrator has one previous conviction of battery and there is no reason to believe the battery from which this arrest resulted caused substantial bodily harm, then bail shall be set at \$5,000.00; or
- If the perpetrator has one previous conviction of battery and there is reason to believe that the battery from which this arrest resulted caused substantial bodily harm, or the perpetrator has two or more previous convictions of battery, then bail shall be set at \$15,000.00.
- Examples of other conditions of release: 1000 foot rule (between perpetrator and partner and/or children), drug or alcohol counseling, staying out of bars or other establishments where alcohol is served, no weapons possession, seeking and maintaining employment.

Initial Appearance

Under Nevada law, any person arrested for a misdemeanor crime must be presented before a magistrate without unnecessary delay.⁶² Pursuant to statute and current case law, concerns for unnecessary delay direct that a misdemeanant arrested without a warrant must be presented before a magistrate for a probable cause hearing within 48 hours, including non-judicial days.⁶³ The purpose of the hearing is to review whether probable cause existed for the arrest.⁶⁴ When a person has been arrested without a warrant and brought before the court, Nevada law requires that a complaint be filed “forthwith.”⁶⁵

⁶¹*Id.* at §1-14.

⁶²NEV. REV. STAT. ANN. §171.178(3) (Michie 1997). *See also Powell v. State*, 511 U.S. 79, 114 S.Ct. 1280 (1994); *County of Riverside v. McLaughlin*, 500 U.S., 44 111 S.Ct. 1661(1991).

⁶³NEVADA JUDGES ASS’N., *supra* note 53, at §1-1.

⁶⁴*Id.*

⁶⁵NEV. REV. STAT. ANN. §171.178(4) (Michie 1997).

Generally, the arraignment proceeding entertains the initial appearance of the defendant before the court in order to receive a formal complaint, assure the defendant's understanding of the charges, verify the true name of the defendant, and handle other matters as appropriate.⁶⁶ Although the arraignment may seem like an early and unimportant proceeding, caution must be taken to insure that the defendant understands both the charges against him and his legal rights in order to prevent later constitutional challenges to the proceedings.⁶⁷ In particular, the judge should ensure that any special accommodations required by the defendant in order to understand the proceedings, such as a competency examination or a translator for a non-English speaking defendant, are arranged in advance and provided at the arraignment.⁶⁸

4.6.2 Parole and Probation Status

In Nevada, parole and probation supervision is located in a single division, the Nevada Division of Parole and Probation (the Division), and its officers supervise both probationers and parolees. All such individuals with a criminal justice status are subject to additional burdens and sanctions if they are arrested for a domestic violence crime. Probationers are subject to the jurisdiction of the court of record in the event that they are arrested for subsequent crimes, whereas parolees are subject to the jurisdiction of the Nevada Parole Board for any subsequent crimes.

Pre-Sentence Investigations and Reports

The Division is responsible for conducting pre-sentence investigation reports which the court generally utilizes as a recommendation when imposing a sentence against a defendant eligible for probation status. As a general rule, the Division will recommend a "no contact clause" be placed in a probation agreement where the defendant is convicted of a crime against a person (e.g., felony domestic violence or stalking). As with any section of the probation agreement, violation of the no contact clause subjects the probationer to arrest and return to the court of record for a revocation hearing.⁶⁹

⁶⁶*Id.* See also NEV. REV. STAT. ANN. §174.015 AND 174.025 (Michie 1997).

⁶⁷NEVADA JUDGES ASS'N., *supra* note 53, at §1.1.

⁶⁸*Id.* There is no statute or case authority which mandates that an arraignment must come within a specified number of hours post-arrest. However, a person must not be admitted to bail without appearing before a magistrate if possible, with the least possible delay. See NEV. REV. STAT. ANN. §171.178(5) (Michie 1999).

⁶⁹An arrest alone violates the terms and conditions of a parole or probation agreement. Violations of specific clauses of the agreements constitute additional reasons for arrest and also provide evidence in favor of revocation of the defendant's criminal justice status.

Procedure for Probationers or Parolees Arrested for Domestic Violence Crimes⁷⁰

In order to implement its policy of “zero tolerance” for crimes of domestic violence, it is imperative that the Division be notified of the following:

- All felony and misdemeanor arrests for domestic violence crimes.
- All convictions arising out of domestic violence arrests.
- Association or contact by the probationer or parolee in violation of a “no contact” provision in the terms and conditions of either a parole or probation agreement.
- Threats of or actual acts of violence. Documentation, including arrest reports, is required. If the incident is not reported to a law enforcement agency, a victim’s statement will suffice.
- All violations of restraining orders and TPO’s (emergency, temporary and extended).

Authority of the Division

The following statutes provide the Division with its authority to make arrests, including misdemeanor domestic violence arrests, as Nevada peace officers.

NRS 289.180(a) and (b): authorizes and designates parole and probation officers as sworn peace officers with full arrest powers in the performance of their duties.

NRS 176A.500(3): authorizes probation officers to arrest probationers who violate the terms and conditions of the probation order. Probationers will be arrested and brought back before the sentencing court of record for all violations involving domestic violence.

NRS 213.151(3): authorizes parole officers to arrest parolees who violate the terms and conditions of their parole agreement. Parolees will be arrested and brought back before the Nevada Parole Board for all violations involving domestic violence.

Release of a Probationer or Parolee

Any person with a criminal justice status is subject to a “no bail” hold which must be placed on the defendant by an officer of the Division while he is in custody. Thus, when a

⁷⁰SOUTHERN NEVADA DOMESTIC VIOLENCE TASK FORCE, DOMESTIC VIOLENCE PROTOCOLS at 29 (1999).

hold is placed on the probationer or parolee, the defendant usually awaits arraignment in custody and will usually remain in custody until the resolution of any revocation proceedings. However, jail space constraints and judicial discretion to release a probationer or parolee exist, and the prosecutor should be aware of these possibilities in order to notify the victim and plan for victim safety issues and referrals.

4.6.3 Mentally Ill Defendants

The subject of mentally ill defendants in the context of domestic violence is a topic that receives little recognition in the legal community. As NRS 176.127 (3)(b) demonstrates, a mentally ill perpetrator of domestic violence is treated no differently than a perpetrator who is not considered mentally ill, with the exception that the mentally ill perpetrator may receive some psychological treatment at the court's discretion.

Plea of Guilty But Mentally Ill

NRS 176.127. Determination of mental condition of defendant; treatment if mentally ill at time of sentencing.

1. If a court accepts a plea of guilty pursuant to NRS 174.041, the court shall, before imposing sentence, afford the defendant an opportunity to present evidence of his present mental condition. If the defendant claims that he is mentally ill at the time of sentencing, the burden of proof is upon the defendant to establish that fact by a preponderance of the evidence.
2. If the defendant has been ordered to the custody of the department of prisons, the court may order the department to cause an examination of the defendant to be conducted to determine his mental condition, and may receive the evidence of any expert witness offered by the defendant or the prosecuting attorney.
3. If the court finds:
 - (a) That the defendant is not mentally ill at the time of sentencing, it shall impose any sentence that it is authorized to impose upon a defendant who pleads or is found guilty of the same offense.
 - (b) By a preponderance of the evidence that the defendant is mentally ill at the time of sentencing, it shall impose any sentence that it is authorized to impose upon a defendant who pleads or is found guilty of the same offense and include in that sentence an order that the defendant, during the period of his confinement or probation, be given such treatment as is available for his mental illness if the court determines that the relative risks and benefits

of the available treatment are such that a reasonable person would consent to such treatment. The treatment must be provided by the department of prisons.

NRS 176.129. Final judgment of guilty but mentally ill deemed judgment of guilty. Except for purposes of NRS 176.127, a final judgment of guilty but mentally ill shall be deemed to be a final judgment of guilty.

Pursuant to NRS 176.059(1), when a defendant pleads guilty or guilty but mentally ill or is found guilty of a misdemeanor, including violation of any municipal ordinances, the justice or judge shall include in the sentence the sum prescribed as an administrative assessment and render a judgment against the defendant for the assessment.

4.7 PROTECTING THE VICTIM⁷¹

Ironically, prosecution of the perpetrator may pit the victim and prosecutor against one another and create an adversarial relationship.⁷² In order to help establish common ground with the victim, the prosecutor should keep in mind the rationale behind the criminal justice system's intervention into domestic violence:⁷³

- To protect the victim and her family from repeated incidents of abuse.
- To unequivocally reject violence and abuse by reinforcing the fact that domestic violence is a crime.
- To empower the victim by providing her with the support and sense of community that can occur when legal and community resources are mobilized on her behalf.
- To hold the perpetrators of domestic violence accountable for their behavior and to change those institutions which perpetuate the abuse of power.

⁷¹See Chapter 7 detailed discussion of victim specific issues including victim services.

⁷²See generally MCGUIRE, *supra* note 1, §5.

⁷³*Id.* at §5-1, citing Schechter, *Guidelines for Mental Health Practitioners in Domestic Violence Cases*, National Coalition Against Domestic Violence, P. O. Box 15127, Washington, DC 20003-0127.

4.7.1 Confidentiality

It is absolutely imperative that any information obtained about the victim or by the victim, such as contact information, job location, address, and phone numbers, be kept confidential. Criminal justice agencies may wish to consider adopting formal procedures for handling victim information in instances involving domestic violence crimes. Those procedures may also cover security issues and information concerning hearings or other proceedings. However, it is equally imperative that prosecutors and victim advocates are aware of and adhere to the government's obligation to disclose exculpatory information, such as victim recanting statements, to the defendant.

4.7.2 Interview Rapport⁷⁴

The first interview with the victim, scheduled by either an investigator or a victim services advocate, ideally should take place within 48 hours of the incident which led to the arrest or filing of a complaint. This time frame takes into account the fact that waiting any longer may impair the prosecutor-victim relationship,⁷⁵ and may result in defense counsel being the first contact the victim has with the criminal justice system.

The following checklist provides a list of tasks that should be accomplished in the first interview with the victim.⁷⁶

Establish Rapport.

- Understand the victim's point of view.
- Explore mutuality of interests.
- Communicate the realities of domestic violence and the prosecutor's role.

Inform the Victim of Community Resources.

Investigate the Facts of the Offense.

- Discover the facts and circumstances of the offense and events leading up to the offense.
- Review police reports and witness statements.

⁷⁴Adopted from MCGUIRE, *supra* note 1, §5.2.

⁷⁵Perpetrators may have entered the "honeymoon period" of kindness and contrite loving behavior and may be attempting to reconcile with the victim in order to influence the course of prosecution.

⁷⁶MCGUIRE, *supra* note 1, at §5.3.

- Prepare witness statements if none exist.
- Explore self-defense or other justification issues.

Review the Criminal Process.

- Steps involved in the prosecution and anticipated time frame.
- Conditions of release, including no contact provisions.
- Victim's role as a witness, what participation will be expected (e.g., depositions, hearings, etc.), no drop policies, and victim impact statements.
- Role of the subpoena. Serve subpoena if the trial date is known and get service information for future service.

Explore Disposition Alternatives.

- Prior abuse and the extent, duration and severity of abuse.
- Review criminal history.
- Lethality factors.
- Alcohol or substance abuse issues and any prior treatment.
- Goals for future of relationship.
- Sentencing options.

Consider On-Going Issues

- Medical release forms.
- Support system for victim.

Explaining the Prosecution Process and the Realities of Domestic Violence⁷⁷

In addition to explaining what will be required of the victim during the prosecution phase, the prosecutor should also explain to the victim how the criminal process works in general, including such matters as the function of preliminary hearings and depositions, the trial process, the “no drop” policy, and possible sanctions for failure to appear. The prosecutor or victim advocate may also want to use the opportunity to communicate information about domestic violence that the victim may not otherwise have access to. The following is a list of facts the prosecutor or advocate should convey to the victim:

⁷⁷Adopted from MCGUIRE, *supra* note 1, §5.2(f).

- Domestic violence assault is a crime.
- The victim is not responsible for prosecution.
- Domestic violence often escalates into more serious beatings and can result in death.
- Domestic violence is a widespread problem affecting all sectors of society.
- The prosecutor does not seek to end the relationship – only the violence.
- Victims and prosecutors share the same goals.
- There are many dispositional alternatives.
- As a witness to a crime, the victim may be subpoenaed and, if so, will be expected to testify truthfully.

Use of Victim Advocates⁷⁸

Contact with the victim may be initiated by direct referral from a police agency, a community agency or the Victim Information Guide, distributed when a police report is initiated. Victim advocates may also initiate contact from domestic violence reporting forms, generally within 72 hours of the report.⁷⁹ The advocate may interview the victim in person or over the telephone in order to determine the relationship between the parties, assess the situation for lethality, and determine victim needs. The following is a list of services that the victim advocate may be able to provide to the victim and her family:

- Create an individualized safety plan based upon information in the police report and from the victim.
- Make appropriate referrals, including contact with the TPO office, shelter, social service agencies, medical services or mental health providers. Other referrals may include law enforcement agencies, the prosecutor's office, and Nevada State Victims of Crime Compensation (to assist with medical costs not covered by insurance).

⁷⁸SOUTHERN NEVADA DOMESTIC VIOLENCE TASK FORCE, DOMESTIC VIOLENCE PROTOCOLS at 19 (1999); OFFICE OF THE CITY ATTORNEY, CITY OF LAS VEGAS, DOMESTIC VIOLENCE PROTOCOLS at 11 (1996).

⁷⁹This time frame is valid for southern Nevada agencies and may vary by location and availability of victim resources.

- Provide emergency transportation to criminal justice related and medical appointments; accompany the victim to court and the hospital, if necessary, and assist with protective order and compensation paperwork. Priority is given in the field to elderly or disabled victims of abuse.
- Provide bus tokens to assist victims with emergency transportation needs.
- Arrange for residential and vehicle lock replacement when no other financial resources are available to the victim.
- Act as a liaison between the victim and law enforcement, the courts and other related agencies. This may include interaction with a landlord or employer in order to increase the level of safety and lend credibility to the victim's need for support and understanding while in the midst of a domestic crisis.
- Provide training to law enforcement recruits and civic and community groups.

4.7.3 Service Issues

The victim should always be served notice in person by a member of the criminal justice agency. Service should never be made by mail as the perpetrator could intercept the notice. Thus, the prosecutor or law enforcement agency should obtain current or alternative contact information for the victim. Where personal service is impossible, telephonic service is a possible last resort.⁸⁰ However, care should be taken to avoid letting the perpetrator know of attempts to telephonically contact the victim.

4.7.4 No Contact Orders⁸¹

The victim, prosecutor or victim advocate may ask the court to impose a no-contact provision in any bail release where there is reason to believe that the perpetrator's presence in the home poses a threat to the victim's safety or the safety of other persons in the victim's household.⁸² Where a no-contact provision has been made a condition of the

⁸⁰See NEV.REV.STAT.ANN. 174.315(3) (Michie 1999).

⁸¹Adopted from MCGUIRE, *supra* note 1, at §3-20 to 3-22. See also §§5.3-5.11 *infra* (detailed discussion of civil protection orders available to victims of domestic violence).

⁸²See NEV. REV. STAT. ANN. §178.4851(4)(b) (Michie 1999) (pertaining to the release of a defendant on bail and requiring him to sign certain documentation prior to release, including that he will "comply with other conditions imposed by the court and stated in the document").

perpetrator's release, the prosecutor should communicate to the victim the seriousness of the order and that the prosecutor's office will not tolerate violations of the order. Specifically, the prosecutor should inform the victim that aiding and abetting violations of the no-contact order issued against the perpetrator can be grounds for a contempt charge and for revocation of the perpetrator's release.

The following is a model standard for the imposition of no-contact provisions for domestic violence crimes:

- Police officers should be urged to include a notation on the complaint requesting a no-contact condition of release, and should include in their affidavit adequate facts to support a probable cause showing that ordering the offender from the home is necessary.
- The prosecutor should communicate expeditiously to the court any request or need for protective conditions of release. This may be done by:
 - (1) Appearing personally at the initial appearance;
 - (2) Contacting the pre-trial investigator and making the request through the Division of Parole and Probation (Pre-Sentence Investigation); or
 - (3) Contacting the judge or magistrate before the initial appearance.
- The prosecutor should apply for a no-contact provision after the initial appearance by using the appropriate forms developed by the prosecutor's office.

4.7.5 Child Custody Arrangements

The prosecutor and/or advocate should not overlook the need to advise the victim or to provide the victim with assistance in dealing with child custody and visitation issues. The custody exchange situation is ripe for abuse, and children become a potential source of perpetrator control and further abuse. While child custody and visitation laws are outside the scope of this chapter, it should be noted that contact with the defendant during visitation exchanges is one of the most overlooked issues in domestic violence. Moreover, shared children provide the perpetrator with an additional source of power and control over the victim. Every effort should be made to ensure that the victim and her children are safe during the prosecution period and afterwards.

4.7.6 Victims' Rights

Notification

In general, victim notification procedures should include:⁸³

- Notification to the victim by telephone when charges are filed.
- Telephone or personal contact with the victim if additional information is necessary before a case will be filed.
- Telephone contact with the victim prior to trial dates in pending cases.
- Telephone contact informing the victim of the disposition of the domestic violence case.
- Telephone contact regarding the victim's right to restitution in a pending matter and any further court date at which restitution may be determined. The victim should also be informed of rights related to the State of Nevada Restitution Fund.

In addition, Nevada law provides for notification of victims under certain circumstances.

NRS 178.569:	Victim defined.
NRS 178.5692:	Protection of victim from harassment and during cooperation with an investigation.
NRS 178.5694:	Harassment of victim by defendant and notification of victim in certain circumstances.
NRS 178.5696:	Separate waiting areas to be provided for victims at court hearings.
NRS 178.5698:	Victim to be notified of release of defendant from confinement where victim requests to be notified in writing and provides contact information.

⁸³OFFICE OF THE CITY ATTORNEY, CITY OF LAS VEGAS, DOMESTIC VIOLENCE PROTOCOLS (1996).

Victim Impact Statements

Victims and/or their family members should be encouraged to provide victim impact statements during the penalty phase of a domestic violence trial. The opportunity can provide the victim with a sense of empowerment and allows the victim to communicate directly to the jury the reality of domestic violence outside the constraints of trial testimony and evidentiary burdens. Specifically, victim impact statements give the jury a picture of a real person who has suffered real harm at the hands of the perpetrator.

Compensation and Restitution Fund

Prosecutors or victim advocates should insure that victims of domestic violence are notified of their right to petition for victim assistance under the State of Nevada Restitution Fund.⁸⁴

4.7.7 Failure To Appear Problems⁸⁵

A prosecutor dealing with a reluctant victim witness faces four problems: (1) the victim who avoids subpoena service; (2) the victim who fails to obey a subpoena to appear; (3) the victim who recants or changes her story; and (4) the victim who the prosecutor has probable cause to believe has filed a false report of assault or other crimes. In deciding whether to file charges against the victim, the prosecutor should proceed on a case by case basis, keeping in mind the domestic violence dynamic and the goal of criminal justice intervention into domestic violence crimes.

When making a decision regarding proceeding against a reluctant victim for perjury, contempt, failure to appear, or filing a false police report, the prosecutor should remember that the perpetrator may be pressuring the victim and that incurring the wrath of the criminal justice agency – for example, by not appearing – may be preferable to incurring the wrath of the abusive partner. That is, the victim may be making what she views as a survival decision by not responding to a subpoena or by recanting. In addition, the prosecutor who decides to proceed against the victim, such as for failure to appear, may be acting in opposition to the goals of criminal justice intervention into domestic violence. Specifically, the prosecution of domestic violence empowers the victim by holding the perpetrator accountable for abusive actions. However, when the criminal justice entity sanctions the victim for having made a choice contrary to the prosecution, the victim runs the risk of being re-victimized by the system. Additionally, the victim who is sanctioned for failing to cooperate may be reluctant to involve law enforcement in any future incidents of domestic violence. It is important for the prosecutor to communicate that – whatever the victim's

⁸⁴See Chapter 7 (victim rights and services).

⁸⁵Adopted from MCGUIRE, *supra* note 1, §§5-14 to 5-15.

actions – the criminal justice system is available when and if the victim chooses to use it in the future.

The prosecutor's office may wish to consider adopting a formal policy regarding situations in which the victim is or becomes reluctant or recants. For example, following the adoption of mandatory arrest statutes, the agency may affirmatively assert that they will not drop or reduce a domestic violence charge to a lesser offense and, once subpoenaed, the victim will be required to come to court. If the victim fails to appear, an order to show cause may be filed with the court. However, the agency will not dismiss any domestic violence charges simply because a victim/witness fails to appear for trial.⁸⁶ If the case is not an obvious loss at trial, the law requires the prosecutor to conduct a trial, negotiate the case without a dismissal of the charge, or request a continuance.

Factors That Influence a Victim/Witness to Cooperate with the Prosecutor⁸⁷

The following is a list of factors that encourage a victim to cooperate with the prosecution of the domestic violence perpetrator:

- A victim who is contemplating or has taken steps toward separation or divorce is more likely to be eager to see the prosecution go forward. The distancing between the victim and the abusive partner that the prosecution creates may be a great help to the victim in the separation or divorce proceedings.
- If the victim's children have been harmed or threatened by the perpetrator, the victims may be more willing to help the prosecution. Many victims who have endured years of violence and keep returning to the abusive home will leave at the first hint that their children are also at risk.
- A victim may have tried a variety of alternatives to stop the violence, such

⁸⁶OFFICE OF THE CITY ATTORNEY, CITY OF LAS VEGAS, DOMESTIC VIOLENCE PROTOCOLS (1996). The City Attorney has adopted the position that a victim witness who fails to appear at a court hearing and who has been subpoenaed will be required to appear. However, if a victim witness fails to appear, the attorney requests a continuance, and attempts to locate the victim are made by investigators or advocates. If the victim is located, and the reason for not appearing lacks credibility, upon recommendation of the victim advocates, in lieu of or after a hearing upon an order to show cause, the victim may be required to go to a domestic violence education session in order to be made aware of the cycle of abuse and related behaviors. The victim witness is then given another chance to appear before the court before any actions are taken based on the initial failure to appear.

⁸⁷Adopted from MCGUIRE, *supra* note 1, at §§5-10 to 5-11.

as changing behavior, using marriage counseling, etc. The victim's readiness to view the criminal justice system as necessary to survival may be heightened if these efforts have failed.

- Realistic information about the criminal prosecution process and its delays, burdens of proof, probation, possibilities, may make the victim more willing to assist because of knowing what to expect and being able to plan accordingly.
- A victim who has good emotional and practical support – such as child care, time off from work, and transportation – may be more likely to see prosecution as a positive step.

4.8 TRIAL ISSUES⁸⁸

4.8.1 Theory of the Case⁸⁹

The theory of the case is the theme the prosecutor uses to develop the presentation of evidence to prove the elements and to successfully rebut any defenses. It is the unified theme that is presented to the jury throughout the course of the trial. Not every prosecutor will choose to use a theory of the case to present the evidence to the jury as each case will have issues unique to itself. However, the prosecutor may wish to weave in information about the criminal justice system and, specifically, domestic violence, throughout the course of the trial. The following are some suggestions that the prosecutor may want to consider when developing a theory or theme for the case:

- Domestic violence is a crime, not a family matter or private dispute between equal partners.
- The state, through the prosecutor, has an affirmative duty to intervene in domestic abuse assaults. Its responsibility extends to protecting people unwilling or unable to protect themselves.
- Persons who commit domestic assaults must be held accountable for their acts, and the criminal justice system must frequently intervene for assailants to be held accountable.

⁸⁸Adopted from MCGUIRE, *supra* note 1, at §§9-1 to 9-17.

⁸⁹*Id.*

- Domestic violence affects people beyond the relationship involved: children, employers, the health care system, future partners, family, friends and co-workers.
- Domestic violence is a complex social problem with criminal elements. The trial will focus only on the crime alleged to have been committed, not on the details of the victim - perpetrator relationship or the causes of the violence or abuse. Jurors will likely leave with many unanswered questions because such matters are beyond the scope of a criminal trial.

4.8.2 Preparation of Witnesses⁹⁰

The prosecutor and staff should be aware that witnesses may be unfamiliar with trial procedures and the criminal justice system in general. Prosecutors may want to contact witnesses early in the screening process to provide them with information about potential trial issues, important dates, and the role they will play in the proceedings. Early interviews should cover a brief review of the facts in order to set in the witnesses' minds the issues that may be covered at trial.

The actual pretrial preparatory interview should be conducted in person with a member of the prosecutorial staff. In addition to providing the witness with information about what will occur at the trial, where the various players will sit or stand, and what their functions are, the prosecutor may consider showing the witness the courtroom to ease anxieties and nervousness. The following is a list of items the prosecutor or his staff may wish to cover with witnesses in the preparatory interview:

- Thorough review of the content of direct examination. Practice of some direct examination questions is also recommended, particularly for witnesses who have never before given testimony.
- Review of witnesses' prior statements or depositions.
- Some "rules" about giving testimony: don't testify in narrative form; answer audibly; don't interrupt the questioner; listen to the question carefully and answer only what is asked; stop when a complete answer to the question has been given; what objections are; and how the witnesses should conduct themselves during them.

⁹⁰Adopted from MCGUIRE, *supra* note 1, at §§9-1 to 9-17.

- Review of any exhibits that the witness will be asked to view and comment on during the trial, including all foundational requirements.
- Preparation of diagrams or maps which will be used as exhibits or practice making those which will be created during the trial.
- Anticipation of areas that will be covered in cross-examination. Witnesses are almost always apprehensive about cross-examinations, and helping them prepare can alleviate much of their anxiety. Include impeachment by prior statement, prior convictions, bias or prejudice.

4.8.3 Voir Dire Issues and Jury Selection⁹¹

Voir dire is the process by which the prosecutor attempts to distinguish one group from another and to pick twelve persons who can be convinced that the state's presentation is the correct one. Generally, the prosecutor wants to pick people who can work together, who will be able to make decisions, who will use common sense, and who believe that persons should be held accountable for their actions. Because domestic violence crimes present unique issues and attitudes to potential jurors, the prosecutor should, if possible, use voir dire as an opportunity to attempt to dispel myths and stereotypes about domestic violence and victims of the crime. This strategy offers the prosecutor an early opportunity to begin to overcome any weaknesses in the state's case.

As with any part of the trial process, the prosecutor should strive to appear composed and prepared during voir dire, while keeping in mind that potential jurors may approach the process of voir dire with a certain amount of apprehension. Where a potential juror evinces some discomfort with public speaking or answering questions about domestic violence, such as reasons for the juror's discomfort or possible past experience of domestic violence, the prosecutor may wish to establish some type of procedure for the potential juror to speak with the attorneys and the court in private.

Each prosecutor should attempt to identify major issues which will tend to influence the jury one way or the other and then select individuals that will react favorably to the prosecution's case. The prosecutor may develop broad generalizations about what types of jurors are most favorable for certain cases, but should take care not to rely too heavily on those generalizations, given the uniqueness of each potential juror.

4.8.4 Opening Statements⁹²

⁹¹Adopted from MCGUIRE, *supra* note 1, at §§9-1 to 9-17.

⁹²*Id.*

The opening statement should tell the jury a story and build on themes of empathy and accountability. The prosecutor may wish to do the following in the opening statement:

- Disclose any problems that will appear in the course of the trial in order to avoid juror surprise.
- Identify the “players,” including any children.
- Include statements made by the victims, other witnesses and the defendant in the course of telling the story to the jurors.
- Close on a strong point in the case and avoid bringing up any weak points in the case. (Medical evidence is usually a strong closing point.)

4.8.5 Presentation of Evidence⁹³

Generally, the order in which the evidence is presented is critical to the success of the case. Primacy and recency theories play a crucial role in how jurors respond to and remember the evidence. Thus, the prosecutor should strive to start and end on a strong note. The prosecutor may wish to consider the following suggestions when presenting the case before the jury:

- Do not put the victim on first unless the victim is a convincing witness. The prosecutor may consider putting the victim on the stand in the middle of the victim case in chief, preferably with a strong witness before and after. Where permissible, the prosecutor may consider putting an expert on domestic violence on the stand immediately after the victim in order to explain the dynamics of domestic abuse and help the jury understand why the victim testified as she did. This may be especially useful where a victim is subject to credibility attacks or has given a different story.
- Never put the victim on first if there is any possibility that the victim will lie (or has lied in the past) or recant.
- Present the case so that the witnesses tell the story but don’t get locked into a chronological presentation. Strive for impact and persuasion in presentation of testimony.

⁹³*Id.*

- Present first any evidence that clearly demonstrates that an assault occurred. This way, by the time the jury hears any weaknesses in the case-in-chief, they will have less impact. The prosecutor may consider starting the case with the testimony of medical personnel - someone “unbiased” who can describe the assault and injuries.
- Where pictures are available, put the witness testifying about the related injuries on the stand early so the jury can hear about the injuries. Publish the pictures to the jury, but save the pictures for presentation until the final argument.
- The prosecutor may wish to ask the court prior to trial for permission to have the investigating officer, who might otherwise be subject to witness exclusion, sit at the counsel table during trial in order that he or she may assist the prosecutor by pointing out any discrepancies or possible lies and providing additional investigation information.

Reluctant or Hostile Victim Witness

Frequently, victims are reluctant to testify against their domestic partners. Recanting victims often lack sincerity and credibility when they testify. However, they are better than a cooperative victim who lacks credibility. The prosecutor must be prepared to question a hostile witness or proceed under the theory of victimless prosecution and the independent corroboration standard.⁹⁴

NRS 115(4)⁹⁵ permits leading questions of a witness who identifies with an adverse party. Hostile victims should be immediately identified to the court through their testimony as to current relationship with the perpetrator or any financial or emotional dependence on the perpetrator, and common bonds such as a child in common, joint loans or leases, and other evidence of an ongoing relationship. Use a hostile victim to prove the domestic relationship, identify the defendant (especially when he was “gone on arrival”), establish the court’s jurisdiction, provide foundation for admissible hearsay (principally the time between the event and statements and the fact that the victim was upset), and to narrow the issues. Through kindness and tact, get the uncontested or apparently unimportant matters from the victim before moving into “hot button” issues over which she will be seen as critical to your case. Contrast what was important to the victim on the day in question (personal and children’s safety) with what is important to the victim on the day of trial (their relationship). Point out any lack of cooperation to date. Find at least two or three areas

⁹⁴See §4.4.1, *supra* (screening standards and use of independent corroboration).

⁹⁵See NEV.REV.STAT.ANN. 115(4) (Michie 1999).

where the victim's testimony

is not credible and obtain testimony that will assist you in coloring the victim's credibility and the falsity of obvious misrepresentations.

Use of Child Witnesses and Issues of Competency⁹⁶

Whether or not to use child witnesses who saw the actual assault or saw their parent after the assault is a difficult question that a prosecutor must carefully consider. Children who witnessed the assault can be powerful witnesses but can also be traumatized by the discovery process and courtroom proceedings. In addition, children may feel that they need to take the side of one parent or the other, and they are highly susceptible to the pressure to please.

The prosecutor should endeavor to inquire into the availability of any children who witnessed the assault against their parent or saw their parent immediately after the assault and determine what they saw and any biases they may have against either parent. Under Nevada law, persons of all ages are competent to testify.⁹⁷ Witnesses are required to have personal knowledge of the matter at issue in the court, or if they do not have personal knowledge, they must be qualified as experts.⁹⁸ However, when the witness is a child under legal age, it is the responsibility of the judge to question the child to determine whether the individual is capable of testifying in court.⁹⁹ The primary purpose of the questioning is to assess (1) the individual's capacity to understand the difference between honesty and dishonesty, right and wrong, truth and falsity; and (2) the intelligence level of the individual.¹⁰⁰ When questioning children, asking leading questions is considered appropriate for both the judge and counsel.¹⁰¹

4.8.6 Cross Examination of Defense Witnesses¹⁰²

The two primary goals of cross-examination are to affirm or corroborate the state's case, and to discredit the defendant. Rarely will the prosecutor be able to effectively cross-examine the witness by simply responding to direct testimony. Thus, it is critical that the prosecutor be prepared and have mapped out potential defenses to the domestic violence incident and a strategy for destroying such a defense. This preparation should begin as early as when the case was screened for prosecution. It should continue through the case subpoena issuance and be deliberated on throughout the pretrial phase. By the time cross-

⁹⁶Adopted from MCGUIRE, *supra* note 1, §§9-1 to 9-17.

⁹⁷NEV. REV. STAT. ANN. §50.015 (Michie 1999).

⁹⁸*Id.* at §50.025 (Michie 1999).

⁹⁹See NEVADA JUDGES ASS'N., *supra* note 53, at §11-1 to 11-5.

¹⁰⁰*Id.*

¹⁰¹*Id.*

¹⁰²Adopted from MCGUIRE, *supra* note 1, at §§9-1 to 9-17.

examination takes place, the prosecutor should

have the closing argument mapped out so that the facts necessary to present the desired closing are established during trial.

The following lists potential domestic violence defenses:

- It was an accident (e.g., the victim tripped, fell, etc).
- The victim provoked me by _____.¹⁰³
- We were arguing and I was holding the victim. The victim got hurt by trying to pull away from me.
- The victim threatened me, and I was just trying to protect myself (or the victim had a weapon).
- Someone else beat the victim.

Cross-Examination of Character Witnesses¹⁰⁴

There are three general approaches to damaging the testimony of witnesses for defendants who testify to their good character. They are summarized below.

- (1) **Lack of Personal Knowledge:** Establish early in the cross-examination that the witness was not present at the time of the alleged assault and, therefore, has no personal knowledge whether the event took place as alleged. When a witness acknowledges this fact, the prosecutor can argue during closing that people act out of character at times, and that uncharacteristic behavior would surprise even our closest friends.
- (2) **Challenge the Reliability of the Witness's Opinion:** This requires prior investigation on the part of the prosecution. Because character witnesses can only testify as to their opinion about the truthfulness or untruthfulness of the defendant, the defendant will be required to lay the proper foundation to establish this type of knowledge (the basis for the opinion). The prosecutor with sufficient time to investigate the background of the witness may be able to challenge the foundational requirements set by the

¹⁰³This is not a defense per se. It may be an attempt at self-defense, defense of others or defense of property. The prosecutor should be well-versed in the distinctions and armed with case law which illustrates the lines between valid and invalid defenses.

¹⁰⁴Adopted from MCGUIRE, *supra* note 1, at §§9-1 to 9-17.

defendant – that is, the witness does not know the defendant well enough to have formed a reliable opinion of him. Challenges such as this can be made during the voir dire of the defense witness before the witness is allowed to give testimony. Even if the testimony is allowed, a question is raised about the basis for the testimony, and this lessens its impact on the jury.

- (3) **Contradict the Defendant’s Good Behavior:** If the prosecutor has been able to discover evidence of the defendant’s relevant behavior that would tend to contradict the witness’s testimony, the prosecutor can ask the witness on cross-examination if the witness is familiar with specific instances of the defendant’s behavior. If the question is followed by asking the witness whether knowing about that conduct now affects the witness’s opinion of the defendant’s reputation, the witness’s testimony is in trouble no matter what the response.

Cross-Examination of the Defendant¹⁰⁵

The jury will want to hear what the defendant has to say about the incident. It is, therefore, critical that the prosecutor has a persuasive cross-examination that discredits the defendant’s testimony. The state’s questioning should focus on affirming the state’s case and destroying the defendant’s credibility. The following questions are designed to get the defendant to answer in the affirmative, thus confirming as many points of the victim’s testimony as possible:

- You recall the events of (date)?
- You were at the house, right?
- Your partner was at the house, right?
- The children were at the house, right?
- That’s also what your partner testified, isn’t it?
- You and your partner had an argument, right?
- You were arguing about your drinking, right?
- That’s what your partner said, too, isn’t it?
- Your partner’s telling the truth about that, right?
- Your partner was angry because you stopped at the bar on the way home, right?
- You did stop at the bar, didn’t you?
- Your partner’s telling the truth about that, too?

¹⁰⁵Adopted from MCGUIRE, *supra* note 1, §§9-1 to 9-17.

This technique forces the defendant to endorse as many facts of the state's case as possible and the victim's credibility, as well. If the prosecutor can get the defendant to admit to physical contact with the victim, the defendant may defend the contact or seek to minimize it. For example, the defendant may state that the victim was in the way and had to be moved "out of the way," and that is how the injury occurred. The prosecutor should commit the defendant to the defendant's own account that the injuries to the victim occurred at that time and no other time. Once this is established, the prosecutor can ask the defendant why the specific actions were taken. For example:

- The injury was self-inflicted by the victim to get custody of the kids or to get the defendant arrested
- I had to protect the victim from self-inflicted harm. The victim was suicidal, drunk and near the balcony or stairs, wanting to engage in drug or prostitution, or disturbing the neighbors. I was just calming the victim down;
- Did you think that was necessary?
- Would you do it again?

An affirmative answer to the last question can bind the defendant and label him as a multiple offender. However, if the defendant answers in the negative, the prosecutor can still argue at closing that the defendant knows that what he did was wrong. If possible, ask a hypothetical which makes another person the victim's perpetrator and the defendant the protector. For example: "What if you and your partner were at a party and someone gets into an argument and pushes your partner aside?" "Do you think that would have been necessary?" "What if your partner was hurt in the process?" "Do you think that the force used would have been necessary?"

4.9.7 Defenses¹⁰⁶

The two principal defenses asserted by defendants are summarized below. The prosecutor's attack on these defenses demonstrates that there is no basis in law or fact for the claims of self-defense or provocation.

Self-Defense

Self-defense is a risky strategy for defendants because they must admit the fact of the injuries and that they caused them, while at the same time arguing that they were justified

¹⁰⁶Adopted from MCGUIRE, *supra* note 1, at §9-1 to 9-17.

in acting in that manner. Self-defense claims are vulnerable to the following:

- Whether there was any risk of injury or risk to life or safety.
- Whether force was necessary to avoid the risk.
- Whether the force used was reasonable.

The prosecutor should attempt to destroy the claim of self-defense at the earliest point possible. The prosecutor may do this by demonstrating that there was no risk of harm to the defendant, by demonstrating the size and strength disparity between the victim and the defendant, or by showing that the defendant never had cause to fear the victim in the past and, if not afraid in the past, why was he fearful on this occasion.¹⁰⁷

The following areas of inquiry may be useful where the defendant claims self-defense:

- The defendant's consumption of drugs or alcohol
- The effect of alcohol on the defendant's perceptions, memory or judgment
- The good times that the defendant and the victim had that same day up to as close to the time of the argument as possible (including any kissing and hugging)
- The good times that they had planned for the near future
- What the defendant likes most about the victim, and especially what the victim was not that particular day, such as a "good cook," when dinner was not ready on time
- The size and/or age differential between the defendant and the victim
- Any special permanent or temporary handicap the victim had
- What they argued about – the defendant was mad at the victim for something done, not done, or she did not do, or "won't shut up about"
- The victim's lack of injury prior to the argument
- The environment in which the argument took place
 - plenty of room for the defendant to retreat if or when threatened
 - room for the defendant to stay more than arm's length
 - room available to retreat into, lock victim out, and call 911
 - cornered the victim
 - many items for possible use against the victim
 - sufficient lighting to see the victim had no weapons
 - near enough to door or wall for neighbors to hear screaming and threats
 - furniture around to tip over or otherwise use as an obstruction if the victim advanced on the defendant
 - pillows of other soft material to use as a buffer
 - no family or close friends around – if there had been and the

¹⁰⁷The prosecutor may be reluctant to enter into areas involving victim's prior bad acts. If, however, the perpetrator/defendant opens the door to the victim's prior bad acts, the prosecutor can hold the defendant to compliance with the rules of evidence concerning character and make the allegations seem extreme. To highlight indicia of a lack of self-defense, the court's attention should be drawn to victim's reactive actions and the perpetrator's proactive actions.

victim acted the same, the defendant would have reacted differently

- Possibility of calling witnesses into the room in case of the argument escalating into physical contact
- Power and control mechanisms. Who writes the bills. Who has the final say in major decisions. Who says what company comes over. Who decided the victim could not work or that the victim would work and the defendant would not. The defendant having to okay any “questionable” clothing. The victim checking in with the defendant when running late. The defendant is embarrassed sitting in the passenger seat when the victim drives.
- Deference by the victim: The victim likes the defendant to take control and make all of the decisions, likes to cook and have a clean house for the defendant, and understands the defendant’s need to unwind. If the defendant wants sex, it is the victim’s duty to give in, even when not feeling like it.

Provocation

The claim of provocation occurs when the defendant asserts that the victim provoked the attack. Although altercations involving verbal provocation by the victim may present the prosecutor with less difficulty, cases in which the victim physically “started it” may present greater difficulty. The jury may find it hard to hold the defendant accountable for responding to a physical confrontation unless the prosecutor can succeed in educating the jury to the idea that violence is an inappropriate response in all but the most extreme cases. These kinds of cases can be especially difficult if the victim is not very likeable or there is an extended history of violence.

The prosecutor may try presenting the victim as a person whom society sees as in need of special protection. If the jury sees the victim as a rational adult capable of making choices, they may be more willing to hold the victim accountable for taking independent action. However, if they see the victim as in need of special protection, they may be more willing to excuse any violence on the victim’s part and hold the defendant accountable for taking advantage of the victim’s weakness. Expert testimony on the dynamics associated with domestic violence can be useful and is probably necessary when the victim initiated physical contact. Whether provocation or self-defense, only *necessary and reasonable* use of force is allowed when responding to another’s immediately preceding or imminent use of force. It may be helpful to analogize to a security guard or police officer (even when cross-examining

the defendant) and ask if one would think that such a person using the same response would be acting out of necessity and acting reasonably.

4.8.8 Closing Argument

The closing argument is the prosecutor's opportunity to play out the theme or theory that was presented to the jury. Possible themes include the defendant's control of the victim, the need to protect the victim and the children, protecting the victim from misguided judgments, helping to make the family healthy (where the incident is a first and minor offense) and getting the defendant's anger under control). The prosecutor should remind the jury of the importance that the criminal justice system respond to family violence. The use of mandatory arrest can be used to demonstrate the legislature's intent in this regard. The prosecutor should not simply repeat the evidence, but should mention critical pieces of evidence at least once during the closing argument. The prosecutor should also discuss the multiple implications of pieces of evidence where applicable. This gives the jury a thumbnail sketch of the state's analysis, which adds up to a guilty verdict, so that they do not have to start from scratch when they enter into deliberations. As previously stated, the prosecutor should have a closing argument prepared or mapped out early on for all case preparation should be directed toward validation of the points to be made in the closing argument.

4.9 EVIDENTIARY ISSUES

Evidentiary issues present the most crucial aspect of victimless prosecution. As in homicide trials where deceased victims cannot speak on their own behalf, the prosecutor must be able to rely on the adequacy of the evidence in a domestic violence trial to prove the elements of the crime in the absence of victim testimony or cooperation.

The following provides a brief synopsis of evidentiary issues particularly relevant to the prosecution of domestic violence crimes, especially where the prosecutor is unable to rely on victim assistance during the trial. Nevada case law is cited where it speaks to a particular issue. However, the listing is not a complete review of Nevada law on the specific issue discussed. Prosecutors and law clerks are encouraged to make a thorough substantive review of the law in order to insure that they are using the most up-to-date case law and statutory authority. Nevada's rules of evidence are codified in Title 4 of the Nevada Revised Statutes.¹⁰⁸

¹⁰⁸NEV. REV. STAT. ANN. §§47 - 56 (Michie 2000).

4.9.1 Character and Conduct Evidence Generally

Character and conduct evidence can be of particular importance in a domestic violence trial due to the nature of the crime and the relationship of the parties.¹⁰⁹ Specifically, the perpetrator and victim will have extensive knowledge of the other's character and past conduct because of their relationship.¹¹⁰ Prosecutors may have to consider the admissibility of prior charged or uncharged acts of domestic violence against the current victim or other witnesses.¹¹¹ Additionally, the defendant may seek to have admitted evidence of the victim's past conduct, such as mental health problems, lying, substance use or abuse, and past history of aggression, in order to provide support for a claim of self-defense, or the defendant may seek to have admitted the testimony of witnesses attesting to the defendant's own peaceful nature.¹¹²

Under Nevada law, "the use of specific conduct to show a propensity to commit the crime charged is clearly prohibited by [the] law and is commonly regarded as sufficient grounds for reversal."¹¹³ Thus, evidence of a person's character or character traits is not admissible to demonstrate that the person acted in conformity with the established "character" in the current case.¹¹⁴ In addition, the law prohibits the admission of other crimes, wrongs or acts to prove the character of the defendant or to show actions in conformity with the established "character."¹¹⁵

However, certain exceptions to the general rule exist. Evidence of character or character traits may be accepted if offered by the accused; and if so, character evidence may be offered by the prosecution to rebut that evidence.¹¹⁶ In addition, evidence of the character or trait of a victim may be offered by the accused, subject to NRS 48.045, 48.055, 50.085, 50.090, 50.095, other statutory restraints, and certain procedural requirements pertaining directly to the prior sexual conduct of a sexual assault victim, subject to rebuttal by the prosecution.¹¹⁷ Opinion evidence regarding the character of a witness offered to support or attack the witness's credibility may be admitted into evidence subject to a limitation pertaining to credibility challenges in sexual assault cases and restrictions related

¹⁰⁹McGUIRE, *supra* note 1, at §6-1.

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.*

¹¹³*Berner v. State*, 104 Nev. 695, 697, 765 P.2d 1144, 1146 (1988), *citing* NEV.REV.STAT.ANN. 48.045(1)(Michie 2000) (internal citations omitted).

¹¹⁴NEV. REV. STAT. ANN. §48.045 (Michie 2000).

¹¹⁵*Id.*, §48.045(2).

¹¹⁶*Id.*, §48.045(1)(a).

¹¹⁷*Id.*, §48.045(1)(b).

to truthfulness or untruthfulness.¹¹⁸ The law also provides an exception to the prohibition against the admission of evidence of other crimes, wrongs or acts. Specifically, such evidence may be admitted to provide proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.¹¹⁹ The most common application of this exception is discussed below.

Prior Bad Acts of Defendant

The following cases demonstrate the admissibility of prior uncharged bad acts of the defendant as applied under NRS 48.045(2).

Admissibility of Bad Act Evidence - The Three Step Process

- *Tinch v. State*, 113 Nev. 1170, 946 P.2d 1061 (1997), *modifying Berner v. State*, 104 Nev. 695, 765 P.2d 1144 (1988); *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

In order for a prior bad act of a defendant to be admissible, the trial court must determine, outside the presence of the jury, (1) whether the incident is relevant to the crime charged; (2) whether the [prior bad act] is proven by clear and convincing evidence; and (3) that the probative value of the evidence [of the prior bad act] is not substantially outweighed by the danger of unfair prejudice.¹²⁰ The hearing to admit evidence of prior bad acts is often referred to as a “*Petrocelli* hearing.”¹²¹ The court must note its finding on the admissibility of the prior bad act evidence on the record.¹²² The trial court’s ruling on the admissibility of prior bad act evidence will generally not be disturbed on appeal absent manifest error.¹²³

The *Tinch* Test As Applied¹²⁴

Under the first prong of the *Tinch* test, the prosecutor has the burden of establishing the special relevance of the bad act to a material fact in issue.¹²⁵ Evidence of a prior bad act

¹¹⁸*Id.*, §48.045(1)(c) (cross-referencing NEV. REV. STAT. ANN. §§50.090 and 50.085).

¹¹⁹*Id.*, §48.045(2).

¹²⁰*Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064 (1997).

¹²¹*See Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

¹²²*Armstrong v. State*, 110 Nev. 1322, 1323-24, 885 P.2d 600, 601 (1994); *Walker v. State*, 997 P.2d 803, 806 (Nev. 2000).

¹²³*Petrocelli*, 101 Nev. at 52, 692 P.2d at 508.

¹²⁴*See generally* Peter F. Carroll, *The Use of Bad Act Evidence in Criminal Prosecutions*, 57 APRI INTER ALIA 2 (1992).

¹²⁵*Id.* at 3.

will be admitted only if the prosecution shows independent, legitimate or special relevance on a material issue.¹²⁶ The potential special relevance is legislatively recognized on issues of motive, opportunity, intent, preparation, plan, knowledge, identity and absence of mistake or accident. However, this list is not exhaustive.¹²⁷ The prosecutor must also prove by clear and convincing evidence that the prior bad act occurred and that the defendant committed it.¹²⁸ In determining whether the bad act occurred, the trial court will look at objective issues such as whether the victim reported the act, whether there were corroborating witnesses, whether there was a conviction, and when the act occurred.¹²⁹ The prosecutor must also show that there is a sufficient need for such evidence. Probative value is a function of relevance, admissibility, weight and need of the evidence. In arguing a diminished probative value, defense attorneys naturally tend toward arguing insufficient relevance, admissibility and weight, and shy away from arguing insufficient need for the evidence because they would then be conceding the strength of the prosecutor's case. If the prosecutor meets his burden of production, the court will admit the evidence as having special relevance, and the burden then shifts to the defendant to show that the prior bad act evidence should be legally excluded.¹³⁰ Generally, the principal basis for exclusion of the evidence is substantial prejudice, but it may also be excluded as cumulative.¹³¹

Nevada does not expressly require notice to the adverse party of the intent to seek admission of prior bad act evidence, but some courts have required pre-trial notice in order to satisfy due process constraints.¹³² Automatic reversal is not required for failure to conduct a Petrocelli hearing on admission of prior bad acts evidence if (1) the record is sufficient to determine that the evidence is admissible under the test for bad acts evidence, or (2) when the results would have been the same if the trial court had not admitted the evidence. *See Chappell v. State*, 114 Nev. 1403, 972 P.2d 838 (1999). Prosecutors may wish to consider filing timely notice of intent to admit prior bad act evidence and identifying the theory of special relevance that may apply.¹³³ Upon admission of prior bad act evidence, the defendant or the court, *sua sponte*, may issue a limiting instruction to the jury on the use of the evidence.¹³⁴ Prosecutors should be wary of not making improper reference to the prior bad act evidence in opening or closing arguments, as bad act evidence is not admissible to show bad character. Thus, referring to the defendant as the "type", "kind" or "sort" of person who commits such acts is prohibited

¹²⁶*Id.*

¹²⁷*Id.* see also NEV.REV.STAT.ANN. §48.035 (Michie 1999).

¹²⁸*Id.*, citing *Berner v. State*, 104 Nev. 695, 698 765 P.2d 1144, 1146 (1988).

¹²⁹Carroll, *supra* note 131, at 3, citing *Beck v. State*, 105 Nev. 910, 784 P.2d 983 (1989).

¹³⁰*Id.*, citing *Berner*, 104 Nev. at 698, 765 P.2d at 1147.

¹³¹*Id.*, citing NEV. REV. STAT. ANN. §48.035(1) and (2).

¹³²*Id.* at 3.

¹³³*Id.* (internal citations omitted).

¹³⁴*Id.* (internal citations omitted).

and may lead to a mistrial.¹³⁵ In addition, reference to prior bad act evidence which has been excluded is grounds for a mistrial or reversal on appeal.¹³⁶

Nevada Case Law Examples - Admission of Prior Bad Act Evidence

- *Walker v. State*, 997 P.2d 803 (Nev. 2000).

The Nevada Supreme Court ruled that the district court erred in admitting evidence of the prior bad acts of the defendant wife who killed her husband following an argument. The decedent's son was allowed to testify that the defendant had, ten years prior to the murder, pointed a loaded weapon at the decedent while threatening to kill him. Additionally, the witness was allowed to testify that the defendant had, six years prior to the murder, pointed a rifle at the decedent after an argument. The defendant offered expert testimony that she was suffering from Battered Woman Syndrome (BWS) at the time of the killing. The son's testimony was presented in rebuttal, along with expert testimony that the defendant did not suffer from BWS.

The court held that the defendant's prior conduct differed significantly from the charged conduct because her prior acts did not involve the firing or attempted firing of a weapon at the decedent. The State was required to prove specific intent to establish first degree murder. Because the prior bad acts did not clearly establish an intent to kill but only showed an intent to threaten, the court ruled that the State failed to demonstrate the logical relevance of the prior acts to the defendant's intent to kill.¹³⁷

- *Hogan v. State*, 103 Nev. 212, 732 P.2d 422 (1987).

The Nevada Supreme Court found that a murder defendant's prior act of throwing the victim to the ground from shoulder height showed sufficient "ill will" against the victim to be admissible under NRS 48.045.

- *Buschauer v. State*, 106 Nev. 890, 804 P.2d 1046 (1990).

The Nevada Supreme Court reversed a six year sentence imposed for involuntary manslaughter with a deadly weapon due to the admission of prior bad act information in a victim impact statement.¹³⁸ The defendant entered a plea of guilty to involuntary

¹³⁵*Id.* at 4.

¹³⁶*Id.*, citing *Garner v. State*, 78 Nev. 366, 374 P.2d 525 (1962).

¹³⁷*Walker*, 997 P.2d at 807.

¹³⁸*Buschauer*, 106 Nev. at 896, 804 P.2d at 1050 (reversing sentence on two additional grounds and remanding for sentencing before a different judge).

manslaughter for the shooting death of his wife while playing “quick draw.” At the sentencing, the victim’s mother gave an oral victim impact statement pursuant to NRS 176.015(3). Defense counsel was not given prior notice of the contents of the statement, and the victim’s mother was not under oath and not subject to cross-examination. The statement made by the victim’s mother referred to several prior bad acts by the defendant, including that he had previously been jailed for spousal abuse in California, that the victim’s leg had previously been broken while the defendant was chasing her, that the defendant had tried to run the victim over with his truck, and that he had physically abused her.¹³⁹ In imposing the maximum available sentence, the district court referred to a “pattern of domestic violence.”¹⁴⁰

On appeal, the defendant contended that the statement given by the victim’s mother exceeded the scope of such statements as authorized under NRS 176.015(3) and violated his due process rights because it did not provide the required notice, oath or opportunity for cross-examination in connection with the victim impact statement.¹⁴¹ The court first held that the statute authorizes the victim to express, in a reasonable fashion, any views concerning the crime, the impact of the crime on the victim, the need for restitution, and the defendant.¹⁴² The court stated that “views” on the defendant clearly encompass opinions as to the defendant’s general character and that an assessment of general character usually turns in part on prior acts.¹⁴³ Thus, the victim impact statement may include reasonable discussion of prior acts of the defendant.¹⁴⁴

The court noted that the scope of due process depends on the scope of the victim impact statement.¹⁴⁵ Thus, where the victim impact statement refers only to the facts of the crime, the impact on the victim and the need for restitution, the victim must be sworn in, but cross-examination and prior notice of the contents of the statement will not normally be required.¹⁴⁶ However, if the victim impact statement significantly deviates from the facts established at trial and includes facts not previously raised, cross-examination and even a continuance prior to cross-examination, if requested, may be required.¹⁴⁷ If the latter situation occurs, the State should inform defense counsel that an impact statement will be offered, but it does not need to disclose the contents of the impact statement.¹⁴⁸

¹³⁹*Id.* at 891-92, 804 P.2d at 1047.

¹⁴⁰*Id.*

¹⁴¹*Id.* at 893, 804 P.2d at 1047-48.

¹⁴²*Bushauer*, 106 Nev. at 893, 804 P.2d at 1047-48.

¹⁴³*Id.*

¹⁴⁴*Id.*

¹⁴⁵*Id.*

¹⁴⁶*Id.* at 893-94, 804 P.2d at 1048.

¹⁴⁷*Id.*

¹⁴⁸*Id.*

In situations where the impact statement refers to any specific prior acts of the defendant, as in the present case, due process requires that the accuser be under oath, that there be an opportunity for cross-examination, and, most importantly, that the defendant be provided reasonable notice of the prior acts that the victim impact statement will include.¹⁴⁹ The court also stated that notice of the identity of the source of a hearsay statement as reported in the impact statement was an important component of the defendant's right to rebut information at sentencing.¹⁵⁰ However, the court did not bar the inclusion of hearsay statements in victim impact statements as they are also allowed in pre-sentence reports, provided that the defendant has the opportunity to rebut any such statements.¹⁵¹

The court concluded that the prosecutor would be required to ascertain from the victim and disclose to the defense the scope of the victim impact statement prior to sentencing and that this could be done when the prosecutor gives notice of the sentencing hearing pursuant to NRS 176.015(4).¹⁵² Where defense counsel is not given reasonable prior notice of an impact statement that refers to specific prior acts, the defendant will be entitled to a continuance to rebut the impact statement unless the court can disclaim any reliance on the prior act information when imposing sentence.¹⁵³

- *Bradley v. State*, 109 Nev. 1090, 864 P.2d 1272 (1993).

The Nevada Supreme Court upheld the admissibility of an expert's testimony that the nine year-old victim reported being beaten with a belt because it aided the expert in explaining the basis for her opinion about the mental condition and behavior of sexually assaulted children, and was not offered simply to show that the defendant acted in conformity with bad character.

Victim's Character

Pursuant to NRS 48.045(1)(b), the accused may be allowed to offer evidence of the character or trait of the victim, and the prosecution will have the opportunity to rebut the evidence.¹⁵⁴ The admission of character evidence of the victim where sexual assault has been alleged is subject to special limitations under this provision.¹⁵⁵ Character evidence

¹⁴⁹*Id.*, citing *Booth v. Maryland*, 482 U.S. 496, 107 S.Ct. 7529, 96 L.Ed.2d 440 (1987) (holding use of impact statements in capital cases unconstitutional unless defendant is given opportunity to rebut impact statement and opportunity to conduct cross-examination of witness).

¹⁵⁰*Buschauer*, 106 Nev. at 894, 804 P.2d at 1049.

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³*Id.*

¹⁵⁴NEV. REV. STAT. ANN. §48.045(1)(b) (Michie 2000).

¹⁵⁵*See Id.*, §§48.069 and 50.090 (Michie 2000).

is further limited under NRS 48.055 where proof of character is limited to testimony pertaining to the reputation of the person or to an opinion regarding the person.¹⁵⁶ If the character of a person is an essential element of a charge, claim or defense, proof of specific instances of the person's conduct may be admitted on either direct or cross-examination.¹⁵⁷

In a domestic violence case, the most common application of this type of evidence would be where the perpetrator asserts that he acted in self-defense,¹⁵⁸ that the victim was really the primary aggressor, and that evidence of the victim's violent or dangerous character should be admitted to prove that the victim acted in conformity with that character in the current case. The perpetrator also may assert a fear of being in imminent danger of substantial bodily harm. Specifically, the perpetrator's knowledge of the victim's prior violent acts is circumstantial evidence of the perpetrator's state of mind in the present case.¹⁵⁹

When the perpetrator seeks to introduce evidence of the victim's character or of specific instances of conduct, subject to the limitations of NRS 48.055, 48.045(3), and 50.085,¹⁶⁰ the prosecutor should always seek to have the admissibility of such evidence determined outside the presence of the jury.¹⁶¹ Furthermore, the prosecutor may want to file a motion in limine to exclude evidence that unfavorably portrays the victim when that evidence is not relevant to the case, such as evidence that the victim has a history of drug or alcohol abuse, whether or not such abuse is alleged at the time of the offense, or that the victim has a history of violent or aggressive behavior, but the defendant is not claiming self-defense.¹⁶² The prosecutor may also want to affirmatively seek to exclude evidence pertaining to the couple's relationship under the theory that the inclusion of such evidence would unduly prolong the trial.¹⁶³

¹⁵⁶*Id.*, §48.055 (Michie 2000) (on cross-examination, inquiry may be made into specific instances of conduct relevant to proof of character).

¹⁵⁷*Id.*, §48.055(2) (Michie 2000).

¹⁵⁸*See generally* MCGUIRE, *supra* note 1.

¹⁵⁹MCGUIRE, *supra* note 1, §6-4.

¹⁶⁰NEV. REV. STAT. ANN. §50.085 (Michie 1999) (witness credibility may be supported or attacked only as to opinion evidence relating to truthfulness or untruthfulness with specific limitations as to admission; evidence as to truthfulness or untruthfulness, based upon reputation, is not admissible; and specific instances of conduct, other than prior convictions, may not be proved by extrinsic evidence except where such testimony is relevant to truthfulness and may be inquired into on cross-examination).

¹⁶¹*See* MCGUIRE, *supra* note 1, §6-3.

¹⁶²*Id.*, §6-8.

¹⁶³*Id.*; *see also* NEV. REV. STAT. ANN. §48.035(2) (Michie 1999).

Nevada Case Law Examples - Victim Character Evidence

- *Petty v. State*, 997 P.2d 800 (Nev. 2000).¹⁶⁴

The Nevada Supreme Court reversed a conviction of first degree murder with the use of a deadly weapon and remanded for a new trial because the district court abused its discretion by prohibiting the defendant from presenting character evidence concerning the victim.¹⁶⁵ The court held that NRS 48.045(1)(b) permits the accused to present evidence of the character of a crime victim regardless of the accused's knowledge of the victim's character when the evidence tends to prove that the victim was the likely aggressor.¹⁶⁶ Pursuant to NRS 48.055(1), proof of character may be established by testimony as to reputation or in the form of an opinion.¹⁶⁷ However, the character of the victim may not be established by proof of specific acts.¹⁶⁸ The court concluded that in order to demonstrate the state of mind of the accused at the time of the commission of the offense for the purpose of establishing self-defense, specific acts which tended to show that the victim was a violent and dangerous person could be admitted, provided that the specific acts of violence of the victim were known or had been communicated to the accused.¹⁶⁹

Defendant's Character

As mentioned previously, the use of character evidence is not permitted to prove the propensity to commit a specific act.¹⁷⁰ The rationale for the prohibition is that the evidence would tend to prove a propensity to commit crime rather than the specific offense charged.¹⁷¹ However, a general exception exists when the defendant opens the door by presenting witnesses attesting to the defendant's general propensity for peacefulness.¹⁷²

4.9.2 Impeachment

NRS 50.075¹⁷³ states that the credibility of any witness may be attacked by any party, including the party calling the witness. NRS 50.085¹⁷⁴ limits the admission of character or

¹⁶⁴*Accord Burgeon v. State*, 102 Nev. 43, 714 P.2d 576 (1986).

¹⁶⁵*Petty v. State*, 997 P.2d 800, 800-801 (Nev. 2000).

¹⁶⁶*Id.* at 802, *citing Burgeon v. State*, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986).

¹⁶⁷*Id.* at 802.

¹⁶⁸*Burgeon*, 102 Nev. at 46, 714 P.2d at 578.

¹⁶⁹*Petty*, 997 P.2d at 802, *citing Burgeon*, 102 Nev. at 45-46, 714 P.2d at 578.

¹⁷⁰NEV. REV. STAT. ANN. §48.045 (Michie 1999).

¹⁷¹MCGUIRE, *supra* note 1, §6-1, *citing* FED. R. EVID. 404, Advisory Committee Note.

¹⁷²*See* NEV. REV. STAT. ANN. §48.045(1)(a) (Michie 1999).

¹⁷³*Id.* §50.075 (Michie 1999).

¹⁷⁴*Id.* §50.085 (Michie 1999).

conduct evidence to opinion evidence about the witness's truthfulness, but such opinions are admissible only after the introduction of evidence characterizing the witness as untruthful or otherwise impugning the witness's character.¹⁷⁵ Direct evidence regarding the reputation of the witness for truthfulness or untruthfulness is not admissible under Nevada law.¹⁷⁶ Nor can specific instances of conduct of the witness, other than conviction for a crime, be proved by extrinsic evidence for the purpose of attacking or supporting credibility.¹⁷⁷ However, specific instances of conduct may be admissible if they are relevant to the truthfulness of the witness.¹⁷⁸ Such information may be inquired about on cross-examination of the witness or on cross-examination of a witness who offers opinion testimony regarding another witness's truthfulness or untruthfulness.¹⁷⁹

Nevada Case Law Examples - Impeachment on Character or Conduct Evidence

- *Sterling v. State*, 108 Nev. 391, 834 P.2d 400 (1992).¹⁸⁰

The Nevada Supreme Court affirmed a conviction against a defendant who was charged with sexual abuse. The defendant appealed on various issues, including the district court's failure to allow him the opportunity to impeach the credibility of the victim by showing a motive to fabricate the allegations.¹⁸¹ The victim was a 12 year old female.¹⁸² On direct examination, the victim's mother was questioned regarding how well the defendant got along with the victim.¹⁸³ Defense counsel objected on the grounds that the question asked for improper character evidence concerning a trait other than truthfulness.¹⁸⁴ The Court held that NRS 50.085 was controlling and that merely contradicting the witness's version

¹⁷⁵*Id.* §50.085(1)(a) and (b) (Michie 1999).

¹⁷⁶*Id.* §50.085(2) (Michie 1999).

¹⁷⁷NEV. REV. STAT. ANN. §50.085(3) (Michie 1999).

¹⁷⁸*Id.*

¹⁷⁹*Id.* (subject to general limitations on the admission of relevant evidence, interrogation and limits imposed pursuant to NRS 50.090 regarding the previous sexual conduct of a victim.)

¹⁸⁰*Accord Daly v. State*, 99 Nev. 564, 571, 665 P.2d 798, 803 (1983). In *Daly*, the court noted that the accused may, in an effort to prove his innocence, seek to establish his good character. The proof offered, however, must be confined to particular traits of character that are relevant to the conduct charged. Evidence of the defendant's character trait of truthfulness is relevant in only three situations: (1) where the offense charged as a lie by the defendant is an element of the crime; (2) where the defendant has testified on his own behalf and his credibility has been attacked; and (3) where the truth of out-of-court statements by the defendant has been attacked. The mere fact that the defendant takes the stand does not give him the right to present character evidence supporting his veracity. Even contradiction of the testimony of the accused does not, per se, give him that right.

¹⁸¹*Sterling v. State*, 108 Nev. 391, 396, 834 P.2d 400, 403 (1992).

¹⁸²*Id.* at 391, 834 P.2d at 400.

¹⁸³*Id.* at 396, 834 P.2d at 403.

¹⁸⁴*Id.*

of the facts did not necessarily constitute an attack on the defendant's truthfulness which would justify the admission of evidence of the defendant's general reputation for truthfulness.¹⁸⁵

Impeachment Regarding Prior Convictions

Evidence that a witness has been convicted of a crime punishable by death or imprisonment for one year or more may be admitted to attack the credibility of that witness.¹⁸⁶ However, evidence of prior convictions is not admissible if: (1) ten years or more has elapsed since the witness was released from confinement or the expiration of the term of probation, parole or sentence, whichever is later;¹⁸⁷ (2) the witness has been pardoned;¹⁸⁸ or (3) the witness is a juvenile.¹⁸⁹ The pendency of an appeal of the conviction does not affect the admissibility of the evidence, and evidence pertaining to the appeal may be admitted.¹⁹⁰

Nevada Case Law Examples - Impeachment Regarding Prior Convictions

- *Owens v. State*, 96 Nev. 880, 620 P.2d 1236 (1980).

The Nevada Supreme Court affirmed the defendant's conviction for sexual assault, and the defendant appealed on numerous grounds including the admission of a prior felony conviction for possession of a stolen vehicle which occurred approximately one year prior to the current offense.¹⁹¹ The court held that evidence that a witness has been convicted of a felony is admissible for the purpose of attacking credibility pursuant to NRS 50.095(1) and that the decision to admit or exclude evidence of prior offenses is within the discretion of the trial court.¹⁹² Thus, the Court found no abuse of discretion.

- *Johnson v. State*, 82 Nev. 338, 418 P.2d 495 (1966).¹⁹³

The Nevada Supreme Court sustained a judgment denying the defendant's writ of habeas corpus on the grounds that he was unlawfully held because there was insufficient evidence presented at the preliminary hearing to constitute probable cause and that the justice of the

¹⁸⁵*Id.*

¹⁸⁶NEV. REV. STAT. ANN. §50.095(1) (Michie 1999).

¹⁸⁷*Id.* §50.095(2)(a) and (b) (Michie 1999).

¹⁸⁸*Id.* §50.095(3) (Michie 1999).

¹⁸⁹*Id.* §50.095(4) (Michie 1999).

¹⁹⁰*Id.* §50.095(5) (Michie 1999).

¹⁹¹*Owens v. State*, 96 Nev. 880, 884, 620 P.2d 1236, 1238-39 (1980).

¹⁹²*Id.*

¹⁹³*Accord Bushnell v. State*, 95 Nev. 570, 572, 599 P.2d 1038, 1039-40 (1979).

peace had precluded the defendant's counsel from cross-examining a witness for the state.¹⁹⁴ During the cross-examination of a witness, the state's attorney asked if the witness had ever been arrested.¹⁹⁵ The magistrate precluded the witness's answer to the question.¹⁹⁶ In upholding that decision, the court concluded that a witness's credibility may be attacked by showing his conviction for a felony but not by a mere arrest.¹⁹⁷

- *Staude v. State*, 112 Nev. 1, 908 P.2d 1373 (1996).

The Nevada Supreme Court affirmed the conviction of an inmate for the first-degree murder of a fellow inmate. The defendant asserted that the district court erred in admitting evidence of prior convictions for voluntary manslaughter, burglary and grand larceny which occurred nine years before the current offense.¹⁹⁸ The defendant asserted that his prior conviction for manslaughter should have been excluded because it was an assaultive crime which had only slight probative value in regard to veracity and was highly prejudicial because it paralleled the crime for which he was being tried.¹⁹⁹ However, the court held that the defendant failed to preserve the issue for appeal when he moved *in limine* to have the evidence excluded at a first trial but failed to renew the motion at a subsequent trial.²⁰⁰ The court held that a ruling on a motion *in limine* is advisory, not conclusive, and that a party must object at the time the evidence is sought to be introduced in order to preserve the objection for appellate review.²⁰¹

- *Harris v. State*, 106 Nev. 667, 799 P.2d 1104 (1990).

The Nevada Supreme Court reversed a conviction of first-degree murder with the use of a deadly weapon where it concluded that the district court erred, among other things, in refusing to give the defendant's requested jury instructions, and refusing to instruct the jury that evidence of the defendant's prior felony convictions could be considered only on the issue of his credibility and not as substantive proof of his guilt. The supreme court held that a defendant is entitled, upon request, to a jury instruction as to his theory of the case so long as there is some evidence to support it, no matter how weak or incredible.²⁰²

¹⁹⁴*Johnson v. State*, 82 Nev. 338, 339-40, 418 P.2d 495, 495-96 (1966).

¹⁹⁵*Id.* at 341, 418 P.2d at 496.

¹⁹⁶*Id.*

¹⁹⁷*Id.* at 342, 418 P.2d at 496-97.

¹⁹⁸*Staude v. State*, 112 Nev. 1, 5, 908 P.2d 1373, 1376 (1996).

¹⁹⁹*Id.*

²⁰⁰*Id.*

²⁰¹*Id.*

²⁰²*Harris v. State*, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990).

4.10.3 Privileges

Under Nevada law, privileges are expressly identified by statute. No person may refuse to be a witness in any matter or refuse to produce any object or writing or prevent another from doing the same.²⁰³

Spousal Privilege

As a general rule in Nevada, the spousal privilege is an absolute privilege that cannot be waived absent consent of the other spouse or meeting one of the exceptions.²⁰⁴ Exceptions to the spousal privilege rule include situations where a civil proceeding has been brought by or on behalf of one spouse against another, proceedings to commit a spouse or the property of a spouse under the control of another due to physical or mental condition, competency proceedings brought by or on behalf of one spouse, and proceedings in juvenile court pursuant to NRS chapter 62 and NRS 432B.410 and 532b.590.²⁰⁵ An additional exception applies in criminal proceedings involving bigamy, incest, or any crime related to the abandonment or non-support of a child,²⁰⁶ or any case in which one spouse who has been charged with a crime against a person, or the property, or child of either spouse, where the crime was committed before or during the marriage.

Nevada Case Law Examples

- *Foss v. State*, 92 Nev. 163, 547 P.2d 688 (1976), and *Constancio v. State*, 98 Nev. 22, 639 P.2d 547 (1982).

In order for communications between a husband and wife to be privileged, they must be confidential in nature. Thus, the mere fact that communications occurred between spouses does not make them privileged.²⁰⁷

- *Collins v. State*, 113 Nev. 1177, 946 P.2d 1055 (1997).

The Nevada Supreme Court affirmed judgments against the defendant for burglary and insurance fraud where he and his wife claimed they had been burglarized. Among other issues on appeal, the defendant asserted that the testimony of his wife regarding the

²⁰³NEV. REV. STAT. ANN. §49.015 (Michie 1999).

²⁰⁴*Id.* §49.295 (Michie 1999). *Accord Gallegos v. State*, 101 Nev. 782, 788, 711 P.2d 856, 860 (1985).

²⁰⁵*Id.* §49.295(2)(a) - (d) (Michie 1999).

²⁰⁶*Id.* §49.295(2) - (3) (Michie 1999) (the provisions in sub-section one of this statute do not apply to any criminal proceeding that took place before the spouses were legally married to each other).

²⁰⁷*Citing id.* §49.295.

defendant's prior history of physically abusing her was inadmissible. The court held that the wife's testimony was admissible and relevant to her credibility.

- *Franco v. State*, 109 Nev. 1229, 866 P.2d 247 (1993).

The Nevada Supreme Court reversed and remanded convictions of first degree murder against the defendants where the district court admitted several hearsay statements made by the wife of one of the defendants and the court improperly commented on the failure of the wife to testify at trial.²⁰⁸ During trial, the wife properly asserted her privilege not to testify in court, and the state marked and introduced into evidence a photo of the wife, who had been present in the courtroom, and was allowed to place the photo before the jury.²⁰⁹ The supreme court concluded that this act constituted a comment on the wife's assertion of spousal privilege and was prosecutorial misconduct although not reversible error.²¹⁰ The supreme court also held that the spousal privilege belongs to the testifying spouse and that a spouse does not waive the privilege by talking to police detectives during the investigation or by talking to family members about the alleged crime.²¹¹ The spousal privilege can only be waived by taking the stand and refusing to testify.²¹²

The court further held that the defendant could assert his privilege to prevent his wife from testifying about any statements he had made to her in reliance on the marital confidence, but he must prove that the statements were made in reliance on the privilege and were made to his spouse alone.²¹³ Lastly, the court concluded that the spousal privilege does not operate to preclude a spouse's hearsay statements offered at trial.²¹⁴ Hearsay statements are not "testimony" or "examination" and are not, therefore, reached by the spousal privilege.²¹⁵

Doctor-Patient Privilege

In Nevada, the doctor-patient privilege applies to all doctors of medicine, dentistry and osteopathy and also includes licensed psychologists.²¹⁶ Pursuant to NRS 49.215, all communications are presumed confidential if they are not intended to be disclosed to a

²⁰⁸*Accord Emerson v. State*, 98 Nev. 158, 163, 643 P.2d 1212, 1215 (1982) (regarding the impropriety of either judge or counsel commenting on exercise of privilege by witness).

²⁰⁹*Franco v. State*, 109 Nev. 1229, 1243, 866 P.2d 247, 256 (1993).

²¹⁰*Id.*

²¹¹*Id.* at 1243-44, 866 P.2d at 256.

²¹²*Id.*

²¹³*Id.* at 1244, 866 P.2d at 256.

²¹⁴*Id.*

²¹⁵*Id.*

²¹⁶NEV. REV. STAT. ANN. §49.215 (Michie 1999).

third party other than any of the following: those present to further the interests of the patient in consultation, examination or interview; persons reasonably necessary for the transmission of the communications; and persons participating in the diagnosis or treatment of the patient under the direction of a doctor, including members of the patient's family.²¹⁷ In addition, the doctor-patient privilege is the patient's privilege to assert, and this privilege may be claimed by the patient or the patient's guardian, conservator or personal representative.²¹⁸ The physician may claim the privilege on behalf of the patient only where the authority to claim the privilege is presumed and in the absence of evidence to the contrary.²¹⁹

Nevada Case Law Examples

- *State v. Depoister*, 21 Nev. 107, 26 P. 1000 (1891).

The Nevada Supreme Court affirmed a conviction of rape where the defendant appealed on multiple grounds, including the assertion that the doctor's testimony in the case was improperly admitted. The court concluded that consent for a physician to testify may be either express or implied, and he may be examined as a witness as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.²²⁰

- *State v. Fouquette*, 67 Nev. 505, 221 P.2d 404 (1950).

The defendant was convicted of first degree murder and sentenced to death. The defendant appealed the conviction on multiple grounds, including that the lower court committed prejudicial error by admitting the testimony of a physician who testified against the defendant as to treatment and statements made by the defendant which defendant asserted were subject to the doctor-patient privilege.²²¹ Affirming the conviction, the Nevada Supreme Court concluded that, in order for the privilege to apply, the doctor-patient relationship must exist at the time the communications were made.²²² The prohibition against testifying exists only as to information acquired in attending the patient, which was necessary to enable the physician to prescribe or act for the patient.²²³ The court also concluded that the privilege does not apply where the physician is employed for the sole purpose of determining the sanity of the defendant and not for diagnosis or

²¹⁷*Id.* §49.215(1)(a) - (c) (Michie 1999).

²¹⁸*Id.* §§49.225 and 49.235 (Michie 1999).

²¹⁹*Id.* §49.235(2) (Michie 1999).

²²⁰*State v. Depoister*, 21 Nev. 107, 25 P. 1000, 1001 (1891).

²²¹*State v. Fouquette*, 67 Nev. 505, 536, 221 P.2d 404, 420 (1950).

²²²*Id.* at 537, 221 P.2d at 421.

²²³*Id.* at 537, 221 P.2d at 421 (internal citations omitted).

treatment.²²⁴

Waiver of Privilege

Under Nevada law, a party may waive any of the privileges identified by statute through either voluntary disclosure or consent, properly obtained, to disclose any matter that is the subject of the privileged relationship.²²⁵ However, waiver does not apply where the disclosure is, itself, a privileged communication or where the disclosure is made to an interpreter merely to facilitate communication.²²⁶ Furthermore, evidence that a statement or other disclosure of a privileged matter is not admissible against the person holding the privilege if the disclosure was compelled erroneously or made without the opportunity to claim the privilege.²²⁷ Neither counsel nor the judge are permitted to comment on a claim of privileged status, and the jury is not permitted to draw any inferences from a claim of privilege.²²⁸ Where possible, claims of privilege should be made outside the presence of the jury. However, when the jury might draw an adverse inference from a claim of privilege, the party against whom the adverse inference might be drawn is entitled to a jury instruction regarding a claim of privilege.²²⁹

4.9.4 Medical Evidence

In addition to medical records and/or the testimony of medical and emergency service personnel, the prosecutor should insure that law enforcement personnel obtain any medical related evidence at the scene of the assault. Medical evidence may be most pertinent in domestic violence assaults that also include sexual assaults. For example, law enforcement officers and emergency medical personnel should complete a rape kit including collection of seminal fluid, vaginal and anal swabs, fingernail scrapings, and hair and fiber evidence on any victim who asserts an assault by a domestic partner.

Exceptions to Medical Evidence Privilege

NRS 49.245 details certain exceptions where medical evidence privileges do not exist.²³⁰ Included, among others, are any communications relevant to hospitalizing a patient for mental illness, communications made in the course of a court ordered examination, and

²²⁴*Id.* at 538, 221 P.2d at 421.

²²⁵NEV. REV. STAT. ANN. §49.385 (Michie 1999).

²²⁶*Id.* §49.385(2)(a) - (b) (Michie 1999). *See also id.* §49.027 (Michie 1999) (translators have privileged relationship when matter disclosed is merely to facilitate a privileged communication).

²²⁷*Id.* §49.395 (Michie 1999).

²²⁸*Id.* §49.405(1) (Michie 1999).

²²⁹*Id.* §49.405(2) - (3) (Michie 1999).

²³⁰NEV. REV. STAT. ANN. §49.245 (Michie 1999).

communications pertaining to written or hospital records relevant

to an issue of the condition of a patient where the condition is an element of a claim or defense.²³¹

4.9.5 Hearsay Exceptions²³²

Provided that judges follow the law, prosecutors should be comfortable with using exceptions to hearsay rules for two reasons. First, as domestic violence trials approach a perception of a “he said, she said” situation, the prosecutor may be able to have the victim’s contemporaneous statements admitted to bolster the victim’s trial account of the assault. Second, when the victim becomes unavailable or is a reluctant witness, the prosecutor may be able to avoid a directed verdict by admitting prior hearsay statements the victim made to the police, medical personnel and other witnesses. Often attorneys and their clients will appear for trial less prepared because they expect the case to be favorably negotiated or dismissed simply because the victim is recanting or unavailable. With adequate preparation from the point of case screening on convictions may be salvaged which might otherwise have been lost or “dumped” due to lack of victim cooperation.

The general provisions related to hearsay are listed below:²³³

- NRS 51.015: Definitions
- NRS 51.025: Declarant Defined
- NRS 51.035: Hearsay Defined
- NRS 51.045: Statement Defined
- NRS 51.055: Unavailable Witness Defined
- NRS 51.065: General Rule - hearsay inadmissible
- NRS 51.067: Hearsay within Hearsay Rule
- NRS 51.069: Credibility of Declarant

Certain hearsay exceptions are particularly relevant to domestic violence prosecutions. These exceptions are: excited utterances, present sense impressions, statements made for medical diagnosis or treatment, and existing mental, emotional or physical condition, each of which is discussed below. The statements themselves are routinely considered when evaluating whether adequate foundation exists. See NRS 47.060(2), which provides that a judge reviewing a preliminary question of admissibility may consider anything within Title 4 except for privileged matters. See also the relevant

²³¹*Id.* §49.245(3) (Michie 1999).

²³²*Adopted from* MCGUIRE, *supra* note 1, §7.3(a) - (c).

²³³*See also* NEV. REV. STAT. ANN. §§51.075 - 51.305 (Michie 1999) (Exceptions - Where Availability of Declarant is Immaterial) and §§51.315 - 51.355 (Exceptions - Declarant Unavailable).

case law, discussed below, which considers the content of the statements themselves to determine whether the statement qualifies as admissible hearsay.

Excited Utterance - NRS 51.095

Statements related to a startling event are admissible as an exception to the general hearsay rule if the statements are made while the declarant was under the stress and excitement caused by the event.²³⁴ The rationale for the exception is the belief that a statement made by a person under stress, with insufficient time for deliberation or reflection, is trustworthy.²³⁵

Nevada Case Law Examples

- *Browne v. State*, 113 Nev. 305, 933 P.2d 187 (1997).

The Nevada Supreme Court affirmed a first degree murder conviction of the defendant where he beat his wife to death with a baseball bat. The defendant appealed the conviction on numerous grounds, including the admission of statements by the victim to her father that she planned to leave the defendant and was afraid that he was going to kill her. The court concluded that where the record did not indicate the timing of the event precipitating the victim's fear, the statements were not admissible under the excited utterance exception.²³⁶ Further, the court stated that the timing of the statement – immediately following the precipitating event – is often a determining factor for the admission of a statement under the excited utterance exception.²³⁷ Thus, the victim's statements were improperly admitted, but the admission did not warrant overturning the defendant's conviction.²³⁸

The timing between the "event" and the statement will vary based upon how narrowly or broadly the "event" is defined. Prosecutors should argue for the broadest definition of the "event" possible – not simply the slap or push, but the preceding argument, the victim's subsequent flight, waiting for police intervention and assistance, continued fear of retaliation. Similarly, the more prolonged the event, the more extended the stress associated with the event.

- *Hogan v. State*, 103 Nev. 21, 732 P.2d 422 (1987).

²³⁴*Id.* §51.095 (Michie 1999).

²³⁵MCGUIRE, *supra* note 1, §7.3(a).

²³⁶*Browne v. State*, 113 Nev. 305, 313, 933 P.2d 187, 192 (1997).

²³⁷*Id.*

²³⁸*Id.*

The Nevada Supreme Court affirmed a conviction of first degree murder and attempted murder where defendant shot and killed his female companion and also attempted to kill the victim's teenage daughter. The defendant asserted that the district court improperly admitted the decedent's statements to others that the defendant had threatened to kill her.²³⁹ One statement was made just after the defendant threatened her, and the second statement was made an hour and a half after the defendant threatened her.²⁴⁰ In each case, the victim was frightened, shaking, nervous, and crying.²⁴¹ The court held that the testimony was properly admitted as an excited utterance exception to the general hearsay rule.²⁴²

- *Dearing v. State*, 100 Nev. 590, 691 P.2d 419 (1984).

The Nevada Supreme Court affirmed a conviction of sexual assault and lewdness. The defendant asserted on appeal that the testimony of the victim's father repeating her version of the assault was improper, where the victim's recitation occurred only minutes after the assault, and the victim was agitated and nervous.²⁴³ Additionally, the defendant asserted that the district court improperly admitted the testimony of a detective who interviewed the victim an hour and a half after the assault where the victim appeared nervous and upset.²⁴⁴ In both instances, the supreme court concluded that admission of the statements was proper under the excited utterances exception to the general hearsay rule.

Present Sense Impressions - NRS 51.085

Statements describing or explaining an event or condition while the declarant is perceiving the event or condition, or immediately after perceiving the event or condition, are admissible as an exception to the general hearsay rule.²⁴⁵ Note: Once again, the definition of the event or condition is critical to a determination of whether the statement came "while perceiving" or "immediately after" the event or condition. The broader the definition, the shorter the time between the two. Prosecutors may become so focused on the "event" that they ignore the "condition" (i.e., property damage, injuries, pain, fear of return or retaliation.) described or explained in the statement.

²³⁹*Hogan v. State*, 103 Nev. 21, 23, 732 P.2d 422, 423 (1987).

²⁴⁰*Id.*

²⁴¹*Id.*

²⁴²*Id.*

²⁴³*Dearing v. State*, 100 Nev. 590, 592, 691 P.2d 419, 420 (1984).

²⁴⁴*Id.* at 591, 691 P.2d at 421.

²⁴⁵NEV. REV. STAT. ANN. §51.085 (Michie 1999).

Nevada Case Law Examples

- *Browne v. State*, 113 Nev. 305, 933 P.2d 187 (1997).

As noted above, in this case the Nevada Supreme Court affirmed a conviction for first degree murder where defendant beat his wife to death with a baseball bat. The defendant contended that the district court improperly admitted statements made by the victim's father regarding a conversation he had with the victim a few days prior to her death wherein the victim stated that she was planning to leave the defendant and was afraid he was going to kill her.²⁴⁶ The supreme court concluded that the district court improperly admitted the prior statements under the present sense exception.²⁴⁷ The supreme court held that the policy for admitting present sense impressions is that the statements are more trustworthy if made contemporaneously with the event described and that the statements at issue did not serve that policy.²⁴⁸ The court also ruled that out-of-court statements may be used as a foundation for a non-hearsay purpose as long as the substance of the statements is not revealed to the jury.²⁴⁹

Statements Made for Medical Diagnosis or Treatment - NRS 51.115

If victims of domestic violence assaults received medical treatment or care, the testimony of medical personnel regarding victim statements may be admissible.²⁵⁰ The exception to the general hearsay rule applies to statements made about a past or present medical condition, symptoms, pain or cause of injury or condition where the statements are reasonably pertinent to diagnosis or treatment.²⁵¹

The Nevada Supreme Court has held that mental evaluations made by licensed psychologists for the purpose of determining the sexual abuse of a child were more in the nature of investigatory sessions and not statements made to a health care professional for the purpose of medical treatment.²⁵² The court has also indicated that the purpose of admitting evidence under the exception is that such statements are reliable because the patient would not lie or deceive a physician when describing a current condition or discomfort.²⁵³ Thus, the reliability of such statements exists only when the patient

²⁴⁶*Browne v. State*, 113 Nev. 305, 312, 933 P.3d 187, 191 (1997).

²⁴⁷*Id.*

²⁴⁸*Id.* (internal citations omitted.)

²⁴⁹*Id.*

²⁵⁰MCGUIRE, *supra* note 1, §7.3(c).

²⁵¹*Id.* See NEV. REV. STAT. ANN. §51.115 (Michie 1999).

²⁵²*Felix v. State*, 109 Nev. 151, 849 P.2d 220 (1993) (noting that this exception does not generally extend to unlicensed health care providers).

²⁵³*Id.*

understands the need to tell the truth, and the health information given is necessary for assisting or treating the patient.²⁵⁴ In addition, the person seeking the admission of the statements must prove, directly or indirectly, that the patient understood the need to speak truthfully and that the statements were reasonably necessary for the treatment or diagnosis of the patient.²⁵⁵

- *Felix v. State*, 109 Nev. 151, 849 P.2d 220 (Nev. 1993).

In a case involving allegations of child sexual abuse, the Nevada Supreme Court delineated the parameters of NRS 51.115. The court held that statements made to a psychologist by the alleged victim of the sexual abuse were inadmissible under NRS 51.115 where the interview between the psychologist and the alleged victim was requested by the prosecuting attorney and the psychologist reported back to the attorney following the interview. Sessions with a psychologist that are more in the nature of investigatory sessions to confirm alleged abuse are not statements made for the purpose of medical diagnosis or treatment. The court further held that the reliability of statements made to health care providers exists only when the patient understands the need to tell the truth and the information given is necessary for assisting and treating the patient, and that the proponent of the statements has the burden of establishing these facts. The exception for statements made to obtain mental health treatment applies only to licensed psychologists and psychiatrists and generally will not be extended to other therapists or family counselors. Moreover, allowing the psychologist or psychiatrist to testify regarding statements made by the declarant is not an open invitation to admit evidence of all statements that were made in the course of assisting or treating the declarant.

Turning to the facts of the case, the court found sufficient evidence to support the lower court's conclusion that statements made by the alleged victim of sexual abuse to a psychologist were not for the purpose of medical diagnosis or treatment because: 1) during the initial sessions, the psychologist acted more as an investigator on behalf of the prosecutor than as a treating psychologist by providing the detective in charge with information obtained in the course of the interview; 2) the alleged victim initially met with the psychologist at the instigation of law enforcement officials; 3) the sheriff's office paid for the alleged victim's first three visits with the psychologist; and 4) the psychologist would not receive payment for subsequent interviews with the child unless the psychologist determined that the child had been abused.

- *Walker v. State*, 113 Nev. 853, 944 P.2d 762 (Nev. 1997).

²⁵⁴*Id.*

²⁵⁵*Id.*

The Nevada Supreme Court upheld a decision by the district court to refuse to admit a doctor's testimony, based on a medical report made for litigation purposes, about the defendant's history of alcoholism, drug abuse and level of intoxication at the time of a murder. At trial, the defendant asserted that the doctor's testimony was critical to demonstrate that he lacked the requisite mens rea to commit first degree murder. The supreme court found that the lower court did not abuse its discretion in refusing to admit the testimony of the doctor where: 1) the doctor was not likely a disinterested witness; 2) the doctor's statements were based on an interview with the defendant that occurred more than two years after the murder; and 3) the doctor's conclusions were based partially on information obtained from the defendant.

Existing Mental, Emotional or Physical Condition - NRS 51.105

Generally referred to as a "state of mind" exception, this rule allows for the hearsay statement of a declarant describing a current mental, emotional, or physical condition. The exception does not allow a statement of memory or belief about a past condition.²⁵⁶ The trustworthiness of admitted statements is based on the fact that the statement is made contemporaneously with the condition described and the spontaneity of the statement guarantees its reliability.²⁵⁷

The Nevada Supreme Court has held that in order for the state of mind exception to apply and for testimony to be admitted, the victim's state of mind must be a relevant issue, the relevance must be weighed against prejudice, and a proper limiting instruction must be given or the objectionable testimony deleted from the transcript.²⁵⁸

Beddow v. State, 93 Nev. 619, 572 P.2d 526 (Nev. 1977).

The Nevada Supreme Court affirmed a conviction for resisting a public officer where police officers were dispatched to a report of a civil disturbance and informed by a neighbor that the defendant was intoxicated and possibly carrying a firearm. As officers approached the defendant, they saw a weapon tucked in his waistband and, contrary to the officer's verbal warnings, the defendant reached behind his back. The court found the admission of the officer's testimony about the neighbor's statements admissible as they did not go to the truth of the matter asserted but, rather, to establishing the officer's then existing state of mind as he approached the defendant.

- *Shults v. State*, 96 Nev. 742, 616 P.2d 388 (Nev. 1980).

²⁵⁶McGUIRE, *supra* note 1, §7.3(b), NEV. REV. STAT. ANN. §51.105 (Michie 1999).

²⁵⁷McGUIRE, *supra* note 1, §7.3(b)

²⁵⁸See *Shults v. State*, 96 Nev. 742, 616 P.2d 388 (1980).

The Nevada Supreme Court upheld the conviction of the defendant for first degree murder where the defendant asserted that the trial court had erred in admitting the hearsay statements of the murder victim. While the supreme court held that the trial court had erred in admitting the hearsay statements of the victim, it upheld the conviction on the basis that the admission did not affect substantial rights of the defendant. The court held that for the state of mind hearsay exception to be applicable, the victim's state of mind must be a relevant issue, the relevance must be weighed against prejudice, and a proper limiting instruction must be given or objectionable testimony deleted.

- *Carson v. State*, 106 Nev. 922, 803 P.2d 230 (Nev. 1990).

The Nevada Supreme Court reversed and remanded the conviction of the defendant for two counts of sexual assault where the defendant asserted a consent defense. The defendant asserted that the victim of the alleged sexual assault consented to defendant's massage of her shoulders, neck, back and legs and moaned when defendant placed his hands between her legs. The defendant asserted that it was an error for the trial court to refuse to admit hearsay statements that went to the defendant's state of mind at the time of the alleged assault. The court held that whenever an utterance is offered to evidence the state of mind which ensued in another person in consequence of the utterance, it is obvious that no assertive or testimonial use is sought to be made of it, and the utterance is therefore admissible, so far as the hearsay rule (codified at NRS 51.105(1)) is concerned.

4.9.6 Documentary or Tangible Evidence

Documentary or tangible evidence can include photographs, videos, 911 tapes or transcripts, law enforcement reports, medical evidence, and other documentary evidence that assists the prosecutor with the prosecution of the perpetrator. Juries generally seem to appreciate the use of documentary and aural evidence that assists them in gaining a better understanding of witness testimony.²⁵⁹ Documentary evidence can be especially useful in a domestic violence trial where it bolsters the victim's testimony or provides additional evidence when the victim is reluctant or not available to testify.²⁶⁰

The following provides the statutory provisions governing the admission of certain types of documentary evidence and related considerations for the prosecutor.

²⁵⁹McGUIRE, *supra* note 1, §7-5(a)-(c).

²⁶⁰*Id.* at §7-5.

Photos and Videos

Prosecutors should always remember that a picture is worth a thousand words and, to that end, should communicate this need directly to local law enforcement agencies. Photographs can be particularly useful in domestic violence trials.²⁶¹

Photos should include a ruler in the picture so that the person viewing the photo can get an idea of the relative size of the evidence depicted.²⁶² This is particularly important when photographing injuries. Additionally, the prosecutor may want to obtain photographs of victim injuries three to four days after the assault, as soft tissue damage (bruising) presents differently on different persons and becomes more pronounced after the passage of a few days.²⁶³ As a general rule, these types of photos should be taken by someone with photographic expertise.²⁶⁴

NRS 52.015 governs the authentication requirement of all evidence which counsel seeks to have admitted, and NRS 52.025 governs testimony of a witness pertaining to the authentication or identification of evidence.²⁶⁵ NRS 52.215 defines photographs to include still photos, x-rays and motion pictures.²⁶⁶

Lease, Rental Agreement or Joint Deed Of Trust

Any of these documents may assist in establishing cohabitation where both victim and perpetrator are named in the document. If the perpetrator is the only one in the document, it may show the victim's financial dependence. If the victim is the only one on the document, it may legitimize a claim of the defendant's trespassing or may make the court more willing to issue "no contact orders."

911 Tapes or Transcripts

The prosecutor should always ask that a copy of any radio traffic, dispatch traffic and 911 calls be made and forwarded to the office. Prosecutors should be aware of how long local law enforcement agencies retain such tapes and the procedures for obtaining audio copies or transcripts. Frequently, such tapes are useful for many purposes, including: (1) discovering additional witness names and addresses or telephone numbers and friends who

²⁶¹*Id.* at §7-5(a). *See supra* §4.5.1 (Law Enforcement Agency Investigation).

²⁶²MCGUIRE, *supra* note 1, at §7.5(a).

²⁶³*Id.*

²⁶⁴*Id.*

²⁶⁵NEV. REV. STAT. ANN. §§52.015 and 52.025 (Michie 1999).

²⁶⁶*Id.* §52.215 (Michie 1999).

may assist in procuring victim cooperation, (2) allowing the court to hear the defendant's abusive and controlling behavior, (3) allowing the court to hear the defendant's slurred speech, (4) showing the victim's being stressed by the ongoing event, (5) identifying the perpetrator, (6) identifying the use of force as unlawful, (7) impeachment of recanting victims, (8) reminding the victim of how bad it got and the need to hang in there and fight, and (9) demonstrating to the court that the neighbors are also impacted by this crime.

Medical Records

When a domestic violence victim has received medical treatment as a result of the assault, the prosecutor should obtain copies of all medical records, x-rays, records of emergency responders, emergency rooms and physicians' records.²⁶⁷ This evidence allows the prosecutor to present objective evidence of the assault in the form of exhibits.²⁶⁸ It also assists in showing the victim's stress around the time of the statement. In addition, the prosecutor can subpoena the testimony of any medical personnel who had the opportunity to treat or diagnose the victim.

The prosecutor may need to obtain a patient release from the victim in order to get a copy of the victim's medical records. The prosecutor can encourage local law enforcement agencies to either place a medical release form in their domestic violence report forms or encourage the officers to carry medical release forms with them. Otherwise, the prosecutor or victim advocate should be certain to obtain a signed release during the initial victim interview. When a victim will not sign a medical release form, the prosecutor will have to decide whether to subpoena the records from the appropriate medical departments.

NRS 52.320 defines medical records as any bill, ledger, statement and other accounts which show the costs of medical treatments provided to a patient.²⁶⁹ Pursuant to this authority, a custodian of medical records includes a chiropractor, physician, registered physical therapist, licensed nurse who prepares and maintains medical records or any employee of any of these persons.²⁷⁰ NRS 52.325 governs the use of subpoenaed medical records and authentication of medical records obtained by subpoena.²⁷¹

4.9.7 Use of Expert Testimony

²⁶⁷MCGUIRE, *supra* note 1, at §7.5(c).

²⁶⁸*Id.*

²⁶⁹NEV. REV. STAT. ANN. §52.320 (Michie 1999).

²⁷⁰*Id.*

²⁷¹*Id.*, §52.325 (Michie 1999). *See also id.*, §§52.335 to 52.375 (Michie 1999) (copies to be delivered to clerk of court, notice of delivery to clerk of the court, order for production of original documents, use of copies in discovery proceedings, and fee for subpoenas.)

Expert and layperson testimony are admissible in Nevada courts pursuant to statute. Expert testimony about battered women may be used in the defense of a woman accused of killing her partner.²⁷² The prosecutor may consider having an expert explain the behavior of the victim, such as a delay in reporting the incident or a reluctance to testify, which the defendant may use to cast doubt on whether the charged offense actually took place.²⁷³

The following provides the statutory authority for the use of expert and layperson opinions.

NRS 50.265: Opinions: Lay Witnesses. Where a witness is not testifying as an expert, his opinion or inferences are limited to rationally based perceptions and those opinions or inferences that are helpful to a clear understanding of his testimony or the determination of a fact in issue.

NRS 50.275: Testimony by Experts. Where information of a scientific, technical or other specialized knowledge will assist the jury in understanding the evidence or determining a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of his or her knowledge.

NRS 50.285: Opinions: Experts. The facts or data given by a witness qualified as an expert may be those perceived or known to the witness at or before the hearing. If the facts or data are of a type reasonably relied upon by experts in forming opinions upon the subject, then the facts or data do not need to be admissible into evidence.

NRS 50.295: Opinions: Ultimate Issues. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the jury.

NRS 50.305: Disclosure of Facts and Data Underlying an Expert Opinion. The expert may testify and give reasons as to his or her opinions or inferences without prior disclosure of the underlying facts or data unless the judge requires it.

²⁷²McGUIRE, *supra* note 1, at §8.1. See also NEV.REV.STAT.ANN. §48.061 (Michie 1999).

²⁷³*Id.*

However, the expert may be required to disclose the facts or data underlying the opinion on cross-examination.

Battered Woman Syndrome Theory of Defense

Nevada statutorily recognizes the Battered Woman Syndrome (BWS) theory of defense, but it is not a complete defense.²⁷⁴ The BWS theory is admissible to show the defendant's state of mind and is to be considered as "some" evidence to support defenses such as self-defense, duress, compulsion or coercion.²⁷⁵ Evidence of BWS is presented through expert testimony to assist the jury in its evaluation of the defendant's state of mind.²⁷⁶ The Nevada Supreme Court has stated that:

The theory behind the use of evidence regarding domestic violence and the battered woman syndrome centers upon the state of mind of the individual who has been subjected to such violence. Self-defense is shown when a person, under the circumstances, reasonably believes she is in imminent danger of death or great bodily harm, even if no actual threat exists. Where the "circumstances" include domestic violence, the battered woman syndrome is relevant to the reasonableness of an individual's belief that death or great bodily harm is imminent.²⁷⁷

The court has held that a woman claiming the BWS partial defense is entitled to have the jury instructed on the defense as it pertains to the reasonableness of the victim's conduct and as to her state of mind at the time of the incident.²⁷⁸ Thus, the court has ruled that a defendant claiming BWS is entitled to the following jury instruction:

You have heard expert testimony concerning the effects of domestic violence on the beliefs, behavior, and perception of a woman who may be suffering from battered woman syndrome at the time of the killing. This, in itself, is not a legal defense. However, if you believe that the defendant was suffering from battered woman syndrome, you may consider such evidence when determining the defendant's state of mind at the time of the killing and whether she acted in self-defense. You may also consider such evidence as to the defendant's

²⁷⁴NEV. REV. STAT. ANN. §48.061 (Michie 1999).

²⁷⁵See *Boykins v. State*, 2000 Nev. LEXIS 1, 116 Nev. Adv. Op. No. 17 (2000).

²⁷⁶See McGUIRE, *supra* note 1, at §8.1 (noting that the United States Attorney General's 1984 Task Force on Domestic Violence recommended that courts permit expert testimony about battered women to provide judges and juries with an explanation of the complexities of domestic violence which are beyond their ordinary experience.)

²⁷⁷*Boykins*, 2000 Nev. LEXIS at 12.

²⁷⁸*Id.* at 13.

credibility and the reasonableness of her belief that she was about to suffer imminent death or great bodily harm and the need to slay the aggressor.²⁷⁹

4.10 DISPOSITIONS

4.10.1 Sentencing Recommendations

With regard to felonies and gross misdemeanors, the prosecutor's sentencing recommendations will generally have the benefit of a pre-sentence investigation conducted by the Division of Parole and Probation, in addition to a recommendation by the Division. However, in recommending a sentence, the prosecutor may wish to advocate that a higher sentence range is necessary due to the relationship between the defendant and the victim.²⁸⁰ In addition, the prosecutor may wish to allow the victim an opportunity to testify as to past incidents of violence that may not have been admissible at trial.²⁸¹ Information offered at this stage could include testimony of additional witnesses and experts.²⁸² The prosecutor should be prepared for the victim to minimize the conduct of the defendant. In such cases, the testimony of an expert in domestic violence may be particularly useful, for example, to explain the cycle of domestic violence and how victims respond to it.²⁸³

The following is a model sentencing recommendation guideline which should be amended to include pertinent sentencing details and considerations from each jurisdiction:²⁸⁴

A prosecution standard regarding sentencing should contain the types of sentences which are appropriate in domestic violence cases, the severity of such sentences, and factors to be considered when the prosecutor makes his discretionary decision regarding recommendations to the court.

²⁷⁹*Id.* at 13.

²⁸⁰WASHOE COUNTY DOMESTIC VIOLENCE TASK FORCE, PROSECUTION SUBCOMMITTEE, DOMESTIC VIOLENCE PROSECUTION PROTOCOL (1996).

²⁸¹*Id.*

²⁸²*Id.*

²⁸³*Id.*

²⁸⁴MCGUIRE, *supra* note 1, at §3-25.

The victim of domestic violence should be given an opportunity to make her recommendation about sentencing and to provide information to the prosecutor and the court. This process can be commenced as early as the first interview and should include, assuming the victim is able to complete it, a Victim Impact Statement for submission to the court.

Restitution

The prosecutor should seek restitution to the victim where allowable by law and documented by the victim.²⁸⁵ Expenses may include shelter costs, medical costs, counseling for the victim and children, replacement costs for destroyed property, and wages lost due to attendance at hearings.²⁸⁶ Restitution for the victim is provided pursuant to the following Nevada authorities:

NRS 176.189: requires that the court *shall* order restitution as a condition of probation or suspension of sentence, or the court is required to set forth the circumstances upon which it finds restitution impracticable.²⁸⁷

NRS 5.055 (municipal courts) and NRS 4.373 (justice courts): provide for suspended sentences and restitution as a condition thereof in these courts of limited jurisdiction.

NRS 213.126: requires that, unless complete restitution was made during a parolee's incarceration, the Board of Parole Commissioners *shall* impose restitution as a condition of parole.

Probation as a Suspended Sentence

The following provides a model prosecution standard regarding the use of probation as a suspended sentencing option:²⁸⁸

The prosecutor should consider probation in appropriate circumstances as a means to protect the victim from continued violence, to hold the perpetrator accountable, and to offer the offender an opportunity for rehabilitation.

²⁸⁵WASHOE COUNTY DOMESTIC VIOLENCE PROTOCOL, *supra*, note 40.

²⁸⁶*Id.*

²⁸⁷*Id.* Revocation of probation proceedings may be instituted by motion of the victim or the Division of Parole and Probation for failure to pay court ordered restitution.

²⁸⁸*Id.* at §3-28.

Deferred judgment and probation without a significant period of incarceration are inappropriate where the defendant is a repeat offender, the offense or injuries were serious or involved a weapon, or the defendant's criminal record or present circumstances indicate that the defendant is unlikely to successfully complete probation.

The prosecutor shall request appropriate terms of probation from the court or the probation office, such as screening and treatment for substance abuse, perpetrators' education programming, and restraining from future violence.

The prosecutor shall consider writing a letter to the Division of Parole and Probation regarding each offender placed on probation outlining the circumstances of the case and any recommendations for supervision, and including the name and address of the victim.

The prosecutor shall promptly comply with any request by the Division of Parole and Probation to sanction a probationer's violation of the terms and conditions of probation.

Division of Parole and Probation Policy on Domestic Violence²⁸⁹

The Division maintains an express policy of "zero tolerance" toward probationers or parolees who commit crimes of domestic violence. Mandatory arrest will be effected for all probationers or parolees identified as the primary aggressor in a crime involving domestic violence. Furthermore, probationers and parolees will be subject to a "no bail" hold for domestic violence arrests.

Any arrest, including a misdemeanor arrest for domestic violence or violating an existing TPO, constitutes a violation of the terms of the probation agreement or the parole release and subjects the defendant to either a probation revocation hearing before the district court or a parole violation hearing before the Nevada Parole Board.

Parole Applications

Defendants who have been convicted of domestic violence crimes and ordered to serve time in the Nevada Department of Prisons may petition the State Board of Parole Commissioners to obtain parole.²⁹⁰ The victim is entitled to submit documents to the Board and may testify before the Board at the meeting to consider the defendant's petition

²⁸⁹SOUTHERN NEVADA DOMESTIC VIOLENCE PROTOCOLS, *supra* note 41, at 29.

²⁹⁰WASHOE COUNTY DOMESTIC VIOLENCE PROTOCOL, *supra*, note 40.

for parole.²⁹¹ No application for parole may be considered until the Board has notified the victim of all victims' rights and the victim has been given an opportunity to exercise those rights, provided that the victim gives the Board notice of any request to exercise the rights in writing and with a current address.²⁹² Pursuant to NRS 213.130, the Board of Parole Commissioners may not be held responsible if a current victim address is not on file and notification of the parole application could not be made.²⁹³

In addition to a victim statement, the prosecutor may wish to speak to the Board. In order to do so, the prosecutor should provide the Board with his or her name.²⁹⁴ The prosecutor should also obtain the most current address and contact information for the victim and notify the victim of any parole applications and meetings of the Board to consider the defendant's parole application.²⁹⁵ However, the prosecutor has no affirmative statutory duty to contact the victim.²⁹⁶

4.10.2 Negotiated Pleas²⁹⁷

Negotiated pleas, or plea bargains, should occur only when in the prosecutor is able to articulate objective factors that form the basis for the discretionary decision to negotiate the charge, and such factors should be noted in the prosecution file.²⁹⁸ Criminal justice agencies may wish to consider adopting an affirmative policy regarding domestic violence to act as a guidepost for prosecutors when making decisions regarding plea bargains.²⁹⁹

4.10.3 Dismissals

Dismissal of a domestic violence case should be a last resort and should never occur merely because the victim is reluctant to assist the prosecutor. If a case must be dismissed because of a lack of independent corroborative evidence or for any other reason,³⁰⁰ the prosecutor should delay dismissal until the time of trial.³⁰¹ This gives the prosecution one last chance to persuade a reluctant victim to come forward and assist the prosecution.³⁰² Further, it ensures that the defendant appears in court, which may impress upon the

²⁹¹*Id.*

²⁹²*Id.*

²⁹³*Id.* See also NEV. REV. STAT. ANN. §213.130(2), (4), (7)-(9) (Michie 2000).

²⁹⁴WASHOE COUNTY DOMESTIC VIOLENCE PROTOCOL, *supra* note 289.

²⁹⁵*Id.*

²⁹⁶*Id.*

²⁹⁷See also §4.4.3, *supra*.

²⁹⁸MCGUIRE, *supra* note 1, at §3-24.

²⁹⁹See §4.4.3, *supra* (providing a model standard regarding plea bargaining.)

³⁰⁰See §4.4.3, *supra* (regarding cases not charged.)

³⁰¹WASHOE COUNTY DOMESTIC VIOLENCE PROTOCOL, *supra*, note 40.

³⁰²*Id.*

defendant the seriousness of the offense.³⁰³

Except as provided by NRS 174.085, pursuant to NRS 178.554 and 178.562(1), dismissal at the time of trial acts as a dismissal with prejudice. Because dismissal may confirm the defendant's continuing power and control over the victim,³⁰⁴ the prosecutor should note, for the record, that, as is within the discretionary power of the prosecutor to dismiss a case, and that the victim had no input in the decision to dismiss.³⁰⁵

4.10.4 Future Prosecutions

Information on cases which are not prosecuted, in addition to all incident reports required pursuant to NRS 171.1227, should be retained. Such information may be admissible in future prosecutions.³⁰⁶

4.11 ACKNOWLEDGMENTS

Special thanks are extended to the many people who contributed their time and effort to the completion of this chapter, including: Veronica Boyd-Frenkel, Domestic Violence Ombudsman, State of Nevada, Office of the Attorney General; David W. Clifton, Chief Deputy District Attorney, Washoe County; Carol Cohen and David Sonner, State of Nevada, Division of Parole and Probation; Brad Jerbic, City Attorney and Bernard Little, Assistant City Attorney, Office of the City Attorney, City of Las Vegas; Hon. Betsy Kolkoski, formerly Elder Rights Attorney, State of Nevada, Division for Aging Services; Annelle Lerner, Nevada Network Against Domestic Violence; Michael McCormick, Executive Director, Nevada Prosecution Advisory Council; members of the Nevada Network Against Domestic Violence; Abbi Silver, Clark County Chief Deputy District Attorney, Special Victim's Unit; Lt. Brad Simpson, Las Vegas Metropolitan Police Department; and members of the Southern Nevada Domestic Violence Task Force. Thank you also to Don Castle, Computer Systems Specialists, William S. Boyd School of Law.

The development of this manual is consistent with a nationwide trend recognizing the seriousness of domestic violence as a crime and the long term effects continuing violence exerts on victims and children as well as community resources. To that end, the author is

³⁰³*Id.*

³⁰⁴*Id.*

³⁰⁵*Id.*

³⁰⁶*See* §4.9.1, *supra* (regarding the admission into evidence of prior bad acts of the defendant.)

grateful for groundbreaking work previously done in several jurisdictions which had a pivotal influence on this chapter. Specifically, the author wishes to thank and recognize the efforts of the San Diego Domestic Violence Council,³⁰⁷ the Santa Clara County Probation Department,³⁰⁸ and the states of Iowa,³⁰⁹ Louisiana³¹⁰ and Utah.³¹¹

³⁰⁷San Diego Domestic Violence Council, *Domestic Violence Law Enforcement Protocol* (visited Mar. 11, 2000) <<http://www.sandiegodvcouncil.org/library-le-protocol.html>>.

³⁰⁸Santa Clara County Probation Dep't., *Domestic Violence Information And Referral Handbook* (visited May 27, 2000) See <http://www.growing.com/nonviolent/victim/vict_res.htm>.

³⁰⁹MCGUIRE, *supra* note 1.

³¹⁰LOUISIANA DIST. ATTY'S ASS'N., *DOMESTIC VIOLENCE PROSECUTION* (1996).

³¹¹UTAH ATTY GEN. OFF., *supra* note 30.

CHAPTER 5

JUDICIARY

This chapter contains the following:

- 5.1 INTRODUCTION
- 5.2 DOMESTIC VIOLENCE AND THE COURTS
 - 5.2.1 Jurisdiction of the Respective Courts
 - 5.2.2 A Positive Policy: One Family, One Judge
 - 5.2.3 The Judge's Role in Domestic Violence Cases
 - 5.2.4 Liability Issues
 - 5.2.5 Nevada's Domestic Violence Protection Order Repository
- 5.3 ORDERS FOR PROTECTION AGAINST DOMESTIC VIOLENCE
 - 5.3.1 Overview
 - 5.3.2 Authorization for Protection Orders
 - 5.3.3 Scope of Protection Orders: Acts of Domestic Violence
 - 5.3.4 Withdrawing Applications for Protection Orders

5.3.5 Types of Protection Orders

Temporary Protection Order

Extended Temporary Protection Order

Emergency Protection Order

Out-of-State Protection Order

Temporary Stalking or Harassment Order

Harassment

Stalking

Aggravated Stalking

Extended Stalking or Harassment Order

5.3.6 Essential Elements

5.4 THE PROTECTION ORDER PROCESS

5.4.1 A Step-by-Step Look at the Mandatory Standardized Forms

5.4.2 Beginning the Protection Order Process

5.5 FORM 1: APPLICATION FOR A TEMPORARY AND/OR EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

5.5.1 Seeking the Court's Protection Against Domestic Violence

5.5.2 Eligibility to Apply for a Protection Order

5.5.3 Submitting the Application for a Protection Order

5.5.4 Emergency Protection Order

5.5.5 Non-Emergency Protection Order

5.5.6 Application Assistance

5.5.7 Filling Out the Application

- 5.6 FORM 2: TEMPORARY ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE
 - 5.6.1 The Court's Role
 - 5.6.2 Temporary Protection Order: Ex Parte Proceedings
 - 5.6.3 Purpose of the Order
 - 5.6.4 Scope of the Order
 - 5.6.5 Transmission and Service of the Order
 - 5.6.6 Notice to the Adverse Party
- 5.7 FORM 3: DOMESTIC VIOLENCE ORDER FOR PROTECTION INFORMATION SHEET
- 5.8 FORM 4: ORDER FOR PROTECTION RETURN OF SERVICE
 - 5.8.1 Return of Service
 - 5.8.2 Service of Protection Order and Arrest for Violation
 - 5.8.3 When Service of the Protection Order Cannot Be Verified
- 5.9 FORM 5: ORDER FOR HEARING TO EXTEND, MODIFY OR DISSOLVE THE ORDER FOR PROTECTION
 - 5.9.1 Case-By-Case Analysis
 - 5.9.2 Hearing to Extend Order if Physical Harm Exists
- 5.10 FORM 6: NOTICE FOR HEARING TO EXTEND, MODIFY OR DISSOLVE THE ORDER FOR PROTECTION
- 5.11 FORM 7: EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE
 - 5.11.1 Extension of a Protection Order

- 5.11.2 What Warrants the Extension of a Temporary Protection Order
- 5.11.3 Procedure for Modification or Dissolution of a Protection Order
- 5.11.4 Typical Protection Order Modifications
- 5.11.5 No Need to Modify
- 5.11.6 Protection Order Dissolution
- 5.11.7 Grounds for Dissolution of a Protection Order
- 5.12 VIOLATION OF PROTECTION ORDERS
 - 5.12.1 Penalties for Violation of a Protection Order
 - 5.12.2 Contempt of Court for Violation of a Protection Order
- 5.13 MUTUAL PROTECTION ORDERS
- 5.14 SENTENCING
 - 5.14.1 Mandatory Sentences and Sentence Enhancements
 - 5.14.2 Sentencing Options
 - 5.14.3 Parole and Probation
- 5.15 RESOURCES
- 5.16 ACKNOWLEDGMENTS

5.1 INTRODUCTION

The judiciary is central to the proper function of the system of domestic violence laws and the protection of victims of domestic violence. This chapter is not intended to cover every aspect of the judiciary's role in addressing the problem of domestic violence. However, the chapter covers several areas of importance to judges hearing domestic violence matters, namely: jurisdiction and the judge's role in domestic violence cases, the various types of orders for protection, and an overview of the newly adopted standardized forms used to implement the protection order process.

5.2 DOMESTIC VIOLENCE AND THE COURTS

5.2.1 Jurisdiction of the Respective Courts

In outlining the jurisdiction of district courts, the Nevada Constitution provides that the district courts in the nine judicial districts have original jurisdiction in all cases excluded by law from the original jurisdiction of justice courts. In other words, unless the legislature assigns the jurisdiction in a certain matter to justice courts, the district courts have original jurisdiction. NRS 4.370 outlines the powers of the state's justice courts. The 1993 Nevada Legislature amended NRS 4.370 to add the power to issue a temporary or extended order for protection against domestic violence to justice courts in counties whose populations are less than 100,000. In counties with populations greater than 100,000, the legislature has created family courts separate from the general jurisdiction district courts. The jurisdiction of the family courts in Washoe and Clark Counties is as follows:

NRS 3.223 Jurisdiction of Family Courts

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original exclusive jurisdiction in any proceeding:

- (a) Brought pursuant to chapter 31A, 62, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.

.....

2. The family court, where established, and the justice court have concurrent jurisdiction over actions for the issuance of a temporary or extended order for protection against domestic violence.¹

3. The family court, where established, and the district court, have concurrent jurisdiction over any action for damages brought pursuant to NRS 41.134 by a person who suffered injury as the proximate result of an act that constitutes domestic violence.

5.2.2 A Positive Policy: One Family, One Judge

NRS 3.025(3) mandates that the chief judge assign cases to the department of the family court to which other cases involving family members are presently assigned or, if the other cases have been decided, to the department of the family court that decided the other cases. In addition, NRS 3.025(3)(b) requires that the chief judge assign the case to the same department if a child involved in the case is also involved in any other pending case or was involved in any other previously decided case assigned to a department of the family court in the judicial district (other than a case within the jurisdiction of the juvenile court pursuant to chapter 62 of NRS). There are two exceptions to NRS 3.025(3)(b): when a different assignment is required by another NRS provision, a court rule or the Nevada Code of Judicial Conduct, and when the chief judge determines that a different assignment is necessary because of considerations related to the management of the caseload of the district judges within the judicial district. If a case described in this subsection is heard initially by a master, the recommendation, report or order of the master must be submitted to the district judge of the department of the family court to which the case has been assigned pursuant to this subsection for consideration and decision by that district judge.

In the Family Division of the Eighth Judicial District Court in Las Vegas, the “One Family, One Judge” philosophy is good for families and is practical and efficient, given that the Family Division has eleven family court judges and eight masters. The sense of cohesiveness and continuity provided by the “One Family, One Judge” approach ensures optimum fairness to litigants and makes what is often a difficult process less intimidating and more familiar. For example, when the Domestic Violence Commissioners are confronted with an order pending divorce, they do what is necessary in emergency circumstances, and

¹

See NEV.REV.STAT.ANN. §4.370, which limits justice court jurisdiction over orders for protection to judicial districts whose population is 100,000 or more. Thus, under the limiting language of §4.370, justice courts in judicial districts that have family courts do not have the power to issue orders for protection. Justice courts in those district do, however, have the power to issue stalking and anti-harassment orders.

then transfers the motion to the judge. If the motion is not an emergency, it is presented directly to the divorce judge. If a temporary protection order (“TPO”) is filed in court prior to the filing of divorce, then the Commissioner keeps the TPO in effect by maintaining the temporary visitation and support orders that have been entered.

5.2.3 THE JUDGE’S ROLE IN DOMESTIC VIOLENCE CASES ²

Dealing With Domestic Violence

The American Judges Foundation, Inc. offers the following suggestions to judges dealing with domestic violence cases. The Foundation recognizes the important role that judges can play in stopping domestic violence and helping the victims to survive.

First, a judge should begin by carefully determining who the victim is, then carefully listening. A judge’s demeanor can be very important and can convey to the victim that the judge does indeed care about the victim’s situation and the events that brought the victim to the courtroom.

Second, the judge must identify the abuse in the circumstances brought before the court. Identifying the abuse is the first step toward stopping it. It is not always easy, however, because denial, rationalization and minimization are coping methods frequently employed by the victim and those closest to the victim. The American Judges Foundation stresses that the judge should use whatever resources are available to provide victims with secure and safe surroundings while they continue through the judicial process.

Third, the judge must build trust with the victim. Victims’ trust boundaries and perceptions of trust can become seriously distorted due to their being subjected to domestic violence. Consequently, the victim may have no clear understanding of who is trustworthy and who is not. To the victim accustomed to living in an environment where a mistake in judgment can be lethal, there is little room for poor judgment. In the courtroom, it is up to the judge to approach the situation gently yet pro-actively so that the victim can begin to trust the court and the judicial system. The American Judges Foundation suggests that, if possible, the judge should appoint a lawyer who has the compassionate approach that a domestic violence victim needs.

Fourth, the judge must understand that while the victim is intellectually aware of what may be happening, the “emotional roller coaster” that the domestic violence victim experiences can blur comprehension of available options. Patience is the key, as the judge

²*Adopted from* American Judges Foundation, Inc., *DOMESTIC VIOLENCE & THE COURTROOM: UNDERSTANDING THE PROBLEM...KNOWING THE VICTIM*, (1995).

circumspectly explains options to the victim to the point where the judge is reasonably certain that the victim has a clear understanding.

Fifth, the judge must ask for specific details. The victim is conditioned not to make trouble and may appear very complacent even when not agreeing with what is taking place. The judge needs to make time to gather specific details because victims have a tendency to accept responsibility for things for which they are not responsible. Moreover, victims may agree with an inaccurate record due to their complacency. It is very important to create a safe atmosphere in which the victim may freely answer questions. Asking specific questions to uncover specific details can enable a judge to negotiate satisfactory settlements and to enter effective custody and visitation orders.

Last, in order for the victim to be able to access the system to full advantage, the judge must create an atmosphere free of intimidation. The judge must understand that the victim may have been exposed to years of intimidation. The judge can use his or her legal authority to demonstrate zero tolerance of domestic violence. For example, the judge can ensure that the litigants and family members present maintain a calm and mature sense of decorum. Recesses from the courtroom often are the occasion for comments and remarks that further the intimidation of the victim. The perpetrator often makes light of the litigation, or even makes crude or coarse comments to or about the victim while they are in the courtroom. It is crucial that the judge not let this kind of behavior occur, as it could undermine the authority of the court and make it appear to the victim that the perpetrator is immune from the court's authority.

5.2.4 Liability Issues

Judges, court clerks, law enforcement officers and agencies, and city and county governments may be subject to personal and/or agency civil liability if they do not perform their duties as specified. Liability may occur in circumstances such as the following:

A victim comes to court in need of a protection order. The judge or clerk fails to give the victim information concerning the availability of a protection order, as required by law. Later, that same person is injured or killed by the abuser he or she needed the order against. A civil liability lawsuit against the judge, clerk and county is possible, and liability is likely if the case goes to trial. In a case in the mid-1980's, the New York Court of Appeals, that state's highest court, upheld liability of the City of New York for failing to enforce a protective order. The police department had failed to follow up on a complaint when presented with a copy of the court-issued protective order and an accusation that it had been violated. As a result, a child was injured.

5.2.5 Nevada's Domestic Violence Protection Order Repository

In accordance with NRS 179A.350, the Repository for Domestic Violence Protection Orders was created within the Records and Identification Services Bureau of the Nevada Highway Patrol, Department of Motor Vehicles and Public Safety. The Repository is accessible to the criminal justice community through the Nevada Criminal Justice Information System (NCJIS). The NCJIS Protection Order file contains complete information on each order entered and provides a mechanism for users to flag an order and notify the issuing court that the order has been served. Additionally, it provides detailed information on the actions prohibited by the order so that a law enforcement officer is able to determine whether the order has been violated by the adverse party.

Protection orders are entered into the Repository by the issuing court or by the Repository on behalf of courts who do not have state developed software created specifically for creating and maintaining domestic violence protection orders. Courts interested in obtaining the state developed software should contact the Administrative Office of the Court at (775) 684-1700.

Questions regarding the NCJIS Protection Order file should be directed to Records and Identification Services staff at (775) 687-1600.

5.3 ORDERS FOR PROTECTION AGAINST DOMESTIC VIOLENCE

5.3.1 Overview

An important means of domestic violence intervention is the issuance of court protection orders that limit or prohibit contact between persons in domestic violence situations. One of the first steps in addressing domestic violence is for the victim to obtain a protection order. However, if such orders are not fully enforced to protect domestic violence victims, the orders represent nothing more than a piece of paper: powerless and ineffective. Some victims fear that even greater abuse will result because the order may anger the perpetrator, and this fear may lead to the withdrawal of an application for a protection order.

Protection orders may be granted without regard to whether an action for divorce, annulment of marriage, or separate maintenance has been filed respecting the applicant³

³The terms “applicant” and “adverse party” are terms of art used to identify the “victim” and the “perpetrator,” respectively, in the course of the protection order process. Although the terms “victim” and “perpetrator” are used throughout this Manual, the terms “applicant” and “adverse

and the adverse party. A temporary or extended order is in addition to and not in lieu of any other available civil or criminal action. An applicant is not barred from seeking an order because of other pending proceedings. An application for a temporary or extended order may be consolidated with another civil action if it would prevent an act of domestic violence.

5.3.2 Authorization for Protection Orders

Protection orders are authorized by two separate laws:

- NRS 33.017 to 33.100 and NRS 4.370(1)(m) – Protection Order Against Domestic Violence (administered through District Court/Family Division and Justice Courts)
- NRS 200.571 to 200.601 – Protection Order Against Stalking and/or Harassment (administered through Justice Courts)

Protection orders may be issued through most local courts whenever anyone has reason to fear for their own personal safety. Applicants must complete a detailed application documenting events which cause them to be fearful for their safety or the safety of their minor child(ren).

5.3.3 Scope of Protection Orders: Acts of Domestic Violence

Anyone committing an act of domestic violence may be arrested for such an act without regard to whether a protection order existed at that time. Pursuant to NRS 178.484(4), anyone arrested for an act of domestic violence may not be released on bail until after a 12-hour “cooling off” period. NRS 33.018 defines domestic violence as follows:⁴

1. Domestic violence occurs when a person commits one of the following acts against or upon his spouse, former spouse, any other person to whom he is related by blood, marriage, a person with whom he is or was actually residing, a person with whom he has a child in common, the minor child of any of those persons or his minor child:

(a) A battery -- physical violence such as

- Hitting

party” will be used in the context of this Chapter’s explanation of the protection order process.

⁴See also CLARK COUNTY, NEVADA PROTECTION ORDER HANDBOOK, p. 4-1.

- Punching
 - Slapping
 - Kicking
 - Biting
 - Slapping
- (b) An assault -- threat to inflict injury with an apparent ability to do so. Any intentional display of force that would give a person reason to fear or expect immediate bodily harm.
- (c) Compelling the other by force or threat of force to perform an act from which he has the right to refrain or to refrain from an act which he has the right to perform.
- (d) A sexual assault, such as:
- Rape
 - Forced Sexual Acts
- (e) A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to:
- Stalking
 - Arson
 - Trespassing
 - Larceny
 - Destruction of private property
 - Carrying a concealed weapon without a permit
- (f) A false imprisonment.
- (g) Unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

5.3.4 Withdrawing Applications for Protection Orders

Some Nevada courts maintain a policy against allowing withdrawals of applications for protection orders. This policy not only keeps the perpetrator from intimidating the victim to withdraw the application, but also shows Nevada's commitment to the seriousness of enforcing such orders, giving future victims more confidence to obtain such orders. Nevada Police Departments fully enforce these orders and maintain a system that provides up-to-date information to officers responding to domestic disturbances.

For example, an applicant in Clark County cannot withdraw the application for a temporary protection order without appearing before the court for a hearing on the matter. If the applicant seeks to dissolve the temporary or extended protection order, the applicant must file a written motion and appear before the court at a hearing.

In Washoe County, however, the applicant may withdraw the application or request the temporary protection order to be dissolved at any time, and without a court hearing. For extended orders for protection, the court requires that the adverse party have notice of the applicant's intent to dissolve the extended order, which may result in a hearing.

5.3.5 Types of Protection Orders

Nevada statutes provide for a number of different types of protection orders, depending on the particular circumstances in each case. A brief description of each follows.

Temporary Protection Order Against Domestic Violence (TPO), NRS 33.020

The court may issue a temporary or extended order after an order has been requested and an application and affidavit have been filed claiming that domestic violence has occurred or that a threat of domestic violence exists. A TPO is generally valid for thirty days, or 45 days if applicants apply for an extended order at the same time they apply for a TPO.

1. A temporary order may be granted with or without notice to the adverse party.
2. An extended order may be granted only after notice to the adverse party and a hearing is conducted on the application.
3. If it is communicated by telephone to the court that an act of domestic violence has occurred and the alleged perpetrator has been arrested and is in custody, the court may grant a temporary order; however, first the court shall confirm that the victim (applicant) is an alleged victim and the alleged perpetrator is actually in custody. Upon approval by the court, the signed order may be transmitted by facsimile to the facility where the alleged perpetrator is in custody. The order must be personally served by an

authorized employee of the facility. The court shall mail a copy of the order issued to the alleged victim and the original shall be filed with the court clerk.

4. In a county whose population is 400,000 or more the court shall be available, while in a county whose population is less than 400,000, the court may be available, 24 hours a day, 7 days a week, including non-judicial days and holidays, to receive communications by telephone and for the issuance of a temporary order for protection against domestic violence pursuant to paragraph 3.

5. Criminal charges do not have to be filed. Police or medical reports of current or previous incidents may be included with the application, and photos of any visible injuries may be taken in the Protection Order office. The applicant's photo identification is required for notarization of the application. If the application is granted, the temporary protection order will be in effect for 30 days, or 45 days if the applicant applies for an extended order at the time of the application for the temporary order.

Extended Protection Order, NRS 33.020(2); 33.080(3)

A temporary order may be converted by the court, upon notice to the adverse party and a hearing at which the applicant must be present, into an extended order. An Extended is effective for a maximum of one year, and is issued at the court hearing prior to the expiration of the temporary order.

Emergency Protection Order, NRS 33.020(3)

An Emergency Protection Order may be obtained by telephone when an act of domestic violence has occurred and the adverse party has been arrested. The application process must commence immediately upon the adverse party's arrest. The adverse party is served with notice prior to release from custody. Emergency orders are generally valid for 72 hours. In Clark County, the court must be available by telephone 24 hours a day, seven days a week. In Washoe County, the court maintains an after-hours program in which temporary protection orders are available during non-judicial hours, covering evenings, weekends, and holidays.

Out-of-State Protection Order

Pursuant to the Full Faith and Credit section of the 1994 Violence Against Women Act, law enforcement officers shall make a good faith effort to enforce out-of-state protection orders. When reasonably assured that the order has been served on the adverse party, the officer(s) shall enforce it in the same manner as a court order issued in Nevada. A copy should be attached to the offense report, when possible. See Chapter 2, Sections 2.2.4 and 2.4.4 for a more detailed discussion of full faith and credit.

Temporary Stalking or Harassment Order, NRS 200.571-575 (These orders are not part of the temporary forms discussed in Section 5.4 of this Chapter.)

A Temporary Stalking or Harassment Order is issued by Justice Court, initially for up to thirty days; however, it can be extended for up to one year. The adverse party must repeatedly commit or threaten one or more of the following acts before a temporary stalking or harassment order may be issued.

Harassment

Without lawful authority the person knowingly threatens:

- To cause bodily injury, in the future, to the person threatened or to any other person;
- To cause physical damage to the property of another person;
- To subject the person threatened, or any other person, to physical confinement or restraint; or
- To do any act which is intended to substantially harm the person threatened or any other person with respect to his physical or mental health or safety; and

The person, by words or conduct, places the person receiving the threat in reasonable fear that the threat will be carried out.

Stalking

Without lawful authority, a person willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated or harassed, and the conduct actually causes the victim to feel terrorized, frightened, intimidated or harassed.

Aggravated Stalking

- The adverse party commits the crime of stalking and also threatens the victim with the intent to cause him/her to be placed in reasonable fear of death or substantial bodily harm; or
- The adverse party commits the crime of stalking on his spouse while a proceeding for divorce is pending or within six months after entry of a final divorce decree; or
- The adverse party commits the crime of stalking on a person with whom he has a child in common while a proceeding for custody of that child is pending.

The same filing fees as for temporary protection orders – \$36.00 application fee and \$20.00 opposition fee – apply to stalking and harassment orders.

Extended Stalking or Harassment Order, NRS 200.594(3) (These orders are not part of the temporary forms discussed in Section 5.4 of this Chapter.)

This statute permits the extension of the stalking or harassment order, but only if the adverse party has received notice and a hearing is held.

5.3.6 Essential Elements

Temporary Protection Order Against Domestic Violence:

- Issued by Family Court or Justice Court
- Relationship between adverse party and victim required
- Applicant's photo ID required
- Filing of criminal charges against adverse party not required
- Valid for 30 days
- Granted WITHOUT NOTICE to adverse party
- Contempt of court may apply
- Proof of service of order required prior to arrest for violation
- Violation in presence of officer not required for enforcement
- Misdemeanor if violated
- Crime report and voluntary statements required for prosecution

Extended Temporary Protection Order Against Domestic Violence

- Issued by Family Court or Justice Court
- Relationship between adverse party and victim required
- Valid for up to one year
- Granted ONLY WITH NOTICE and hearing
- Contempt of court may apply
- Proof of service of order required prior to arrest for violation
- Violation in presence of officer not required for enforcement
- Misdemeanor if violated
- Crime report and voluntary statements required for prosecution

Emergency Temporary Protection Order Against Domestic Violence:

- Issued by Family Court and Justice Court
- Adverse party MUST be in custody on domestic violence charges
- In certain jurisdictions, orders may be obtained by telephone only if application process begins immediately upon arrest of adverse party
- Adverse party must be served with notice prior to release from custody
- Relationship between adverse party and victim required
- Valid for 72 hours
- Granted WITHOUT NOTICE to adverse party
- Contempt of court may apply
- Proof of service of order required prior to arrest for violation
- Violation in presence of officer not required for enforcement
- Misdemeanor if violated
- Crime report and voluntary statements required for prosecution

Temporary Stalking or Harassment Order (These orders are not part of the temporary forms discussed in Section 5.4 of this Chapter.)

- Issued by Justice Court
- Valid for 30 days
- Granted WITHOUT NOTICE to adverse party
- Contempt of court may apply
- Proof of service of order prior to arrest for violation
- Violation in presence of officer not required for enforcement
- Gross misdemeanor if violated
- Crime report and voluntary statements required for prosecution

Extended Stalking or Harassment Order (These orders are not part of the temporary forms discussed in Section 5.4 of this Chapter.)

- Issued by Justice Court
- Valid for up to one year
- Granted ONLY WITH NOTICE and hearing
- Contempt of court may apply
- Proof of service of order required prior to arrest for violation
- Violation in presence of officer not required for enforcement
- Category C felony if violated
- Crime report and voluntary statements required for prosecution

5.4 THE PROTECTION ORDER PROCESS

5.4.1 A Step-by-Step Look at the Mandatory Standardized Forms

On April 17, 1998, the Nevada Supreme Court appointed a study committee to examine the need for the development and adoption of standardized forms for protection orders in domestic violence cases in all Nevada state courts. The study committee developed the following seven mandatory standardized forms, which are reproduced in their entirety in Appendix F.

1. Application for a Temporary and/or Extended Order for Protection Against Domestic Violence
2. Temporary Order for Protection Against Domestic Violence
3. Domestic Violence Order for Protection Information Sheet
4. Order for Protection Return of Service
5. Order for Hearing to Extend, Modify or Dissolve the Order for Protection
6. Notice for Hearing to Extend, Modify or Dissolve the Order for Protection
7. Extended Order for Protection Against Domestic Violence

On June 7, 2000, the Nevada Supreme Court adopted these seven standardized forms for mandatory use in all cases involving orders for protection against domestic violence in all courts of the state of Nevada. The Court also adopted and approved for voluntary use five additional standardized forms, all of which are reproduced in their entirety in Appendix G.

This section provides a look at the step-by-step process of the stages involved in a typical domestic violence case, in which the victim seeks the court's protection through a protection order. When faced with an application for an order for protection against domestic violence, the judge plays the important role of protecting

the community and its children. It is critical for the judge to balance both the victim's and the perpetrator's rights and responsibilities, and consider other significant factors, such as the children of domestic violence.

5.4.2 Beginning the Protection Order Process

The precursor to the protection order process usually is an incident or threat of domestic violence, or a fear of ensuing domestic violence, followed by a 911 telephone call. Often, the phone call to law enforcement is the victim's first contact with the system in the protection order process. However, in other instances, the victim does not place a 911 telephone call, and the victim does not contact law enforcement. Instead, the victim is guided to the temporary protection order system by friends, counselors, or other services.

5.5 FORM 1: APPLICATION FOR A TEMPORARY AND/OR EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

5.5.1 Seeking the Court's Protection Against Domestic Violence

If the victim's first contact with the system is with a police officer, the officer will advise the victim of the victim's rights and options during the preliminary investigation. It is often after this contact with law enforcement that victims seek the court's protection against domestic violence. If applicants for protection orders have been or believe they will become victims of domestic violence, it is appropriate for them to enter the protection order process and request the court's protection against domestic violence through a protection order.

5.5.2 Eligibility to Apply for a Protection Order

Criminal charges do not have to be filed in order for a victim of domestic violence to be eligible to file an application for a temporary protection order (TPO). However, pursuant to NRS 33.018, a victim of domestic violence **MUST** have at least **ONE** of the following relationships with the perpetrator before the victim is deemed eligible to apply for a protection order:

- Related by blood (son/daughter, father/mother, brother/sister)
- Related by marriage (spouse, ex-spouse or current in-law)
- Current or former roommate

- Past or present dating relationship
- Have children together

Also, the minor child of any of the persons listed above, or the applicant's minor child, may also be entitled to protection.

5.5.3 Submitting the Application for a Protection Order

If a victim of domestic violence is eligible to apply for a protection order, the victim may submit to the court an Application for a Temporary and/or Extended Order for Protection Against Domestic Violence (the "Application"). However, if the applicant believes that an emergency situation exists, the Application provides that the applicant may request the immediate issuance of an Emergency Temporary Order for Protection Against Domestic Violence. Both types of orders are available without notice to the adverse party.

5.5.4 Emergency Temporary Protection Order

The applicant may apply for an emergency temporary protection order ("ETPO") pursuant to NRS 33.020(5) only if the perpetrator is arrested and still in custody for an act of domestic violence (domestic battery or related charges). In certain jurisdictions, the application process for the ETPO MUST commence immediately upon the adverse party's arrest.

During regular business hours Monday through Friday, a Clark County applicant should call the Family Court Temporary Protection office at (702) 455-3400 or Safe Nest/TADC hotline, which is available 24 hours a day, seven days a week at (702) 646-4981, within twelve hours of the perpetrator's arrest.

During regular business hours, Monday through Friday, in Washoe County, applicants should call (775) 328-3468. After hours, applicants should call (775) 750-7282 during the hours of 5:00 p.m. to 9:30 p.m., Monday through Friday, and 8:00 a.m. and 9:30 p.m., Saturday, Sunday and Holidays. If the request is delayed, the judge may not consider it an emergency. A hearing will be scheduled within seven (7) calendar days, and the applicant MUST attend the hearing.

After the assisting agency faxes the application to the judge, the judge will determine whether the applicant is in a life threatening situation. Before signing the order, the judge must first confirm that the applicant is a victim and the adverse party is in custody. Upon approval by the court, the signed order may be transmitted by facsimile to the facility where the adverse party is in custody. The order must be personally served on the adverse party by an authorized employee of the facility. The court must mail a copy of the

order issued to the alleged victim, and the original must be filed with the court. NRS 178.484(4) requires the arrest of an alleged perpetrator regardless of the existence of a protection order, and the alleged perpetrator must be held for 12 hours for acts of domestic violence and battery, without release on bail until the 12-hour “cooling off” period has expired. As a result of the 12-hour limitation, the victim must, in certain jurisdictions, call the emergency number within 12 hours of the adverse party’s arrest to ensure that he receives the notice before being released from jail.

5.5.5 Non-Emergency Protection Order

If the victim’s request for a protection order is the result of a non-emergency domestic violence situation, the victim may request the court to order temporary or extended protection. The applicant must file an application in person at the justice or district court clerk’s office or, in Clark County, at the TPO office:

Eighth Judicial District Court - Family Division
Protection Order Program
601 N. Pecos Road
Las Vegas, NV 89101
(702) 455-3400
Monday - Thursday 8 a.m. - 3 p.m.
Friday 9 a.m. - 3 p.m.

In Washoe County, at the TPO office:

Second Judicial District Court - Family Division
One South Sierra
3rd Floor
Reno, NV 89501
(775) 328-3468
Monday - Friday 9:00 a.m. - 5:00 p.m.

5.5.6 Application Assistance

If the victim is eligible to apply for a protection order, court employees are available to assist the victim in filling out the application. NRS 33.050 requires the clerk or other person designated by the court to assist any party in completing and filing the application, and any other paper or pleading to initiate or respond to an application for a temporary or extended order. This assistance does not constitute the practice of law, but the clerk or any other court designate must be careful not to render any advice or service requiring the professional judgment of an attorney.

The clerk of the court must provide each party, free of cost, with information about:

1. The availability of temporary and extended orders;
2. The procedure for filing an application for such orders; and
3. The right to proceed without legal counsel.

Police or medical reports of current or previous incidents may be included with the application, and court employees may take photographs of any visible injuries to document any evidence of abuse. Court employees also may guide victims to agencies created to assist victims, such as shelters and community resources that offer food and clothing.

5.5.7 Filling Out the Application

The same application for protection against domestic violence permits the applicant to apply for either temporary or extended protection. The applicant may request some or all of the protection listed on the application, including prohibiting the adverse party from threatening, harming, harassing, or contacting the applicant or the children at home or at work within a certain distance, in addition to extra space for other requests not specifically enumerated in the application. If the applicant checks “confidential” for any of the requested addresses, both the court and advocates should advise the applicant that it may be difficult for law enforcement to enforce the order. It must be proven that the adverse party was fully aware of the applicant’s location. Also, if the applicant elects to check the “confidential” box, the city, county and state should still be filled in.

After completing the application, the applicant must read it, and swear or affirm under oath that the information contained therein is true. The applicant’s photo identification is required for notarization of the application. The entire application process may take several hours. When the application process is complete, the applicant is assigned a case number. If the applicant is not informed of the status of the TPO prior to leaving the court, then the applicant must call the court or TPO office to ascertain the status of the TPO, and must identify the case number when calling to learn of the court’s ruling on the TPO. Along with the application, the applicant must complete the Domestic Violence Order for Protection Information Sheet. The information is required by the Domestic Violence Protection Order Repository and assists law enforcement with service of the protection order.

5.6 FORM 2: TEMPORARY ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

5.6.1 The Court's Role

The second stage in the protection order process takes place after the victim files the application for protection against domestic violence. In this stage, a judge considers the application and determines, within one judicial day, whether to issue or deny the protection order, or whether to require a hearing after notification to the adverse party of the application and of the time, date, and place of the hearing.

In Washoe and Clark Counties, the process includes an additional step before the judge issues the order or denies the application. After the applicant files an application with the TPO office in Washoe County, the Domestic Violence Court Master personally interviews all protection order applicants. In Clark County, the Domestic Violence Commissioner reviews the written applications. In both jurisdictions, the master/commissioner drafts a recommendation to be presented to a judge of the family court, who is responsible for overseeing the domestic violence commissioner or court master. If the parties are unhappy with the recommendation, they may object and obtain a hearing before the family court judge. Otherwise, the judge uses the commissioner/master's recommendation to consider the application and make a ruling.

In broad terms, the judge has the discretion to: (1) incorporate the TPO into a divorce decree; (2) extend or make the TPO permanent; or (3) dissolve the TPO. In greater detail, the judge has the discretion to:

- (1) Issue a 30 day protection order at an ex parte hearing, which does not require the presence of the applicant or the adverse party; if the judge decides that a possibility of violence exists, then the judge issues a TPO, and the possible scope of the order includes:
 - (a) No contact between the applicant and the adverse party;
 - (b) Making a party move from the residence (which may invoke due process issues); and
 - (c) Ordering visitation rights regarding children, including the possibility of spousal and child support on a temporary basis;
- (2) Order an evidentiary hearing, requiring the applicant's presence and notification to the adverse party. This occurs in instances where present acts of domestic violence are alleged in the TPO application, but custody or eviction issues are the focal point of the application. Also, if the judge reads the application and finds no present acts of domestic violence, but

finds a past of domestic violence, the judge will order an evidentiary hearing to determine if the issuance of the order is necessary; or

- (3) Issue a 30-day protection order at an ex parte hearing, while simultaneously ordering a court hearing at a future date, approximately two weeks from the date of the order.

If the judge grants the application, the judge issues a temporary order for protection, and includes the date the protection expires in the order.

5.6.2 Temporary Protection Order: Ex Parte Proceedings

When the judge decides whether to issue a temporary order for protection against domestic violence, the applicant need not appear in court, and the adverse party will not receive notice of the proceedings. Such proceedings are ex parte proceedings, defined as proceedings “on behalf of only one party, without notice to any other party.” In Clark County, it is rare for a judge to grant custody to the applicant during an ex parte hearing. However, if notice is served to the adverse party (a non-ex parte hearing), and the adverse party fails to appear, the judge may grant custody to the applicant. In Washoe County, the judge may grant custody during temporary protection order hearings. In other counties, with only justice courts and the justice of the peace to conduct such hearings, the justice of the peace lacks the jurisdiction to grant custody during a hearing for a temporary protection order but has the authority to order what is necessary for the protection of the child.

5.6.3 Purpose of the Order

The order notifies the adverse party of the consequences of violating the order. Further, the order expressly states that violations of the order are criminal, and can result in arrest, fines, and community service. Also, the order specifically lists the actions the adverse party is prohibited from committing, such as the distance to be kept from the applicant and the children, and custody, visitation, and child support issues. Moreover, the protection order provides explicit orders to law enforcement pertaining to an officer’s duties and the adverse party’s responsibilities and restrictions. Additionally, the order provides a section designating the date on which the order is transmitted to the state repository. See Section 5.2.5 for a description of the state repository.

5.6.4 Scope of the Order

Both the TPO and the extended Order forms include sections in which a judge may provide for exceptions or additional provisions not specifically stated in the form. Examples of exceptions or additional provisions that could be included in an order, to be placed in the appropriate “exceptions” paragraph, includes, for example, if a child suffers from medical problems and the court orders the adverse party to stay away from the child,

except when the child visits the doctor, the order should state a specific time, date, hospital, etc.

5.6.5 Transmission and Service of the Order

NRS 33.060 provides as follows:

1. By the end of the next business day after the order is issued, the court shall transmit a copy of it to the appropriate law enforcement agency which has jurisdiction over the residence, school, child care facility or other provider of child care, or place of employment of the applicant or minor child.
2. The court may order the appropriate law enforcement agency to:
 - (a) Serve the adverse party personally with the temporary order if it finds that such service is necessary to avoid any act of violence; and
 - (b) File with or mail to the clerk of the court proof of service by the end of the next business day after service is made.

The application for an extended order and the notice of the hearing thereon must be served upon the adverse party pursuant to Nevada Rules of Civil Procedure.

3. A law enforcement agency shall enforce a temporary or extended order without regard to the county in which the order was issued.
4. The clerk of the court shall issue to the applicant and the adverse party, without any fee, a copy of the temporary or extended order.

5.6.6 Notice to the Adverse Party

NRS 33.020(3) provides that a temporary order may be granted with or without notice to the adverse party. An extended order may be granted only after notice to the adverse party and a hearing on the application. A hearing on an application for an extended order must be held within 45 days after the date on which the application for the extended order is filed.

5.7 FORM 3: DOMESTIC VIOLENCE ORDER FOR PROTECTION INFORMATION SHEET

The applicant must fill out the protection order information sheet. The information the applicant supplies is necessary for service of the order on the adverse party. Further, the applicant must provide certain information for entry of the order into the statewide repository, including: the applicant's name, date of birth, race and sex; the adverse party's name, date of birth, race, sex, social security number, and relationship to the applicant; and answers to a number of specific questions.

5.8 FORM 4: ORDER FOR PROTECTION RETURN OF SERVICE

5.8.1 Return of Service

All protection orders must be served on the adverse party. The officer or other person who serves a protection order must submit to the court a fully completed return of service form. The form designates the type of order to be served, and the status of service upon the adverse party. The officer or other person who serves the order must certify that the adverse party was personally served, and the time and location of service, or that the officer or person serving the order attempted to serve the adverse party with notice of the order, but was unsuccessful. If the order is served orally, the officer or person serving the order must certify that the adverse party was informed of the specific terms of the order, the consequences of violating the order (arrest), the location of the court issuing the order, and the hours when the applicant may obtain a copy of the order.

5.8.2 Service of Protection Order and Arrest for Violation

NRS 33.070 requires service of the order on the adverse party before he can be arrested or held in contempt of court. In addition,

1. Every temporary or extended order must include a provision ordering any law enforcement officer to arrest an adverse party if the officer has probable cause to believe that the adverse party has violated any provision of the order.

2. If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and order, he shall:

- (a) Inform the adverse party of the specific terms and conditions of the order;⁵
- (b) Inform the adverse party that he now has notice of the provisions of the order and that a violation of the order will result in his arrest; and

⁵The specific terms and conditions of the order will be available to law enforcement through the central repository. See §5.2.5.

- (c) Inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order.

3. Information concerning the terms and conditions of the order, the date and time of the notice provided to the adverse party, and the name and identifying number of the officer who gave the notice must be provided in writing to the applicant, and the officer must prepare and submit a report to the records section of the law enforcement agency.

5.8.3 When Service of the Protection Order Cannot Be Verified

If verification of service cannot be made, the officer(s) shall:

- Advise the adverse party of the specific terms of the order;
- Advise the adverse party that he now has notice and a further violation will result in arrest;
- Note the date, time, and officer's name on the applicant's copy of the order when applicant is present;
- Prepare and submit a report, along with the affidavit of service and copy of the order, to the records section of the law enforcement agency.

5.9 **FORM 5: ORDER FOR HEARING TO EXTEND, MODIFY OR DISSOLVE THE ORDER FOR PROTECTION**

5.9.1 Case-By-Case Analysis

Depending on the unique circumstances of each domestic violence incident and the resultant protection order, this stage of the protection order process may not materialize. However, if the victim needs the court's protection beyond the time granted in the temporary protection order, or needs specific protections different from or in addition to those provided in the order, or no longer needs protection from the adverse party, the victim may move to extend, modify or dissolve the order for protection. The adverse party also may move to modify or dissolve the protection order at any time. When either the applicant or the adverse party requests an extension, modification or dissolution of the temporary protection order, the judge will inquire into the reasons for such a request.

5.9.2 Hearing to Extend Order If Physical Harm Exists

If the victim presents evidence of physical harm, the court will hold an evidentiary hearing to determine whether the 30 day temporary protection order should be extended. The

order may be extended up to one year pursuant to NRS 33.080(3). If the hearing takes place before a domestic violence commissioner or hearing master and the parties are unhappy with the decision, they may object and obtain a hearing before the district court judge.

5.10 FORM 6: NOTICE FOR HEARING TO EXTEND, MODIFY OR DISSOLVE THE ORDER FOR PROTECTION

This stage of the proceedings is the first time in the protection order process when the adverse party may challenge the protection order by moving to dissolve or modify it. Moreover, NRS 33.080(3) specifically requires that the adverse party receive notice of any hearing to extend, modify or dissolve the order for protection. In addition, the applicant must attend the hearing for the order to be extended.

Depending on which party initiated the motion, the court serves the adverse party or the applicant with the Notice for Hearing to Extend, Modify or Dissolve the Order for Protection. Notably, the language contained in both the order for the hearing and the notice for the hearing informs the parties that the protection order will continue in effect until the court conducts a hearing and issues a further order. Additionally, the language appearing in both the order and notice of hearing instructs the court to transmit the forms to the central repository.

5.11 FORM 7: EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

In the final stage of the protection order process, the judge reviews the particular facts of the case, and then determines whether to extend, modify or dissolve the order. If the judge finds that an extension of the protection order is necessary to protect the applicant and any children, the judge issues an extended order for protection against domestic violence. The order makes the same admonitions to the adverse party as those in its notification to them regarding violations of the initial protection order. Also, the order specifically states that the adverse party received actual notice of the hearing, and lists the actions the perpetrator is prohibited from committing, similar to the prohibitions found in the initial protection order.

The order also contains a warning: “Possession of a firearm or ammunition while this order is in effect may constitute a felony under federal law punishable by a fine of up to \$250,000 and/or a prison sentence of up to ten (10) years.”

5.11.1 Extension of a Protection Order

Following the hearing, the temporary protection order may be extended for a period of not more than one year. There is no minimum time period for which the order must be extended; an order may be extended for as little as one week. If the extended order is issued by the justice court and the adverse party objects, the adverse party has the option of appealing the decision to the district court. An appeal does not affect the enforcement of the order unless and until the appeal is successful.

5.11.2 What Warrants the Extension of a Temporary Protection Order

To extend a temporary protection order, it is sufficient for the applicant to show a reasonable fear of the adverse party. At the hearing to extend a temporary protection order, the applicant must convince the court that the extension of the protection order is necessary for the applicant's safety. The judge will inquire into the basis for the applicant's motion to extend the protection order. It is not necessary for the applicant to present an entire case at the hearing to extend the order, but the applicant should be able to provide sufficient facts to prove allegations stated in the motion. For instance, an applicant may assert fear of the adverse party. If the adverse party is present at the hearing and responds with a lack of knowledge about the reason for the applicant's fear, the applicant must be prepared to testify about specific occasions of the adverse party damaging property, or about injuries sustained from the adverse party that required medical care.

Further, the applicant may present evidence of threats of domestic violence, harassment, and phone calls, among other things. It is important for the applicant to file police reports of any incidents of domestic violence or any events that caused the applicant to be fearful of domestic violence after the court has issued a temporary order for protection. The applicant should present the police reports as evidence at the hearing to extend the protection order. Further, the applicant should obtain notarized statements from witnesses, such as family, friends, and neighbors, and present such statements to the court as further evidence to convince the judge to extend the protection order. If there is a history of domestic violence, the court will likely extend the protection order to a year.

5.11.3 Procedure for Modification or Dissolution of a Protection Order

A protection order can be dissolved or modified only by motion, and the court may require a hearing. Either the adverse party or the applicant may file a motion to modify or dissolve the protection order. Because a TPO is an order of the court, only the court has the power to modify or dissolve the order prior to the expiration date stated in the order. In addition, NRS 33.080(2) provides that, after being served with a protection order, the adverse party may file a motion to request an expedited hearing to modify or dissolve the

order. In all instances in which modification or dissolution of a protection order is sought, the order remains in effect until the hearing, and the person requesting the hearing must attend and present pertinent information to the court.

In Clark County, the Eighth Judicial District Court will not allow an applicant to withdraw an application for a TPO and will not dissolve or modify a temporary or extended protection order without a written motion and hearing. In Washoe County, their policy on applications for Temporary Protection Orders is to allow the applicant to withdraw the application or to request the Temporary Protection Order be dissolved. This can be done at anytime and does not require a court hearing. For Extended Orders for Protection, the court requires that the Adverse Party have notice of the applicants intent to dissolve the Extended Order, which may result in a hearing.

5.11.4 Typical Protection Order Modifications

Although the court may hold a separate hearing for the modification of a temporary or extended order for protection, modifications to protection orders are often made in conjunction with hearings to extend a temporary protection order. Some of the changes made to protection orders are more in the nature of additions to the order, rather than modifications of the existing terms. Such additions or modifications may include provisions concerning child support, and visitation, maintenance, and reimbursement for medical bills and property damage.

The typical modification may occur when a judge issues an ex parte 30 day temporary protection order and does not award visitation of the children to the adverse party because the adverse party was not present. If, after the issuance of the temporary protection order, the adverse party wishes to obtain visitation under the protection order, the adverse party must make a motion to modify the order. Similarly, if the adverse party was evicted from the family residence at an ex parte hearing, the adverse party may later move to modify the order, providing evidence that the applicant is not married to the adverse party, and has no right to evict the adverse party from property belonging exclusively to the adverse party.

A judge also may modify a provision of the protection order specifying where the applicant and the adverse party are to exchange their children. If the applicant's family member's residence is the pick-up location designated in the order, and the applicant's family member no longer wants to be the pick-up location, either the applicant or the adverse party may file a motion to modify the location for the exchange of the children. Similarly, if one of the parties changes a work schedule that affects the time and place for visitation as set forth in the protection order, the party should use the modification process as a vehicle to reach the other party without actually contacting the other party, in which case

the judge will modify the terms of visitation on the order.

5.11.5 No Need to Modify

A modification of the protection order is not always necessary. For instance, in the case where the applicant changes a work or home address, the applicant may wish to modify the addresses typed in the temporary protection order to ensure that the protection order protects the applicant at the new address. However, it is not necessary for the applicant to move to modify the changed addresses on the protection order, because the standardized protection order form instructs the adverse party to stay away from “any other place that Applicant may reside” or “place of employment.”

5.11.6 Protection Order Dissolution

Except as noted in 5.11.3 regarding Washoe County’s procedure, a court will grant an applicant’s request to dissolve the protection order, but the applicant must be present at the dissolution hearing. The adverse party need not be present when the applicant is the movant. If the adverse party is the movant, both the applicant and the adverse party must be present at the hearing before the judge will dissolve the protection order. If the adverse party seeks to dissolve the protection order, the applicant must be served with notice of the hearing to dissolve the order. If the applicant is not properly served, and the applicant is not present at the hearing, the judge will not dissolve the protection order.

5.11.7 Grounds for Dissolution of a Protection Order

There are a number of reasons for a judge to order the dissolution of a protection order. For instance, if the applicant contacts the adverse party through telephone calls, or the applicant and the adverse party meet, the adverse party may use this as an opportunity to present such evidence to the judge and request the dissolution of the protection order. Adverse parties may use such contacts or other evidence to prove that they are not violent persons. Also, if the adverse party demonstrates that the applicant’s allegations in the original application are false, the judge may dissolve the protection order. For example, the adverse party could offer evidence of an alibi proving that the adverse party was out of town during the incidents alleged in the applicant’s affidavit.

5.12 VIOLATION OF PROTECTION ORDERS

5.12.1 Penalties for Violation of a Protection Order

Violation of a protection order is a misdemeanor criminal offense, punishable by up to six months in jail and/or a fine up to \$1,000. If the adverse party violates the order, the applicant should call the police and report the incident immediately. The adverse party is not subject to arrest, however, if the violation of the order involves the adverse party's failure to pay child support or reimburse the applicant for damaged property or medical expenses for injuries sustained. Further, the applicant may move that the adverse party be held in a contempt of court.

5.12.2 Contempt of Court for Violation of a Protection Order

An applicant may request a hearing to find the adverse party in contempt of court for violating a protection order.⁶ The court will schedule a hearing in response to the applicant's filing of an affidavit alleging violations of a protection order.⁷ A finding of contempt of court is a misdemeanor⁸ and may result in a fine, jail time or other sanctions within the court's discretion.

To move for an order holding the adverse party in contempt of court, the applicant must attach an affidavit to a motion which details the reasons why the adverse party should be held in contempt of court. The applicant also must provide notice of the contempt hearing to the adverse party, and be prepared to provide specific evidence at the hearing. It is not necessary for the applicant to meet the standard of proof required for conviction of a crime, even though the adverse party may be exposed to time in jail. For example, if the applicant fails to pay financial relief as instructed in the protection order, the court may hold the adverse party in contempt, and order jail time of up to 25 days for each specific violation of the protection order.

It is important for the applicant to recognize the power behind the contempt of court sanction. If the adverse party fails to follow the protection order's no contact instructions, any letters, phone calls, and even flowers will result in violations of the protection order. From the applicant's perspective, the contempt of court order enables the applicant to prevent the adverse party from intimidating the applicant by violating the order. When the court holds the adverse party in contempt, the adverse party quickly learns that the protection order is not just a piece of paper that can be ignored.

Applicants should be encouraged to be specific when filing allegations that the adverse party has violated a protection order. Applicants should be advised to keep a written journal or diary of all instances of the adverse party's harassment or other violations (including dates, times, and locations). Harassment through telephone calls may be substantiated with answering machine tapes, caller ID, or call traces. Letters, faxes and e-mail also may be used to substantiate the allegations in the contempt motion. Witnesses may submit notarized written statements if they have firsthand knowledge of the adverse party's violation of a domestic violence protection order.

⁶Of course, if the adverse party is arrested for violating a protection order, a new criminal complaint may be filed, as with any criminal arrest.

⁷See generally NEV.REV.STAT.ANN. §22.030 (Michie 1999).

⁸NEV.REV.STAT.ANN. §199.340 (Michie 1999).

5.13 MUTUAL PROTECTION ORDERS

A mutual protection order is an order entered against both parties, requiring both parties to abide by the respective conditions and orders imposed upon them. Nevada courts cannot enter valid mutual protection orders unless both parties petition for protection.

In keeping with Nevada law, the Violence Against Women Act of 1994 does not afford mutual protection orders full faith and credit, unless the following safeguards have been satisfied:⁹

1. A petition articulating grounds for the issuance of such order was filed;
2. The person against whom the order was entered was served with notice of the petition;
3. The person against whom the order was entered had an opportunity for a hearing before a court; and
4. The court made specific findings that each party was entitled to such an order.

A violation of due process occurs when mutual orders are entered against the applicant without the adverse party's filing a petition, presenting evidence of abuse, and obtaining a court ruling that the applicant committed an offense of domestic violence.¹⁰

5.14 SENTENCING

5.14.1 Mandatory Sentences and Sentence Enhancements

NRS 200.485(1)(a) mandates the following for the first offense within the immediately preceding seven years, which is a misdemeanor:

- Imprisonment in the city or county jail or detention facility for not less than two days, but not more than six months; and

⁹18 U.S.C. § 2265(c)(1)(2) (1994).

¹⁰Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21(4) HOFSTRA L. REV. 801, 1074-78 (1993).

- Not less than 48 hours, but not more than 120 hours, of community service; and
- A fine of not less than \$200, but not more than \$1,000.

NRS §§200.485(1)(b) and (c) mandate sentence enhancements based on prior convictions of battery constituting domestic violence, as follows:

1. For the second offense within the immediately preceding seven years, the perpetrator is guilty of a misdemeanor and must be sentenced to:

- Imprisonment in the city or county jail or detention facility for not less than ten days, but not more than six months; and
- Not less than 100 hours, but not more than 200 hours, of community service; and
- A fine of not less than \$500, but not more than \$1,000.

2. For the third and any subsequent offense within the immediately preceding seven years, the perpetrator is guilty of a category C felony and shall be punished as provided in NRS 193.130.

In addition to any other penalty, if a person is convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, the perpetrator must attend counseling sessions and pay a \$35.00 administrative fee per month. The convicted perpetrator also may be required to participate in a drug or alcohol abuse treatment program.

5.14.2 Sentencing Options

After adjudication, judges have additional sentencing options. Some sentencing options focus on education, such as anger management and parenting classes, and other options focus on substance abuse and addiction awareness. As provided in NRS 200.485(4), the court may order a perpetrator to participate in and pay for a program of treatment for abuse of alcohol or drugs that has been certified by the state. In addition, the court also may order participation in such programs as Alcoholic Anonymous, Narcotics Anonymous, and other similar rehabilitation programs. Some perpetrators may participate in “drug court,” which is available in Clark and Washoe Counties.

It is important to remember that while drugs and alcohol may play a role in the domestic violence cycle, ridding the perpetrator of a substance abuse problem does

not automatically rid the perpetrator of a propensity for violence. Drugs and alcohol can serve as excuses for domestic violence. Perpetrators also can be violent for the same reasons when they are sober.

5.14.3 Parole and Probation

The Nevada Division of Parole and Probation (the Division) becomes involved in any domestic violence case involving a person who has criminal justice status as either a probationer or parolee. Probationers serve suspended sentences and answer to the authority of the court imposing the original sentence (the court of record) in any situations involving subsequent violations of the law. In contrast, parolees answer to the authority of the Nevada Parole Board for subsequent violations.

Probation may be one of the most effective sentencing options available for perpetrators due to the fact that when the perpetrator is properly monitored, the victim has a level of protection and support after the disposition of the case before the court.¹¹ Furthermore, the Division can monitor the perpetrator's progress on the terms and conditions of the probation (in Nevada, by requiring completion of a Batterer Intervention Program licensed by the state). Given the nature of domestic violence, and its overtones of power and control, probation supervisors should be cautioned to treat even minor infractions of the terms and conditions of the probation agreement as serious issues.¹² To assist the Division in monitoring compliance, the courts should not issue orders it is not prepared or will not be able to enforce, in light of the fact that perpetrators, as a group, will tend to test the limits of their supervision.¹³ Probation can be a highly effective sanction, provided that it continues to hold the perpetrators accountable for their behavior.¹⁴

¹¹*See generally* LINDA A. MCGUIRE, PROSECUTION OF DOMESTIC VIOLENCE IN IOWA: A PROSECUTION MANUAL (3rd ed. 1998) at §3-26.

¹²*Id.* at §3-27.

¹³*Id.*

¹⁴*Id.* (noting for example, the need to obtain releases for any treatment programs that the perpetrator is attending and making clear to the perpetrator that no excuses for absences will be tolerated).

5.15 RESOURCES

U.S. ATTORNEY'S OFFICE
(702) 388-6336

ADMINISTRATIVE OFFICE OF THE COURTS-SUPREME COURT OF NEVADA
(775) 684-1700

EIGHTH JUDICIAL DISTRICT COURT/FAMILY DIVISION
601 North Pecos Road, Third Floor
Las Vegas, NV 89101-2408
(702) 455-4624

DOMESTIC VIOLENCE PREVENTION COUNCIL
Statewide Domestic Violence Task Force
(775) 684-1100 (in Carson City)
(702) 486-3420 (in Las Vegas)

SOUTHERN NEVADA DOMESTIC VIOLENCE TASK FORCE
(702) 229-6201

WASHOE COUNTY DOMESTIC VIOLENCE TASK FORCE
(775) 334-2050

NEVADA NETWORK AGAINST DOMESTIC VIOLENCE
100 W. Grove Street Suite 315
Reno, NV 89509
(775) 1115
1-800- 230-1955

NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE
1-800 537-2238

RESOURCE CENTER ON
DOMESTIC VIOLENCE:
CHILD PROTECTION/CUSTODY
1-800 527-3223

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
The Family Violence Department
P.O. Box 8970
Reno, NV 89507
(800) 527-3223

WEBSITE FOR VIOLENCE AGAINST WOMEN OFFICE
U.S. DEPARTMENT OF JUSTICE
www.usdoj.gov/vawo

ASSISTANCE FOR TRIBAL COURT ORDERS
American Indian Law Center, Inc.
(505) 277-5462
Northern Plains Tribal Judicial Institute
(701) 777-6176

5.16 ACKNOWLEDGMENTS

A special thank you to the Family Courts of the Second and Eighth Judicial Districts, particularly the Hon. Scott Jordan, the Hon. Victoria Van Meter, and the Hon. Patricia Doninger. Also appreciated is the assistance of the Eighth Judicial District Family Court Administrator, Christina Chandler, and her staff. Susan Strauss of the Administrative Office of the Courts–Supreme Court of Nevada and “Sam” Smith of the National Council of Juvenile and Family Court Judges also provided valuable information contained in this chapter. Wendy Wilkinson of the Eighth Judicial District Court, TPO Office, and Elke Bertrand of SafeNest in Clark County, offered valuable information contained in this chapter.

CHAPTER 6

CIVIL PRACTICE

- 6.1 INTRODUCTION
- 6.2 IDENTIFYING AND ADDRESSING DOMESTIC VIOLENCE IN LAW OFFICE PRACTICE
 - 6.2.1 Client Screening Guidelines
 - 6.2.2 Client Interviewing and Safety Planning
 - 6.2.3 Planning for Separation or Divorce
- 6.3 NEVADA LAW - ORDERS PENDING DIVORCE
 - 6.3.1 Orders for Support and Costs of Suit
 - 6.3.2 Temporary Restraining Orders Regarding Residence
 - 6.3.3 Child Custody
 - 6.3.4 Mediation of Cases Involving Child Custody or Visitation
 - 6.3.5 Abduction and Interstate Enforcement
- 6.4 INDIAN CHILDREN
- 6.5 RESOURCES
- 6.6 ACKNOWLEDGMENTS

6.1 INTRODUCTION

Given the prevalence of domestic violence in our society, lawyers in most areas of private practice have had or will have a client who is a victim or a perpetrator of domestic violence, although the lawyer may not know it. Victims are generally reluctant to open up, even though they may need legal representation. Perpetrators may be in denial or too embarrassed even to seek the advice of their lawyers, particularly if the perpetrator is a colleague or other professional. The children of clients who may be perpetrators have no voice of their own, unless lawyers listen. Thus, to best serve the interests of all of their clients, lawyers must educate themselves about domestic violence. This chapter is just a beginning. Civil practitioners also should familiarize themselves with the other chapters in this Manual; in particular, Chapter One and its exploration of the many facets of domestic violence, Chapter Two's treatment of applicable laws and jurisdictional issues, Chapter Five's detailed explanation of various types of protection orders available under Nevada law and the protection order process, and the Bibliography.

6.2 IDENTIFYING AND ADDRESSING DOMESTIC VIOLENCE IN LAW OFFICE PRACTICE

6.2.1 Client Screening Guidelines¹

Recognizing which clients are victims of domestic violence and which clients are perpetrators can be crucial to a lawyer's effectiveness, regardless of the nature of the lawyer's practice. Unless a lawyer is identified as a domestic violence specialist, few clients will identify themselves as victims or perpetrators of domestic violence. Thus, regular screening protocols to identify domestic violence issues are essential. The American Bar Association Commission on Domestic Violence (ABA Commission) recommends screening all clients because it is so difficult to independently identify who is likely to be a perpetrator or a victim of domestic violence.

The ABA Commission advises lawyers to ask direct questions about domestic violence in the home, but without forcing victims to disclose information they are reluctant to divulge. If a client reveals domestic violence problems, the lawyer must decide whether to take on the representation or refer the client to a professional who specializes in domestic violence work. However, any lawyer who learns that a client is being subjected to domestic violence should conduct safety planning with the client

¹ *Adapted from* Roberta A. Valente, American Bar Association Commission on Domestic Violence, *Chapter Two: The Client - Screening Guidelines*, in *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* 2-1 to 2-6 (1996).

before leaving the office, whether the lawyer represents the client in the domestic violence matter or not. Following is a checklist of screening questions.

Screening Checklist

- Screen all clients for domestic violence during the intake interview.
- Determine whether the client has experienced the following because of a spouse or partner's actions:
 - physical or emotional abuse of client or children
 - fear
 - excessive criticism
 - difficulty taking medication needed or seeking medical help
 - injury to pets or destruction of personal effects
 - constant phone calls to check up on victim at work or home
 - difficulty maintaining relationships with others or being trapped in the house
 - difficulty finding or keeping a job or going to school
 - financial deprivation or abuse
 - forced sex
 - attack or threat involving use of weapons
 - injurious effects of spouse or partner's abuse of drugs or alcohol
- Don't assume that a client experiencing or perpetrating domestic violence fits a stereotype; rather, determine whether the warning signs of abuse exist.
- Be aware that clients will not automatically volunteer information about their experiences.
- If the client declines to discuss domestic violence, let the client know:
 - You are concerned about the client's safety
 - You are ready to talk about the client's domestic violence experiences
 - Domestic violence can harm the client's children
 - Domestic violence is a crime
 - You will assist the client in finding the non-legal service referrals needed

- Be alert for the following signs that domestic violence is occurring:
 - Dominating, intimidating, terrifying, rule-making, stalking, harassing, and injurious behavior to control and manipulate the actions and responses of spouses or partners and sometimes children
 - Severe, recurring or life-threatening abuse, for example, repeated bruises, broken bones, and physical attacks or threats with weapons
 - Slaps, pushes, shoves, emotional and financial abuse, false imprisonment, and any other behavior used to control and coerce the other spouse or partner
 - Degrading and humiliating behavior
 - Use of the legal system to punish a partner or spouse or attempts to control client-lawyer appointments and communications
 - Constant phone calls to client from spouse or partner at work or home
 - Isolation of client from relatives, friends, co-workers, or neighbors

6.2.2 Client Interviewing and Safety Planning²

Interviewing a perpetrator or victim of domestic violence can be challenging. Perpetrators often deny or minimize their role, and abused women often have difficulty talking with a lawyer about such intimate matters. Lawyers need to be familiar with interviewing strategies that will yield accurate facts. To discover those facts, they need to be prepared to ask specific questions about all aspects of the abuse – its physical, sexual, psychological and economic dimensions. Lawyers also must assist clients who are victims of domestic abuse in preparing a safety plan. The danger of violence, in particular the risk of death, escalates when victims attempt to leave their perpetrators.³ The following checklist

² Adapted from Fredrica L. Lehrman, American Bar Association Commission on Domestic Violence, *Chapter Two: The Client - Client Interview*, in *THE IMPACT OF DOMESTIC VIOLENCE IN YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* 2-7 to 2-10 (1996), and Deborah M. Goelman, American Bar Association Commission on Domestic Violence, *Chapter Two: The Client - Safety Planning*, in *THE IMPACT OF DOMESTIC VIOLENCE IN YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* 2-11 to 2-16 (1996).

³ Goelman, *supra* note 2, at 2-11, *citing* Ronet Bachman & Linda E. Saltzman, U.S. DEP'T OF JUSTICE, NAT'L CRIME VICTIMIZATION SURVEY, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 1, 4 (1995) (nearly 30 percent of all female homicide victims are killed by their current or former husbands or boyfriends, and the rate of intimate violence against women

combines interviewing and safety planning items that every lawyer should cover when interviewing a client who has experienced domestic abuse.

Interviewing and Safety Planning Checklist

- Assure the client that communications are confidential
- Express belief in client and validation of client's experiences
- Ask simple, direct questions and obtain detailed answers
- Avoid legal terms
- Accept no excuses for violent acts
- Preserve all evidence
- Assess the level of danger and prepare a safety plan
- Take safety precautions when calling or writing client
 - Call the police if client is in danger and confirm that a non-responsive client is safe
 - Assess the perpetrator's lethality and help client go into hiding if necessary
 - Take precautions with the perpetrator's family members
- Advise client to:
 - Make the home as safe as possible and go to a safe place if necessary
 - Take the children if the victim must leave the home
 - Develop an escape route and a safety plan for the family
 - Keep a bag packed and hidden in case flight becomes necessary
 - Keep extra copies of protection orders at home and work
 - Tell the neighbors and co-workers of the perpetrator's identity
 - Enroll in a reliable self-defense course
 - Alter routines and trade cars with a friend or relative
 - Travel to and from work with another person
 - Keep addresses and telephone numbers confidential

separated from their husbands was 25 times greater than that for married women).

- Screen in-coming calls and keep a diary
- When attending court proceedings:
 - Arrive at court before client or advise client to wait near a security guard
 - Position self between the perpetrator and client and do not permit the perpetrator to speak to client
 - Make certain that client is safe when exiting the courthouse

6.2.3 Planning for Separation or Divorce⁴

As noted above, the danger of domestic violence often escalates during separation or divorce because of the threat to the perpetrator's control over the victim. Lawyers and advocates for domestic violence victims should take immediate steps to secure short term legal protection for their clients and their clients' children. The ABA Commission recommends the following short-term legal protections:

1. Custody: Child custody is a very volatile area in the context of domestic violence.⁵ Therefore, the victim should obtain sole custody as soon as possible to diminish or eliminate the necessity of any continued contact between the parties. Also, the contact between the parties should be minimized if parties arrange for time-sharing. A neutral pick-up and drop-off place for the children is preferable to the residence of either party. If necessary for the children's safety, supervised visitation should be arranged. Go through the following checklist to ensure that the child's best interests are advanced:

- Evaluate the extent to which any child subject to a custody or visitation action is exposed to violence or is a victim
- Be prepared to describe the pattern of violence, including injuries and other effects of the violence
- Develop explicit recommendations for protections in a proposed custody order

⁴ Adapted from Marna S. Tucker, American Bar Association Commission on Domestic Violence, *Chapter Four: Civil Matters - Separation and Divorce: Property and Financial Settlements and Court Awards*, in *THE IMPACT OF DOMESTIC VIOLENCE IN YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* 4-9 to 4-16 (1996), and Barbara J. Hart & Meredith Hoffman, American Bar Association Commission on Domestic Violence, *Chapter Five: The Best Interest of the Child - Child Custody*, in *THE IMPACT OF DOMESTIC VIOLENCE IN YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* 5-1 to 5-6 (1996).

⁵Saunders, Daniel G., *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 *SOCIAL WORK* 51, 53 (1994) (noting that custody proceedings frequently become a vehicle whereby perpetrators of domestic violence attempt to extend or maintain their control and authority over abused partners during and after separation); Hart, Barbara J. *Family Violence and Custody Orders*, 43(4) *JUV. & FAM. CT. J.* 29, 33-34 (1992) (same).

- Fully inform custody evaluators, mediators, counsel for children, and the court about the domestic violence and the need for provisions within custody and visitation awards to safeguard against future abuse
- Introduce evidence of domestic violence in custody proceedings, and be certain that the court adequately evaluates the impact of domestic violence in creating an award
- Ensure that custody orders articulate specific rights, restrictions, and responsibilities to enhance enforcement and safeguard the vulnerable
- Make certain that custody and visitation arrangements minimize the children's exposure to future violence and help the children recover from prior domestic violence

2. Child and Spousal Support: Payments from the perpetrator's account to the victim's account should be made by direct deposit and/or electronic transfers. If the perpetrator defaults, the victim may seek wage withholding. Include costs of current or future counseling and therapy, medical treatments, relocation expenses, emergency housing expenses, extraordinary medical costs, and replacement of damaged possessions.

3. Marital Home: Obtain exclusive use and possession of the marital home. Change the locks and secure other possible points of entry.

4. Health Insurance Coverage: Seek a direct relationship between the health insurer and the victim so that the perpetrator cannot threaten to cancel the insurance.

5. Counseling for the Perpetrator: Obtain required counseling for the perpetrator, particularly if the parties have children in common. Provide for victim notification when the counseling program or the perpetrator's participation terminates.

6. Legal Fees: Seek an agreement that the perpetrator will pay the victim's attorneys' fees and court costs for the duration of the litigation.

7. Dissipation of Marital Assets: Seek an agreement that the parties will not dissipate marital assets until further agreement.

8. Contact or Harassment by the Perpetrator: Seek an agreement that the perpetrator will refrain from contacting or harassing the victim and, if necessary, obtain a court order prohibiting contact.

6.3 NEVADA LAW - ORDERS PENDING DIVORCE

6.3.1 Orders for Support and Costs of Suit

Section 125.040 of the Nevada Revised Statutes governs the court's issuance of orders for support and costs of suit during the pendency of divorce proceedings. The purpose of NRS 125.040 is to act as an equalizer, creating for the wife the financial possibility of getting her day in court. Through the orders authorized by Section 125.040, the wife is enabled to afford her appearance in court on an equal basis with her husband, without destroying her financial position.⁶ Although orders granting allowances for past expenses and services are permitted in some cases, it is the general rule that allowances pending divorce can only be made for future expenses and not expenses previously incurred.⁷

It is important to note that the district court's order providing temporary support during the pendency of divorce proceedings is completely separate from the perpetrator's obligation to pay the victim after the divorce pursuant to a premarital agreement if one exists between the parties.⁸ It is within the judge's discretion to order temporary support and costs for the party in need of such support while a divorce action is pending. Such support often provides for living expenses, child support, and money to enable the party in need to pursue or defend the divorce action. The

⁶*Braddock v. Braddock*, 91 Nev. 735, 742, 542 P.2d 1060 (1975).

⁷*Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342 (1971), citing *Metcalf v. Second Judicial Dist. Court*, 51 Nev. 253, 274 P. 5 (1929).

⁸*Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996).

party filing the motion for fees and allowances, temporary spousal support, child support, or exclusive possession of a community residence, for example, must file an affidavit of financial condition.⁹

6.3.2 Temporary Restraining Orders Regarding Residence¹⁰

In the context of a domestic violence matter, if both parties live in the community residence or if the other party has sole possession of the residence, a motion for immediate temporary exclusive possession of the home or a preliminary injunction requesting such relief cannot be considered until the other party has received notice. A motion for immediate temporary exclusive possession of a community residence must be supported by an affidavit based on personal knowledge and detailed facts. The court will consider a motion for an ex parte restraining order if the other party is not living in the community residence at the time of the request for exclusive possession of the residence. The motion for an ex parte restraining order also must be supported by notice and an affidavit based on personal knowledge and setting forth detailed facts.

Although ex parte motions for restraining orders granting temporary exclusive possession of the residence are usually not granted where both parties live in the residence, a judge or master may grant such an order in a case of extreme emergency. An ex parte order cannot be requested if the residence is the other party's usual place of residence and the property or interest therein is the separate property of the other party. Under these circumstances, the party required to leave the residence where he or she is residing must be given at least 12 hours from the service of the order to remove his or her apparel and personal belongings.

6.3.3 Child Custody

The most important theme in child custody proceedings is for the court to ensure that the best interests of the child remain the center of the court's focus at all stages of the proceedings. A variety of factors contribute to the court's decision of what is in the best interests of the child. When the court decides the best interests of the child in cases involving domestic violence, it is important to note that the court rebuttably presumes that it is not in the child's best interest to award the perpetrator of domestic violence sole or joint custody.

In determining the best interests of the child, NRS 125.480 requires the court to consider,

⁹NEV.REV.STAT.ANN., Rules of the District Courts of Nevada; Rules of Practice for the 8th Judicial District Court of Nevada, Rule 5.32; NEV.REV.STAT.ANN., Rule 6(d).

¹⁰*Id.*, Rule 5.21

among other things:

- The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody;
- Any nomination by a parent or a guardian for the child; and
- Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

When domestic violence is alleged against a person seeking custody of a child, the court generally conducts an evidentiary hearing to determine whether an act of domestic violence has occurred. Such a determination creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. If the court determines that both parties have engaged in acts of domestic violence, it must then determine which person was the primary physical aggressor, if possible. If the court can determine which party is the primary physical aggressor, the presumption created applies only to the party determined by the court to be the primary physical aggressor.

In Clark County, it is rare for a judge to grant custody to the applicant during an ex parte hearing. However, if notice is served to the adverse party (a non-ex parte hearing), and the adverse party fails to appear, the judge may grant custody to the applicant. In Washoe County, the judge may grant custody during temporary protection order hearings. In other counties, with only justice courts and the justice of the peace to conduct such hearings, the justice of the peace lacks the jurisdiction to grant custody during a hearing for a temporary protection order.

In addition, NRS 432B.157 creates a safeguard for children in situations of domestic violence by upholding the rebuttable presumption that when a violent parent seeks sole or joint custody of his child, it is not in the best interests of the child. This safeguard reflects Nevada's efforts to protect the best interests of the child.

6.3.4 Mediation of Cases Involving Child Custody or Visitation

NRS 3.475 establishes a mandatory mediation program for cases involving child custody or visitation. However, NRS 3.475 (2) provides that the program must authorize the court to exclude a case for good cause shown, including, but not limited to, a showing that:

1. There is a history of child abuse or domestic violence by one of the parties;
2. The parties are currently participating in private mediation; or

3. One of the parties resides outside the jurisdiction of the court.

6.3.5 Abduction and Interstate Enforcement

Every court order regarding child custody must contain the following language pursuant to NRS 125.510(6) and the terms of the Hague Convention, as made applicable by NRS 125.510(7):¹¹

The abduction, concealment or detention of a child in violation of this order is punishable as a category D felony as provided in NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

Lawyers representing custodial parents who have protection orders need to ensure that courts in other jurisdictions act to protect the safety and welfare of their children. If the enforcing state court has jurisdiction over custody matters, and

- The protection order contains custody or visitation provisions and complies with the Parental Kidnapping Prevention Act (PKPA) and the issuing state's Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) provisions, the court should enforce the protection order.
- The protection order is silent on custody or visitation, the court should accept emergency jurisdiction if permitted by its state UCCJA / UCCJEA provisions and proceed pursuant to those provisions.
- The protection order contains custody or visitation provisions and complies with the PKPA and UCCJA / UCCJEA, and the petitioner seeks modification based on a change of circumstances, the court should accept emergency jurisdiction if permitted by its UCCJA / UCCJEA provisions and proceed pursuant to those provisions.

¹¹NEV.REV.STAT.ANN. §125.510(7) (Michie 1999) makes the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Convention on Private International Law, applicable to the parties.

If the enforcing court does not have jurisdiction over custody matters, the judge should act to protect the children and refer the custody and visitation issues to the appropriate state court for disposition.

6.4 INDIAN CHILDREN

Unlike other children, Indian children are not within the exclusive original jurisdiction of the state district court, as recognized in NRS 432B.410.¹² Instead, jurisdiction over Indian children is a matter of federal law. Pursuant to the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §1911(a), child custody proceedings involving an Indian child who resides or is domiciled within an Indian reservation are within the exclusive jurisdiction of the Indian tribe. Subsection (b) of Section 1911 provides for concurrent but presumptively tribal jurisdiction when the Indian child is not domiciled within the reservation.

Under NRS 432B.425, at the beginning of any proceedings involving the protection of an Indian child, the court must:

- C Notify the child’s tribe in writing in the manner prescribed by ICWA;
- C Transfer the proceedings to the Indian child’s tribe in accordance with ICWA; and
- C If the tribe declines jurisdiction, exercise its jurisdiction as provided in ICWA.

Further, NRS 432B.465 applies full faith and credit to the judicial proceedings of Indian tribes:

“Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.”

¹² Section 432B.410 states: “Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.”

6.5 RESOURCES:

Domestic Violence Commissioner
Eighth Judicial District Court
Family Division
601 N. Pecos
Las Vegas, NV 89101-2408
(702) 455-2434

Temporary Protection Order Office
Eighth Judicial District Court - Family Division
601 N. Pecos
Las Vegas, NV 89101-2408
(702) 455-3400

Clark County Legal Services Program, Inc.
Children's Law Project
701 Bridger, Suite 100
Las Vegas, NV 89101
(702) 386-1070

National Council of Juvenile and
Family Court Judges
P.O. Box 8970
Reno, Nevada 89507
1-800-527-3223
(702) 784-6295 / Fax (702) 784-6628

RESOURCE CENTER ON DOMESTIC VIOLENCE CHILD PROTECTION / CUSTODY

(800) 527-3223
FAX: (702) 784-6160
Specializes in child protection and custody within the context of domestic violence.

FAMILY & CHILD TREATMENT of SOUTHERN NEVADA (FACT)

4800 W. Charleston Blvd.
Las Vegas, NV 89146
(702) 258-5855
E-Mail: fact4800@vegas.infi.net.

6.6 ACKNOWLEDGMENTS

A special thank you to the Hon. Patricia Doninger, the Hon. Victoria Van Meter, TPO Assistant Wendy Wilkerson, and Law Clerk Ron Cordes of the Family Courts of the Second and Eighth Judicial District Courts, and to Maureen Sheeran of the National Council of Juvenile and Family Court Judges Domestic Violence and Child Custody Project for the very helpful information they provided for this chapter. The authors also wish to acknowledge the American Bar Association Commission on Domestic Violence and, in particular, Deborah Goelman, Esq., Fredrica Lehrman, Esq., and Roberta L. Valente, Esq., for their commitment to assisting lawyers in private civil practice to recognize and respond to domestic violence in their day-to-day practice and beyond.

CHAPTER 7

VICTIM SERVICES

This chapter contains the following:

- 7.1 INTRODUCTION
- 7.2 STATEWIDE AND NATIONAL DOMESTIC VIOLENCE
HOTLINE NUMBERS AND PRIMARY STATEWIDE
RESOURCES
- 7.3 BRIEF DESCRIPTIONS OF PROGRAMS INCLUDED IN THIS
CHAPTER
- 7.4 LIST OF RESOURCES AND PROGRAMS IN NEVADA BY
COUNTY OR JURISDICTION INCLUDING
 - Shelter Programs and Services Provided
 - Child Protective Service Providers
 - CASA Programs
 - Certified Batterers' Treatment Programs
 - Family Resource Centers
- 7.5 AN INNOVATIVE PROGRAM IN CLARK COUNTY WORTH
NOTING
- 7.6 STATE DOMESTIC VIOLENCE RESOURCES
- 7.7 NATIONAL DOMESTIC VIOLENCE RESOURCES
- 7.8 ACKNOWLEDGMENTS

7.1 INTRODUCTION

The availability of victim support services in Nevada varies greatly from county to county. This Chapter outlines specific services offered by each County. However, there is a 24 hour hotline that provides information and referral to anyone in the State. It is operated by the Nevada Network Against Domestic Violence, a non-profit organization made up of many, but not all, of the programs that provide victim services in Nevada. The hotline makes referrals to all programs in Nevada. A national domestic violence hotline provides information and referral services for every state. The following numbers are a good starting point for victim service resources.

7.2 STATEWIDE AND NATIONAL DOMESTIC VIOLENCE HOTLINE NUMBERS AND PRIMARY STATEWIDE RESOURCES

NEVADA DOMESTIC VIOLENCE HOTLINE
1-800 500-1556

NEVADA STATEWIDE CHILD ABUSE HOTLINE
1-800-992-5757

NATIONAL DOMESTIC VIOLENCE HOTLINE
1-800-799-SAFE (7233)

NEVADA NETWORK AGAINST DOMESTIC VIOLENCE (NNADV)

100 W. Grove Street Suite 315
Reno, NV 89509
(775) 828-1115
1 800 230-1955

NNADV provides an extensive list of publications and brochures on domestic violence
(See Appendix H)

Domestic Violence Ombudsman
Office of the Attorney General
1325 Airmotive Way Suite 340
Reno, Nevada 89502

(775) 688-1846

ASSISTANCE TO VICTIMS OF VIOLENT CRIME

Victims of violent crime who are physically injured may qualify for medical and counseling compensation from the State of Nevada under NRS 217. Applications for this service must be received within one year of the commission of the crime.

For information, call:

Victims of Crime Compensation Program - (702) 486-2740

7.3 BRIEF DESCRIPTIONS OF PROGRAMS INCLUDED IN THIS CHAPTER

Note: Because programs and contact information are subject to change, it is recommended that the reader check directly with the resource to determine if the information in this Manual is still current.

Domestic Violence Advocacy Programs:

Refers to programs recognized by the Nevada Network Against Domestic Violence. These programs are not-for-profit organizations that usually provide shelter or referrals to shelter services, counseling, assistance obtaining temporary protection orders, and advocacy.

Court/Victim Advocacy/TPO Assistance Programs

Some courts, district and city attorney offices, and police departments provide an advocate to assist the victim in completing the paperwork to apply for a Temporary Restraining Order. Oftentimes these advocates are staff or volunteers from the local shelters. In other instances they are employees of the government entity. Washoe and Clark Counties have the most extensive programs.

Protective Service Programs

Child Protective Services: Either the County or State investigates and protects children who are the victims of child abuse and neglect. Other than in Clark and Washoe Counties, child protective service is provided by the State of Nevada Division of Child and Family Services, a division of the Department of Human Services.

Senior Protective Services: The Nevada State welfare offices in each part of the State investigates abuse, neglect and exploitation of seniors, except in Clark County where senior protective services is provided by Clark County Social Service.

Nevada State Welfare
(the State Operator 1-800-992-0900 will connect anyone in the State to the Nevada
State Welfare Office in Carson City)
(775) 687-4770

Clark County Social Service
Senior Protective Service
(702) 455-8687 or 455-4291 (metropolitan Clark County)
In rural Clark County 1-800-492-3177

The Division of Aging Services
1-800-243-3638
(provides information and referral to seniors throughout the State)

Child Advocacy Programs

CASA (Court Appointed Special Advocates) provides trained volunteer advocates to preserve and protect the rights and interests of children involved in all aspects of the Family Court system. The focus of the CASA program statewide is permanency planning for abused and neglected children who fall under NRS 432(B). CASA programs are provided in Clark, Washoe, Lyon and Douglas Counties and in Carson City. The services offered varies in each location.

The **Children's Attorney Project** in Clark County provides attorney representation for children and handles some domestic violence cases. The contact information is as follows:

Children's Attorney Project
Clark County Legal Services
(702) 386-1070

Certified Batterers Treatment Programs

Nevada Administrative Code 228 outlines the criteria of standards and regulations for Batterer's treatment programs to be certified. These regulations have recently been amended and integrated the standards. The revised NAC 228 was effective August 1, 2000. Batterers treatment programs are certified by a Statewide Certification Committee. The certified programs listed in this manual were certified as of March 16, 2000. For more information on the certification process, the most up-to-date list or an application for program certification contact:

Chair

Batterers Treatment Certification Committee
(702) 877-0133

Family Resource Centers

Established by the 1995 Nevada Legislature, Family Resource Centers have been established in communities throughout Nevada. Staff at these centers have been trained in the dynamics of domestic violence and can offer limited assistance, especially in areas where domestic violence resources are sparse.

Family Resource Centers
Statewide Coordinator
(702) 486-3530

7.4 LIST OF RESOURCES AND PROGRAMS IN NEVADA BY COUNTY OR JURISDICTION

CARSON CITY

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Advocates to End Domestic Violence	Office Hours	Mon-Fri 8:30-4:00 p.m.
32 Sierra	24 hrs Crisis line	Yes
P.O. Box 2529	Shelter Services	Yes
Carson City, NV 89775	Number of beds	37
	Length of stay	5 months
	Support Groups	Yes
Hotline (775) 883-7654	Emergency Motels	Yes for men
Phone (775) 883-7654	Transportation	Yes
Fax (775) 883-0364	Transitional Housing	Yes
	Legal Advocacy	Yes
	Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

Provided through Advocates to End Domestic Violence

Child Protective Service Agency

Carson City Field Office
1572 East College Parkway, Suite 161
Carson City, NV 89703
(775) 687-4943
Fax: (775) 687-4903

CASA

(Primarily serves children involved in dependency NRS 432(B) cases)

Director of CASA

Public Safety Building

885 E. Musser, Suite 3005

Carson City, NV 89701

(775) 882-6776

Certified Batterers Treatment Programs

CARSON PROFESSIONAL GROUP

407 N. Walsh

Carson City, NV 89701

COMMUNITY COUNSELING OF NORTHERN NEVADA

205 S. Pratt Ave.

Carson City, NV 89107

(775) 882-3945

Fax: (775) 882-6126

NEXT STEP ADVOCATES

P.O. Box 2529

Carson City, NV 89107

BEHAVIORAL HEALTH SERVICES: CARSON-TAHOE HOSPITAL

(Conditionally Certified)

1177 N. Division Street, Suite 1

Carson City, NV 89703

(775) 885-4774

Fax: (775) 841-0304

Family Resource Center

RON WOOD FAMILY RESOURCE CENTER

637 South Stewart, #D

Carson City, NV 89701

(775) 884-2269

CHURCHILL COUNTY

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Domestic Violence Intervention, Inc.	Office Hours	Mon-Fri 8:30am-4:00 pm
P.O. Box 2231	24 hrs Crisis line	Yes
Fallon, NV 89407	Shelter Services	Yes
	Number of beds	3 families
	Length of stay	3 months
Hotline (775) 423-1313	Support Groups	Yes
Phone (775) 423-1313	Emergency Motels	Yes
Fax (775) 423-9699	Transportation	Yes
	Transitional Housing	Yes
	Legal Advocacy	
	Languages Spoken	Spanish & Filipino

Court/Victim Advocacy/TPO Assistance Programs

Domestic Violence Intervention, Inc.

Child Protective Service Agency

FALLON FIELD OFFICE

1735 Kaiser Street

Fallon, NV 89406-3108

(775) 423-8566

Fax: (775) 423-4800

CASA

Unavailable

Certified Batterers Treatment Programs

CHURCHILL COUNCIL - NEW FRONTIER DOMESTIC VIOLENCE

TREATMENT PROGRAM

165 N. Carson Street

Fallon, NV 89406

(775) 423-1412

Family Resource Center
CHURCHILL COUNTY SCHOOL DISTRICT
690 South Maine Street
Fallon, NV 89406
(775) 428-2600

CLARK COUNTY

Boulder City

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Court/Victim Advocacy/TPO Assistance Programs

Safe Nest/Temporary Assistance for Domestic Crises
509 Avenue G
Boulder City, NV 89005
(702) 293-7836

Provides Advocacy, Counseling, TPO assistance through the Boulder City Police Department. Note: No shelter facilities are available in Boulder City. However, Safe Nest provides shelter services through their Las Vegas facilities.

PROTECTIVE SERVICES

SENIOR PROTECTIVE SERVICES
CLARK COUNTY SOCIAL SERVICE
3827 S. Maryland Parkway
Las Vegas, NV 89119
(702) 455-4291

Child Protective Service Agency

CHILD PROTECTIVE SERVICES
CLARK COUNTY FAMILY AND YOUTH SERVICES
601 N. Pecos Road
Las Vegas, NV 89101
Child Abuse Hotline (702) 399-0081

CASA
EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CASA Office
Program Manager
601 N. Pecos
Las Vegas, NV 89155
(702) 455-4306

Certified Batterers Treatment Programs
Safe Nest/Temporary Assistance for Domestic Crisis
509 Avenue G
Boulder City, NV 89005
(702) 293-7836

Family Resource Centers
See Henderson or Las Vegas

Henderson

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Safe House

18 Sunrise Drive, Building G-S#1
Henderson, NV 89014

Office Hours

Mon-Wed 8:00am-9:00pm
Thurs-Fri 8:00am-5:00pm
Sat 8:00am - 12:00pm

Hotline (702) 564-3227
Phone (702) 451-4203
Fax (702) 451-4302

24 hrs Crisis line Yes
Shelter Services Yes
Number of beds 45
Length of stay 45 days
Support Groups Yes
Emergency Motels Yes
Transportation Yes
Transitional Housing Yes
Legal Advocacy Yes
Languages Spoken Spanish

Court/Victim Advocacy/TPO Assistance Programs

HENDERSON CITY ATTORNEY'S OFFICE

243 Water Street
Henderson, NV 89015
(702) 565-2184, ext. 5

Provides specialized advocacy for victims of domestic violence or battery occurring within the City of Henderson. The Advocates can assist victims if they receive a subpoena to appear as a witness in a City of Henderson Municipal Court case, or if they have questions regarding a pending case in the City of Henderson.

Monday through Thursday, 8:00 a.m. to 5:00 p.m.
For Assistance, call (702) 565-4036 or (702) 565-4203

PROTECTIVE SERVICES

Senior Protective Services

CLARK COUNTY SOCIAL SERVICE

Senior Protective Services
3827 S. Maryland Parkway
Las Vegas, NV 89119
(702) 455-4291

Child Protective Service Agency
CHILD PROTECTIVE SERVICES
CLARK COUNTY FAMILY AND YOUTH SERVICES
601 N. Pecos Road
Las Vegas, NV 89101
Child Abuse Hotline (702) 399-0081

Henderson
(Supervised by Las Vegas Field Office)
145 Panama Street
Henderson, NV 89015
(775) 486-6770
Fax: (775) 486-6750

CASA
EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
Program Manager
CASA
601 N. Pecos Road
Las Vegas, NV 89101
(702) 455-4306

This CASA program serves all areas of Clark County. Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the process of developing a visitation exchange and supervised visitation program which should be operational in the Fall of 2000. The visitation programs would be available in domestic violence cases, if ordered by the court.

Certified Batterers Treatment Programs

SAFE HOUSE
18 Sunrise Drive, Building G-70
Henderson, NV 89014
(702) 451-4203
(702) 451-4302

VIA MILAGRO/ABC
7 Water Street, Suite A
Henderson, NV 89015
(702) 568-5971
Fax: (702) 568-5974

HORIZON FAMILY THERAPY & WELLNESS
 FAMILY ABUSE INTERVENTION PROJECT
 (Conditionally Certified)
 220 E. Horizon Drive, Suite G
 Henderson, NV 89015
 (702) 568-5888
 Fax: (702) 568-7554

Family Resource Centers
 HACA Family Resource Center
 145 Panama
 Henderson, NV 89015
 (702) 486-6770

Las Vegas

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Safe Nest		Office Hours	Mon-Fri 9:00am-5:00pm
P.O. Box 43264		24 hrs Crisis line	Yes
Las Vegas, NV 89116		Shelter Services	Yes
		Number of beds	67
Hotline	(702) 646-4981	Length of stay	5 - 8 weeks normally
	(800) 486-7282	Support Groups	Yes
Phone	(702) 646-4981	Emergency Motels	Yes
Fax	(702) 368-1540	Transportation	Yes
TDD	647-8584	Legal Advocacy	Yes
		Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs
 EIGHTH JUDICIAL DISTRICT COURT
 FAMILY DIVISION
 Protection Order Program
 601 N. Pecos Road
 Las Vegas, NV 89101-2408
 (702) 455-3400

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

Provides Justice Court and District Court case information and addresses any concerns victims may have regarding appearance in Court as a witness. When receive a subpoena to appear for a Justice Court or District Court case, they should contact the Victim/Witness Assistance Center.

Monday - Friday, 8:00 a.m. to 5:00 p.m.

For Assistance, call (702) 455-4204

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Provides crises intervention, an assessment of the immediate needs of the victim and their families, initiates crime compensation claims, provides referrals to other agencies and functions as a liaison with LVMPD personnel and other law enforcement agencies.

Monday - Friday, 8:00 a.m. to 4:00 p.m. - For Assistance, call (702) 229-2690 or (702) 229-5708

LAS VEGAS CITY ATTORNEY

Provides specialized advocacy for victims of domestic violence or battery occurring within the City of Las Vegas. The Advocates can assist victims who receive a subpoena to appear as a witness in a City of Las Vegas Municipal Court case, or if the victim has questions regarding a pending case in the City of Las Vegas.

Monday - Friday, 8:00 a.m. to 5:00 p.m.

For Assistance, call (702) 229-2525

PROTECTIVE SERVICES

Senior Protective Services

CLARK COUNTY SOCIAL SERVICE

Senior Protective Service

Cambridge Center

3827 S. Maryland Parkway

Las Vegas, NV 89119

(702) 455-4291

Child Protective Service Agency

CHILD PROTECTIVE SERVICES

CLARK COUNTY FAMILY AND YOUTH SERVICES

601 N. Pecos Road

Las Vegas, NV 89101

Child Abuse Hotline (702) 399-0081

Las Vegas Field Office

610 Belrose Street

Las Vegas, NV 89107-2234
(702) 486-7800
Fax: (702) 486-7885

CASA
EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CASA
601 N. Pecos Road
Las Vegas, NV 89155
(702) 455-4306

This CASA program serves all areas of Clark County. Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the process of developing a visitation exchange and supervised visitation program which should be operational in the Fall of 2000. The visitation programs would be available in domestic violence cases, if ordered by the court.

Certified Batterers Treatment Programs

A HOPE IN NEW BEGINNINGS
133 N. Eastern
Las Vegas, NV 89101
(702) 384-4673
Fax: (702) 384-3667

COMMUNITY COUNSELING OF SOUTHERN NEVADA
1120 Almond Tree Lane, #207
Las Vegas, NV 89101
(702) 369-8700
Fax: (702) 369-8489

FULLY ALIVE CENTER
2065 East Sahara, Bldg. "C"
Las Vegas, NV 89104
(702) 221-4357
Fax: (702) 873-7071

INNOVATIVE CARE, INC.
2545 So. Bruce St., Suite 1
Las Vegas, NV 89109

(702) 732-0214
Fax: (702) 873-7071

LAS VEGAS MUNICIPAL COURT
(Alternative Sentencing and Education Division)
416 N. Seventh Street
Las Vegas, NV 89101
(702) 229-6557
Fax: (702) 382-1783

LEGAL REHABILITATION
2545 So. Bruce Street
Building II, Suite H
Las Vegas, NV 89109
(702) 732-0214
Fax: (702) 699-9923

MESA FAMILY COUNSELING
1000 So. 3rd St., #F
Las Vegas, NV 89101
(702) 383-6001
Fax: (702) 380-0890

NEVADA TREATMENT CENTER
1721 E. Charleston
Las Vegas, NV 89104
(702) 382-4226
Fax: (702) 382-4296

OPTIONS
4410 N. Rancho Rd., #180
PMB 108
Las Vegas, NV 89130
(702) 646-4736
Fax: (702) 646-1301

SAFE NEST/TEMPORARY ASSISTANCE FOR DOMESTIC CRISIS
2915 W. Charleston, #12
Las Vegas, NV 89102
(702) 877-0133
Fax: (702) 877-0955

SOUTHWEST PASSAGE - NO TO ABUSE

1101 N. Decatur
Las Vegas, NV 89108
(702) 631-8722
Fax: (702) 631-8744

VIA MILAGRO/ABC

740 N. Eastern, #110
Las Vegas, NV 89101
(702) 598-2020
Fax: (702) 598-2018

Family Resource Centers

A.D. GUY BOYS AND GIRLS CLUB FAMILY RESOURCE CENTER

817 N. Street
Las Vegas, NV 89106
(702) 651-4996

CAMBRIDGE FAMILY RESOURCE CENTER

3827 South Maryland Parkway
Las Vegas, NV 89119
(702) 455-7386

METROPOLITAN FAMILY RESOURCE CENTER

2200 East Cheyenne
North Las Vegas, NV 89030
(702) 657-0371

CLARK FAMILY RESOURCE CENTER

4291 Pennwood
Las Vegas, NV 89102
(702) 365-9272

COMMUNITY PARTNERS FAMILY RESOURCE CENTER

1581 North Main Street
Suite 125
Las Vegas, NV 89101
(702) 388-0088, ext. 258

EASTSIDE FAMILY RESOURCE CENTER

1408 North Sandhill Road

Las Vegas, NV 89010

(702) 437-2225

FAMILY LINK FAMILY RESOURCE CENTER

3900 Perry Street

Las Vegas, NV 89121

(702) 454-9020

GREATER LAS VEGAS FAMILY RESOURCE CENTER

1200 North Eastern

Las Vegas, NV 89101

(702) 657-6762

STUPAK FAMILY RESOURCE CENTER

300 West Boston

Las Vegas, NV 89102

(702) 229-2432

UNIVERSITY METHODIST FAMILY RESOURCE CENTER

4412 South Maryland Parkway

Las Vegas, NV 89119

(702) 733-1378

VARIETY FAMILY RESOURCE CENTER

990 D Street

Las Vegas, NV 89106

(702) 647-4907

HEART OF THE CITY FAMILY RESOURCE CENTER

580 East St. Louis

Las Vegas, NV 89104

(702) 732-7436

McCABE BOYS AND GIRLS CLUB FAMILY RESOURCE CENTER

2801 East Stewart

Las Vegas, NV 89101

(702) 488-2828

Mesquite

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Court/Victim Advocacy/TPO Assistance Programs

Safe Nest/Temporary Assistance for Domestic Crisis

12 W. Mesquite Blvd.

Mesquite, NV 89027

(702) 346-5262

Provides Advocacy, Counseling, TPO assistance through the Mesquite Police Department.

Note: No shelter facilities are available in Mesquite. However, Safe Nest provides shelter services through their Las Vegas facilities.

PROTECTIVE SERVICES

Senior Protective Services

CLARK COUNTY SOCIAL SERVICES

3827 S. Maryland Parkway

Las Vegas, NV 89119

(702) 455-4291

(1-800-492-3177, ext. 4291)

Child Protective Service Agency

CHILD PROTECTIVE SERVICES

CLARK COUNTY FAMILY AND YOUTH SERVICES

601 N. Pecos Road

Las Vegas, NV 89101

Child Abuse Hotline (702) 399-0081

CASA

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

Program Manager

CASA

601 N. Pecos Road

Las Vegas, NV 89155

(702) 455-4306

This CASA program serves all areas of Clark County. Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the process of developing a visitation exchange and supervised visitation program which should

be operational in the Fall of 2000. The visitation programs would be available in domestic violence cases, if ordered by the court.

Certified Batterers Treatment Programs

Safe Nest/Temporary Assistance for Domestic Crisis
12 W. Mesquite Blvd.
Mesquite, NV 89027
(702) 346-1944

Family Resource Centers

MESQUITE FAMILY RESOURCE CENTER
51 North First Street
Mesquite, NV 89024
(702) 346-7277

Laughlin

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Court/Victim Advocacy/TPO Assistance Programs

Safe Nest/Temporary Assistance for Domestic Crisis
3650 S. Pointe Circle, #205
Laughlin, NV 89029
(702) 298-4431

Provides Advocacy, Counseling, TOP assistance.

Note: No shelter facilities are available in Laughlin. However, Safe Nest provides shelter services through their Las Vegas facilities.

PROTECTIVE SERVICES

Senior Protective Services

Clark County Social Services
3827 S. Maryland Parkway
Las Vegas, NV 89119
(702) 455-4291
(1-800-492-3177, ext. 4291)

Child Protective Service Agency

CHILD PROTECTIVE SERVICES
CLARK COUNTY FAMILY AND YOUTH SERVICES

601 N. Pecos Road
Las Vegas, NV 89101
Child Abuse Hotline (702) 399-0081

CASA
EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
Program Manager
CASA
601 N. Pecos Road
Las Vegas, NV 89155
(702) 455-4306

This CASA program serves all areas of Clark County. Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the process of developing a visitation exchange and supervised visitation program which should be operational in the Fall of 2000. The visitation programs would be available in domestic violence cases, if ordered by the court.

Certified Batterers Treatment Programs
SAFE NEST/TEMPORARY ASSISTANCE FOR DOMESTIC CRISIS
3650 So. Pointe Circle, #205
Laughlin, NV 89029
(702) 298-4431

A HOPE IN NEW BEGINNINGS
55 Civic Way
Laughlin, NV 89029
(702) 298-5777

Family Resource Centers
LAUGHLIN FACILITY RESOURCE CENTER
Spirit Mountain activity Center
1975 Arie Avenue
Laughlin, NV 89029
(702) 298-2592

North Las Vegas

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Safe Nest		Office Hours	Mon-Fri 9:00am-5:00pm
P.O. Box 43264		24 hrs Crisis line	Yes
Las Vegas, NV 89116		Shelter Services	Yes
		Number of beds	67
Hotline	(702) 646-4981	Length of stay	5 - 8 weeks normally
	(800) 486-7282	Support Groups	Yes
Phone	(702) 646-4981	Emergency Motels	Yes
Fax	(702) 368-1540	Transportation	Yes
TDD	647-8584	Legal Advocacy	Yes
		Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

Protection Order Program

601 N. Pecos Road

Las Vegas, NV 89101-2408

(702) 455-3400

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

Provides Justice Court and District Court case information and addresses any concerns victims may have regarding appearance in Court as a witness. When the victim receives a subpoena to appear for a Justice Court or District Court case, victims should contact the Victim/Witness Assistance Center.

Monday - Friday, 8:00 a.m. to 5:00 p.m.

For Assistance, call (702) 455-4204

PROTECTIVE SERVICES

Senior Protective Services

CLARK COUNTY SOCIAL SERVICE

Cambridge Center

3827 S. Maryland Parkway

Las Vegas, NV 89119

(702) 455-4291

Child Protective Service Agency
CHILD PROTECTIVE SERVICES
CLARK COUNTY FAMILY AND YOUTH SERVICES
601 N. Pecos Road
Las Vegas, NV 89101
Child Abuse Hotline (702) 399-0081

CASA
EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
Program Manager
CASA
601 N. Pecos Road
Las Vegas, NV 89155
(702) 455-4306

This CASA program serves all areas of Clark County. Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the process of developing a visitation exchange and supervised visitation program which should be operational in the Fall of 2000. The visitation programs would be available in domestic violence cases, if ordered by the court.

Certified Batterers Treatment Programs
OPTIONS
3925 N. Martin Luther King, #207
North Las Vegas, NV 89030

Family Resource Centers
North Las Vegas Boys and Girls Club FRC
2530 East Carey
North Las Vegas, NV 89115
(702) 649-2656

Overton

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Court/Victim Advocacy/TPO Assistance Programs

SAFE NEST/TEMPORARY ASSISTANCE FOR DOMESTIC CRISIS

320 N. Moapa Blvd.

Overton, NV

(702) 346-1944

Provides Advocacy, Counseling, TOP assistance.

Note: No shelter facilities are available in Laughlin. However, Safe Nest provides shelter services.

PROTECTIVE SERVICE

Senior Protective Services

CLARK COUNTY SOCIAL SERVICE

3827 S. Maryland Parkway

Las Vegas, NV 89119

(702) 455-4291

(1-800-492-3177, ext. 4291)

Child Protective Service Agency

CHILD PROTECTIVE SERVICES

CLARK COUNTY FAMILY AND YOUTH SERVICES

601 N. Pecos Road

Las Vegas, NV 89101

Child Abuse Hotline (702) 399-0081

CASA

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CASA

601 N. Pecos Road

Las Vegas, NV 89155

(702) 455-4306

This CASA program serves all areas of Clark County. Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the

process of developing a visitation exchange and supervised visitation program which should be operational in the Fall of 2000. The visitation programs would be available in domestic violence cases, if ordered by the court.

Certified Batterers Treatment Programs

SAFE NEST/TEMPORARY ASSISTANCE FOR DOMESTIC CRISIS

320 N. Moapa Blvd.
Overton, NV
(702) 346-1944

Family Resource Centers

CHAPPALAPPA FAMILY RESOURCE CENTER

320 North Moapa
Overton, NV 89040
(702) 397-6476

DOUGLAS COUNTY

Minden

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Family Support Council

P.O. Box 810
Minden, NV 89423

Office Hours	Mon-Fri 9:00am - 5:00pm
24 hrs Crisis line	Yes
Shelter Services	Yes
Number of beds	
Length of stay	14 days
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	
Legal Advocacy	Yes
Languages Spoken	Spanish

Hotline (775) 782-8692
Phone (775) 782-7565
Fax (775) 782-1942
Stateline, Zephyr Cove, Glenbrook
588-7171

Court/Victim Advocacy/TPO Assistance Programs

Available through Family Support Council.

Child Protective Service Agency

CASA

NINTH JUDICIAL DISTRICT COURT

P.O. Box 218

Minden, NV 89423

(775) 782-6247

Their efforts are concentrated primarily on child abuse and neglect cases under NRS 432(B). However, the District Court occasionally appoints a CASA in cases involving domestic violence. They are in the process of developing a supervised visitation program and those services would be available in domestic violence cases if ordered by the court.

Certified Batterers Treatment Programs

AMERICAN COMPREHENSIVE COUNSELING SERVICES

CASA Program Coordinator

1255 Waterloo Lane, #A

Gardnerville, NV 89410

(775) 356-0371

Family Resource Centers

FAMILY SUPPORT COUNCIL OF DOUGLAS COUNTY

1255 A Waterloo Lane

Gardnerville, NV 89410

(775) 782-8692

ELKO COUNTY

Elko

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Committee Against Domestic Violence	Office Hours	Mon-Fri 8:30am - 4:30pm
P.O. Box 2531	24 hrs Crisis line	Yes
Elko, NV 89803	Shelter Services	Yes
	Number of beds	20
	Length of stay	30 day w/case evaluation
Hotline (888) 738-9454	Support Groups	Yes
Phone (775) 738-6524	Emergency Motels	Yes
Fax (775) 738-2976	Transportation	Yes
	Transitional Housing	
	Legal Advocacy	Yes
	Languages Spoken	Spanish and Sign language

Court/Victim Advocacy/TPO Assistance Programs

Available through Committee Against Domestic Violence.

Child Protective Service Agency

Elko Field Office
3920 Idaho Street
Elko, NV 89801-4611
(775) 738-2534
Fax: (775) 778-6628

CASA

Unavailable.

Certified Batterers Treatment Programs

FAMILY VIOLENCE INTERVENTION PROGRAM
1250 Lamoille Highway
Elko, NV 89801
(775) 753-8666
Fax: (775) 777-3613

Family Resource Centers

ELKO FAMILY RESOURCE CENTER

790 Commercial Street

Elko, NV 89803

(775) 753-7352

WELLS FAMILY RESOURCE CENTERS

366 ½ Fourth Avenue

Wells, NV 89835

(775) 752-2345

ESMERALDA COUNTY

(Served by)

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Support, Inc.

174 N. Mineral
P.O. Box 1434
Tonopah, NV 89049

Office Hours	Mon-Fri 9:00am - 3:00pm
24 hrs Crisis line	Yes
Shelter Services	
Number of beds	
Length of stay	1 week w/case evaluation
Support Groups	Yes
Emergency Motels	Yes
Transportation	
Transitional Housing	
Legal Advocacy	Yes
Languages Spoken	Spanish and Sign language

Hotline (888) 815-1773

Phone (775) 482-5598

Fax (775) 482-5598

Court/Victim Advocacy/TPO Assistance Programs

Available through Support, Inc.

Child Protective Service Agency

Tonopah
(Supervised by Fallon Field Office)
100 Frankie Street
P.O. Box 1491
Tonopah, NV 89049-1491
(775) 482-6626
Fax: (775) 482-3429

CASA

Unavailable.

Certified Batterers Treatment Programs

Contact Support, Inc. for information.

Family Resource Centers

Unavailable.

EUREKA COUNTY

(Served by)

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Support, Inc.
399 First Street
P.O. Box 583
Ely, NV 89301

Hotline (775) 289-2270
Phone (775) 289-2270
Fax (775) 289-2294

Office Hours	Mon-Fri 9:00am - 5:00pm
24 hrs Crisis line	Yes
Shelter Services	
Number of beds	
Length of stay	1 week w/case evaluation
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	
Legal Advocacy	Yes
Languages Spoken	Spanish and Sign language

Court/Victim Advocacy/TPO Assistance Programs

Available through Support, Inc.

Child Protective Service Agency

Ely
(Supervised by Elko Field Office)
725 Avenue K
Ely, NV 89301-2798
(775) 289-1640
Fax: (775) 289-1652

CASA

Unavailable.

Certified Batterers Treatment Programs

Check with Support, Inc. for availability.

Family Resource Centers

Unavailable.

HUMBOLDT COUNTY

Winnemucca

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Committee Against Family Violence P.O. Box 583 Winnemucca, NV 89445	Office Hours 24 hrs Crisis line Shelter Services Number of beds Length of stay Support Groups Emergency Motels Transportation Transitional Housing Legal Advocacy Languages Spoken	24 hrs. Crisis line Yes through Motels Yes Yes Yes Yes Spanish
Hotline (775) 623-6429 Phone (775) 623-3974		

Court/Victim Advocacy/TPO Assistance Programs

Through Committee Against Family Violence.

Child Protective Service Agency

Winnemucca
(Supervised by Elko Field Office)
475 W. Haskell, #7
Winnemucca, NV 89445-3781
(775) 623-6555
Fax: (775) 623-6559

CASA

Unavailable.

Certified Batterers Treatment Programs

Check with Committee Against Family Violence for availability.

Family Resource Centers

WINNEMUCCA FAMILY RESOURCE CENTER
20 East Fifth Street
Winnemucca, NV 89446
(775) 623-1166

LANDER COUNTY

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Committee Against Family Violence	Office Hours	24 hrs. Crisis line
P.O. Box 624	24 hrs Crisis line	
Battle Mountain, NV 89820	Shelter Services	Yes
	Number of beds	5 - 8
	Length of stay	3 days
Hotline (775) 635-2500	Support Groups	Yes
Phone (775) 635-2500	Emergency Motels	Yes
	Transportation	Yes
	Transitional Housing	
	Legal Advocacy	Yes
	Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

Available through Committee Against Family Violence.

Child Protective Service Agency

BATTLE MOUNTAIN
(Supervised by Elko Field Office)
145 E. Second Street
Battle Mountain, NV 89820-2031
(775) 635-8172
Fax: (775) 635-9067

CASA

Unavailable.

Certified Batterers Treatment Programs

Check with Committee Against Family Violence for availability.

Family Resource Centers

BATTLE MOUNTAIN FAMILY RESOURCE CENTER
303 North Second Street
Battle Mountain, NV 89820
(775) 635-8949

LINCOLN COUNTY

Pioche

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Support, Inc.

Pioche Town Hall
P.O. Box 485
Pioche, NV 89043

Office Hours	Mon-Fri 9:00am - 5:00pm
24 hrs Crisis line	Yes
Shelter Services	
Number of beds	
Length of stay	1 week w/case evaluation
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	
Legal Advocacy	Yes
Languages Spoken	Spanish and Sign language

Hotline (775) 962-5888
Phone (775) 962-5888
Fax (775) 962-5888

Court/Victim Advocacy/TPO Assistance Programs

Available through Support, Inc.

Child Protective Service Agency

State

CASA

Unavailable.

Certified Batterers Treatment Programs

SUPPORT INC. FAMILY RESOURCES CENTER OF ELY
P.O. Box 485
Pioche, NV 89043
(775) 962-5888

Family Resource Centers

Unavailable.

LYON COUNTY

Yerington

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Alive 400 N. Main Street P.O. Box 130 Yerington, NV 89447		Office Hours 24 hrs Crisis line Shelter Services Number of beds Length of stay	Mon-Fri 9:00am - 5:00pm Yes Yes 3 bedrooms determined in individual basis
Hotline	(775) 463-4009 (800) 453-4009	Support Groups	Yes
Phone	(775) 463-5843	Emergency Motels	Yes
Fax	(775) 463-4453	Transportation Transitional Housing Legal Advocacy Languages Spoken	Yes Yes Spanish

Court/Victim Advocacy/TPO Assistance Programs

Available through Alive.

Child Protective Service Agency

Silver Springs
(Supervised by Carson City Field Office)
3959 Hwy. 50 W.
Silver Springs, NV 89429
(775) 577-1200
Fax: (775) 577-1212

Yerington
(Supervised by Carson City Field Office)
14 Pacific Street
Yerington, NV 89447-2626
(775) 463-3151
Fax: (775) 463-3568

CASA

THIRD JUDICIAL DISTRICT COURT

31 South Main

Yerington, NV 89447

(775) 463-6571

A brand new program that concentrates on NRS 432B (abuse and neglect) petitions only. The court will appoint an attorney for the child if necessary. Handles domestic violence if it is part of the abuse and neglect case.

Certified Batterers Treatment Programs

LYON COUNTY MENTAL HEALTH BATTERERS

INTERVENTION PROGRAM

3595 Hwy. 50 West

P.O. Box 1136

Silver Springs, NV 89429

(775) 577-0319

Fax: (775) 577-9571

Family Resource Centers

LYON COUNTY FAMILY RESOURCE CENTER

1050 Pyramid

Silver Springs, NV 89429

(775) 577-5010

MINERAL COUNTY

Hawthorne

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Advocates to End Domestic Violence	Office Hours	Mon-Fri 9:00am - 5:00pm
P.O. Box 1613	24 hrs Crisis line	Yes
Hawthorne, NV 89415	Shelter Services	Yes
	Number of beds	8
	Length of stay	up to 30 days
Hotline (775) 945-2434	Support Groups	Yes
Phone (775) 945-2472	Emergency Motels	Yes
Fax (775) 945-2499	Transportation	
	Transitional Housing	
	Legal Advocacy	Yes
	Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

Available through Advocates to End Domestic Violence.

Child Protective Service Agency

Hawthorne
(Supervised by Fallon Field Office)
1000 C Street, P.O. Box 1508
Hawthorne, NV 89415
(775) 945-3602
Fax: (775) 945-5714

CASA

Unavailable.

Certified Batterers Treatment Programs

AMERICAN COMPREHENSIVE COUNSELING SERVICES
701 E. Street, Suite "C"
P.O. Box 1613
Hawthorne, NV 89415

Family Resource Centers

HAWTHORNE FAMILY RESOURCE CENTER
Sixth & "C" Street

Hawthorne, NV 89415
(775) 945-5325

NYE COUNTY

Tonopah

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Support, Inc.	Office Hours	Mon-Fri 9:00am - 5:00pm
P.O. Box 3194	24 hrs Crisis line	Yes
Tonopah, NV 89049	Shelter Services	
	Number of beds	
Hotline (775) 482-5598	Length of stay	1 week w/case evaluation
Phone (775) 482-5598	Support Groups	Yes
Fax (775) 482-5598	Emergency Motels	Yes
	Transportation	Yes
	Transitional Housing	
	Legal Advocacy	Yes
	Languages Spoken	Spanish and Sign language

Pahrump

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

No to Abuse	Office Hours	Mon-Fri 9:00am - 5:00pm
P.O. Box 2869	24 hrs Crisis line	Yes
Pahrump, NV 89048	Shelter Services	Yes
	Number of beds	6
Hotline (888) 882-2873	Length of stay	up to 14 days
Phone (775) 751-1118	Support Groups	Yes
Fax (775) 751-0134	Emergency Motels	Yes
	Transportation	Yes
	Transitional Housing	
	Legal Advocacy	Yes
	Languages Spoken	Spanish and Sign language

Court/Victim Advocacy/TPO Assistance Programs

Available through Support, Inc. and No to Abuse.

Child Protective Service Agency

Pahrump

(Supervised by Las Vegas Field Office)

1840 S. Pahrump Valley Blvd.

Suite B

Pahrump, NV 89048-6131

(775) 727-8497

Fax: (775) 727-7072

CASA

Unavailable.

Certified Batterers Treatment Programs

SOUTHWEST PASSAGES - NO TO ABUSE

P.O. Box 2869

1741 Hwy. 372

Pahrump, NV 89041

(775) 751-1118

Fax: (775) 751-0134

Family Resource Centers

PAHRUMP FAMILY RESOURCE CENTER

484 South West Street

Pahrump, NV 89048

(702) 727-3885

PERSHING COUNTY

Lovelock

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Domestic Violence Intervention

535 Western Avenue
P.O. Box 1203
Lovelock, NV 89049

Hotline (775) 273-2641

Phone (775) 273-7373

Office Hours	Vary, leave msg or call Hotline
24 hrs Crisis line	Yes
Shelter Services	Yes - use motels
Number of beds	3 +
Length of stay	max 3 nights
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	
Legal Advocacy	Yes
Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

Available through Domestic Violence Intervention.

Child Protective Service Agency

Lovelock
(Supervised by Elko Field Office)
535 Western Avenue
P.O. Box 776
Lovelock, NV 89419-0776
(775) 273-7157
Fax: (775) 273-1726

CASA

Unavailable.

Certified Batterers Treatment Programs

Unavailable.

Family Resource Centers

Unavailable.

STOREY COUNTY

(Served by)

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Advocates to End Domestic Violence	Office Hours	Mon-Fri 8:30am - 4:00pm
32 Sierra	24 hrs Crisis line	Yes
P.O. Box 2529	Shelter Services	Yes
Carson City, NV 89775	Number of beds	37
	Length of stay	5 months
Hotline (775) 883-7654	Support Groups	Yes
Phone (775) 883-7654	Emergency Motels	Yes
Fax (775) 883-0364	Transportation	Yes
	Transitional Housing	Yes
	Legal Advocacy	Yes
	Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

Available through Advocates to End Domestic Violence.

Child Protective Service Agency

State

CASA

Unavailable.

Certified Batterers Treatment Programs

COMMUNITY CHEST'S VIOLENCE PREVENTION
& INTERVENTION PROGRAM

Drawer 980

Virginia City, NV 89440

(775) 847-9311

Fax: (775) 845-9335

Family Resource Centers

COMMUNITY CHEST, INC.

991 South C Street

Virginia City, NV 89440

(775) 847-9311

WASHOE COUNTY

Reno

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Committee to Aid Abused Women

1735 Vassar St.
Reno, NV 89502

Office Hours	Mon-Fri 8:30am - 4:00pm
24 hrs Crisis line	Yes
Shelter Services	Yes
Number of beds	21
Length of stay	up to 60 days
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	Yes
Legal Advocacy	Yes
Languages Spoken	Spanish and German

Hotline (775) 329-4150

Phone (775) 329-4150

Fax (775) 785-7550

Court/Victim Advocacy/TPO Assistance Programs

PROTECTIVE ORDER OFFICE

Family Division
Second Judicial District
(775) 328-3468

VICTIM ADVOCACY PROGRAM

City of Reno
City Attorney's Office
(775) 334-2013

Child Protective Service Agency

WASHOE COUNTY SOCIAL SERVICE

(775) 328-2300 (during regular business hours)
Crisis Hotline (for Child and Senior Abuse)
1-800-786-8090 (Reno, Sparks, Carson City)
1-800-992-5757 (all outlying rural areas)

Reno Field Office
560 Mill Street, Suite 350
Reno, NV 89502-1028
(775) 688-2600

Fax: (775) 688-2962

CASA

SECOND JUDICIAL DISTRICT COURT

Family Division

(775) 328-3298

Provides extensive services in domestic violence cases. In the first five month of 2000, 15% of their caseload was referred from the domestic violence court master. CASA operates a visitation exchange center and also provides a supervised visitation program. Both of these programs have been operating a number of years.

Certified Batterers Treatment Programs

Reno

AMERICAN COMPREHENSIVE COUNSELING SERVICES

FAMILY COUNSELING SERVICES OF NO. NEVADA

575 E. Plumb Lane, #100

Reno, NV 89502

(775) 356-8564

GREAT BASIN COUNSELING SERVICES, LLC.

5303 Louie Lane, #3

Reno, NV 89511

(775) 827-4454

Fax: (775) 827-1701

GREAT BASIN COUNSELING SERVICES &
CHILD DEVELOPMENT ASSOCIATION

798 Sutro Street, Suite E

Reno, NV 89512

(775) 323-7799

Fax: (775) 323-0490

THE INTERCEPT PROJECT

P.O. Box 41088

Reno, NV 89504

(775) 861-5582

RIDGEVIEW

6065 Ridgeview Ct., #E

Reno, NV 89509
(775) 823-4080
Fax: (775)823-4099

WEIR, DR. SHAYNE
40 West First Street
Suite 200
Reno, NV 89501
(775) 348-6249

Sparks

AMERICAN COMPREHENSIVE COUNSELING SERVICES
2100 Capurro Way, Suite B
Sparks, NV 89431

EVERGREEN COUNSELING
741 Greenbrae
Sparks, NV 89431
(775) 358-1123

NEVADA COURT COUNSELING: AAA FRESH START
1016 N. Rock Blvd.
Sparks, NV 89431

Family Resource Centers

BERNICE MATTHEWS FAMILY SUPPORT CENTER
2750 Elementary Drive
Reno, NV 89512
(775) 353-5563

CHILDREN'S CABINET at INCLINE VILLAGE
865 Tahoe Boulevard
Suite 201
Incline Village, NV 89450
(775) 831-6200

DESERT HEIGHTS FAMILY RESOURCE CENTER
13948 Mt. Bismarck Street
Reno, NV 89506
(775) 677-5437

CENTRAL RENO FAMILY RESOURCE CENTER
219 East Plumb Lane

Reno, NV 89502
(775) 786-5809

MIGUEL RIBERA FAMILY RESOURCE CENTER
4800 Neil Road
Reno, NV 89502
(775) 689-2573

GLENN DUNCAN FAMILY FOCUS CENTER
1200 Montello Street
Reno, NV 89512
(775) 348-9374

NORTHWEST RENO FAMILY RESOURCE CENTER
785 West Sixth Street
Reno, NV 89503
(775) 333-6047

SPARKS FAMILY RESOURCE CENTER
1665 Sullivan Lane
Sparks, NV 89431
(775) 353-5733

SUN VALLEY FAMILY RESOURCE CENTER
115 West Sixth Avenue
Sun Valley, NV 89433
(775) 674-4411

TRANER FAMILY FOCUS CENTER
1700 Carville Drive
Reno, NV 89512
(775) 333-5130

Tahoe

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Tahoe Women's Services

224 E. Enterprise
Incline Village, NV 89450

Hotline (775) 833-3241
Phone (775) 833-4305
Fax (775) 833-2306

Office Hours	Mon-Fri 9:00am - 5:00pm
24 hrs Crisis line	Yes
Shelter Services	Yes
Number of beds	6
Length of stay	6 weeks
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	
Legal Advocacy	Yes
Languages Spoken	Spanish

Court/Victim Advocacy/TPO Assistance Programs

Through Tahoe Women's Services.

Child Protective Service Agency

CASA

Unavailable.

Certified Batterers Treatment Programs

TAHOE MEN'S GROUP COUNSELING PROGRAM

2050 West Way
So. Lake Tahoe, CA 96150

Family Resource Centers

Unavailable.

WHITE PINE COUNTY

Ely

DOMESTIC VIOLENCE ADVOCACY PROGRAMS

Support, Inc.

399 First Street
P.O. Box 583
Ely, NV 89301

Hotline (775) 289-2270
Phone (775) 289-2270
Fax (775) 289-2294

Office Hours	Mon-Fri 9:00am - 5:00pm
24 hrs Crisis line	Yes
Shelter Services	
Number of beds	
Length of stay	1 week w/case evaluation
Support Groups	Yes
Emergency Motels	Yes
Transportation	Yes
Transitional Housing	Yes
Legal Advocacy	Yes
Languages Spoken	Spanish and Sign language

Court/Victim Advocacy/TPO Assistance Programs

Available through Support, Inc.

Child Protective Service Agency

State.

CASA

Unavailable.

Certified Batterers Treatment Programs

SUPPORT INC. FAMILY RESOURCES CENTER OF ELY
P.O. Box 583
Ely, NV 89301
(775) 289-2270
Fax: (775) 289-2294

Family Resource Centers

SUPPORT INC. FAMILY RESOURCE CENTER
300 First Street
Ely, NV 89301
(775) 289-2270

7.5 AN INNOVATIVE PROGRAM IN CLARK COUNTY WORTH NOTING

Andre Agassi Foundation Rural Grant Award
U.S. Department of Justice
Rural Domestic Violence and Child Victimization Enforcement Grant Program

In November 1998, the Andre Agassi Foundation received a grant award from the Department of Justice, Violence Against Women Grants Office to provide a continuum of care for women and children who had been victims of domestic violence. The rural discretionary grant award made it possible to broaden the range of services to children as well as to provide more in depth services to women, thereby removing numerous obstacles to their receiving services and planning for safety. Most notable in this project is the coordination of Child Protective Services with domestic violence advocates and their creation of a multi disciplinary team approach when dealing with children who live in homes where domestic violence is prevalent.

This coordinated approach comes at a time when statistics and studies are starting to show the impact of domestic violence on children. Along with national studies, the Nevada Assembly authorized a task force through A.B. 348 to study and highlight the statewide problems in our current methods for rendering services to battered women and their children. The A.B. 348 task force findings highlighted the following problems. They discovered that “the absence of protocols and consistent data hampers information and intervention.” They recognized the need for “victim sensitive, non-intrusive and non-punitive responses” and strongly suggested that an improved collaboration and a coordinated community response are critical to meeting the needs of this population and sorely lacking in this state.

The current funding from the Agassi Foundation grant award shows some early promising results toward addressing and remedying some of these problems. The project established a multi-disciplinary team with Child Protective Services and domestic violence advocates. In addition, emergency shelter capacity in Las Vegas has been enhanced by 30% at Temporary Assistance for Domestic Crisis and is available to all women and children throughout the state. Long term permanent housing that allows women the opportunity to become economically self-sufficient is provided through the Women’s Development Center, which has also increased its capacity significantly. Women and children now have the opportunity to live in rent free apartments for up to one year while seeking employment or continuing their education in order to achieve self sufficiency. Prevention services throughout the community are now available through Family and Child Treatment (in Las

Vegas), which assist women in stabilizing their families should they wish to remain at home.

In addition to providing direct services, the grant allowed the Foundation to create a data base to evaluate the effectiveness of its funded programs and to measure the kinds of services that children and their mothers must call upon in order to address the issues of safety. Information from this data base maintains strict compliance with confidentiality statutes while allowing the Foundation to use the information as the basis of an evaluation that will be a first step in generating consistent information in the state and will form the basis for developing state wide protocols that heretofore were nonexistent.

7.6 STATE DOMESTIC VIOLENCE RESOURCES

Domestic Violence Prevention Council
(Statewide Domestic Violence Task Force)
(775) 684-1100 (in Carson City)
(702) 486-3420 (in Las Vegas)

Southern Nevada Domestic Violence Task Force
(702) 229-6201

Washoe County Domestic Violence Task Force
(775) 334-2050

Nevada Network Against Domestic Violence
100 W. Grove Street Suite 315
Reno, NV 89509
(775) 1115
1-800- 230-1955

Washoe County Victim Death Review Committee
1-800-527-3223

Clark County Fatality Review Committee
(702) 229-6201

Statewide Court Monitoring Project
Nevada Network Against Domestic Violence
100 W. Grove Street Suite 315
Reno, NV 89509
(775) 828-9911

Domestic Violence Education Program
Kathy Webber
(775) 356-6369

(Provides free classes in Washoe County for victims of domestic violence, many of the victims are court referred during the process of obtaining a TPO)

Special Populations

Governor's Committee on Employment of People with Disabilities
(702) 668-1111
(For victims with disabilities)

Community Counseling (in Southern Nevada)
(702) 369-8700
(Counseling for the sexual minority victims)

Nevada Network Against Domestic Violence
(Native American Resources)
(775) 828-1115

Reno-Sparks Indian Colony
(775) 329-5071

Nevada Tribal Council
(775) 355-0600

Nevada State Board of Cosmetology in conjunction with the Attorney General's Office has recently provided salons statewide with information on how to make referrals to Social Service Agencies. They also provided literature so the salons can display the hotline number and provide brochures. A check list of strategies and resources was also provided to the salons. For more information, contact the Domestic Violence Ombudsman (775) 688-1822.

PUBLICATIONS:

“Protection Order Handbook”
Eighth Judicial District Court - Family Division
Protection Order Program
601 N. Pecos Road
Las Vegas, NV 89101-2408
(702) 455-3400

“Domestic Violence Handbook for Victims and Professionals”

Nevada Commission for Women
Nevada Network Against Domestic Violence
100 W. Grove Street Ste. 315
Reno, NV 89509
1- 800- 230-1955

Available online: www.state.nv.us/ndvpc/broc_dv1.htm

State of Nevada Division of Child and Family publication on
Domestic Violence and Its Impact on Children:

The Role of Agencies That Provide Protective Services
A Report to the Legislature on Assembly Bill 348 (1997)

(This publication contains a number of recommendations. However, the Assembly Bill never went forward, but the above publication contains valuable information)

For More Information Contact the Program Assistance
Department of Child and Family Service
711 E. 5th Street
Carson City, NV 89701 (775) 684-4423

Clark County Bar Association Communique (Journal)
May 2000 Issue on Domestic Violence
Clark County Bar Association

P.O. Box 657
Las Vegas, NV 89125
(702) 387-7867

7.7 NATIONAL DOMESTIC VIOLENCE RESOURCES

National Resource Center on Domestic Violence
1-800 537-2238

Resource Center on Domestic Violence: Child Protection/Custody
1-800 527-3223

Health Resource Center on Domestic Violence
1-888-792-2873

Battered Women's Justice Project
1-800 903-0111

American Bar Association
Commission on Domestic Violence
740 15th Street NW
9th Floor
Washington, DC 20005-1022
E-Mail: abadv@abanet.org
www.abanet.org/domviol/

National Resource Center to End Violence Against Native Women
1-877-733-7623

National Criminal Justice Reference Service (NCJRS)
www.ncjrs.org
(Look under "Victims" category)

Bureau of Justice Statistics

www.ojp.usdoj.gov/bjs/
(National statistical information and publications)

Sourcebook of Criminal Justice Statistic
www.albany.edu/sourcebook

Federal Bureau of Investigation Homepage
www.fbi.gov

State Statistical Analysis Center
www.jrsainfo.org/sa
(Statistical information by State)

Family Violence Prevention Fund
383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133
(415) 252-8900
www.fvpf.org/justice/indes.html
(Model Policy on Domestic Violence in the Workplace and Checklist of strategies and
resources)
(Family Violence Prevention Fund's Judicial Education Project)

HIV-Related Violence: A Resource Manual for HIV Service Providers in NYC New
York City Gay and Lesbian Anti-Violence Project
(212) 807-6761

www.about.com
(Abuse/incest Support and net links for domestic violence services for lesbians)

Full Faith and Credit Issues
Pennsylvania Domestic Violence Coalition: Full Faith and Credit Project
1- 800 256-5883

International Association of Chiefs of Police

1-800 843-4227

7.8 ACKNOWLEDGMENTS

In researching material for this chapter, the editor had the opportunity to observe the process of obtaining temporary protection orders in Clark and Washoe Counties through the Family Courts in both jurisdictions. Both courts made the entire process available for view, from seeing the interviews of the applicants for temporary protection orders with the court advocates and volunteers to the interviews of the applicants by the court master in Washoe County. The judges, domestic violence commissioners, court masters and TPO office staffs of both courts went out of their way to assist the Editor in understanding the court and advocacy process to further the development of this manual. A special thank you to the Second Judicial District Court-Family Division in Washoe County, Hon. Scott Jordon, Family Court Judge; Hon. Victoria Van Meter, Court Master, and Barbara Spring of the TPO office, and the Eighth Judicial District Court-Family Division in Clark County; Hon. Patricia Donninger, Domestic Violence Commissioner, and Wendy Wilkinson of the TPO office. Debbie “SAM” Smith of the Family Violence Resource Center of the National Council of Juvenile and Family Court Judges, University of Nevada - Reno provided a great deal of information on very helpful national resources. Fran Marshall provided information about the Andrew Agassi Foundation project. A special thank you to the Nevada Network Against Domestic Violence, Sue Meuschke, Executive Director, and her staff.

GLOSSARY OF TERMS

Adverse:	Opposed; having opposite interests; against.
Adverse Party:	The person against whom a protection order is filed.
Advocate:	A person who speaks for or assists the victims of domestic violence. This assistance comes in many forms: information on how to deal with the criminal justice system, counseling, family support, etc. (see “Victim Advocate”)
Affidavit:	A written statement sworn to before a person officially permitted by law to administer an oath.
AIDS: (Acquired Immune Deficiency Syndrome):	A viral syndrome that suppresses a person’s immune system and leads to a weakening of the body’s defenses against a variety of infections, viruses, and malignancies.
Allegation:	A statement of the issues in a written document (a pleading) which a person is prepared to prove in court. For example, an indictment contains allegations of crimes.
Applicant:	One who applies or initiates the action to obtain a protection order.
Assault:	Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm. An unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.
Battered Woman Syndrome:	Battered Woman Syndrome has been defined as post-traumatic stress disorder (PTSD), a psychological condition that results from exposure to severe trauma.
Battery:	Any willful and unlawful use of force or violence upon the person of another.

Bisexual, Gay, or Lesbian:	Terms which refer to persons who are sexually attracted to members of their own sex (except bisexuals, who are generally attracted to members of both sexes), but which encompasses lifestyle, heritage, experiences and minority status without focusing on sexuality, per se; the preferred terms for such persons.
Certified:	A stamp, seal, or signature of the issuing judge or clerk of court noting that the copy is an authentic duplicate of the original order of the court.
Comity:	A legal principle whereby a sovereign nation decides voluntarily to recognize another jurisdiction's court order.
Consent Order:	An order of protection which is issued, usually without a finding (legal conclusion) of abuse, but after the adverse party consents or agrees to the entry of the order.
Contempt of Court:	A willful disobeying or disregard for a judge's command or official court order.
Coordinated Community Response:	A system or institution responding to the issue of domestic violence that provides the following priorities: To protect victim safety, promote victim autonomy and integrity, and hold the perpetrator accountable. Responders include the following systems: Criminal Justice, Judiciary, Health Care, Religious, Victim Advocacy, Batterer Intervention.
Dating Relationship:	Frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.
Defendant:	The person against whom a legal action is filed.
Disability:	Any physical, medical, mental or psychological impairment.

Domestic Partner: A term used by gay men and lesbians to refer to their life partner, since marriage between same-sex couples is illegal in the United States. Unmarried couples of any sexual orientation are Domestic Partners.

Domestic Violence: Abuse in a relationship, involving any pattern of behavior used to dominate, coerce, or control another person. Domestic violence occurs in heterosexual, gay, and lesbian relationships. Domestic violence includes abuse by lovers, relatives, roommates or friends.

**Domestic Violence
(Behavior
Definition):**

Domestic violence is a pattern of assaultive and coercive behaviors that an adult or adolescent uses to gain and maintain power and control over an intimate partner. The behaviors can be physical, sexual, psychological, economic, and/or the destruction of property and pets. Domestic violence is a learned pattern of behaviors.

Dual Arrest: The arrest of both parties during a domestic violence incident. Dual arrests are discouraged. The law enforcement officer's responsibility is to identify the primary aggressor and arrest only that person.

Elder Abuse: Elder abuse includes the willful and unjustified infliction of pain, injury or mental anguish or the willful and unjustified deprivation of food, shelter, clothing, or services which are necessary to maintain the physical or mental health of the older person.

Ex Parte Order: An emergency or temporary order issued at the request of the applicant without first providing notice or a hearing to the adverse party.

Felony: A criminal offense that permits a sentence to a term of more than one year imprisonment.

Homophobia: Literally, an irrational fear of erotic attraction to members of the same sex; "homophobic" has become a political term as well, in that it is now used to refer to people, policies and laws which are insensitive to gay, lesbian, bisexual and transgender issues.

HIV (Human Immunodeficiency Virus):

A slow-acting retrovirus that is thought to cause AIDS.

**HIV Positive/
HIV Infected:**

Terms describing a person who has been exposed to and is infected with HIV. This status is determined by a positive lab test for HIV antibodies in the blood. Also called seropositive.

Homosexual:

Generally, a term which pertains to the sexual attraction of persons for members of their own sex; not the preferred term for such persons.

Indian Child Welfare Act (ICWA):

A law that applies to custody proceedings in state courts involving foster care placement, termination of parental rights, pre-adoptive placement, and adoptive placement of Indian children. The ICWA may apply to divorces or custody proceedings where custody of the child(ren) is given to a third party. This law is significant because abusers often threaten to use the ICWA against battered women even though the ICWA does not apply to custody proceedings between the parents of the child(ren).

Jurisdiction (location):

A jurisdiction is used most commonly as a general name for the geographic areas impacted by the federal law. This includes all 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands, and Guam.

Issuing Jurisdiction: Jurisdiction that grants the order of protection.

Enforcing Jurisdiction: Jurisdiction that enforces an order of protection issued by another jurisdiction.

Jurisdiction:

Can also be used as a legal term to refer to the types of authority that a court may exercise.

Subject Matter Jurisdiction: Refers to the authority of a court to hear and determine a particular type of case.

Personal Jurisdiction: Refers to the power the court may (or may not) have over the parties involved in a particular case.

**Long Term Care
Ombudsman -
Elder Abuse:**

A person working in the Nevada Division of Aging Services and assigned to investigate reports of abuse, neglect, exploitation, and isolation of older persons who are residents in nursing facilities and facilities for residential care, such as group homes. These investigators are not peace officers but do exercise important regulatory power of which law enforcement officers and agencies should be aware.

Misdemeanant:

A person who has been convicted of a misdemeanor, which is less severe than a felony.

Mutual Order:

A single order of protection that includes prohibitions against both the applicant and adverse party. Not permitted under Nevada law unless both parties seek orders of protection.

NRS:

Nevada Revised Statutes.

Outing:

A form of abuse in the sexual minority community. Telling the family, employer or community about the sexual minority status of an individual who was believed to be in the sexual majority, and disclosing of HIV status are examples of this type of emotional abuse.

Perjury:

The criminal offense of making a false statement under oath.

Perpetrator:

The abuser or perpetrator of domestic violence in a relationship. The Batterer can be a lover, spouse, relative, roommate or friend.

**Primary Physical
Aggressor:**

The person who is the most significant, rather than the first, aggressor. May not always be the first aggressor.

Pro Per:

A Latin term meaning in proper person, or representing one's self.

In courts, it refers to persons who present their own cases without lawyers.

- Pro Se:** A Latin term meaning “on one’s own behalf.” In courts, it refers to persons who present their own cases without lawyers.
- Sanction:** A penalty or punishment attached to a law to make sure it is obeyed.
- Sexual Abuse:** Physical attack by the abuser is often accompanied by, or culminates in, sexual violence wherein the woman is forced to have sexual intercourse with her abuser or take part in unwanted sexual activity.
- Sexual Minority:** An individual who is gay, lesbian, bi-sexual, or transgendered.
- Stalking:** (NRS 200.575) Without lawful authority, willfully or maliciously engaging in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated or harassed, and that actually causes the victim to feel terrorized, frightened, intimidated or harassed, commits the crime of stalking.
- Stalking (Aggravated):** (NRS 200.575) Any one of the following: (a) Committing the crime of stalking and in conjunction therewith threatening the person with the intent to cause reasonable fear of death or substantial bodily harm; (b) committing the crime of stalking on a spouse while a proceeding for the dissolution of their marriage is pending for which the stalker has actual or legal notice or within six months after entry of the final decree of dissolution; (c) committing the crime of stalking on a person with whom the stalker has a child in common while a proceeding for the custody of that child is pending for which the stalker has actual or legal notice.
- Straight:** Heterosexual.
- TPO - Temporary Protection Order:** An order issued by the court which is effective not to exceed 30 days. The order prohibits the adverse party from making contact with the victim. The order must be served on the adverse party before an arrest can be made for violating the order. A violation of this order is a misdemeanor crime.

Transgender: Umbrella term that refers to persons who have a gender identity different from the one assigned to them at birth. The term includes, but is not limited to: male-to-female transsexuals, also known as “MTFs,” who are referred to as transgender women; female-to-male transsexuals, also known as “FMTs,” who are referred to as transgender men; and intersexed persons who were born with ambiguous genitalia - referred to as transgender men or women - depending upon how they identify themselves. Gender orientation is *different* from sexual orientation. Thus, transgender persons can be bisexual, lesbian, gay or heterosexual.

VAWA: Violence Against Women Act

Victim Advocate: See “Advocate” above.
Types of Victim Advocates:
Shelter Advocates
Community Advocates
Court based legal advocates (victim/witness, family law facilitator, protection order advocates, etc.
Children’s Advocates
Crime Victim Advocates
Sexual Assault Advocates

BIBLIOGRAPHY

- American Bar Association, Commission on Domestic Violence, *Domestic Violence Resources* (visited Mar. 11, 2000)
<<http://www.abanet.org/domviol/pubs.html>>
- American Bar Association, Commission on Domestic Violence, THE IMPACT OF DOMESTIC VIOLENCE IN YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK (1996)
- American Bar Association, Commission on Domestic Violence, *Important Phone Numbers* (visited Mar. 11, 2000)
<<http://www.abanet.org/domviol/phone.html>>.
- American Bar Association, Commission on Domestic Violence, *Myths and Facts About Domestic Violence* (visited June 10, 2000)
<<http://www.abanet.org/domviol/myths.html>>
- American Bar Association, Commission on Domestic Violence, *Research Inquiries* (visited Mar. 11, 2000)
<<http://abanet.org/domviol/research.html>>
- American Bar Association, Commission on Legal Problems of the Elderly, Recommended Guidelines of State Courts Handling Cases Involving Elder Abuse in ELDER ABUSE IN THE STATE COURTS - THREE CURRICULA FOR JUDGES AND FAMILY COURT STAFF (1997)
- American Bar Association, Division of Media Relations and Pub. Affairs, *Facts About Children and the Law - Question 28: How Does Domestic Violence Impact Children?* (visited Mar. 11, 2000)
<<http://www.abanet.org/media/factbooks/ch28.html>>
- American Judges Foundation, Inc. DOMESTIC VIOLENCE & THE COURTROOM: UNDERSTANDING THE PROBLEM...KNOWING THE VICTIM (1995).
- Asmus, Mary E., *Prosecuting Domestic Violence Abuse Cases in Duluth: Developing Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 HAMLINE L. REV. 115 (1991).
- Bala, Nicholas, *Spousal Abuse and Children of Divorce: A Differentiated*

- Approach*, 13 CAN.J.FAM.L. 215 (1996).
- Barnes, Cynthia Lynn, Annotation, *Admissibility of Expert Testimony Concerning Domestic-Violence Syndromes to Assist Jury in Evaluating Victim's Testimony or Behavior*, 57 A.L.R.5th 315 (1998).
- Buel, Sarah M., *Family Violence: Ethical Practice with High-Risk Domestic Violence Victims*, The Texas Prosecutor, September/October 1996.
- Carroll, Peter F., *The Use of Bad Act Evidence in Criminal Prosecutions*, 57 APR INTER ALIA 2 (1992)
- Center on Crime, Communities & Culture, *Discussion of Major Domestic Violence Terms* (visited Mar. 11, 2000)
<<http://www.soros.org/crime/pfdv/contents/preface.html>>
- CLARK COUNTY, NEVADA PROTECTION ORDER HANDBOOK (Winter 2000)
- DAVIDSON, HOWARD, AMERICAN BAR ASSOCIATION STEERING COMMITTEE ON THE UNMET LEGAL NEEDS OF CHILDREN, A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION ON THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN (2nd ed. 1994)
- Domestic and Sexual Violence Data Collection, *A Report to Congress under the Violence Against Women Act*, 1 NIJ RESEARCH REPORT, (1996).
- ELDER ABUSE PREVENTION COUNSEL, ELDER ABUSE, NEGLECT, EXPLOITATION AND ISOLATION PROTOCOL (1997).
- Fagan, Jeffrey, *The Criminalization of Domestic Violence: Promises and Limits* (visited Mar. 11, 2000) <<http://www.ncjrs.org/txtfiles/crimdom.txt>>
- GREENFELD, LAWRENCE A., U.S. DEP'T OF JUSTICE, VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS (1998).
- GROBAN, MARGARET S., UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF NEVADA, THE FEDERAL DOMESTIC VIOLENCE LAWS AND THE ENFORCEMENT OF THESE LAWS (1999).
- Gwinn, Casey G., & Anne O'Dell, *Stopping the Violence: The Role of the Police*

- Officer and the Prosecutor*, 20 WESTERN ST. U. L. REV. 1501 (1993).
- Island, David & Letellier, Patrick, *The Scourge of Domestic Violence*, Gaybook, (Winter 1990), at 11.
- Island, David & Letellier, Patrick, MEN WHO BEAT THE MEN WHO LOVE THEM (1991)
- Kanuha, Valli, *Compounding the Triple Jeopardy: Battering in Lesbian of Color Relationships*, in DIVERSITY AND COMPLEXITY IN FEMINIST THEORY (1990)
- King, Patricia, *Not So Different After All*, Newsweek, Oct. 4, 1993.
- Klein, Catherine F. & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21(4) HOFSTRA L. REV. 801, 1074-78 (1993)
- Kurtz, Lynne R., Comment, *Protecting New York's Children: An Argument for the Creation of a Rebuttable Presumption Against Awarding a Spousal Abuser Custody of a Child*, 60 ALB.L.REV. 1345 (1997)
- LEEN, THOMAS L., THE LAW OF ARREST, SEARCH AND SEIZURE FOR NEVADA POLICE OFFICERS (1997)
- Levin, Amy B., Comment, *Child Witnesses of Domestic Violence: How Should Judges Apply the Best Interests of the Child Standard in Custody and Visitation Cases Involving Domestic Violence?*, 47 UCLA L. REV. 813 (2000).
- LOBEL, K., NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING (1986)
- LOUISIANA DISTRICT ATTORNEYS ASSOC., DOMESTIC VIOLENCE PROSECUTION (1996)
- Masson, Erin M., Annotation, *Admissibility of Expert or Opinion Evidence of Battered-Woman Syndrome on Issue of Self-Defense*, 58 A.L.R.5TH 749 (2000).
- LINDA A. MCGUIRE, PROSECUTION OF DOMESTIC VIOLENCE IN IOWA: A

PROSECUTION MANUAL (3rd ed. 1998)

Minnesota Center Against Violence and Abuse, *Articles, Fact Sheets, and Other Informative Resources* (visited Mar. 11, 2000)
<<http://mincava.umn.edu/vaw.asp>>

- Minnesota Coalition for Battered Women, *CONFRONTING HOMOPHOBIA: A MANUAL FOR BATTERED WOMAN'S AND ANTI-SEXUAL ASSAULT PROGRAMS* (1990)
- Minnesota Coalition for Battered Women, *CONFRONTING LESBIAN BATTERING* (1990)
- Montgomery, Ann-Marie, Note, *State v. Riker, Battered Women Under Duress: The Concept the Washington Supreme Court Could Not Grasp*, 19 SEATTLE U.L. REV. 385 (1996)
- NEVADA COMMISSION FOR WOMEN, *DOMESTIC VIOLENCE: A HANDBOOK FOR VICTIMS AND PROFESSIONALS* (1994)
- NEVADA ELDER ABUSE PREVENTION COUNCIL, *ELDER ABUSE, NEGLECT, EXPLOITATION AND ISOLATION PROTOCOL* (1997).
- NEVADA JUDGES ASSOCIATION, ADMIN. OFF. OF THE CT., *NEVADA BENCHBOOK FOR JUSTICE AND MUNICIPAL COURTS* (REV. 1998)
- Parrish, Janet, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases*, 11 WIS. WOMEN'S L.J. 75 (1996)
- PRAXIS INTERNATIONAL, *THE PROSECUTOR'S TOOL BOX FOR DOMESTIC VIOLENCE CASES: PROSECUTING CASES WITHOUT THE VICTIM* (1999)
- Ramsey-Klawnsnik, Holly *Investigating Suspected Elder Maltreatment*, 7 J.ABUSE & NEGLECT 1 (1995)
- RENZETTI, CLAIRE, *VIOLENT BETRAYEL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS* (1992)
- Ridgeway, Mindy, *Lesbian Battery: Paying The Ultimate Price*, San Francisco Bay Times, May 5, 1994
- San Diego Domestic Violence Council, *Domestic Violence Law Enforcement Protocol* (visited Mar. 11, 2000)
<<http://www.sandiegodvcouncil.org/library-le-protocol.html>>
- San Diego Domestic Violence Council, *Domestic Violence Protocol for Medical Facilities* (visited Mar. 11, 2000)

- <<http://www.sandiegodvcouncil.org/library-medical-protocol.html>>.
- San Diego Domestic Violence Council, *Teen Summits on Teen Relationship Violence* (visited Mar. 11, 2000)
<<http://www.sandiegodvcouncil.org/library-teen-final-report.html>>
- SANTA CLARA COUNTY PROBATION DEPARTMENT, DOMESTIC VIOLENCE INFORMATION AND REFERRAL HANDBOOK (visited May 27, 2000)
<http://www.growing.com/nonviolent/victim/vict_res.htm>
- Santa Clara County, *Violence in the Lives of Women and Children: Some Facts* (visited May 27, 2000) <<http://www.growing.com/nonviolent>>
- Seemann, Robert J. *The Role of Elderly Protective Services and Law Enforcement*, in 3(2) LOUISIANA CHIEFS' CHRONICLE 11 (Summer 1996)
- Snow, Katrin, *The Violence At Home*, *The Advocate*, June 4, 1992, at 60.
- Stoffel, Elizabeth, JD, NETWORK NEWS, 20TH ANNIVERSARY, *Statewide Court Monitoring Project*, (Jan. 20, 2000)
- TUCSON UNITED AGAINST DOMESTIC VIOLENCE, LESBIAN AND GAY DOMESTIC VIOLENCE: A RESOURCE (Apr. 1995) (available by contacting The Brewster Center at 510-881-7201)
- Tuller, David, *When Gays Batter Their Partners*, *The San Francisco Chronicle*, Jan. 3, 1994, at A8.
- UTAH ATTORNEY GENERAL'S OFFICE, DOMESTIC VIOLENCE 101: A USER-FRIENDLY MANUAL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT FOR PROSECUTORS AND LAW ENFORCEMENT OFFICERS (2nd ed. 1998).
- Ventura, Marissa J., *Intimate Abuse: Domestic Violence in Lesbian Relationships*, *Deneuve*, July/Aug. 1995, at 40
- Violence Against Women Online Resources, *A Review of Standards for Batterer Intervention Programs* (visited Mar. 11, 2000)
<<http://www.vaw.umn.edu/Vawnet/standard.htm>>
- Violence Against Women Online Resources, *Incidence Rates of Violence Against Women: A Comparison of the Redesigned National Crime Victimization*

Survey and the 1985 National Family Violence Survey
(visited Mar. 11, 2000)
<<http://www.vaw.umn.edu/Vawnet/incidence/htm>>

Violence Against Women Online Resources, *Reviewing Domestic Violence Fatalities: Summarizing National Developments* (visited Mar. 11, 2000)
<<http://www.vaw.umn.edu/FinalDocuments/fatality.htm>>.

Violence Against Women Online Resources, *Working Effectively with the Police: A Guide for Battered Women's Advocates* (visited Mar. 11, 2000)
<<http://www.vaw.umn.edu/BWJP/policeV.htm>>.

Violence Against Women Online Resources, *Annual Report on Lesbian, Gay, Bisexual, Transgender Domestic Violence* (visited Mar. 11, 2000)
<<http://www.vaw.umn.edu/FinalDocuments/glbtdiv.htm>>

APPENDICES

- A. NEAPC PROTOCOL ON ELDER ABUSE
- B. JUDGES' BENCH CARDS
- C. WASHOE COUNTY SHERIFF'S DEPARTMENT PROTOCOL
SPARKS POLICE DEPARTMENT MODEL POLICY
LYON COUNTY SHERIFF'S DEPARTMENT POLICY
CARSON CITY SHERIFF'S DEPARTMENT POLICY
LAS VEGAS METROPOLITAN POLICE DEPARTMENT -
DOMESTIC ABUSE AND DUI VIOLATIONS BY EMPLOYEES
NORTH LAS VEGAS POLICE DEPARTMENT POLICY
- D. LAW ENFORCEMENT DOMESTIC VIOLENCE STATISTICAL FORM
FOR REPORTING TO THE STATE OF NEVADA
- E. LEGAL OPINION FROM THE NEVADA ATTORNEY GENERAL'S
OFFICE TO COL. MICHAEL HOOD OF THE NEVADA HIGHWAY
PATROL
- F. NEVADA MANDATORY STANDARDIZED FORMS FOR PROTECTION
ORDERS
- G. NEVADA VOLUNTARY STANDARDIZED FORMS FOR PROTECTION
ORDERS
- H. NEVADA NETWORK AGAINST DOMESTIC VIOLENCE PUBLICATION
ORDER FORM

INDEX

- Advocacy Programs . . . 33, 271-273, 275, 276, 278, 280, 286, 287, 289, 291, 292,
294, 296-301, 303, 304, 306-308, 312, 313
- Advocates 1, 28, 36, 49, 50, 52, 77, 82, 86, 104, 105, 133, 134, 139, 140,
143, 144, 166, 168, 172, 173, 238, 260, 271-274, 278, 281, 303,
307, 314, 320, 327, 333
- Aggravating Factor 67, 155
- Application Assistance 219, 237
- Attorney General 127, 128, 130, 216, 270
- Bail 62, 74, 80, 89, 91, 102, 116, 134, 159-162, 169, 227, 237
- Battered Woman Syndrome 66, 137, 189, 211, 321
- Bisexual 23, 24, 29, 33-36, 125, 126, 322, 323, 327, 333
- Carson City 80, 127, 130, 132, 252, 272-274, 301, 307, 308, 315, 317, 334
- CASA 269, 272, 274, 275, 277, 279, 282, 286, 288, 290, 291, 293, 294, 296-
300, 302, 303, 305-307, 309, 312, 313
- Central Repository 57, 61, 89, 90, 127, 131, 132, 243, 244
- Certified Batterers Treatment Programs . . . 272, 274, 275, 277, 279, 282, 287, 288,
290, 292-294, 296-300, 302, 303, 305-307, 309, 312, 313
- Character Witnesses 135, 180
- Charges . . . 51, 59, 77, 80, 86, 90, 94, 144, 145, 152, 153, 162, 171-173, 230, 232,
233, 235, 236
- Child Custody 46, 62, 65, 66, 91, 134, 170, 241, 255, 260, 263-266, 268
- Child Support 5, 18, 46, 239-241, 246, 248, 262, 263
- Child Welfare Act 222, 266
- Churchill County 275, 276
- Clark County 56, 76, 84, 116, 132, 152, 216, 227, 229, 230, 236, 237,
239, 240, 246, 254, 264, 268, 269, 271, 272, 276, 278, 279, 281,
282, 286-291, 314, 315, 317, 320, 329
- Clergy 28, 30, 31, 48
- Client Interviewing 255, 258
- Closing Argument 135, 179, 185
- Coercion 5, 9, 69, 71, 120, 121, 156, 211
- Compensation and Restitution Fund 135, 172
- Competency 135, 162, 179, 197
- Confidentiality 134, 157, 166, 315
- Contempt of Court 221, 232, 233, 242, 248, 249
- Continuance 50, 173, 190, 191
- Convictions 30, 44, 46, 66, 73, 115, 136, 159-161, 163, 176, 192, 195, 196,
198, 201, 250

Coordinated Community Response	1, 30, 31, 139, 314
Criminal History	99, 102, 104, 106, 160, 167
Cross-Examination	135, 176, 179-181, 190-192, 194, 196, 211
Cyber-Stalking	8
Cycle of Violence	1, 15, 139, 154
Death Threats	159
Defenses	107, 135, 174, 179, 180, 182, 211, 321
Degradation	22
Discovery	154, 156, 179, 209
Dismissals	137, 215
Dispositions	137, 143, 212
Dissolution	221, 244, 246-248, 326
Divorce	16, 18, 44, 50, 173, 223, 226, 232, 239, 241, 255, 260, 262, 328
Doctor-Patient Privilege	136, 198, 199
Domestic Violence Triad	33, 34, 133, 139
Douglas County	292, 293
Dual Arrest	51, 88, 323
Dynamics of Domestic Violence	9, 31, 273
Economic Abuse	22, 43
Elder Abuse	40, 53, 55, 56, 125, 323, 325, 328, 329, 331, 334
Elko County	294
Emergency Temporary Protection Order	61, 219, 230, 233, 236, 237
Enforcement of Restraining and Protective Orders	86, 110
Esmeralda County	296
Eureka County	297
Evidence	9, 15, 17, 19-21, 27, 28, 44-50, 54, 66, 67, 77, 81, 97, 98, 100, 101, 103, 106-109, 118, 124, 135, 136, 141, 145, 146, 148-153, 155- 157, 162, 164, 174, 177, 178, 181, 183, 185-189, 191-196, 198- 200, 204, 205, 207-211, 215, 216, 238, 244, 246-248, 250, 259, 261, 329, 330
Ex Parte Proceedings	220, 240
Excited Utterance	136, 157, 202, 203
Expert Testimony	19, 136, 184, 189, 209, 211, 329, 331
Extended Temporary Protection Order	219, 230, 232
Extreme Hardship	46, 49, 50
Failure to Appear	135, 167, 172, 173
Family Resource Centers	269, 273, 277, 280, 284, 287, 288, 290, 292, 293, 295- 300, 302, 303, 305-307, 310, 312, 313
Federal Laws	59, 68, 126
Financial Abuse	8, 35, 258
Gay	23, 24, 29, 33-37, 125, 126, 319, 322, 323, 326, 327, 332, 333

Harassment	19, 62, 63, 70, 77, 80, 82, 86, 92, 105-108, 111, 113, 114, 121, 171, 219, 227, 231-233, 246, 249, 261
Hardship	46, 48-50
Health Care System	32, 175
Hearsay	19, 124, 136, 154, 178, 191, 198, 201-204, 206, 207
Humboldt County	298
Immigration	2, 8, 43, 44, 48, 49, 51, 52, 139
Indian Child Welfare Act	222, 266
Intimidation	225
Investigation	5, 35, 69, 77, 80-82, 86, 95, 97, 103, 104, 106, 118, 119, 125, 134, 138, 143, 156, 162, 170, 171, 178, 180, 198, 208, 212, 235, 319
Isolation	8, 10, 21, 53-55, 258, 325, 329, 331
Jurisdiction	3, 18, 30, 31, 35, 64, 68, 70, 75, 76, 83, 116, 118, 119, 121, 139, 160, 162, 178, 212, 213, 218, 222, 223, 240, 241, 264-266, 269, 273, 324, 325
Jury Selection	135, 176
Justice System	12, 30, 33, 46, 75, 87, 138, 166, 173-175, 185, 321
Juvenile	65, 77, 83, 86, 116, 117, 195, 197, 223, 253, 254, 268, 320
Lander County	299
Law Enforcement Reports	136, 207
Lesbian	23, 24, 29, 33-36, 125, 126, 319, 322, 323, 326, 327, 330-333
Lincoln County	300
Lyon County	79, 132, 301, 302, 334
Mediation	255, 264
Mentally Ill Defendants	134, 164
Mineral County	303
Mutual Protection Orders	124, 221, 249
Myths and Facts	1, 11, 27, 328
National Resources	42, 51, 320
Native American	37, 42, 43, 126, 316
Negotiated Pleas	137, 215
Nevada Highway Patrol	77, 83, 86, 119, 226, 334
Nevada Resources	41, 51
Nevada Sheriffs and Chiefs Association	130, 132
No Drop Policy	167
Notification	114, 135, 171, 215, 239, 245, 261
Nye County	304
Opening Statements	135, 176
Orders Pending Divorce	255, 262
Parole and Probation	77, 82, 86, 115, 134, 137, 162, 163, 170, 212-214, 216,

	221, 251
Pershing County	306
Photos and Videos	136, 208
Physical Abuse	8, 15, 19, 20, 35, 39-41, 54
Physical Evidence	146, 157
Pleas	134, 143, 150, 151, 164, 189, 215
Power and Control	5, 9, 20, 28, 38, 150, 170, 184, 216, 251, 323
Pre-Sentence	134, 162, 170, 191, 212
Primary Aggressor	34, 81, 86, 88, 98, 102, 151, 152, 192, 214, 323
Prior Bad Acts	135, 152, 183, 187-190, 216
Privileges	136, 197, 200
Protection Orders	16, 29, 31, 50, 61, 63, 71, 72, 76-78, 82, 92, 123, 124, 127, 129, 132, 158, 169, 218, 219, 221, 226-232, 234, 235, 241, 242, 246, 248, 249, 256, 259, 265, 334
Protocols	29, 32, 33, 35, 77, 79-81, 83, 84, 124, 125, 132, 139, 142-145, 152, 156, 163, 168, 171, 173, 214, 256, 314, 315
Records	16, 18-20, 26, 30, 45-48, 89, 107, 114, 126, 128, 136, 146, 152, 155, 200, 209, 226, 243
Reluctant or Hostile Victim Witness	135, 178
Response to Domestic Violence (Law Enforcement)	Chapter 3
Restitution	74, 75, 135, 137, 143, 150, 171, 172, 190, 213
Retaliation	50, 159, 202, 203
Re-victimization	150
Rural Areas	142, 144, 308
Safety Planning	50, 255, 256, 258, 259
Screening	133, 144, 145, 152, 153, 156, 175, 178, 201, 214, 255-257
Self-Defense	51, 67, 102, 108, 135, 146, 147, 155, 157, 167, 180, 182-184, 186, 192, 193, 211, 259, 330
Self-Petitioning	43, 46, 49, 124
Senior Protective Services	56, 271, 276, 278, 281, 286, 287, 289, 291
Sentencing	18, 32, 54, 67, 74, 115, 117, 126, 134 137, 143, 151, 153, 155, 157, 162, 163, 164, 165 167, 170, 189-191, 195, 212, 213, 221, 245, 250, 251, 283, 323
Sexual Assault	12, 39-42, 60, 62, 80, 87, 91, 96, 125, 149, 156, 186, 191, 195, 203, 207, 228, 327, 331, 332
Sexual Minorities	1, 33-36
Shelter Programs	269
Social Isolation	21
Southern Nevada Law Enforcement Protocols (SNLEP)	77, 80
Special Populations	1, 33, 77, 125, 316
Spiritual Abuse	8

Spousal Privilege	136, 197, 198
Spousal Support	261, 263
Stalking	8, 21, 35, 44, 47, 60, 62, 63, 70, 72, 77, 80, 82, 86-88, 92, 96, 105-109, 111, 113, 114, 121, 122, 162, 219, 227, 228, 231-233, 258, 326
Standardized Forms	72, 129, 144, 219, 222, 234, 334
Statistics	1, 23, 26, 34, 35, 81, 110, 126, 127, 314, 318
Stockholm Syndrome	9
Storey County	307
Substance Abuse	20, 28, 106, 167, 214, 251
Suspended Sentences	137, 213, 251
Teenagers	125
Temporary Protection Orders	230, 232, 241, 246
Theories of Domestic Violence	1, 9
Threats	8, 9, 13, 18-21, 28, 35, 47, 70, 106, 115, 121, 148, 159, 160, 163, 183, 246, 258
TPO Assistance Programs	271, 273, 275, 276, 278, 280, 286, 287, 289, 291, 292, 294, 296-301, 303, 304, 306-308, 312, 313
Transgender	23, 24, 29, 34, 35, 126, 323, 327, 333
Tribal Issues	2, 37, 42
Tribes	38-41, 64, 65, 75, 76, 123, 222, 266
VAWA	43, 50-52, 68, 69, 74-76, 120, 124, 327
Verbal Abuse	8
Victim Impact Statement	189-191, 213
Victims Services	Chapter 7
Victims' Rights	74, 135, 171, 215
Violation	61-63, 70-75, 88-92, 95, 96, 111-114, 121-123, 128, 130, 156, 162, 163, 165, 214, 220, 221, 232, 233, 242, 243, 248-250, 265, 326
Violence Against Women Act	43, 52, 58, 64, 68, 76, 83, 120, 139, 231, 249, 327, 329
Visitation	31, 46, 160, 170, 223, 225, 239, 240, 246, 247, 255, 260, 261, 264-266, 279, 282, 286, 288, 290, 291, 293, 309, 330
Voir Dire	135, 176, 180
Waiver of Privilege	136, 200
Washoe County	79, 132, 152, 212-216, 229, 230, 236, 237, 239, 240, 246, 252, 264, 308, 315, 316, 320, 334
Weapons	21, 32, 69, 80, 94, 99, 100, 106, 146, 157, 161, 183, 257, 258
White Pine County	313
Witnesses	12, 17-19, 77, 81, 82, 86, 98-100, 102-104, 107, 109, 114, 135, 145- 148, 151, 153, 155, 158, 175-177, 179, 180, 184, 186, 188, 193, 201, 210, 212, 246, 249, 330
Workplace	32, 107, 160, 319

