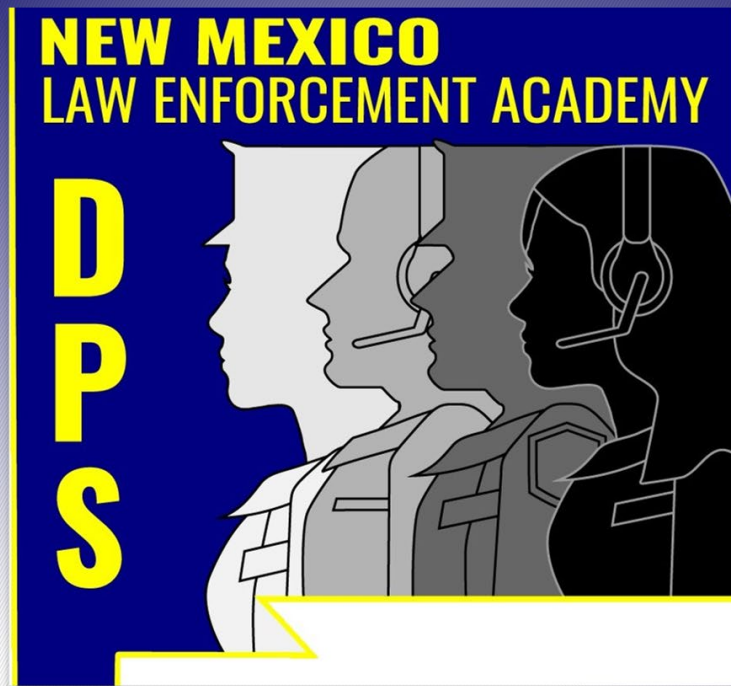


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*Lesson Plan / Instructor Guide*

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**Domestic Violence (NM240012)**  
New Mexico Law Enforcement Academy  
Annual In-Service Training Curriculum 2024

**COURSE TITLE:**  
**Domestic Violence**

**INSTRUCTIONAL GOAL:**

Provide the students with basic understanding of the New Mexico Statues regarding domestic violence, as well as statistics and officer safety and survival considerations during Domestic Violence Calls for service, including the signs and symptoms of Non-Lethal Strangulation.

**INSTRUCTIONAL OBJECTIVES:**

Upon completion of this block of instruction the participant will:

1. Know the different types of Orders of Protection
2. Know the Criminal Damage to Property or Deprivation of Property Against a Household Member (30-3-18)
3. Understand Search warrants in relationship to Domestic Violence Shelters
4. Know an officer's responsibilities as described in Dual Arrest (40-13-1.1)
5. Know the changes to the stalking statue as it applies to Domestic Violence (30-3A-3)
6. Know the five key indicators associated with Domestic Violence calls for service wherein there is a 50% likelihood that officers will be assaulted.
7. Know the key safety considerations for Officer Safety and Survival during Domestic Violence Calls for Service.
8. Understand the concept of a Trauma Informed Interview of the victim / victims of Domestic Violence.
9. Know the New Mexico State Laws governing Domestic Violence Investigations as well as case law associated with Domestic Violence Crime.

10. Know all others associated criminal activity related to Domestic Violence Investigations  
i.e. Stalking; Sexual Assault; Non-Lethal Strangulation; Protection Order violations.

**INSTRUCTIONAL METHODS:**

Classroom lecture, participation, demonstration, Prezi Presentation.

**HANDOUTS:**

**“Why I Stayed”**; International Chiefs of Police (IACP) Report Review Checklists

**COURSE DURATION:**

1 Hour

**CURRICULUM REFERENCES:**

FBI Statistics; IACP LE Leadership Initiative on Domestic Violence Against Women; Dolan Consulting Group; 29-7-4.1 NMSA 1978

Edna Frances Sprague, Esq., Staff Attorney/Domestic Violence Helpline Statewide Coordinator

New Mexico Legal Aid, Inc.; [ednas@nmlegalaid.org](mailto:ednas@nmlegalaid.org) (505) 768-6110

**EQUIPMENT, PERSONNEL, AND SUPPLIES NEEDED:**

Computer, screen, projector

**TARGET AUDIENCE:**

New Mexico Law Enforcement Officers

**INSTRUCTOR RATIO:**

N/A

**EVALUATION STRATEGY:**

Participation in discussion

**AUTHOR & ORIGINATION DATE:**

Frank Ortiz III, Advanced Training Bureau Chief

July 1, 2018

**REVISION / REVIEW DATE(S):**

**12/19/23**

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**I. INTRODUCTION**

- A.** Domestic Violence calls for service pose a number of physical safety risks for law enforcement. As the killing of a 24 year old Flagstaff Police Department Officer Tyler Stuart demonstrate and statistics now show that depending on five (5) key factors, responding officers can have a 50% chance of being violently assaulted during these calls for service. DV Calls involve crimes between people with complex relationship issues, making the investigation of these crimes difficult for responding officers. Domestic Violence results in nearly 2,000 murders annually in the United States and is the most common violent crime encountered by police.
- B.** This course will focus on Officer Safety, victim safety and survival during Domestic Violence calls for service as well as strategies for facing violent assaults by DV batterers, who may well have already decided that he will assault officers before they arrive at the crime scene. According to experts who study Domestic Violence relate that having a departmental Domestic Violence Policing Strategy should include a thorough investigation and photographic evidence, identifying the “Predominant Aggressor,” consistent and repeated enforcement of the law and an unyielding efforts to get a victim of Domestic Violence to accept help.

**C. Officer Frustration in Dealing with DV Victim Behaviors**

1. Victim refusal to cooperate with the investigation.
2. Recanting statements.
3. Refusing to Testify.
4. Refusing to end the relationship with the batterer.
5. DV Victims more likely to display these behaviors than victims of other crimes.

\*HANDOUT – “Why I Stayed” Is a handout for discussion, to augment discussion and dialogue with attendees in order to gain insight into the strong psychological and emotional bonds that connect the batterer to the domestic violence victim(s) and the added frustration the officer(s) can experience with these particular victims.

**D. Additional Challenges / Barriers involving DV Calls**

1. Deaf or hearing diminished individuals.
2. Gay, Lesbian, Transgender, bisexual, or gender non-conforming individuals
3. Individuals with physical or cognitive disabilities.
4. Older adults
5. Non-English speakers (immigrants)

**E. Reasons for DV Victim Non-Cooperation**

1. Financial Dependence on the Batterer – Victim financially dependent – home & vehicles in batterers name.
2. Social Dependence on the Batterer – victim isolation by batterer –withdrawal from family & friends.
3. Religious, Family, or Cultural Norms – can be viewed as a sin to leave a marriage even if abusive by some religions.
4. Legal Angers & Repercussions – child custody / property

**F. Physical Dangers of Leaving**

1. DV victims at greatest risk of being murdered in the first couple years after leaving their abusers
  2. Stalking only occurs after victim leaves batterer
  3. Leaving the batterer usually does not end the abuse, harassment and living in fear
  4. Leaving the batterer and assisting the police can be among the most dangerous things the victim can do
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**G. Predicting Assaults at DV Calls**

1. **Five characteristics were found to predict whether or not an officer assault occurred**
  - a) Batterer unemployed
  - b) Batterer has damaged property during the incident
  - c) Batterer resides with the DV Victim
  - d) Batterer was drunk
  - e) Batterer displays hostile demeanor toward the officers upon arrival
2. With those factors, there was a 1 in 4 chance that the batterer would assault responding officers
3. Without those factors, odds of attack less than 1 in 2,000

**H. Domestic Violence Calls differ in Firearms Assaults on Officers**

1. DV shootouts more likely to involve older male assailants (30's, 40's, or older)
  2. May or may not have a criminal history.
  3. Armed with a rifle or a shotgun
    - a. Half of firearms assaults began very shortly upon officers' arrival with assailant firing from the front door of the residence or laying ambush outside of the home.
    - b. In the majority of these firearms assaults, the officers had not entered the residence or even made contact with the batterer when they opened fire.
  4. Half of the shootings began at a distance of 50 feet.
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**I. Factors associated with Officer Survival during DV Assaults**

- a. Wearing Body Armor
  - b. Distance between the officer and the shooter
  - c. Returning controlled accurate fire
    - i) A recent study showed that 225 officers that had been fired upon, that 14% were killed, another 43% received survivable bullet wounds and another 43% survived without serious injury.
    - ii) The study further showed that if an assault occurs during a DV call, officers have a 50/50 chance of sustaining an injury and of being hit by assailant gunfire requiring medical treatment.
    - iii) Six out of ten or 65% of officers never recognized the presence of a violent assault and 36% of the officers that were killed during a violent assault were not wearing their body armor.
    - iv) An officer on a DV call should request and wait for backup and “slow down” their response if possible.
    - v) An officer should maintain their tactical advantage at all times and further avoid poor tactical positioning during a DV call.
    - vi) Driving at very high rates of speed to a DV call was deadly in New Mexico for both a Valencia County Deputy and a Rio Rancho Police Officer who did not survive their crashes.
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- vii) Leadership of any law enforcement organization has a duty to create a systematic culture of safety with their department and priority of safety in all they do.
- viii) If firearms and ammunition are seized as evidence at a DV call always trace the firearm and describe firearms accurately utilizing: Make, model, caliber, type and serial number and itemizing the ammunition by manufacturer and the designated caliber cartridge ammunition.
- ix) Always try to identify the **“dominant aggressor” (bully/batterer) at a DV call.**
- x) Trauma informed interviews of the victim(s) should be conducted by the officer utilizing compassion and care for detailing first the trauma suffered by the victim(s) and then seeking the additional facts of case after EMS has been called and other immediate needs provided i.e. water, warmth, clothing etc.
- xi) Remember to pull 911 calls that occur before the start of the official interview(s) as they will stand as non-testimonial evidence (Crawford / Davis Vs. State of Washington) , as those calls are not violation of the Confrontation Clause of the U.S. Constitution per the Supreme Court of the United States (SCOTUS).

**J. DV Crime Scene Photography**

1. Take overall photographs of the entire crime scene to begin with and then the individual photographs of the individual evidence after to include the appearance of the victim(s) and offender; injuries; damaged property; damaged torn or ripped clothing; crying children, so that the prosecutor, judge and jury can see what you saw.
2. Studies in Indiana found that compared to DV cases with photographic evidence were 129% more likely to result in a plea of guilty by the batterer and 76% more likely to result in a conviction should the case go to trial. This study also showed that cases with photographic evidence was 205% more likely to result in a sentence of incarceration.
3. A Phoenix Police Department study showed that only with the use of a body worn camera as video evidence at trial resulted in a 389% more likely to result in a conviction.
4. Effects of Arrests on DV Offenders
5. Recent studies show that mandatory arrest policies for dv offenses have shown to reduce DV homicides by 35%.
6. Some police departments in other states surveil the most dangerous batterers and utilize "Threat Assessment Surveys" as a component of their DV Investigations.

**DV Crime Scene Photography continued**

7. Threat assessment tools can determine the level posed by some batterers based on past background and behavior, to include utilization access to firearms to predict future violence, which could have an effect on new acts of violence and prevent homicide.

**K. De-Escalation**

1. During a domestic Violence incident an officer can engage in de-escalation which is defined as “the use of words, actions and techniques to defuse a heightened emotional state, to facilitate calm and rational interaction and to gain suspect compliance.”
2. The officer on a DV call can use De-Escalation unless: it is unsafe or not feasible to do so.
3. The officer should remember that if there is not exigent circumstances, one should always de-escalate. As New Mexico officers are in the Federal 10th Circuit Court jurisdiction, there has been case law in relation to officer created jeopardy.

## II. The Six Most Common Areas of Officer Liability in Domestic Violence Cases

1. Failure to take proper actions to protect citizens
2. Failure to appropriately enforce a court order protecting a victim of domestic abuse
3. Failure to respond at all or in a timely manner
4. Failure to provide information to a victim as required by law
5. Arresting a citizen without establishing probable cause
6. Exhibiting a pattern of differential treatment or application of the law to domestic abuse cases

- A. Failure to Arrest or Restrain:** If victims can show that officer stood by when person were committing, about to commit, or threatening to commit violent crimes, some courts have held that there was a special relationship.

*Ross v. Gaston*

*Jones V. County of Herkimer*

*Baker v. City of New York*

- B. Duty to Protect has been assumed:** Assumption of a duty to protect may be expressed or implied. Some courts have held that the publication of “911” as an emergency police referral number may imply a duty to respond, especially if the victims rely on it to their detriment.

**C. Do not make promises that cannot be delivered.**

*Zibbon v. Town of Cheektowaga:*

*Morgan v. County of Yuba*

Federal Civil Rights Act

42 U.S.C. 1983, allows suits against municipalities and municipal officers

**III. History of Violence of Against Women Act****A. The Violence against Women Act of 1994 (VAWA)**

1. The first comprehensive federal legislation responding to violence against women was introduced in 1990. During the 103<sup>rd</sup> Congress the VAWA was signed into law in August 1994 as part of the Violent Crime control and Law Enforcement Act of 1994 by President Bill Clinton. The provisions of the VAWA expired in 2000.



**B. Violence Against Women Act, VAWA 1994 summary:**

1. New penalties for gender-related violence and
2. New grant programs encouraging states to address domestic violence and sexual assault including:
  - a. Law enforcement prosecution grants (stop grants)
  - b. Grants to encourage arrest
  - c. Rural domestic violence and child abuse enforcement grants
  - d. The National Domestic Violence Hotline
  - e. Grants to battered women's shelters
  - f. Full Faith and Credit—requires all state, tribal courts and courts in U.S. territories to accord full faith and credit to orders of protection issued from other jurisdictions. Provides for mandatory nationwide enforcement of orders of protection for victims of crimes against women.
3. This was considered the first vital stem in the nation's efforts to treat domestic violence as a serious problem.

**C. The Violence against Women Act of 2000**

1. Due to the fact provisions of the original act expired in 2000, Congress took up the reauthorization of the VAWA in 1999 and completed its efforts in the fall of 2000 with the passage of the Violence against Women Act of 2000.
2. VAWA 2000 was merged with the Victims of Trafficking and Violence Protection Act of 2000 and several smaller bills, and President Clinton signed the legislation into law on October 28, 2000.

**3. VAWA 2000 Summary:**

- a. Total authorization: \$3.3 billion over five years
  - b. STOP Grants (Services and Training for Officers and Prosecutors):  
\$925 million over 5 years—mainly for enhancing law enforcement activities
  - c. Shelter Services for Battered Women and their Children
  - d. Civil Legal Assistance--\$200 million over five years. Assist women with legal help for protection orders, family court matters, housing, immigration and administrative matters.
  - e. Transitional Housing--\$25 million per year but only for one year. Provides grants to aid individuals who are “homeless” in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence and for whom emergency shelter services are unavailable or insufficient.
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- f. Supervised Visitation Centers: \$30 million over two year for pilot project. Authorizes Attorney General to provide grants to state and local law enforcement to provide supervised visitation exchange for the children of victims of domestic violence, child abuse and sexual assault.
- g. Full Faith and Credit: Allows for protection orders from one state to be recognized in another state and allows Grants to Encourage Arrest to go toward providing technical assistance and computer or other equipment to law enforcement to aid in the enforcement of interstate protection orders and those between state and tribal agencies.
- h. Battered Immigrant Women: Addresses the needs of battered immigrant women, removes U.S. residency requirements and “extreme hardship” requirements for immigrant women to receive VAWA protections; allows battered immigrant women to obtain lawful permanent residence without leaving the country; restores access to VAWA protections for immigrants regardless of how they entered the country and creates a new type of visa for victims of serious crimes that will allow some to attain lawful permanent residence.
- i. Dating violence defines dating violence and allows grants to go toward programs that address dating violence.
- j. Services for Disabled and Older Women: \$25 million over five years to provide grants for training law enforcement and developing policies to address the needs of older and disabled victims of domestic and sexual violence.

**IV. Types of Orders of Protection:**

A. Wording changes have occurred in the statutes relating to orders of protection:

1. “Protected Party” means a person protected by an order of protection; and  
“Restrained Party” means a person who is restrained by an order of protection.

**2. Definitions: 40-13-2 NMSA 1978**

- a. “Co-parents” means persons who have a child in common, regardless of whether they have been married or have lived together at the time.
- b. “court” means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;
- c. “domestic abuse”:
  - (1). means an incident of stalking or sexual assault whither committed by a household member or not;
  - (2). means an incident by a household member against another household member consisting of or resulting in;
    - i. physical harm;
    - ii. severe emotional distress;
    - iii. bodily injury or assault;
    - iv. a threat causing imminent fear of bodily injury by an household member;
    - v. criminal trespass

- vi. criminal damage to property
- vii. repeatedly driving by a residence or workplace
- viii. Telephone harassment
- ix. harassment; or
- x. harm or threatened harm to children as set forth in this paragraph;  
and

(3). Does not mean the use of force in self-defense or the defense of another;

- d. "household member" means a spouse; former spouse; family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child; or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section;
  - e. "mutual order of protection" means an order of protection that includes provisions that protect both parties
  - f. "order of protection" means an injunction or a restraining or other court order granted for the protection of a victim of domestic abuse;
  - g. "protected party" means a person protected by an order of protection; and
  - h. "restrained party" means a person who is restrained who is restrained by an order of protection
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**3. Ex parte emergency orders of Protections (40-13-3.2)**

- a. The District Court may issue a written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.

**4. A Law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:**

- a. If necessary, pursuant to the judge's oral approval, write and sign the order on an approved form;
- b. If possible, immediately serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;
- c. Immediately provide the protected party with a signed copy of the order; and
- d. Provide the original order to the court by the close of business on the next judicial day.

**5. The court may grant the following relief in an emergency order of protection upon a probable cause finding that domestic abuse has occurred:**

- a. Enjoin the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members;
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- b. Enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and
- c. Grant temporary custody of any minor child in common with the parties to the protected party, if necessary.
  - (1). A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.
  - (2). An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.
  - (3). A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.
  - (4). Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.
  - (5). Emergency orders of protection are enforceable in the same manner as other orders of protection issued pursuant to the provisions of Family Violence Protection Act.

**B. Temporary order of protection (40-13-4)****Petition is filed by victim in District Court.**

1. Order of Protection can be issued if there is probable cause to show specific facts shown by the affiant or by the petition to give the judge reason to believe that an act of domestic abuse has occurred.
  - a. A hearing will be held within ten days to question continuing the order
  - b. If an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; provided if notice of hearing cannot be served within seventy-two hours, the temporary order of protection shall be automatically extended for ten days.
  - c. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate
  - d. Except for petitions alleging stalking or sexual assault, if the court finds that the alleged perpetrator is not a household member, the court shall dismiss the petition.



**C. Order of Protection—Mutual Order of Protections (40-13-5)**

1. Upon finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection ordering the restrained party to refrain from abusing the protected party or any other household member. The court shall specifically describe the acts the court has order the restrained party to do or refrain from doing. As a part of any order of protection, the court may:
    - a. Grant sole possession of the residence or household to the protected party during the period of the order of protection is effective or order the restrained party to provide temporary suitable alternative housing for the protect party and any children to whom the restrained party owes a legal obligations of support;
    - b. Award temporary custody of any children involved when appropriate an provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected party and the children.
    - c. Order that the restrained party shall not initiate contact with the protected party
    - d. Restrain a party from transferring, concealing, encumbering or otherwise disposing of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the restrained party;
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- e. Order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;
- f. Order the restrained party to participate in, at the restrained party's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and
- g. Order other injunctive relief as the court deems necessary for the protection of a party, including orders to law enforcement agencies as provided by this section.

2. The order of protections shall contain a notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both.
3. If the order of protection supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.
4. A mutual order of protection shall be issued only in cases when both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.
5. No order issued under the Family Violence Protection Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.
6. Either party may request a review hearing to amend an order of protection. An order of protection involving child custody or support may be modified without proof of a substantial or material change or circumstances.
7. An order of protection shall not be issued unless a petition or a counter petition has been filed.

**D. Service of order (40-13-6 NMSA 1978)**

1. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued. The order shall be filed and served without cost to the protected party.
2. A local law enforcement agency receiving an order of protection from the clerk the court that was issued under the Family Violence Protection Act shall have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt.
3. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the parties.
4. A peace officer shall arrest without a warrant and take into custody a restrained party whom the peace officer has probable cause to believe has violated an order of protection that is issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.

5. State courts shall give full faith and credit to tribal court orders of protection and orders of protection issued by courts of other states. A protection order issued by a state or tribal court against one who has petitioned, filed a complaint or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:
    - a. No cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or
    - b. A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
  6. A restrained party convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.
  7. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.
  8. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.
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9. The remedies provided in the Family Violence Protection Act are in addition to any civil or criminal remedy available to the protected party or the state.

**E. Verification of a Protection Order**

1. An order of protection issued in another jurisdiction is enforceable when:
  - a. The order appears to be valid
  - b. There is probable cause to believe that a violation of the order occurred in the enforcing jurisdiction
2. Other Verification Methods:
  - a. Confirmation of the order in NCIC
  - b. Confirmation through communication with the issuing agency
  - c. Review of the elements of an order in the state or local protection order registry of the issuing jurisdiction
  - d. Review of the elements of an order if previously filed with authorities in the enforcing jurisdiction

**V. Other New Mexico Statutes**

Officer should be familiar with the listed statutes.

**A. Criminal damage to property of household member; deprivation of property of household member (30-3-18 NMSA 1978)**

1. Criminal damage to property of a household member consists of intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass the household member
2. Whoever commits criminal damage to the property of household member is guilty of a misdemeanor, except that when the damage to the household member's interest in the property amounts to more than one thousand dollars (\$1,000), the offender is guilty of a fourth-degree felony
3. Deprivation of the property of a household member consists of intentionally depriving a household member of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member
4. Whoever commits deprivation of the property of a household member is guilty of a misdemeanor



**B. Stalking (30-3A-3 NMSA 1978)**

1. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.
  - a. “lawful authority” means within the scope of lawful employment or constitutionally protected activity; and
  - b. “pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by an action, method, device or means directly, indirectly or through third parties, follows monitors, surveils, threatens or communicates to or about a person.
2. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth-degree felony.
3. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person’s own expense or a domestic violence offender treatment or intervention program.

**C. Aggravated stalking (30-3A-3.1 NMSA 1978)**

1. Aggravated stalking consists of stalking perpetrated by a person:
  - a. Who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
  - b. In violation of a court order setting conditions of release and bond
  - c. When the person is in possession of a deadly weapon; or
  - d. When the victim is less than sixteen years of age.
  - e. Whoever commits aggravated stalking is guilty of a fourth-degree felony. Upon a second or subsequent conviction, the offender is guilty of a third-degree felony.
  - f. In addition to any punishment, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense.

**D. Dual Arrests (40-13-1.1 NMSA 1978)**

- A. The legislature finds that domestic abuse incidents are complex and require special training on the part of law enforcement officers to respond appropriately to domestic abuse incidents. The state of New Mexico discourages dual arrests of persons involved in incidents of domestic abuse. A law enforcement officer, in making arrests for domestic abuse, shall seek to identify and shall consider whether one of the parties acted in self-defense and identify the “Primary Aggressor” (bully).

**E. Emergency Assistance; providing notification to victims when an alleged perpetrator is released from detention (40-13-7 NMSA 1978)**

1. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.
2. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:
  - a. Advising the victim of the remedies available under the Family Violence Protection Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of domestic violence shelters, medical care, counseling and other services;
  - b. Upon the request of the victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;

- c. Upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;
  - d. Upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;
  - e. Arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and
  - f. Advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence
3. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the alleged perpetrator is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the alleged perpetrator is released from custody.

4. Any law enforcement officer responding to a request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.
5. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.

**F. Entry into domestic violence safe house or shelter; search warrant**

1. It is not a violation of Section 30-22-1 NMSA 1978 or Section 30-22-4 NMSA 1978 for a person who is a member, resident, employee or volunteer of or is otherwise associated with a domestic violence safe house or shelter to request that a law enforcement officer show a valid search warrant before allowing the officer to enter the domestic violence safe house or shelter. Nothing in this section shall prevent a law enforcement officer from executing a valid search warrant.
2. Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry.

**VI. Domestic Violence Report Review Checklist Handouts:**

How was the case received?

Is the time of the call recorded (including time of incident, time of dispatch, time of arrival)?

Are the elements of the crime articulated?

What were the observations upon approach?

Is there a valid protection order in place?

Is the scene concisely described/diagramed?

Were photos taken and details recorded?

Is the relationship of the parties identified?

What is the history of the relationship?

(Include frequency of any violence, intimidation, and threats)

Were all witnesses interviewed and documented?

Were there children on the scene?

Was information about previous incidents documented?

Were weapons/objects used?

What evidence was collected?

**Domestic Violence Report Review Checklist Handouts (continued):**

What was the emotional state of the victim?

(Include what did they report they were thinking and feeling)?

Is evidence of fear articulated in the report?

Have all threats been clearly documented?

Is the use of coercion and/or force articulated?

Have all injuries (visible and non-visible) been documented?

Were injuries existing or new?

Was there any property damage? Theft? Burglary?

Are stalking behaviors identified? (e.g. following, repeated calling, sending unwanted gifts)

Did the officer inquire about possible strangulation (hands, ligature, etc.)?

Did the victim report being strangled ("choked")?

If so, was it described in detail?

Did the victim request/need medical attention?

Did the victim report sexual violence?

Were all spontaneous statements captured?

**Are officers aware of the laws that address  
Domestic Violence and Firearms?**

Is this individual prohibited from possessing firearms due to:

- a conviction for a misdemeanor crime of domestic violence
- a qualifying order of protection

**Did the Officers assist the victim with safety planning?**

Does the suspect have access to weapons?

Did the officer provide information about obtaining an order of protection  
(if laws permit)?

Did the officer(s) provide the victim with information about local service providers?

Did the officer(s) utilize a threat/risk assessment tool with the victim?

**If both parties used force, were the proper steps taken to determine if one was in self-defense?**



**Did the officer gather comprehensive information about the suspect?**

Was an arrest made?

If an arrest was not made, is a detailed explanation of the reasoning in the report?

Was more than one arrest made?

If so, was probable cause articulated for the arrests in separate reports?

What was the emotional state of the suspect  
(what did they report they were thinking and feeling)?

Did the officer(s) utilize a threat/risk assessment tool with the suspect?

Was the proper protocol followed if the suspect was not on the scene?

Are there any active warrants out for the suspect?

Has the suspect been the respondent to a protection order in the past?

**Protection Order Violations Report Review Checklist**

*Does the report include all the needed information?*

How was the case received?

Is the time of the call recorded (including time of incident, time of dispatch, time of arrival)?

Are the elements of the crime articulated?

Is the scene concisely described/diagramed?

Were photos taken and details recorded?

Is the relationship of the parties identified?

What is the history of the relationship?

(include frequency of any violence, intimidation, and threats)

Were all witnesses interviewed and documented? Were weapons/objects used?

What was the emotional state of the victim?

(what did they report they were thinking and feeling)?

What evidence was collected?

Is evidence of fear articulated in the report?

Have all threats been clearly documented?

**Protection Order Violations Report Review Checklist continued**

Are stalking behaviors identified? (e.g. following, repeated calling, sending unwanted gifts)

Is the use of coercion and/or force articulated?

Have all injuries (visible and non-visible) been documented?

Were injuries existing or new?

Was there any property damage? Theft? Burglary?

Did the victim report being strangled ("choked")?

If so, was it described in detail?

Did the victim need medical attention?

Were all spontaneous statements captured?

**Sexual Assault Report Review Checklist**

Does the report include all needed information?

How was the case received?

Is the time of the call recorded (including time of incident, time of dispatch, time of arrival)?

Are the elements of the crime articulated?

What were the observations upon approach?

Is the scene(s) concisely described/diagramed?

Were photos taken and details recorded?

Is the relationship of the parties identified?

What is the history of the relationship?

(include frequency of any violence, intimidation, and threats)

Were all witnesses interviewed and documented?

Were "outcry witness" interviewed?

Were weapons/objects used?

What was the emotional state of the victim?

(what did they report they were thinking and feeling)?

**Sexual Assault Report Review Checklist continued**

What evidence was collected?

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Have all injuries (visible and non-visible) been documented?

Were injuries existing or new?

Is trauma documented in the report?

Have all threats been clearly documented?

Is the victim's fear effectively documented?

Was there any property damage? Theft? Burglary?

Are stalking behaviors identified in the report?

Did the victim report being strangled ("choked")?

If so, was it described in detail?

Did the officer inquire about possible strangulation (hands, ligature, etc.)?

Did the victim request/need medical attention?

Were advocates called to the scene?

Is there a valid protection order in place? Was it verified?

Was the case coded properly?

**Sexual Assault Report Review Checklist continued**

Has sexual abuse by the suspect been ongoing?

Were all spontaneous statements captured?

**Was the victim incapacitated or incapable of giving consent?**

Were drugs or alcohol used by victim?

Are amounts and timespan articulated?

Does the victim believe he/she was drugged?

If drug facilitated sex assault is suspected, were blood and urine collected?

Have mental and/or physical incapacities been documented?

**Did officer(s) assist the victim with safety planning?**

Did the officer(s) provide the victim with information about local service providers?

Was a forensic examination of the victim conducted?

Did the officer(s) utilize a threat/risk assessment tool with the victim?

**Response to Non-Lethal Strangulation Report Review Checklist**

**Are the officer(s) aware of the state’s strangulation statute/law, if applicable?**

Does the report thoroughly articulate the elements of the strangulation crime that occurred?

**Does the report include all needed information?**

How was the strangulation case received?

Is the time of the call recorded (including time of incident, time of dispatch, time of arrival)?

Is the relationship of the parties identified?

Is there a valid protection order in place?

Are the events that took place pre and post strangulation documented?

Has strangulation occurred in the past?

Was information about previous incidents?

(strangulation, domestic/sexual violence, threats, stalking, including frequency, documented?)

Were all witnesses interviewed and documented?

What was used to strangle the victim?

(one hand, two hands, forearm, other body part, ligature, etc.)?

**Response to Non-Lethal Strangulation Report Review Checklist continued**

Were other weapons involved?

Did the strangulation take place from the front or behind?

Was the victim wearing jewelry?

Was the suspect wearing jewelry? Gloves?

Is the suspect right or left-handed, if known?

How long did the strangulation last?

How many times was the victim strangled?

Was the victim also smothered?

Was the victim also shaken while being strangled?

Was the victim's head pushed into a wall, floor, or other surface?

Was there property damage?

Did the victim attempt to protect themselves?

What was the emotional state of the victim?

(what did they report they were thinking or feeling)?

Did the suspect say anything to the victim before/while/after the strangulation occurred?



**Response to Non-Lethal Strangulation Report Review Checklist continued**

Did the victim say anything to the victim before/while/after the strangulation occurred?

What was the suspect's demeanor before, during and after the incident?

Did the victim describe what the suspect's face looked like during the incident?

Why and how did the suspect stop strangling the victim?

Was medical attention provided?

Is the scene(s) concisely described/diagramed?

Are all the crimes that co-occurred with the strangulation thoroughly documented (sexual assault, kidnapping, property damage, etc.)?

**Ask about and capture details regarding non-visible injuries that occur from strangulation (officers can use a scale of 1 – 10, 10 being the most extreme pain, with victims and include this information in their report).**

Difficulty breathing/unable to breath, hyperventilation

Raspy voice, hoarse voice, coughing, unable to speak

Trouble swallowing, painful to swallow

Neck pain

Nausea, vomiting

Involuntary urination or defecation

Dizziness, fainting/light-headed

Headaches, head “rush”, ears ringing

Loss of consciousness (how long?)

Change in mental status (disoriented, combative, memory loss, “spaced out”)

**Ask about and document visible injuries from strangulation**

Petechiae (pinpoint red spots above the area of constriction)

Hemorrhaging, bruising

Scratch marks, scrapes, abrasions

Bloody nose, broken nose

Fingernail impressions

Swelling of the neck or face

Pulled/missing hair, bumps on head

Skull fracture, concussion

Swollen tongue, swollen lips

Is a diagram of injuries included with the report?

Were there any existing (old) injuries?

**Did the officer(s) gather and document comprehensive information about the suspect?**

Was an arrest made?

Did the suspect have any injuries?

Were injuries identified on the suspect that may have been caused by the victim in self-defense?

Could the suspect see the victim's face during the strangulation?

What was the emotional state of the suspect  
(what did they report they were thinking and feeling)?

Are there any active warrants out for the suspect?

Have there been protection orders taken out on the suspect in the past?

Was the proper protocol followed if the suspect was not on the scene?

**Did your officer(s) discuss the following with the victim?**

The need for follow-up photos.

Receiving medical attention.

Symptoms and injuries can occur days or weeks after the strangulation, including miscarriage if pregnant.

Information about local service providers.

**Response to Stalking Report Review Checklist**

**Does the report include all needed information?**

How was the case received?

Is the time of the call recorded (including time of incident, time of dispatch, time of arrival)?

Is the relationship of the parties identified?

What is the history of the relationship?

(include frequency of any violence, intimidation, and threats)

Are stalking behaviors articulated? (e.g. following, repeated calling, sending unwanted gifts)

Is there a valid protection order in place?

Was it verified?

Were all witnesses interviewed and documented?

Was information about previous incidents documented?

What evidence was collected?

Was electronic/technological evidence collected?

**Response to Stalking Report Review Checklist continued**

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Were all incidents of stalking behavior on cell phones, computers, and recording devices captured?

Is the scene(s) concisely described/diagramed?

Were weapons/objects used?

What was the emotional state of the victim?

(what did they report they were thinking and feeling)?

Is evidence of fear articulated in the report?

Have all threats been clearly documented?

Is the use of coercion and/or force articulated?

Have all injuries (visible and non-visible) been properly documented?

Were injuries existing or new?

Was there any property damage? Theft? Burglary?

Were photos taken and details recorded?

Did the victim report being strangled ("choked")? If so, was it described in detail?

Did the victim request/need medical attention?

Were all spontaneous statements captured?

**Are officers aware of the state's stalking statute/law?**

Does the report thoroughly articulate the elements of the stalking crime that occurred?

**Did the officer(s) assist the victim with safety planning?**

Was information provided about obtaining an order of protection?  
(if laws permit)

Was information about local service providers supplied to the victim?

Was a threat/risk assessment tool utilized with the victim?

Was the use of a "stalking kit" and/or stalking log discussed with the victim?

Does the suspect have access to weapons?

**Did the officer(s) gather comprehensive information about the suspect?**

Was an arrest made?

What was the emotional state of the suspect?

(what did they report they were thinking and feeling)?

Did the officer(s) utilize a threat/risk assessment tool with the-suspect?

Was the proper protocol followed if the suspect was not on the scene?

Are there any active warrants out for the suspect?

If so, is this information documented?

Has the suspect been the respondent to a protection order in the past?

Is this individual prohibited from possessing firearms due to:

1. a conviction for a misdemeanor crime of domestic violence
2. a qualifying order of protection



**VII. Non-Lethal Strangulation**

- A.** Photograph of Petechiae bruising and hemorrhaging  
(pinpoint red spots above the area of constriction from homicide victim)
  
- B.** Definition of Strangulation:
  - 1. Personal
  - 2. Controlling
  - 3. Intimate
  - 4. Lethal
  - 5. Escalated Violence
  - 6. Pattern of Behavior
  - 7. Power
  - 8. Intimidating

**C. Strangulation V. Choking****A. Strangulation:** closure of blood vessels and air passages in the neck

## a. External forces -3 types:

i. Manual – hands, arms, legs, knees, feet, etc..

ii. Ligature – necklaces, shirts, panty hose, belts, etc.

iii. Hanging (usually suicidal/accidental)

**B. Choking:** Internal blockage of airway

a. “choking” on food, candy, etc..

b. Allergic reactions – swollen shut

c. Usually accidental

(True or False Question: Strangulation is NOT serious?)

**D. Strangulation by the Numbers**

- A. Study by Strack, McClane and Hawley – Journal of Emergency Medicine Volume 21, No. 3 pp. 303-309 2001.
- B. 300 strangulation cases were evaluated for signs/symptoms of strangulation/attempted strangulation.
  - a) 97% are manual
  - b) 50% of the time children were present
  - c) 67% reported NO symptoms
  - d) 50% NO visible injury
  - e) 35% injury TOO minor to photograph
  - f) Huge factor in lethality
  - g) Death can occur later
  - h) 15% injury photographed
  - i) 10% - 18% DV homicides
  - j) 43% of homicide victims reported prior strangulation incidents
  - k) 1 in 5.3 experience strangulation in relationships
  - l) 7x more likely to be killed
  - m) After ~50 seconds unable to “bounce-back”

**E. Strangulation: The Mechanics**

- A. 20 lbs. pressure to open soda pop can, 50 seconds of oxygen deprivation = point of no return – person can't bounce back – reflexes to do so are gone. Brain death within 4-5 minutes
  - B. Carotid Artery: Carries Oxygenated Blood to Brain
  - C. 11 pounds of pressure to occlude (soda can = 20 pounds)
  - D. 10 seconds to unconsciousness
  - E. 15 seconds to brain infarct (stroke)
  - F. 1- 30 seconds to cardiac arrest
  - G. No Petechiae
  - H. Jugular Vein removes deoxygenated blood from brain:
  - I. 20 – 30 seconds to Petechiae
  - J. 4.4 pounds of pressure to back up blood flow (unconsciousness, respiration, asphyxia)
  - K. Pressure caused in the head
  - L. Damage to larynx/trachea/hyoid
  - M. Cuts off air flow to lungs (33 lbs. pressure)
  - N. 4 – 5 minutes to brain death
  - O. Usually done with 2 hands – compression to the spine
  - P. Broken hyoid – often done one handed – head extended back
-



**F. Cauliflower Ear**

1. A shriveled-up outer ear
2. Ear appears pale due to loss of blood
3. Cartilage death and scarring (fibrosis)

**G. Applied Force Diagram**

1. Strangulation – Anatomic Location / Pressure / Duration / Surface Area
2. Quantity of applied force (11 lb. of pressure=unconsciousness)
3. Duration of applied force (10 seconds = unconsciousness; 50 seconds of
4. Continuous oxygen deprivation =point of no return; 4-5 minutes = death)
5. Surface area of applied force. Exact anatomic location of applied force (Hyoid bone, larynx, carotid arteries and jugular veins)

**H. Manual Strangulation (most common) - Diagram**

1. (Go over types of strangulation: Forearm, Headlock, Reverse Headlock, one handed, Rear, Sleeper holds)

You will always see injuries? True or false

**I. Ligature Strangulation**

1. (Ask students to identify what method in which this strangulation happened)

**J. Ligature Strangulation (with chain)**

**K. Signs & Symptoms of Strangulation - conclusion**

1. (Talk here about defensive v. offensive injuries; Hickies – similar as in both are ecchymosis)
    - a. Petechiae
    - b. Bruising
    - c. Impression Marks
    - d. Finger nail cuts
    - e. Ligature marks/burns
    - f. Neck/Tongue Swelling
    - g. Soiled Clothing
    - h. Injuries to back of head
    - i. Bleeding from mouth
    - j. Fainting and/or LOC
    - k. Redness on neck
    - l. Injuries to shoulders
    - m. Abrasions (chin, neck, shoulders)
    - n. Vomit (aspiration)
    - o. Raspy breathing
    - p. (Subjective Information given by Victim)
    - q. Voice changes
    - r. Hoarseness
    - s. Difficulty swallowing
    - t. Breathing changes
    - u. Sore throat
    - v. Seeing stars
    - w. “Going black”
    - x. Tunnel vision
    - y. Change in mental status
    - z. Headaches
    - aa. Loss of Memory
-

**Talking to the Victim:**

- i. Describe if ligature used
- ii. Describe how strangled
- iii. For how long?
- iv. Describe amount of force (scale of 1 to 10)
- v. What did offender look like?
- vi. Was this part of sex?
- vii. Educate on danger
- viii. Did victim: urinate, defecate, vomit, feel like doing any of those things
- ix. What did offender say?
- x. Any gaps in memory?
- xi. What were you thinking/feeling?
- xii. How did it stop?
- xiii. Sexual Assault?
- xiv. Self-inflicted?



**Review:**

Question T/F: It takes a lot of force to strangle someone to death

Strangulation: NM Law 30-3-16 NMSA 1978 (Aggravated Battery Against a Household member – Subsection C-3)

Only in FVPA, Abuse & Neglect, & Crimes Against HHM Act                      Effective July 1, 2018.

**Strangulation** means the unlawful touching or application of force to another person’s neck or throat with intent to injure that person and in a manner whereby great bodily harm or death can be inflicted, the result of which impedes the person’s normal breathing or blood circulation; and

**Suffocation** means the unlawful touching or application of force that blocks the nose or mouth of another person with the intent...

**Great Bodily Harm:** an injury to a person which creates a high probability of death...  
Section 30-1-12A NMSA 1978

**Aggravated Battery Against a Household Member (GBH):** the defendant cause GBH or acted in a way that would likely result in death or GBH Section 30-3-16(C)

State v. Hollowell 80 N.M. 756, 461 P.2d 238 N.M. App. 1969: “choking” victim creates high probability of death

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**Effective Police Reports:**

Details

Key phrases (“strangulation”; “manual”; “could cause death, gbh”; etc.)

Photographs

Demonstrate your knowledge

Institutionalize your investigative methods (e.g. signs, symptoms, outcomes)

Practice a report narrative

**Resources:**

NMLA DV Helpline - Assistance with legal representation for:

DV Order of Protection hearings;

Advice and counsel on divorce; custody; housing; poverty issues facing DV victims;

**1-877-974-3400 or [helpline@nmlegalaid.org](mailto:helpline@nmlegalaid.org)**

Monday through Friday 9am to 5pm.

No income guidelines

Funded by CVRC

**XII. SUMMARY:**

- A. Officer(s) and first responders should be aware of the dynamic circumstances they are facing when heightened human emotions are at play in a call for service at domestic violence incidents. First and foremost is consideration and planning for officer safety, tactical and statistical awareness that will make these calls for service challenging.
- B. Once the crime scene is stabilized, parties separated and identified, the officer(s) must quickly offer and provide emergency medical services and show sincere compassion and concern first for the trauma experienced by the victim(s), be they men, women, children or members of the LGBTQ community. Connecting the victim(s) to community victim advocates, safe homes, church and other community service providers will be essential to the successful conclusion of both the investigation and victim(s) assistance.
- C. The officer(s) must be prepared to investigate and document thoroughly a variety of crimes emanating from the domestic violence call, such as sexual assault, protection order violations, illegal possession of firearms, non-lethal strangulation and stalking. The investigation will then logically follow from understanding and addressing the trauma inflicted by the primary aggressor (batterer) and out to the essential compassionate interviews necessary to gather all the facts necessary, including the proper identifying, photographing and gathering all available evidence in order to fully document the crimes associated with domestic violence. Officer(s) and investigators should be aware of the need for follow-up evidence gathering, such as photographing bruises that may take hours or days to develop and gathering additional evidence of stalking, harassment, threats or other crimes.