

Alberta



DOMESTIC VIOLENCE HANDBOOK

for Police and Crown Prosecutors in Alberta

A Domestic Violence Handbook For Police Services and Crown Prosecutors in Alberta

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This Handbook is dedicated to the memory of Cole Harder and all other innocent victims of domestic violence homicides.



Naomi Manuel with her two-year old son Cole Harder.

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A TRUE STORY

My name is Shayleen Richtik, I am a “Survivor” of domestic violence, and this is my story...

It was early June and I had been dating my boyfriend for almost 2 years. I started to notice some control issues and red flags, a couple months before that I didn't like. After talking to my friends and family, I quickly came to the conclusion that I should end the relationship.

It was June 14th 2006, I had just finished school for the day and went to work. My boyfriend had been calling my cell phone all day. Just before closing, he called the store, and my boss answered. As I took the phone from him, a friend announced that my boyfriend was waiting outside. This was one of the many reasons I didn't want to continue on with the relationship. After cancelling dinner with my co-workers, I headed outside. My boyfriend asked me to come with him but I had driven to work that day and said I would follow him to my parent's house where I lived. On the way there he drove up beside me and ran me off the road into a parking lot where he began yelling that he knew I was going to break it off with him. After a short period of time I convinced him to just continue on to the house. When we arrived my mother could tell I was upset, and tried to comfort me. My boyfriend became irritated and began to cry to my mom that he didn't want me to leave him. After about 2 hours of talking with him, I had ended the relationship. By this time he had drank himself stupid, so I told him to stay the night.

I was woken up at about 8am June 15th 2006. He wanted me to “go to one last breakfast” together. I didn't feel well that morning and begged him to just leave. He grabbed my arm and gave me socks and said “I have one last day with you, we are going.” He started driving towards his house where he lived with his parents. He told me he was just going to change. After parking the car in the garage he got out and walked around the car. Opening my door, he asked me to get out and hug him. After I did so, he jumped in the backseat rather quickly. He told me he wanted to talk some more, and didn't want to hurt himself or his car like he had done in the past. I got in the front passenger seat. He began begging me to stay with him and I replied that I couldn't. He said “OK, then tell me one last time whether we can make this work?” I said no and he said “OK, then I have a present for you... before I knew it he had wrapped a key lanyard around my neck and began to strangle me. As I struggled, I was able to turn myself around, and face him. I punched him in the face and fell unconscious...

When I woke up we were on Highway 1 heading west. I looked at him and he said “that's disgusting! Clean your teeth.” I wiped the blood from my teeth and ear, and told him that it was all my fault and if he would just take me to the hospital we could run away together and no one would have to know what really happened. After about an hour of convincing, he believed me and pulled into the Canmore hospital. He told them a story that he had made up as to how I incurred these injuries. They took me into a room alone and I requested the RCMP. They arrived and took him in to custody.

That fateful day has taught me a lot. I am so thankful to everyone that helped me through it, especially the Calgary Police Service and Homefront. With a couple great officers and a wonderful case worker, I was able to fight the whole way to have him sentenced and eventually

deported. Domestic Violence should not be something people are afraid to talk about. If I had of known more about it, it might not have happened.



Shayleen's Injuries, 1 day after the assault

INTRODUCTION

On July 8, 1982, the House of Commons unanimously adopted a motion that “Parliament encourages all Canadian police forces to establish a practice of having the police regularly lay charges in instances of wife beating, as they are inclined to do with any other case of common assault.”¹ This motion was initially greeted with “laughter and jeers.”² On July 15, 1982, the Solicitor General of Canada wrote a letter to the Canadian Association of Chiefs of Police requesting their support and co-operation in addressing spousal abuse and strongly encouraged them to lay charges in wife assault cases.³

Today, charging and prosecution policies on domestic violence remain in effect in all provinces and territories. All jurisdictions continue to support a similar criminal justice system response, the primary objective of which is the criminalization of family violence. This sends a strong and clear message to society that this behaviour is wrong and seeks to prevent the individual abuser from committing further acts of violence.

The criminal justice system still faces many challenges in ensuring a sensitive, responsible and constructive response to family violence. Despite pro-charge and pro-prosecution policies, advances in legislation such as the *Protection Against Family Violence Act*, and the provision of a wide range of services for victims and offenders, the effects of domestic violence continue to harm many families every year.

In 2009, approximately 6.2% of Canadian women indicated they had experienced spousal violence within the past five years.⁴ Within Alberta, this percentage increased to 7.6%, although this marks a significant decrease from 2005 when Alberta experienced the highest rates of domestic violence in Canada (10%).⁵ From April 2009 to March 2010, Alberta’s domestic violence shelters accommodated 6,169 women and 5,601 children. During this same time frame, 9,934 women and 6,342 children were unable to be accommodated and were turned away.⁶

According to police-reported data for 2010, there were almost 99,000 victims of family violence across Canada, comprising 25% of all victims of violent crime. Approximately 49% of these family violence victims were spouses while the remaining 51% of victims were parents, siblings, children or extended family members. Unlike other forms of violent crimes, females had more than double the risk of males of becoming a victim of police-reported family violence (407 victims per 100,000 population versus 180 victims per 100,000).⁷

¹ Canada, House of Commons, *Debates* (8 July 1982) at 19119-19120.

² Keri Sweetman, “Male MPs’ guffaws at wife beating query enrage female MPs” *The Ottawa Citizen* (13 May 1982).

³ Department of the Solicitor General Canada, *The Myth of “The Mandatory National Charging Policy,”* [unpublished draft] (1993) p. 14.

⁴ Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2011* (Ottawa).

⁵ Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2005* (Ottawa).

⁶ <http://www.acws.ca/home.php>

⁷ Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2011* (Ottawa).

It has been argued that the response by police, prosecutors and the judiciary has been inadequate to meet the needs of the victims in cases of domestic violence. The criminal justice system has traditionally been focussed on incidents occurring between strangers. The introduction of family relationships into this traditional paradigm poses many challenges; most notably, recanting and reluctant victims/witnesses and the ambiguous impacts of dispositions on perpetrators and victims. Furthermore, in some jurisdictions there is a concern that systemic pressure on the courts prevents a thorough hearing of domestic violence cases.

Alberta Justice acknowledges that domestic violence needs to be more effectively addressed by the criminal justice system. Police services must properly respond to, and handle domestic calls, no matter how frequent, since failure to do so could expose individuals and the community to danger up to and including death. The system as a whole must provide consistent and responsive support to the victim. The Crown must recognize the complex dimensions of such cases and be knowledgeable about risk factors and available options to protect victims.

Because domestic violence can and does have disastrous consequences for victims and their children, every criminal justice response to a domestic violence incident should be executed with sensitivity, diligence and above all, a firm understanding of the issues surrounding domestic violence.

By creating and widely distributing this Domestic Violence Handbook, the Alberta government is demonstrating its commitment to eradicating family violence. Alberta's dedication to ending family violence is ongoing, and as such, this Handbook will be electronically up-dated as the need arises to keep abreast of new developments in family violence research and programming.

If you wish to learn about the current services available to those affected by family violence, the latest research, or how changes to family violence-related legislation may affect you, please visit the Alberta Justice website at: <http://justice.alberta.ca/Pages/home.aspx> or the Alberta Solicitor General and Public Security website at: <http://www.solgps.gov.ab.ca/home/> to access the most current version of the handbook.

Definition of Domestic Violence

DOMESTIC VIOLENCE is defined as any use of physical or sexual force, actual or threatened, in an intimate relationship. It may include a single act of violence, or a number of acts forming a pattern of abuse through the use of assaultive and controlling behaviour. The pattern of abuse may include:

- Physical abuse;
- Emotional abuse;
- Psychological abuse;
- Sexual abuse;
- Criminal harassment (stalking);
- Threats to harm children, other family members, pets, and property.

The violence is used to intimidate, humiliate or frighten a partner of an intimate relationship, or to make them feel powerless.

INTIMATE RELATIONSHIP is defined as between opposite-sex or same-sex partners. These relationships vary in duration and legal formality, and include:

- Current and former dating relationships;
- Current and former common-law relationships;
- Current and former married relationships;
- Persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time.

Domestic violence is also commonly referred to as:

- Domestic abuse;
- Domestic assault;
- Domestic conflict;
- Spousal abuse;
- Spousal assault;
- Battering;
- Intimate partner abuse;
- Intimate partner assault;
- Relationship abuse;
- Family violence.

PLEASE NOTE - While the terms “domestic violence” and “family violence” appear interchangeably throughout this Handbook, the intended focus is on intimate partner violence.

Family Violence Initiatives in Alberta

Coordination and collaboration are essential components to addressing domestic violence. The Crown and police must work together with the advocacy community on collaborative efforts that improve the referral network and the criminal justice response to these cases. As well, the Crown and police should engage in joint training and education programs that seek to improve the level of understanding of what is needed to successfully prosecute a domestic violence case.

The Domestic Abuse Intervention Project in Duluth, Minnesota has identified the eight characteristics and activities of an effective coordinated community response as:

- Developing a common philosophical framework. The community and practitioners should agree on a common understanding about battering and the complicated dynamics of domestic violence. This helps create an atmosphere conducive to holding offenders accountable and avoids victim blaming;
- Creating consistent policies for intervening agencies that respect the efforts of other agencies and incorporate the goals of intervention;
- Monitoring and tracking individual cases to ensure practitioner accountability. Each agency must have a clear understanding of its role and the role of other agencies in responding to domestic violence;
- Coordinating the exchange of information and inter-agency communications. (For examples, see “Assessing the Justice System Response to Violence Against Women: A Tool for Communities” located at: www.vaw.umn.edu;
- Providing resources and services to victims;
- Ensuring sanctions, restrictions and services for offenders;
- Working to protect children, and;
- Evaluating the coordinated justice system response from the victim’s perspective.

Throughout Alberta’s history, we have made great strides in helping to prevent and address family violence. Starting with the introduction of the Office for the Prevention of Family Violence in 1984 to the Alberta Roundtable on Family Violence and Bullying in 2004, the following is a summary of the development of family violence initiatives in Alberta.

OFFICE FOR THE PREVENTION OF FAMILY VIOLENCE (1984)

In 1984, Alberta Family and Social Services established the Office for the Prevention of Family Violence to provide support and leadership in developing an effective response to family violence. The office distributes educational materials, develops government policies, and funds women’s shelters and prevention projects. The Office for the Prevention of Family Violence was the first of its kind in Canada. In 1990, the United Nations commended Alberta for its progress in addressing family violence through the efforts of this office.

POLICE GUIDELINES (2009)

In October 1990, the Alberta Solicitor General's department introduced family violence policing initiatives after consultation with all Alberta police services and police commissions. Since then, the Domestic Violence Guidelines for Police Services in Alberta have been regularly updated to reflect changes in policy, procedure, and new and amended legislation. The most recent update occurred in 2009.

Highlights from the 2009 Domestic Violence Guidelines for Police include:

- Family Violence Investigation Report (FVIR)
- Integrated Threat and Risk Assessment Centre (I-TRAC)
- 2006 Protection against Family Violence Act amendments (PAFVA)
- Enhanced considerations around occurrences involving members and dual charging.

There are eighteen general guidelines and procedures which are to be followed by police services to ensure the development and maintenance of processes for undertaking and managing investigations into domestic violence occurrences. These guidelines address the following procedural components:

1. Communications and Dispatch
2. Initial Response Procedures
3. Interviewing Procedures
4. Case Management Strategies
5. Safety Planning
6. *Protection Against Family Violence Act* (PAFVA)
7. High Risk Cases and Repeat Offenders
8. Bail Procedures
9. Collecting Evidence
10. Criminal Harassment (Stalking)
11. Charge Policy
12. Dual Charging and Assessing Mutual Claims of Abuse
13. Firearms
14. Children Exposed or at Risk
15. Occurrences Involving Members of the Police Service
16. Support to Victims
17. Training
18. Monitoring and Supervision

PROSECUTOR GUIDELINES (2008)

In support of the Policing Guidelines issued to police services in 1990, guidelines were issued to all Chief Crown Prosecutors in March 1991, re-emphasizing the spousal assault guidelines first issued in 1985. These guidelines outline the role of the Crown Prosecutor and provide advice on the best practices associated with prosecuting domestic violence cases. The Prosecutor Guidelines are intended to be used in conjunction with the Domestic Violence Handbook for Police and Crown Prosecutors in Alberta.

The Prosecutor Guidelines encourage Crown prosecutors to be alert to the unique nature of domestic violence, the dysfunctional dynamics of the relationships that result in such violence, and the special needs of victims and witnesses. When making sentencing considerations, the Guidelines indicate that the paramount consideration must be general deterrence and denunciation while rehabilitation and individual deterrence are of secondary importance. In cases where detention in custody is not appropriate, Crown prosecutors are advised to seek imposition of conditions which would assist in stabilizing the domestic situation and reducing the possibility of further violence. Such conditions include: banning the accused from the family residence, proscribing or limiting contact with the victim(s) or witnesses, banning the possession of firearms and abstention from the consumption of alcohol.

The Guidelines also provide advice on how to approach such issues as compelling the testimony of a recanting victim, identifying criminal harassment, how to speak to bail on domestic violence cases, and how to provide support to victims and their children.

REVIEW OF BAIL PROCEDURES – SERIOUS DOMESTIC VIOLENCE CASES (1999)

Bail Procedures

In speaking to bail on domestic violence cases, the following information should be provided to the court when it has been provided by the police (either in a “Risk Factoring Tool” or in the Family Violence Investigation Report):

- Whether there is a history of violence;
- Whether the victim fears further violence and the basis of that fear;
- The victim’s opinion on the likelihood that the suspect will obey a term of release, particularly a no contact order;
- Whether the suspect has a history of alcohol or drug problems, or mental illness;
- Whether the accused has a history of breaches of judicial orders;
- The details of all previous domestic violence charges and convictions.

Crown prosecutors should also:

- Use Bail Hearings as opportunities to disclose the history of abuse by the accused (with this or other victims), the dynamics of the relationship and the impact on victims and children;
- Use 911 recordings and photographs to show the extent of fear and suffering caused by the accused actions, and to deflect claims by reluctant/recanting victims;
- Where an accused is released from custody, seek conditions that protect victims and children including:
 - Reporting conditions;
 - Abstaining from communication with the victim/children;
 - Radius restrictions – residence and workplace;
 - Weapons prohibition;
 - Abstaining from alcohol and non-prescribed drugs.

Bail Notification

Crown offices are responsible to ensure a notification of victim protocol is in place for bail hearings or bail reviews conducted by Crown prosecutors. Such a protocol may require

notification of the investigating police agency or a victim service agency, who will be responsible for notifying the victim. The Crown prosecutor conducting the bail hearing or bail review is responsible for engaging the notification protocol as soon as possible so that the victim is advised of the release of the accused and any bail conditions imposed. Details should be documented on the file.

If a Crown prosecutor chooses to notify the victim directly, the best methods of notification are:

- Contact by telephone;
- In person, or;
- Where verbal notification is not possible, by mail in an envelope devoid of official markings.

All verbal or written notifications or attempts to notify the victim must be recorded on the Crown file.

PROTECTION AGAINST FAMILY VIOLENCE ACT (2010)

On June 1, 1999, the *Protection Against Family Violence Act* (PAFVA) was proclaimed in Alberta. This Act enables family members to apply for emergency protection orders (EPOs) in cases of family violence. The EPO is a temporary order that can order the respondent to stay away from family members and the residence, and allow the claimant (the victim of violence) to remain in the home if it is safe. The legislation also allows a person to apply directly for a Queen's Bench Protection Order (a longer-term order) and allows police to obtain a Warrant of Entry to assist victims of family violence. Over the years, amendments have been made to the original Act, which includes, for example, an expanded definition of family members to incorporate relatives, whether they reside together or not, to authorize counselling for any minor children without the consent of the respondent (the abusive parent), and to add stalking to the definition of family violence.

PROTECTION AGAINST FAMILY VIOLENCE AMENDMENT ACT (2011)

The *Protection Against Family Violence Amendment Act* (PAFVA) received Royal Assent on March 18, 2006 and was amended on November 1, 2011. The first most significant amendment proposes to clarify the scope of no-contact orders to prohibit contact by any means, including through a third party, unless the order explicitly provides otherwise. The second significant change proposes to allow for a "paper review" rather than a formal review hearing of EPOs by the Court of Queen's Bench, unless the Court is not satisfied that the evidence supported the original order. The third proposed amendment is the introduction of an offense provision for breaches of orders made under the Act. Currently there are no specific provisions under the PAFVA dealing with breaches.

PROTECTION FOR PERSONS IN CARE ACT (2010)

In January 1998, Alberta enacted legislation relating to mandatory reporting of abuse occurring in publicly funded care facilities:

“Every individual or service provider who has reasonable and probable grounds to believe and believes that there is or has been abuse against a client shall report that abuse to the Minister of Seniors and Community Supports or a police service...”

Alberta Seniors and Community Supports operates a direct reporting line*. The complaints are subsequently assigned to a contracted investigator who responds to the complaint and conducts an investigation. It is not the intention of the *Act* to find guilt or innocence, but to better protect the health, safety and well being of adults in care. Therefore, recommendations are made to the facility involved and are also sent to the complainant. Complaints received by a police service may be forwarded on to the department of Seniors and Community Supports.

*** To report abuse call: 1-888-357-9339**

CHILD, YOUTH AND FAMILY ENHANCEMENT ACT (2004)

The *Child, Youth and Family Enhancement Act* emphasizes that families who experience domestic violence should be provided with intervention services that support the abused family members and prevent the need to remove children from the custody of an abused family member, while keeping in mind that the safety of children is of paramount concern. Family violence has been highlighted in the *Child, Youth and Family Enhancement Act*, and the definition of emotional injury has been expanded to include exposure to family violence. As well, police are required to report every family violence incident where children are present in the home.

SPECIALIZED CROWN AND COURTS

Starting in 2000, Alberta has commenced the operation of a series of domestic violence courts. The purpose of these courts is to provide a specialized, coordinated response to domestic violence which is integrated with a variety of community services, such as women’s shelters, mental health workers, counselling services, the SPCA, as well as many other interested community groups. These courts allow government, police services, and community agencies to work together to address family violence. In responding to domestic violence, these organizations share information, provide counselling to both victims and the accused, assist with safety planning, and ensure offenders abide by court orders. Through this collaborative effort, these specialized courts and crown have shown how a coordinated community response can provide an effective means for dealing with domestic violence.

Currently, Alberta is home to eight specialized crown and courts located in the following communities:

- Calgary (established in 2000)
- Edmonton (established in 2002)
- Lethbridge (established in 2004)
- Red Deer (established in 2005)
- Medicine Hat (established in 2005)
- Fort McMurray (established in 2006)

Airdrie (established in 2006)
Grande Prairie (established in 2007)

SPECIALIZED POLICE SERVICES

Within Alberta, specialized police services are now available to handle cases involving domestic violence. These units are comprised of police investigators who specialize in risk assessment, risk management, breach enforcement, and criminal harassment/stalking offences. These specialized teams often work closely with social workers to ensure victims are provided with information about where to get help and how to develop a safety plan. These teams also work with Crown prosecutors to provide as much information about the accused and the investigation as possible.

Calgary Police Service, Edmonton Police Service, Medicine Hat Police Service, and Lethbridge Regional Police Service have established specialized police services. Additionally, RCMP detachments throughout the province have established family violence initiatives at the community level to prevent and address domestic violence. To learn more about the RCMP Family Violence Approach, visit: <http://www.rcmp-grc.gc.ca/cp-pc/fam-eng.htm>.

VICTIM SERVICE UNITS

Victim Service Units are available across Alberta to support victims of crime. Although Victim Service Units work closely with the police, they are independent organizations that operate out of police facilities to deliver ongoing, frontline services to victims of crime that includes providing information about available programs and services, updates on the status of court cases, court preparation and court accompaniment. Victims of crime are referred to Victim Service Units by police and collaboration often occurs between Victim Service Units and partnering agencies in the community to provide additional education and support. Victim Advocates across the province receive certification training in domestic violence, child abuse and elder abuse as well as other aspects of the criminal justice system and victimization. In some communities, the Victim Service Unit may be the only service available to victims of family violence.

It is important to note that Victim Service Units in Alberta only participate in safety planning under the direction of a police member. It is important that police lead this process as they have conducted the original risk assessment that the safety plan is built upon. Victim Service personnel are also trained to provide assistance to claimants under *PAFVA*.

When language is a barrier, all Victim Service Units have the ability to communicate with victims of domestic violence through a phone based translation service offered by CanTalk (Canada) Inc., a global service company that provides immediate interpretation and translation services in over 170 languages, twenty-four hours a day, seven days a week.

Victim Service Units can also provide victims with a copy of: “Victims of Crime Protocol: What Victims of Crime Can Expect from the Criminal Justice System” and the “Victims of Crime Handbook”, available in 13 languages including: Somali, Amharic, Chinese (Simplified and Traditional), Kurdish, Punjabi, Kiswahili, Tigrigna, and Vietnamese. These useful references outline the victim’s role in the complex criminal justice system, the types of information they can receive, and what services victims can expect from the time a crime is reported to the offender’s release into the community. These documents are also available on the Alberta Solicitor General and Public Security website at:

http://www.solgps.alberta.ca/programs_and_services/victim_services/Pages/default.aspx

There may be instances where a Crown Prosecutor is working with or had contact with a victim that has not yet been referred to a Victim Service Unit and they are in need of information, support and referrals. In this regard, a form was developed to facilitate the referral process to the Victim Service Unit by the Crown. The location of the nearest Victim Service Unit can be located at the website noted above.



Referral Form to VSU
(Sept07).doc

Alternately, a form also exists to facilitate the referral of a victim to a Crown Prosecutor from the Victim Services Unit.



Referral Form to
Crowns (Sept0...

INTEGRATED THREAT AND RISK ASSESSMENT CENTRE (I-TRAC)

I-TRAC is a multi-disciplinary threat assessment unit that prepares risk assessment reports and case management plans for intimate partner violence and stalking cases in Alberta. Additionally, I-TRAC’s team provides expert advice and training to police, government, and community agencies throughout the province.

I-TRAC consists of a team of threat assessors who are members of various police services, including the RCMP and the Calgary, Edmonton, Medicine Hat, and Lethbridge Police Services. The threat assessors are teamed with a child protection expert, as well as a consulting psychologist. All referrals to I-TRAC come through Police Services, Crown Prosecutors, Correctional Services, and/or Children and Youth Services when there is a chronic or significant history of violence, abuse, stalking (obsessive controlling behaviour), and/or threatening behaviours.

The threat assessors provide Police, Courts, Crown Prosecutors, Correctional Services, and Children and Youth Services with:

- Formal risk assessment reports and case management plans;
- Recommendations regarding investigations, charges, court orders, victim safety requirements and strategies;
- Expert court testimony for purposes of bail and sentencing hearings, child custody and access hearings, and guardianship applications;
- Participation in case conferencing;
- Specialized training in intimate partner violence, stalking and assessment, and management of high-risk cases.

FAMILY VIOLENCE SERVICES IN THE COMMUNITY

Many community organizations throughout Alberta provide services to families impacted by family violence. Women’s shelters, community agencies, churches, psychologists, psychiatrists and many other service providers work diligently to provide programs and services to victims and perpetrators of family violence.

There are many examples of community agencies carrying out this important work, including: the YWCA Family Violence Program which provides family violence victims with a 24-hour crisis line, counselling, legal assistance, referral and advocacy services, and traditional housing. The Edmonton John Howard Victim Assistance Program provides services to victims of domestic violence appearing in domestic violence courts. Changing Ways in Edmonton and the Calgary Coalition on Family Violence are grass roots agencies that assist victims and provide programming for perpetrators of family violence. Homefront, a Calgary program, partners with Justice, law enforcement and the community to respond to domestic violence in a coordinated manner. The Central Alberta Women’s Outreach Society in Red Deer also uses a coordinated response to address the issue, as does the Today Family Violence Help Centre in Edmonton.

Additionally, there are programs designed to deliver domestic violence services specific to the needs of certain ethno cultural groups such as the program in Calgary run by the Calgary Elderly Chinese Citizen’s Association. Similar programs are located in Edmonton including “Responding to Victims of Family Violence in the Chinese Community” which is a partnership between ASSIST Community Services, the Edmonton John Howard Society and the program run by Multicultural Women’s and Seniors Association entitled “Responding to Family Violence in the South Asian Community.”

The Calgary Legal Guidance Society and the Emergency Protection Order Program of the Family Law Office in Edmonton work to ensure victims are able to access appropriate legal remedies to protect themselves and their family.

What We Know About Domestic Violence

It is difficult to obtain a complete picture of domestic violence in Canada because it often remains hidden within the home. A person who is being abused may endure the abuse for a long time before seeking support, while some victims never tell anyone about the abuse. Statistics Canada reports that only a quarter of women residing in shelters on a snapshot day had reported the most recent incident to the police.⁸

A person who is being abused may be reluctant, unable to talk about, or report abuse for many different reasons.⁹ They may:

- Be emotionally attached to the abusive partner;
- Have strong beliefs about keeping their relationship or family together;
- Fear that the abuser will retaliate against them or their loved ones;
- Fear being stigmatized by others;
- Be economically dependent on the abusive partner;
- Live in an isolated area;
- Be socially isolated from others;
- Face communications, language or cultural barriers;
- Feel ashamed or powerless and lack access to information, resources and support.

In particular, victims may be reluctant to involve authorities because they:

- Do not want the abuser to be removed from the home, go to jail, or have a criminal record;
- Do not believe that involving the criminal justice system will stop the abuse;
- Do not believe that the criminal justice system can help or protect them.

While rates of spousal homicide are relatively rare in Canada, accounting for less than 1% of all violent crimes reported to police between 2000 and 2009 (N=738), spousal homicides represented approximately 1-in-7 solved homicides in Canada (16%) and almost half of all solved family homicides (47%).¹⁰ While males in general are more likely to be the victims of homicide, females are more likely to be the victims of family-related homicide, particularly spousal homicide. Over the past 30 years, the rate of spousal homicides against females has consistently been three to four times higher than for that of males.¹¹ Rates of spousal homicide within the three Prairie Provinces were higher than the other provinces of Canada, with Saskatchewan having the highest rate, followed by Manitoba, then Alberta.

In 2009, there were a total of 64 people who were killed by their spouse in Canada, of which, 49 were female and 15 were male.¹² Between 2000 and 2009, there were 326 homicides against children and youth (under the age of 18) committed by a family member, accounting for 7% of all solved homicides and 21% of all family-related homicides. Parents commit the majority of

⁸ Statistics Canada, Residents of Canada's Shelters for Abused Women, 2008 (Juristat, May 2009), p.10

⁹ Statistics Canada, Family Violence in Canada: A Statistical Profile 2002 (Ottawa: Statistics Canada, 2002).

¹⁰ Statistics Canada, Family Violence in Canada: A Statistical Profile 2011 (Ottawa), p.32.

¹¹ Statistics Canada, Family Violence in Canada: A Statistical Profile 2011 (Ottawa), p.33

¹² Statistics Canada, Family Violence in Canada: A Statistical Profile 2011 (Ottawa), p.39

family-related homicides against children and youth, with fathers and/or mothers responsible for 84% of all family-related homicides against children and youth under the age of 18 years of age.¹³ Finally, there were 160 homicides against seniors (aged 65 years or older) committed by a family member between 2000 and 2009. This accounts for 4% of all solved homicides and 10% of all family-related homicides.¹⁴

While a similar proportion of men and women reported experiencing spousal violence in the previous five years, the violence experienced by women was more severe than that experienced by men.¹⁵ For example:

- Women were approximately three times more likely than men to report being sexually assaulted, beaten, choked, or threatened with a gun or a knife by their partner or ex-partner in the previous five years (34% versus 10%);
- Women were more likely to report multiple victimizations at 57% compared to 40% for men;
- Women were more than twice as likely to report being physically injured as a result of the violence (42% versus 18%);
- Women were three times more likely to report that a violent incident of abuse had disrupted their daily routine;
- In 2009, just under half (45%) of female victims of criminal harassment were harassed by a former intimate partner, while an additional 6% were harassed by a current intimate partner. Conversely, 23% of male victims were harassed by either a former or current intimate partner.¹⁶

Some researchers have noted that women also experience higher levels of certain types of emotional abuse. Compared to men, women:

- Were four times more likely to report being threatened, harmed, or having someone close to them threatened or harmed;
- Were four times more likely to report being denied access to family income;
- Were more than twice as likely to report having their property damaged or their possessions destroyed;
- Reported a higher incidence of being isolated from family and friends;
- Reported a higher rate of name-calling and put-downs.

To respond effectively, criminal justice professionals should approach domestic violence cases with the following factors in mind:

Domestic violence:

- Is a serious crime;
- Is an abuse of trust;
- Takes many forms, although only behaviour that is “criminal” can trigger prosecution;

¹³ Statistics Canada, Family Violence in Canada: A Statistical Profile 2011 (Ottawa), p.35

¹⁴ Statistics Canada, Family Violence in Canada: A Statistical Profile 2011 (Ottawa), p.36

¹⁵ Statistics Canada, Family Violence in Canada: A Statistical Profile 2011 (Ottawa), p.10

¹⁶ Milligan, Shelly (2011). Criminal harassment in Canada, 2009. Ottawa, Statistics Canada: p.9.

- Can have a devastating effect upon the victim, families, and children who witness or live with the consequences of that violence;
- Is likely to become more frequent and more serious the longer it continues;
- Can result in death.

Historically, the legal system often becomes involved after:

- The pattern of abuse is well established;
- The level of physical injury has become serious;
- The violence has spread beyond the intimate relationship or family.

In some cases, victims of domestic violence:

- Continue to live with their abuser;
- Are financially, emotionally, and psychologically dependent on their abuser;
- Experience continuing threats to their safety;
- Find it difficult to give evidence in court because of the complex nature of domestic violence;
- Have difficult decisions to make that will affect their lives and the lives of those close to them (particularly those who have suffered over a considerable period of time);
- May blame themselves or feel that others blame them for the violence;
- Do not make complaints of domestic violence in a timely fashion or at all for fear of reprisals, intimidation or a number of other factors;
- May fear reporting offences, especially if they are disabled or elderly and the abuser is also their caregiver;
- A victim's first contact with law enforcement or the courts rarely happens after the first or second domestic violence incident;
- A victim may be involved in a criminal proceeding, a civil matter, custody, support and visitation proceedings, and a matrimonial action, in multiple courts. This fragmentation coupled with differing standards of proof and rules of procedure can demoralize and inadvertently endanger victims and their children;
- The costs of being involved with the criminal justice and legal systems in terms of money, time, work, privacy, and retaliation by the abuser can be daunting for victims;
- The lives of others (including children) may be at risk;
- Failure to obey a subpoena, or failure to testify against the abusive partner may be a product of the victim's judgment, that it is better not to aggravate the abuser by testifying.

Understanding the Abuser

The primary motivation of an abuser is to maintain control over the victim. Although many still believe that anger is the cause of the violence, power and control over the victim is the prime objective of the abuser. Tactics that abusers employ may include isolation, threats, occasional indulgences, and demonstrations of omnipotence, degradation, and enforcement of trivial demands. Abusers may employ similar patterns of physical, sexual, financial and emotional coercion to control their victims. These tactics prevent victims from leaving abusive relationships and may include:¹⁷

- Emotional abuse;
- Threats/acts to kidnap, sexually abuse, or physically harm the victim's children;
- Controlling finances;
- Sexual assault;
- Threats of suicide/homicide;
- Harassment.

According to the National Judicial Institute on Domestic Violence, there are five central characteristics of domestic violence:

- Domestic violence is learned behaviour;
- Domestic violence typically involves repetitive behaviour encompassing different types of abuse;
- It is the abuser who causes the violence - not their substance abuse, the victim, or the relationship;
- Danger to the victim and children is likely to increase at the time of separation;
- The victim's behaviour is often a way of ensuring survival.

Some abusers extend their controlling tactics to situations within the courtroom, before, during or after the proceedings. These may include:

- Physical assaults or threats of violence against the victim, those providing refuge, and others inside the courtroom;
- Threats to take the children through custody/access;
- Coercion to withdraw the charges or recant;
- Following the victim in or out of court;
- Sending notes or "looks" during proceedings (an abuser can send threatening messages to the victim through body language, that will go unnoticed by all others present);
- Bringing family or friends to court to intimidate the victim;
- Speeches about how the victim "made me do it;"
- Statements of profound devotion or remorse to the victim and court;
- Repeated requests for delays in proceedings;
- Changing counsel or failure to follow through with appointments;

¹⁷*Enhancing Judicial Skills in Domestic Violence Cases*, Presented by The National Judicial Institute on Domestic Violence, April 25-28, 2004, Sofitel Chicago Water Tower, Chicago, Illinois.

- Intervening in the delivery of information from the court to the victim so that the victim will be unaware of when to appear;
- Requests for mutual orders of protection to control the victim and manipulate the court;
- Continually testing the limits of parenting time or support arrangements (e.g. arriving late or not appearing at appointed times, failing to make support payments);
- Threats and/or initiation of custody fights to gain leverage in negotiations over finances;
- Initiating retaliatory litigation against the victim or others who support the victim;
- Enlisting the aid of parent rights groups to verbally harass the victim (and sometimes courts) into compliance with demands;
- Using any evidence of damage resulting from the abuse as evidence that the victim is an unfit parent.

It is important to remember that because domestic abuse takes many forms, only behaviour that is defined as criminal can trigger prosecution.

SIGNS TO LOOK FOR IN A BATTERING PERSONALITY

There are actions and behaviours that involve physical violence, but can be distinguished from patterns of abuse. When partners are abusive, they do not have to use violence to terrorize; threats in the face of prior violence will suffice. Despite the absence of objective, observable violent action, patterns of abuse may continue. A victim of abuse will quickly learn to read signals from the abuser – certain words, or body language that convey threats of harm if understood in the context of that relationship. Victims may retaliate, or initiate violence, based on the context of their experience.

The following checklist may assist in determining the dominant (primary) aggressor:¹⁸

- Jealousy;
- Controlling behaviour;
- Quick involvement;
- Unrealistic expectations;
- Isolation;
- Blames others;
- Hypersensitivity;
- Cruelty to animals and or children;
- “Playful” use of force in sex;
- Verbal abuse;
- Rigid sex roles;
- Explosiveness and sudden mood changes;
- History of abuse/battering (What does the paper trail show? Are there medical records from past incidents? What do police records show? What information does the dispatcher have?)

¹⁸ Walker, Lydia D. “Signs to Look for in a Battering Personality.” Getting a Firm Foundation (Training handout: 1981).

Has the victim been to a shelter or obtained assistance in the past because of the abuse? Are protective orders on file?);

- Threats of violence;
- Destruction of property;
- Any force during an argument;
- Fear (Who looks and appears scared?);
- Body language (Who has an aggressive stance? What is the relative size of the persons involved?);
- Expresses ownership - assertion of proprietary interest in family members;
- Speaks for partner;
- Statements of neighbours and witnesses (What are the witnesses telling you about what happened? What do neighbours know about this and past incidents?);
- Excited utterances (Spontaneous declarations) (What statements are adults and children blurting out to you while still upset and under stress of the incident? Is there a “911 call”? What is their emotional state?);
- Crime Scene (What objects are damaged? Who is upset that the objects are broken? Whose belongings have been destroyed?);
- Injuries (Who has injuries? What caused the injuries? Have weapons been used or threatened? Are any of these defensive injuries? What is the likelihood of future injuries to each person?);
- Evidence of substance abuse (Is there evidence that alcohol or other drugs have been used? Are liquor bottles or drug paraphernalia present?);
- The comparative extent of inflicted injuries or serious threats creating a fear of physical injury.

THE DOMESTIC TERRORIST

The following characteristics identify the “domestic terrorist”¹⁹ personality. According to experts, the “domestic terrorist” has a very high lethality index and may engage in:

- Unpredictable outbursts;
- Unpredictable physical violence (biting almost universal);
- Undermining a partner’s sense of autonomy:
 - Controlling sleep/wake cycle
 - Controlling personal hygiene
 - Controlling eating patterns (deprivation)
 - Controlling toilet routine/schedules;
- Sexual enslavement;
- Sexual violence – bondage, clamping devices, strangulation, foreign object insertions (anal), forced sex with others.

The presence of these characteristics in a suspect should be considered very high risk. A complete and thorough investigation and follow up, including risk assessment and safety planning is crucial.

¹⁹ Dr. Marc Nesca, on Spousal Assault Risk Assessment.

ASSESSING RISK FOR FURTHER VIOLENCE

It is crucial to determine how the specific incident of violence relates to the **overall history and context of violence in the relationship**. Dangerousness is situational. It is not so much assessing the individual that is important, but assessing that individual in the context of the immediate overall situation. Once factors associated with dangerousness have been identified, it is also necessary to intervene in a meaningful way to prevent further violence. The best person to assess risk is generally the investigating police officer.

For a comprehensive review of the existing Risk Assessment tools, see:

1. *Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER)*. This tool, developed by P. Randall Kropp, Ph.D., Stephen D. Hart, Ph.D., and Henrik Belfrage is a checklist or guide for assessing risk for spousal assault in criminal and civil justice (i.e. forensic) settings. The B-SAFER is intended to help people exercise their professional discretion when conducting risk assessments; it is not a replacement for professional discretion. Its purpose is to introduce a systematic, standardized, and practically useful framework for gathering and considering information when making decisions about violence risk. It draws directly from the scientific and professional literatures on spousal violence risk assessment and victim safety planning.
2. *Ontario Domestic Assault Risk Assessment (ODARA)*. ODARA is a general violence-screening tool dealing with recidivism. It does not concern itself specifically with the question of lethality. The form contains 13 questions where “yes” answers are given a one-point score. If a person scores between 7 and 13, there is a 70% risk that the individual may commit another assault. This tool may be of great value as a general violence screening to raise “red flags” for the potential of a victim being at risk of future violence.
3. *Danger Assessment Instrument*. DA-2 developed by Jacquelyn C. Campbell, Ph.D., R.N. of the John Hopkins University School of Nursing, a leading expert and researcher in the United States. Her instrument first asks the victim to record specific examples of abuse on a calendar. The instrument then poses 20 questions on lethality requiring a “yes/no” answer. It establishes a pattern of frequency and severity of the violence during the past year, and serves as an important safety-planning tool, especially for victims who often minimize their level of risk.
4. *Spousal Assault Risk Assessment Guide (SARA)*. SARA is a clinical checklist of risk factors for spousal assault. The instrument is a two-page form with 20 questions that are rated 0–2. Like the above checklists, no specific information is recorded to source the answers.
5. *Initial Screening Tool and Comprehensive Risk Assessment Interview Guide (Durham Region)*. A 21-question screening tool was created for all family court personnel to use in their initial contact with a family. If domestic violence was identified, then a

comprehensive risk assessment interview guide covering 25 areas was available to aid community experts in assessing for further risk and conducting appropriate safety planning.

6. Domestic History Form (Huron County). The Crown Attorney's office in Huron County in Ontario is currently using the Assessing Dangerousness in Domestic Cases form to ensure that information on risk assessment has evidentiary value in domestic violence proceedings.

PROVOCATION LAWS

Within Canadian law, provocation is a highly contested and controversial defence. As a defence, provocation does not operate as a form of justification; rather, it offers an excuse for certain conduct committed under certain circumstances. Provocation only applies to the offence of murder to reduce it to the lesser offence of manslaughter.

The purpose of the provocation defence is to provide some compassionate relief, recognizing ordinary human frailties. It must be remembered, however, that the result is *to reduce culpability for an intentional killing* from one of murder to manslaughter. Provocation applies only where there is some increased moral culpability in the conduct or words of others that operated to "provoke" the offender, and some reduced moral culpability in the offender.

Provocation, as a defence, is codified in s. 232 of the *Criminal Code*, as follows:

Murder reduced to manslaughter

(1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

What is provocation

(2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.

Questions of fact

(3) For the purposes of this section, the questions

- (a) whether a particular wrongful act or insult amounted to provocation, and
- (b) whether the accused was deprived of the power of self-control by the provocation that he alleges he received.

There are four requisite elements to the defence of provocation. For there to be an air of reality to the defence, there must be evidence on *each* of the elements. The four elements are as follows:²⁰

²⁰ *R v Parent*, [2001] 1 SCR. 761, 2001 CarswellQue 851, at paragraph 10 (Tab 20) ;(*R v Humaid* 2006 CarswellOnt 2278, at paragraph 65 (Tab 14); (*R v Lees* 2001 CarswellBC 442, at paragraphs 10-16 (Tab 16)

- a) A *wrongful act or insult*;
- b) The wrongful act or insult must be such that it *would* deprive the ordinary person of the power of self-control;
- c) The wrongful act or insult *must have caused the accused to lose self-control and act while out of control*; and
- d) *Suddenness*, the killing must be in response to a *sudden* act of provocation and the accused's actions must occur on the sudden before he or she has time to regain self-control.

Provocation is often raised in the context of domestic violence. For many years, it has been argued that the defence of provocation equates to the “jealous husband defence” where men act out in violence as a result of the actions of their wives or partners. The contested nature of this offense was demonstrated in 2010 when the Alberta Court of Appeal successfully argued to the Supreme Court of Canada to overturn the manslaughter conviction of Mr. Thieu Khan Tran and substitute a conviction for second-degree murder.

In the early afternoon of February 10, 2004, Mr. Tran entered the locked apartment of Ms. Hoa Le Duong, unexpectedly and uninvited. Mr. Tran and Ms. Duong were married but had separated a few months earlier. Ms. Duong remained in the matrimonial home, and, unbeknownst to her, Mr. Tran kept a set of keys in his possession. When Mr. Tran entered her apartment, Ms. Duong was in her bedroom, in bed, naked, with her boyfriend, Mr. An Tran. What ensued over the next few minutes was nothing short of a brutal and extended attack which left Mr. An Tran dead on the living room floor, a victim of over 37 individual knife wounds, and Ms. Duong severely wounded with several stab wounds to her hands and an intentionally disfiguring slash wound to the right side of her face from her right ear all the way to her nose, exposing bone.

This case raised the question of whether the estranged wife's relationship with another man after separating from the accused amounted to an “insult” sufficient to deprive the accused of the power of self-control. Despite the initial trial judge's decision that the accused's view of his estranged wife with another man was substantial enough to be considered an insult, the Alberta Court of Appeal and the Supreme Court of Canada both ruled that this situation can not legally be found to be sufficient enough to excuse a loss of control in the form of a homicidal rage.

This ruling was viewed by many as a victory for victims of domestic violence and women's advocacy groups and sent the message that the behaviour of abusive men cannot be justified by the behavior of their wives or partners. In other words, abusive men must be held accountable for their actions *despite* their perception of the behaviours or actions of their wives or partners.

Appendix #1 - Includes a document entitled, “Signs to Look for in a Battering Personality.”

Understanding the Victims of Domestic Violence

The ambivalence, denial, and helplessness that are often experienced by victims of domestic violence may be learned messages that have allowed the victim to survive the abuse. The nature of domestic violence is so complex that victims of domestic violence may not behave like victims of other violent crimes. While some victims want the abuser to be prosecuted to the fullest extent of the law, many do not.

In *Lavallee v The Queen*²¹ Madame Justice Wilson stated that the effect of battering a spouse requires an expert to assist the court in understanding the unique nature of these offences:

“Expert evidence on the psychological effect of battering on wives and common law partners must, it seems to me, be both relevant and necessary in the context of the present case. How can the mental state of the appellant be appreciated without it? The average member of the public (or the jury) can be forgiven for asking: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called “battered wife syndrome.” We need help to understand it and help is available from trained professionals.”

In many cases, victims’ decisions to stay or leave an abusive relationship, or cooperate in prosecution are based on survival. Due to the complexities involved in these cases, leaving is a process, not an event. Factors victims consider include:

- Fear;
- Surviving escalations in violence that often follow separation;
- Raising children alone in poverty;
- Facing the potential loss of their children to abusive partners in custody battles;
- Safety issues;
- Complexity of relationship with abuser;
- Challenges victims face having to provide for themselves and their children.

BARRIERS TO A VICTIM ESCAPING AN ABUSIVE RELATIONSHIP:

- Belief that staying is best for the children;
- Lack of employment skills;
- Financial dependency on abuser;
- Inability to afford legal assistance with divorce, custody, or protection order proceedings;
- Fear of court system intervention;
- Isolation of victim from social or family connections;

²¹ *Lavallee v The Queen* [1990] 55 CCC (3d) SCC

- Victim is attempting to change in the hopes abuse will stop;
- Abuser expresses remorse and promises to change;
- Abuser has degraded victim to the point that victim lacks self-confidence necessary to leave;
- Religious, cultural constraints;
- Lack of trust in the criminal justice system.

COMMON SURVIVAL OR COPING STRATEGIES THAT VICTIMS MAY DISPLAY:

- Minimizing or denying the violence;
- Taking responsibility for the violence;
- Using alcohol or drugs as a numbing effect;
- Self-defence;
- Seeking help;
- Remaining in the abusive relationship to avoid escalation of violence;
- Initiating violence as a means of gaining some control.

FURTHERMORE, PROFESSIONALS NEED TO UNDERSTAND THAT FOR SOMEONE TO LEAVE AN ABUSIVE RELATIONSHIP THEY MAY HAVE TO:²²

- Give up the denial and helplessness that have been part of her/his survival;
- Acknowledge the extent, severity and danger of the abuse;
- Begin feeling, thinking and acting in her/his own interests with clarity, strength and decisiveness;
- Act in spite of the threats of harm to victim or children;
- Take action to protect her/himself and her/his children;
- Accept that the abusive partner may follow or find him/her;
- Accept that leaving may place him/her and the children in further danger;
- Ignore the threats of losing the children through custody;
- Overcome the belief that abusive partner is all powerful and omnipotent;
- Ignore constant phone calls from abuser crying and pleading;
- Ignore the shock and disbelief of friends and colleagues who think abuser is a nice person;
- Ignore the statements of people or professionals who subtly or blatantly blame the victim;
- Overcome cultural, religious, political, and family messages pressuring victim to stay and work it out;
- Ignore the sadness and insecurity of the children who miss the abusive parent and plead with the victim to take them home;
- Accept that abuser will not give her/him money unless she/he returns;
- Accept that she/he may have to request financial assistance;
- Accept that often, at least temporarily, she/he has lost the home and her/his security;
- Remain strong and decisive when she/he has been isolated from friends and family.

As a result, victims may leave and return many times during their process of working through these issues.

²² Violence Prevention Council of Durham Region, Durham Response to Woman Abuse (2000).

A victim's reluctance is often misunderstood by police, prosecutors, judges, and juries who come to believe that the victim does not care and that they should not bother to proceed or convict. Ironically, victims who are eager witnesses are sometimes disbelieved and suspected of being vindictive or of seeking an edge in a divorce or custody battle.

For the reasons above, police and prosecutors must always anticipate that the victim will become unavailable. However, early contact with victim advocates who provide information and support about domestic violence, the court process, and the victim's role, help to encourage cooperation. Working together, police and prosecutors can gather evidence so they can proceed to conviction without the victim's testimony; other serious crimes, such as murder cases, are regularly prosecuted without eyewitness testimony.

RECONTING VICTIM

Where practicable, the investigating officer should be asked to obtain the following information from the victim. Where the investigating officer is unavailable, the Crown prosecutor should conduct the interview (only in the presence of a peace officer or independent witness) in order to ascertain:

- Whether there is a history of an abusive relationship;
- Whether there has been a recent separation;
- Whether there is a history of harassment;
- Whether there are divorce/child access/custody proceedings in progress;
- Whether the accused has a psychiatric history;
- Immigration status of victim and accused to the extent that whether a finding of guilt could affect Canadian residency for either party;
- Whether the accused has ever threatened the victim or victim's children in any manner;
- Whether there are serious financial difficulties facing the family unit;
- Whether the accused is employed;
- Whether the victim is financially dependent on the accused;
- Whether the accused has a related criminal record;
- Whether the accused has an alcohol or drug dependency;
- Why the victim is recanting;
- When and under what circumstances was the recantation made;
- Whether the accused has used, or threatened to use a weapon against the victim and/or children;
- Whether the accused has access to weapons.

The purpose of the interview is to:

- Assist in determining the genuineness of the recantation;
- Provide insight into the motivation for the recantation;
- Assess the victim's reliability as a witness;
- Reassure and encourage the victim to testify as to what occurred;
- Inform the victim about any relevant bail conditions imposed on the accused;
- Confirm victim has been made aware of available community services;
- Communicate the Crown's position with respect to the prosecution and possible sentence of the offender.

HELP FOR VICTIMS ESCAPING ABUSIVE RELATIONSHIPS

Albertans in abusive situations can get help 24 hours a day, seven days a week through Alberta Works by calling 1-866-644-5135 toll-free in Alberta or (780) 644-5135 in Edmonton to find out what is available. If eligibility criteria are met, financial supports are available through Alberta Works to help people get to safety, set up a new household, or start a new life.

For individuals who need help finding the services they require, "211" offers information on a wide range of social, health, community, and government services. It is free, confidential, multilingual and available 24 hours a day. Certified Information and Referral Specialists answer 211 calls, assess the needs of each caller, and link them to the best available information and services. For more information, please visit www.211.ca.

Individuals may also call the Family Violence Info Line at 310-1818, toll free at any time. This service is available in over 170 different languages.

Getting to safety

- Emergency transportation to a safe place is provided (such as a women's shelter);
- If shelters are full or not available, emergency accommodation can be arranged at a hotel;
- A \$56 allowance to cover incidental expenses not covered by the shelter;
- Emergency items not available through shelters are covered, such as prescription drugs, dental or optical services and childcare;
- Relocation costs within Alberta or Canada are covered if a person must move out of their community to escape the threat of violence.

Setting up a new household

- A \$1,000 allowance is issued to help set up a new home;
- Damage deposit to secure a residence is covered;
- Financial help provides for needs such as food, clothing, shelter and other basic needs, free from the expectation to seek employment, so personal or family matters can be addressed;
- A \$50 monthly benefit is provided.

Starting a new life

- \$30 per month for telephone costs and \$60 per month for transportation costs are provided to ensure access to additional supports, such as being able to call for help and travel to get counselling or legal advice;

- Employment and training services are available to find employment;
- Child support from the other parent(s) is arranged, if it does not endanger the family's safety;
- To help people increase their income through working, earnings exemptions take only a portion of their wages into account when their monthly financial support is calculated
 - Single parents get the first \$230 in monthly earnings (plus 25 per cent of any amount over \$230) without any deductions from their financial benefits
 - Single people or couples without children get the first \$115 in monthly earnings (plus 25 percent of any amount over \$115) without any deductions from their financial benefits;
- Supplementary health coverage continues for the whole family after they stop receiving financial support, to make the transition into working easier;
- Extended health coverage for children through the Alberta Child Health Benefit is available to all families with limited incomes.

Victims escaping abusive relationships may also want to visit Justice Canada's *Family Violence Initiative* website at: <http://www.justice.gc.ca/eng/pi/fv-vf/index.html> or the *Family Violence Youth Site* at: <http://www.familyviolencehurts.gc.ca/>.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #3 - Includes information regarding the introduction of "211," a phone number that connects people to a full range of non-emergency social, health and government services.

Appendix #13 - Includes a list of shelter locations throughout Alberta.

Children Exposed to Family Violence

Children can experience family violence in the home in a number of ways: by witnessing or hearing the abuse as it occurs, observing physical injuries to a parent and damages to the home, or sensing emotional upheaval in the family in the aftermath of an attack. Children can also experience the violence firsthand, by becoming targets of the violence themselves, intervening in the violence, or may be forced to participate in the abuse. This early exposure to family violence significantly compromises the emotional and developmental well-being of the child and puts him/her at risk of serious injury and death.

The long-term, detrimental effects of children witnessing of family violence in the home are well-documented; however the impact of the abuse on each individual child depends on the child's stage of development, their vulnerability factors and individual resiliency.²³ Additionally, the effect of exposure to domestic violence is cumulative: the more severe, frequent and chronic the abuse is in the home, the more profound the effect can be on the child.²⁴ Research clearly indicates that prolonged exposure to stressful, frightening experiences impairs the functioning of the pre-frontal cortex, which is responsible for making, following and changing plans. Children who regularly experience or witness family violence in the home often lose the ability to differentiate between threat and safety, and may also experience difficulty identifying and responding to emotions expressed by others which interferes with their learning.²⁵ Children with sustained exposure to family violence at a young age can also experience complex trauma, which includes fundamental changes to their arousal and stress response systems, keeping them in a constant state of hypervigilance. These negative effects can continue throughout adulthood.²⁶

The most commonly reported effects experienced by children exposed to family violence can be grouped into three general categories: behavioural and emotional, cognitive and attitudinal and long-term effects. Children with behavioural problems may display more aggression than usual, engaging in rule violation and acting out or children may internalize the abuse, experiencing increased anxiety and depression as a result. Exposure to family violence can also lead to cognitive impairments in children, which can lead to difficulties in school or negotiating healthy relationships. The long-term effects of abuse can include depression, substance abuse and low self-esteem.²⁷

²³ *Children Exposed to Violence*, A Handbook for Police Trainers to Increase Understanding and Improve Community Responses, Linda L. Baker, Peter G. Jaffe, Steven J. Berkowitz, Miriam Berkman.

²⁴ Cunningham, Alison & L. Baker (2007). *Little Eyes, Little Ears: How Violence Against a Mother Shapes Children as They Grow*. Centre for Children and Families in the Justice System (London Family Court Clinic, Inc.). Ottawa, ON. p.33

²⁵ *Working paper Number 9: Persistent Fear and Anxiety Can Affect Young Children's Learning and Development* (2010), National Centre on the Developing Child, Harvard University.

²⁶ Jaffe, Peter, C.V., Crooks, & N.B., Bala (2007). *From Research to Practice: A Framework for Making Appropriate Parenting Arrangements in Domestic Violence Cases*. Paper presented at the Association of American Law Schools Workshop on Family Law, June 20-22, 2007, Vancouver, BC, Canada.

²⁷ *The Mental Health Needs of Children Exposed to Violence in the Homes*, A publication of the New Hampshire Coalition Against Domestic and Sexual Violence. www.nhcadsv.org.

In accordance with the Alberta *Child, Youth and Family Enhancement Act*, the definition of emotional injury includes exposure to domestic violence, which places the child in need of intervention. As a result, when service providers respond to a domestic violence situation and there are children present, they are obligated to make a referral to Child and Youth Services. The *Child, Youth and Family Enhancement Act* emphasizes the importance of providing intervention services that support the abused family members and prevents the removal of children from the abused family member's custody, while recognizing that child safety is of paramount concern.

In 2009, nearly 55,000 children and youth across Canada were reported to be victims of a sexual or physical assault, about 3 in 10 of which were perpetrated by a family member. The rate of family-related sexual offences was found to be more than four times higher for girls than for boys, while the rate of physical assaults in the home was similar for both girls and boys. Over the past 10 years, 326 homicides have been committed by family members against a child or youth (0- 17 years of age), 84% of these homicides were perpetrated by the parents. Infants under the age of one were found to be the most vulnerable to abuse, experiencing higher rates of family homicide compared to older children.²⁸

SPECIAL CONSIDERATIONS FOR POLICE OFFICERS

Police officers responding to a domestic violence call where there are children present should:

- Identify and interview all children in the home and document where they were during the incident;
- Determine if children are harmed or hurt;²⁹
- Interview children old enough to provide a verbal interview alone, and in an age appropriate manner;
- Document the child's statements and demeanour and record all excited utterances;
- Reassure children to let them know someone cares;
- Address the child at eye level;
- Use simple, direct, age-appropriate language;
- Honour a child's loyalty to an abusive parent. Do not criticize or demean the abusive parent;
- Acknowledge a child's right not to speak. Do not coerce a child to talk if he/she is not comfortable doing so;
- Remember, children are affected by more than the criminal act;³⁰
- Take extreme care in not asking leading questions;

²⁸ Statistics Canada, *Family Violence in Canada: A Statistical Profile* (2011).

²⁹ It is important for police officers to find out if the children are physically hurt or in distress. Children may be hiding in another part of the house. They may be sleeping or pretending to be asleep. Children have likely learned that what they are witnessing is a secret that should not be discussed with others. Threats may have been made to ensure their silence on this occasion and/or in the past. Many children learn that keeping quiet and out of the way are good survival strategies.

³⁰ The majority of domestic violence crimes occur within an ongoing pattern of psychological and physical abuse. The abuse often involves using children to control the adult victim. By the time police arrive, children have often been exposed to violence for a substantial length of time and may be experiencing the accumulated impacts of ongoing violence.

- Conduct a videotape interview of child pursuant to s. 715.1 of the *Criminal Code*, when circumstances of the offence warrant it.

Communication with a child can:

- Empower the child;
- Give the child a sense of security;
- Set up a rapport between the child and police if there are more incidents in the future.

RISK ASSESSMENT, RISK REDUCTION AND SAFETY PLANNING FOR CHILDREN

In domestic violence situations, a child's safety is strongly linked to the safety and well being of the victimized parent. The safety of both children and adult victims is increased through the use of risk assessment tools.

Victim advocates within the police service or community play an important collaborative role in risk assessment and safety planning. The main components in domestic violence safety plans are:³¹

- How to leave safely;
- Where to go to be safe;
- Where to keep important papers and documents;
- Which neighbours to tell about the violence so they can call police if necessary;
- Teach children how to call the police;
- How to protect self and children in dangerous situations;
- Local telephone numbers for shelter, crisis center, police, child protection agency;
- Importance of practicing and reviewing safety plan regularly with children;
- Possible safety measures at home (e.g. locks, lights, rope ladders, smoke detectors and fire extinguishers, code words for children to be picked up by another adult, to call police or to get out of the house quickly);
- Inform school of pick-up permission for children if necessary;
- Inform employer and co-workers of risk;
- Other friends, neighbours, family members who can look after children and support the non-offending parent when stress/depression/anxiety levels are high.

Each intervener in the criminal justice system must ensure that the relevant information is obtained about the abuser, that the information is shared with other interveners who need this information, and that the information is incorporated into the decisions about how the case is handled.³²

If you suspect a child is being abused, call 310-0000 to get the telephone number of your [local office](#) or call the **Child Abuse Hotline** at 1-800-387-5437 (KIDS) to speak with a caseworker.

³¹ *Children Exposed to Violence, A Handbook for Police Trainers to Increase Understanding and Improve Community Response*, Linda L. Baker, Peter G. Jaffe, Steven J. Berkowitz, Miriam Berkman, 2002.

³² Metropolitan Nashville Police Department, (2000). *A Guide to Domestic Violence Risk Assessment, Risk Reduction and Safety Plan*. Nashville, Tennessee: Metropolitan Nashville Police Department.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #4 - Includes a document entitled "Reminders for Domestic Violence Work with Children."

Appendix #5 – Includes a sample form that may be used by police to report children exposed to family violence.

Appendix #6 – Includes information regarding safe visitation services in Alberta.

Aboriginal Victims of Domestic Violence

Complex social, historical and economic factors have left many Aboriginal women vulnerable to experiencing domestic violence. The *Indian Act* of 1876 rendered Aboriginal women as lower status citizens within their community and removed their status if they married a non-Aboriginal man. This meant many women became highly dependent on their spouses and were unable to return to their communities for support. Although the act was eventually amended in 1985, allowing women and their children to regain their status, there has been a continuing struggle to have the voices of Aboriginal women carry the same weight as the voices of Aboriginal men.³³

The history of residential schools in Canada is another factor that contributes to domestic violence in Aboriginal communities. Children attending residential schools were alienated from their parents and not allowed to speak their language or practice their customs. These children faced inhuman living conditions, and suffered various forms of abuse at the hands of authority figures. Since the days of residential schools, some Aboriginal children have been and are being raised in an environment of widespread violence and abuse.³⁴

The accumulation of these historical facts has resulted in many Aboriginal victims being placed in harm's way, denied adequate protection of the law, and marginalized. The results of the 2009 General Social Survey indicate that individuals, both male and female, who self-identified as an Aboriginal person were almost twice as likely as non-Aboriginals to be the victim of spousal violence (10% compared to 6%). Brennan (2011) found that Aboriginal women were almost three times more likely to report being a victim of spousal violence than non-Aboriginal women.

It is important for law enforcement and Crown to note that there is tremendous within-group diversity in the Aboriginal culture. Aboriginal victims across Canada have different languages, traditions and spiritual beliefs and may migrate between reserves and urban areas. There are also political and economical differences that must be considered. The emphasis on "family," however, is a common theme that spans across many diverse Aboriginal communities, where the concept of family often extends beyond the nuclear family and single household to include a network of brothers, sisters, aunts, uncles, parents, grandparents, nieces and nephews. This interconnectedness can result in more people being aware of and impacted by abuse. Their reaction to it depends on the level of wellness within the family.

Some Aboriginal victims have resided on the same reserve for their entire lives. If a battered individual leaves her/his home to go to a shelter, she/he may be forced to leave both familiar surroundings and a support system. Additionally, many victims residing on reserves live in such poverty that they do not have access to telephones, transportation, or childcare. Some Aboriginal victims do not speak English. All these factors severely impact the victim's help-seeking behaviour.

³³ The information in this section was taken from <http://www.kanawayhitowin.ca>, part of the Kanawayhitowin Campaign to address woman abuse in Aboriginal communities across the province of Ontario,

³⁴ The Aboriginal Healing Foundation, *Aboriginal Domestic Violence in Canada*, (2003), pg.49.

When dealing with Aboriginal victims of violence, it is important to understand that victims must deal with a multitude of issues. Health Canada provides the following examples:³⁵

- Their resources may be very limited;
- Their support system may be in the very community in which they live;
- Their perpetrator could be an important member of the community;
- The perpetrator may have possession of the house;
- Suspicion about the justice system may discourage many Aboriginal people from seeing it as an option;
- Victims are loath to put a perpetrator in a system that is viewed as racist;
- Many victims fear police will take their children;
- In many instances, there are no culturally appropriate services.

Family violence is a significant problem facing Aboriginal communities. It is important that police and the Crown recognize the special history and circumstances of Aboriginal people so that they can deliver culturally sensitive services.

SPECIALIZED SERVICES

Specialized services are available in Alberta for Aboriginal people dealing with family violence. For information on what services are available, individuals can:

- Call the Family Violence Info Line at **310-1818** for information about services provided in specific communities;
- Speak to a community Elder, a community health nurse, caseworker or other trusted professional;
- Call the police, RCMP or Tribal Police for help;
- For those who live on a Métis Settlement, individuals can contact their Métis Settlements Child and Family Service Authority (CFSA) to locate a Positive Living Outreach Worker for support and helpful referrals.

Aboriginal victims escaping abusive relationships may also visit Aboriginal Affairs and Northern Development Canada's *Family Violence Prevention Program* website at:

<http://www.ainc-inac.gc.ca/hb/sp/fvp-eng.asp>

³⁵ Health Canada. *Family Violence in Aboriginal Communities: An Aboriginal Perspective*. From the National Clearinghouse on Family Violence, 1996.

Language Barriers and Immigration Status

According to the Canadian Department of Justice, immigrant victims of domestic violence need a great amount of support from service providers.³⁶ They may feel alone, have trouble talking with or relating to Canadians, or may be overcome with fear. They may not have knowledge of Canadian law, their Charter rights, or the support services available to them.

Language difficulties make it difficult for an immigrant to navigate the legal system and to access services and programming. In some cases, battered immigrant victims who are sponsored by spouses who are legal residents of Canada, may be reluctant to report the abuse because the abuser has threatened to withdraw sponsorship.

Many immigrant men and women are fearful of any police involvement. In most cases, this is the result of past experiences with the police in their home countries, especially if the victim is from a country where the police are symbols of human rights violations. This is why it is very important for police to explain to victims what their role is.

The following information may provide answers to some of the unique questions and concerns that individuals may have regarding their immigration status and reporting domestic violence.

Individuals with Permanent Residence Status

- A permanent resident is an immigrant (also referred to as a landed immigrant) or a protected person (refugee) who has successfully applied to live in Canada permanently and can become full Canadian citizens.
- Permanent residents will have received documentation from Citizenship and Immigration Canada (CIC) that proves their permanency into Canada. These documents include: Permanent Resident (PR) Card, Record of Landing, and Confirmation of Permanent Residence.

Family Class

- Many immigrants arrive in Canada under family class sponsorship. This means that a Canadian citizen or permanent resident may sponsor their spouse, common-law partner or conjugal partner, or dependent children to come to Canada as permanent residents.

Many individuals who are permanent residents or Canadian citizens believe that they do not have any rights during their sponsorship period or that they must live with their sponsor. However, this is not the case. Individuals with permanent resident status cannot lose their status or be removed from Canada if they leave an abusive relationship. The same applies to individuals who were sponsored to Canada by their abusive partner; the sponsor cannot have the individual deported by leaving him or her. If the abuser is a citizen, he/she cannot be deported. If the abuser is a refugee or a permanent resident, he/she could be deported if a court convicts him/her of assault or another criminal offence. The deportation process, however, could take a long time.

³⁶ Department of Justice Canada. *Abuse is Wrong in any Language*, 2003.
<http://www.justice.gc.ca/eng/pi/fv-vf/pub/>

Individuals That DO NOT Have Permanent Resident Status

- Individuals who have come to Canada under work or study permits, or have been allowed to enter Canada as visitors. They may have no immigration status. This group includes: individuals still waiting for their “inland spousal sponsorship” to be processed and do not have temporary residency, refugee claimants, and live-in caregivers;
- Individuals who are not permanent residents should get legal advice before they go to Citizenship and Immigration (CIC). There may be legal issues affecting the person’s situation and they may be at risk of being removed from Canada;
- Inland Spousal Sponsorship includes individuals who are already in Canada, with or without temporary status and their application is being processed in Canada. If CIC believes that their marriage or relationship is considered genuine and all sponsorship requirements are met, the individual can be given permanent residence. An individual whose application is dependent on their abusive spouse or partner can risk being removed from Canada if they leave the relationship. It is important that they get legal help immediately.

What Can Police Do?

- Explain that the police respond to and investigate all complaints of family violence and are able to arrest an abusive partner if an offence has occurred;
- Explain to victims what help is available in the community;
- Apply to court on a victim’s behalf for an Emergency Protection Order. Explain to them that if they are a Canadian citizen or permanent resident that they cannot be deported for leaving an abusive situation. (A permanent resident is sometimes called a landed immigrant);
- If the victim does not know whether or not she/he is a Canadian citizen, tell them to call their local citizenship office. Look in the blue pages of the telephone book under “Citizenship and Immigration;”
- If the victim has been found to be a refugee, tell them that they can apply on their own to be a permanent resident;
- If language is a barrier, officers will use a translator when necessary. Children or family members should **not** be used as interpreters. As well, it is important that translation services have no ties to, or knowledge of, the perpetrator;
- Victim Service Units in Alberta have access to Cantalk, a tele-interpreter service that provides immediate interpretation and translation services in over 170 languages, twenty-four hours a day, seven days a week. In addition, the Victims of Crime Handbook, a publication that outlines services for victims of crime is available through Victim Service Units in 13 languages including: Somali, Amharic, Chinese Simplified and Traditional, Kurdish, Punjabi, Kiswahili, Tigrigna, and Vietnamese;
- If a victim is a dependent of a refugee and she/he is in the process of applying for permanent residence for both of them, she/he can cancel the application. In this case, tell the victim to apply to be a refugee himself or herself, or tell them that they can apply to be a permanent resident on compassionate and humanitarian grounds. They would need to show why they should stay in Canada.
- Make sure to tell the victim that they should get legal advice.
- Call **Citizenship and Immigration Canada** at **1-888-242-2100**, or visit their website at www.cic.gc.ca to get more information.

Gay/Lesbian/Bisexual/Transsexual (GLBT) Victims of Domestic Violence

Research indicates that incidents of domestic violence in GLBT relationships are comparable to those experienced in heterosexual relationships. Victims experiencing domestic violence within same sex relationships are equally at risk of serious injury or death and may feel more isolated due to a lack of support and acceptance of their sexual orientation. Additionally, GLBT victims may not feel comfortable accessing specialized services because they will have to “out” themselves in order to receive this support. For some GLBT victims of domestic violence, “coming out” may be harder than enduring the abuse.

STATISTICAL PROFILE

- Gays, lesbians, and bisexuals are more than twice as likely as heterosexuals to experience domestic violence, 15% of gay men and lesbian women and 28% of bisexuals reported being victims of domestic violence, compared to 7% of heterosexuals;³⁷
- 1 in 10 people (10%) identify as either gay or lesbian, based on a number of different studies examining human sexuality, including the Kinsey Report;
- Of 50,000 individuals in GLBT relationships, approximately 25% to 33% report they have witnessed or experienced domestic violence.³⁸

WHAT IS UNIQUE?

There are a number of circumstances unique to GLBT people that can make their relationships more vulnerable to violence. These circumstances may contribute to a greater risk of being abused or being abusive.

GLBT-Phobia

- Homophobia, transphobia and heterosexism increase the isolation of people who are experiencing partner abuse in GLBT relationships;
- Abusers can use existing GLBT-phobia and heterosexism to exert power and control in their relationship by threatening to “out” their partner. This is a powerful tool of control.

First Relationships

An abuser can use the inexperience of a first GLBT relationship to control their partner, especially given the vulnerability of someone who has just come out. This can be done through:

- Playing on the abused partner’s fears of losing a relationship which confirms one’s new found GLBT identity;
- Distorting and limiting access to accurate information about relationships and communities;

³⁷ Sexual Orientation and Victimization (2004). Diane L. Beauchamp. Canadian Centre for Justice Statistics, Statistics Canada, Ottawa.

³⁸ These statistics were obtained from <http://safetyrainbow.ca/>

- Normalizing the abuse as part of being in a GLBT relationship;
- Setting up an “us-against-the-world” dynamic to the relationship, further uniting the two partners and making it more difficult for the victim to leave the relationship.

Dislocation

GLBT people may experience increased vulnerability to abuse because of social isolation such as moving to a new city, moving from another country or speaking English as a second language. It is quite common for GLBT individuals to leave the communities they grew up in to move to large urban centres with the desire to connect with GLBT communities. These circumstances could add to the isolation already experienced by GLBT victims of domestic violence.

Fighting Back

Due to heterosexist stereotypes about GLBT relationships, abusive partners can give the impression that the violence is mutual or that the abused partner consents to the abuse. This increases the abusive partner’s power and control. However, partner abuse is not “mutual abuse.” One partner is controlling the other through the abuse.

HIV Status

Because of the prevalence of HIV/AIDS in GLBT communities, HIV status can be a powerful tool for exerting control in a relationship where one or both partners are living with HIV/AIDS. This can be done by:

- Threatening to disclose to family, friends, employer, etc. that the partner is living with HIV/AIDS;
- Claiming that they will sicken or die if the partner leaves them, or that the abused partner’s health will deteriorate if the relationship ends;
- Jeopardizing the partner’s health (i.e. withholding medication, or an HIV-positive abuser may do the same to him/herself in an attempt to blackmail the partner);
- Using a HIV-positive partner’s poor health as an excuse for isolating him/her;
- Intentionally infecting or threatening to infect a partner.

Disabilities

As with HIV, GLBT people living with disabilities may be particularly vulnerable to abuse by their partners/caregivers. Their disabilities may add additional layers of isolation already experienced due to GLBT-phobia and heterosexism.

Transgendered Identity

Abuse of transgendered people by a domestic partner may include elements that relate specifically to their identities. For example, as transgendered people experience widespread employment discrimination, they are often economically dependent on a partner for day-to-day expenses and/or costs relating to transition.³⁹

³⁹ This section contains information taken from “Removing Barriers + Building Access: A Resource Manual on Providing Culturally Relevant Services to Lesbian, Gay, Transgender and Bisexual Victims of Violence” (2004) which was adapted from “No More Secrets: violence in lesbian relationships” by Janice L. Ristock, Routledge, 2002.

Lack of Specialized Services and Supports

- GLBT couples do not have as many role models as heterosexual couples do. They have to find their own way, and that can make it easier for abuse to occur;
- Families of GLBT couples may not know how to support the couple and may leave them on their own;
- Mainstream services may not be aware of the dynamics in GLBT relationships;
- Specialized counselling and support services are limited for abused and abusive partners in GLBT relationships;
- Many GLBT people do not want to report the abuse out of fear that they will not be believed or might be ridiculed by friends, family, police or the Crown.

Police and Crown prosecutors must be sensitive to the concerns of GLBT victims of domestic violence and consider the fact that abuse suffered by a victim who identifies as GLBT may be qualitatively different than that experienced by a heterosexual victim. Consultation with a local GLBT organization or support group may be helpful.

Additional information and resources can be sought through Alberta Education and the Alberta Teacher's Association or Safety Under the Rainbow, a coalition of organizations that have come together to address issues of domestic violence and homophobic bullying. The agencies include:

Alberta Civil Liberties Research Centre

Website: www.aclrc.com

Calgary OutLink: Centre for Gender and Sexual Diversity

Website: www.calgaryoutlink.ca

Peer Support Services for Abused Women

Website: www.pssaw.org

Outlooks Magazine

Website: www.outlooks.ca

Youthsafe

Website: www.youthsafe.net

Additional resources include:

- Safe and Caring Schools: <http://www.sacsc.ca/>
- GLBT Counselling Guide for Students:
<http://safeandcaring.files.wordpress.com/2012/08/lgbtq-guide-for-counsellors-unbooked1.pdf>
- The Canadian Guidelines for Sexual Health Education: This resource includes a section on the rights of GLBT people:
<http://www.phac-aspc.gc.ca/publicat/cgshe-ldnemss/index-eng.php>

Elder Abuse⁴⁰

Elder abuse is the maltreatment of an older person by someone they know and trust, often a close family member. There are numerous misconceptions regarding elder abuse, including the notion that elder abuse only happens to very old, frail seniors and those in institutional care. Though seniors in these situations may be at greater risk of abuse due to complex medical conditions, which may include cognitive impairment, the larger reality is that any senior can be affected by elder abuse.

The problem of elder abuse has only recently come to public attention. While there are few statistics on the incidence and prevalence of elder abuse, the Canadian Centre for Justice Statistics found that of the 7,900 incidents of violence against seniors, approximately 35% of those offences were committed by a family member.⁴¹ While senior men are more likely to be victims of violent crimes, senior women are more likely to be victims of *family-related* violent crime. Specifically, in 2009, family members committed 41% of all victimizations against senior women compared to only 23% of victimizations against senior men.⁴² While senior men were more likely to be victimized by their grown children, senior women were equally as likely to be victimized by their spouse as by their grown children.

The two most frequently identified and reported types of elder abuse in Canada are financial and emotional. According to statistics, these two forms of abuse represent 40 to 70 % of all reported cases.⁴³ However, elder abuse can take many different forms, and can involve more than one type of abuse occurring simultaneously, including:

- *Emotional Abuse*: Actions or statements that cause emotional anguish, fear, diminished self-esteem or dignity;
- *Financial Abuse*: The misuse of a senior's funds or property through fraud, trickery, theft or force;
- *Medication Abuse*: The intentional or unintentional misuse of medications and prescriptions, such as withholding or providing doses that cause bodily harm, sedation, or other adverse effects;
- *Physical Abuse*: Actions that cause physical discomfort, pain or injury;
- *Sexual Abuse*: Unwanted sexual behaviours including sexual comments, exploitive use of pornography, fondling or sexual assault;
- *Neglect*: The active (intentional) or passive (unintentional) failure to provide a senior with a basic level of care.

⁴⁰ We would like to acknowledge the Edmonton Elder Abuse Intervention Teams for their valuable input into this section.

⁴¹ Family Violence in Canada: A Statistical Profile, p.27.

⁴² Family Violence in Canada: A Statistical Profile, p.28.

⁴³ *An Environmental Scan of Abuse and Neglect of Older Adults in Canada: What's Working and Why*. Report prepared for the Federal/Provincial/Territorial Committee of Officials (Seniors), September 2003.

Complexities of Reporting Elder Abuse

There is limited data about elder abuse in Canada, and throughout the world. A key reason for this is that many cases of elder abuse go unreported. Data from surveys and police records only capture what victims are willing to disclose, and community service providers may not collect or track data, or do so in a standardized manner.⁴⁴ In fact, it is approximated that only one in five abuse situations involving seniors comes to the attention of authorities.⁴⁵

Those who suffer elder abuse can be reluctant to report the abuse or seek help. Shame or guilt may prevent some abused seniors from revealing their abuser while other may be fearful of the repercussions that could occur as a result of reporting the abuse, especially if the abuser is a family member. An abused senior may also fear that reporting the abuse will result in the loss of their caregiver, loss of access to grandchildren or other family members, loss of their home, or result in their relocation to unfamiliar surroundings or an institution. Some abused seniors may care deeply for their abuser, which can lead to conflicting feelings about the abuse.

Victims of elder abuse may also regard the abuse as “normal” behaviour, or may mistakenly or wrongly believe they did something to bring on the abuse. Some victims may choose to downplay the abuse, attributing it to bad temper on the part of a family member. In some cases the victim may not understand or be aware they are suffering abuse. Sometimes those suffering elder abuse do not have the capacity to report the abuse, or do not know where to turn to get help.

Elder Abuse and Cultural Differences

Seniors from different cultural backgrounds, particularly Albertans from immigrant communities, can face additional challenges when it comes to elder abuse. Language barriers, limited social connections, and a lack of familiarity with their surroundings can result in social isolation or greater emotional dependence on their abusers. Without a strong support network, seniors in these situations may be reluctant to report abuse by family members or friends.

Seniors from immigrant communities may also be more financially dependent on family members, as they may lack savings or a source of income. This combined with a lack of familiarity or fear of the Canadian justice system can create additional obstacles when it comes to seniors reporting abuse. Additionally, seniors who are recent immigrants or refugees may incorrectly believe they will be deported, institutionalized or punished for disclosing abuse.

Aboriginal communities also face unique concerns related to elder abuse. This holds true not only for seniors who live in rural and remote Aboriginal communities, but also for those living in urban settings. Given the growth rates and increasing urbanization of Aboriginal populations, there is a need to ensure that the unique perspectives of Aboriginal peoples are reflected in the policies and programs aimed at preventing and addressing elder abuse.

⁴⁴ World Health Organization & International Network for the Prevention of Elder Abuse (2002); Statistics Canada, *Family Violence: A Statistical Profile, 2004*; Canadian Network for the Prevention of Elder Abuse: *What is Senior Abuse?*

⁴⁵ Ibid.

COMMON TYPES OF ABUSE EXPERIENCED BY SENIORS

Physical Abuse

Physical abuse may include:

- Beating the person;
- Punching, pushing, tripping, stabbing;
- Burning or scalding;
- Rough handling or physical coercion;
- Spitting.

Physical abuse against older adults may also include:

- Tying them to furniture;
- Using or misusing physical restraints;
- Restraining them through the use of alcohol, tranquilizers or other medication;
- Forcing them to remain in beds, chairs or locking them in rooms.

Sexual Abuse

Sexual abuse is any kind of sexual behaviour directed towards an older adult without the person's full knowledge and consent. It includes sexual assault, sexual harassment, and rape. Sexual abuse can happen to mentally capable seniors by their spouse, partner, a family member or trusted people in their lives. It can also happen to mentally incapable older adults.

Psychological Abuse

Psychological abuse includes behaviours such as:

- Threatening to use violence;
- Threatening to abandon them;
- Intentionally frightening them;
- Making them fear that they will not receive the food or care they need;
- Lying to them;
- Insulting, swearing, yelling, or name calling;
- Making them uncertain about themselves and their abilities (lowering their self esteem);
- Making derogative or slanderous statements about them to others;
- Ignoring or excluding the person;
- Socially isolating them from meaningful events or activities, or failing to let them have visitors;
- Withholding important information or the victim's mail;
- Repeatedly raising the issue of death with them;
- Telling them that they are too much trouble, or criticizing them;
- Treating them like servants or children.

Financial Abuse

Financial abuse includes behaviours such as:

- Misusing a power of attorney;
- Persuading, tricking, or threatening the older adult out of money, property, or possessions (or attempts to do so);

- Cashing pension or other cheques without authorization;
- Use of the older adult's money for purposes other than what was intended.

Financial abuse also includes unduly pressuring seniors to:

- Move from, sell or relinquish their home or other personal property;
- Make or change a will;
- Sign legal documents that they do not fully understand;
- Change or keep their marital status;
- Give money to relatives or caregivers;
- Engage in paid work to bring in extra money;
- Care for children or grandchildren.

Frauds and scams relating to seniors are generally not addressed by any specific response to elder abuse in this province. These crimes are often perpetrated by strangers who target vulnerable individuals, which may include seniors. These crimes are best handled by specialized units, front line police officers or where appropriate, Service Alberta. Service Alberta is responsible for compliance and enforcement of the *Fair Trading Act*.

The Consumer Information Centre: 1-877-427-4088

Information is available online, at: http://www.servicealberta.gov.ab.ca/Consumer_Info.cfm

Neglect

Neglect entails failing to provide:

- Adequate nutrition, clothing and other necessities;
- Adequate personal care, e.g. failing to turn a bedridden older adult frequently;
- Safe, comfortable, clean conditions;
- Prerequisites for personal cleanliness;
- Sufficient space for personal privacy;
- Transportation to necessary appointments;
- Occasional outings.

It may also include:

- Leaving incapacitated older adults alone too long or failing to remain with those who need help;
- Abandonment.

Medication Abuse

When a caregiver is assisting with dispensation or has access to a senior's medication, abuse may occur.

- Caregivers may over or under medicate in order gain relief from the stress or burden they are under;
- Medications may be use improperly as a restraint;
- Over / under medicating of the senior to cause confusion in order to gain advantage or control (change will, sign cheques, move them into care facilities, obtain legal power);

- Theft of the medication for self-use or resale.

Other Forms of Abuse

Other forms of abuse include spiritual abuse or neglect:

- Using their religious or spiritual beliefs to exploit, manipulate, dominate or control them;
- Ridiculing their beliefs;
- Preventing them from engaging in spiritual or religious practices;
- Acting in a disrespectful way toward their spirituality.

POLICE RESPONSE TO COMPLAINTS OF ELDER ABUSE

It is vital that police officers and other responders recognize that seniors seldom report when they are being abused. When seniors do report problems, they will often hold back incident details. They rarely name the abuser or give a full history of problems. Calls are often dealt with by the police superficially – “guest refusing to leave,” “trouble with drunk relative” or “family argument.”

Reports of abuse against seniors most often come from a third party – a neighbour, a family member, or a professional the senior has come into contact with. These reports may be difficult to evaluate for a lack of detailed information.

Whenever a concern for the wellbeing of an older person is reported, all responders should take the complaint seriously and every effort should be made to meet with the senior promptly. Delayed Response, Community Station Reporting and Wait Listing may not be appropriate. Extra effort will be required in drawing out information from the victim and collateral information should be sought out as soon as possible.

CRIMINAL INVESTIGATIONS OF ELDER ABUSE

Where abuse appears to be criminal, a full and thorough investigation is required. The decision to lay charges is not left with the complainant as the perpetrator is almost always a close family member (son, son-in-law, daughter, spouse, etc.). The cycle of violence is the same and the same principles apply respecting the police response. As with spousal victims, seniors will be reluctant to press charges. Be prepared to explain your role and the role of the justice system. Gathering corroborating evidence in these cases is as important as it is in case of spousal violence. Many seniors may have difficulty in court due to frailty, cognitive impairments, intimidation by the system and fear of facing their abuser. Some seniors will not be able to attend court or give evidence, and the investigation should be conducted with this in mind.

Police should:

- Consider doing videotaped interviews with older victims and witnesses;
- Photograph injuries, property damage, crime scenes, etc. Photographs will greatly aid a victim who has difficulty remembering or giving descriptions;
- Seek out witnesses who can provide corroboration or details – a neighbour who heard arguing, or a family member who saw the injury;
- Review 911 / complaint-line recordings and secure copies for evidence as needed;

- Obtain copies of all medical records, and have all related witnesses identified;
- Attempt to videotape interviews with the suspect.

Police officers only need reasonable and probable grounds to lay a charge. By laying charges where appropriate, the offender is held accountable for his/her actions, and court ordered protection is available for the victim. The accused has the opportunity to take responsibility for his/her wrongdoing and receive rehabilitative services that may not otherwise be available.

It is important to recognize that once the abuse has stopped, many seniors become less frail. Their memory may improve and they may regain the courage to face their abuser. Services to support the senior should be utilized to connect individuals and families with the necessary services and supports, including court preparation programs.

For additional information regarding elder abuse and available community resources, please visit:

Alberta Health – Elder Abuse Awareness: <http://www.health.alberta.ca/seniors/elder-abuse.html>

This website provides valuable information on elder abuse including the signs to look for when you suspect a senior is being abused, resources and materials that include a screening guide for elder abuse and important phone numbers to be used when supporting an abused senior.

Alberta Elder Abuse Awareness Network: <http://www.albertaelderabuse.ca>

The Alberta Elder Abuse Awareness Network is dedicated to increasing awareness and supporting a community response to elder abuse. They are a province-wide network of professionals representing communities across Alberta, who develop resources to address elder abuse, work to increase community awareness and promote the well-being of older adults. Their website maintains a comprehensive listing of elder abuse resources available in various communities.

The Canadian Network for the Prevention of Elder Abuse: <http://www.cnpea.ca/>

Domestic Violence and People Who Have a Disability

Individuals with disabilities are particularly vulnerable to family violence. As such, the following information from Health Canada has been assembled to inform police services and Crown prosecutors about the special considerations that people with disabilities face when dealing with domestic violence.⁴⁶

Probably the single biggest factor affecting the incidence of family violence against a person with disabilities is the extent of the victim's "families." Victims with disabilities must often depend on a variety of people to provide them with assistance in their everyday lives. For this reason, their family is understood to include not only parents, siblings, spouses and other relatives, but also friends, neighbours and caregivers.

Individuals who live in institutional settings, and people who are multiply or profoundly disabled, are most vulnerable to abuse because they are more dependent upon even larger numbers of people, and less able to get away. According to Health Canada, it is estimated that women with disabilities are 1.5 to 10 times more likely to be abused than non-disabled women, depending on whether they live in the community or in institutions.

A STATISTICAL PROFILE

Although violence and abuse in general have burgeoned into areas of concern in social policy and government programming, few studies have investigated domestic violence and abuse among people with disabilities.

- Approximately 435,820 Albertans have a disability;⁴⁷
- 83% of women with disabilities will be sexually assaulted in their lifetime;
- 39% of women with disabilities have been abused by their partners/spouses;
- More than half of the perpetrators in violence against persons with disabilities are paid caregivers, family members, or other persons with disabilities.

FORMS OF VIOLENCE

Violence against individuals with disabilities can take many forms, including:

- **Neglect** - denial of food, lack of or inappropriate personal or medical care;
- **Physical abuse** - assault, rough or inappropriate handling, inappropriate personal or medical care, over-use of restraint, over-medication or confinement;
- **Psychological abuse** - verbal abuse, intimidation, social isolation, emotional deprivation, threat of having the victim's children taken away;
- **Sexual abuse** - harassment, unwanted sexual touching, assault, forced abortion or sterilization;

⁴⁶ Health Canada. *Family Violence Against Women With Disabilities*. From the National Clearinghouse on Family Violence, Issue 35, Summer 1998. While this Health Canada study focused on abused females with disabilities, the same considerations equally apply to men.

⁴⁷ Statistics Canada, *Participation and Activity Limitation Survey*, 2006.

- **Financial exploitation** - denial of access to and control over victim's own funds or misuse of financial resources.

Some domestic violence victims have special needs because of their limited physical or mental abilities. These factors make it extremely difficult for them to report their victimization, call for assistance, or participate fully in the investigation and prosecution of their case. Officers should refer these victims to specialized support services to ensure that the victim receives protection, physical assistance, medical treatment or other services as needed.

When an individual with a disability experiences violence, every effort should be made to determine if and how her/his disability has been affected. For example, a victim with epilepsy may be more prone to seizures after an attack. Also, a victim with a learning disability or head injury may be more easily distracted, disorganized and less able to cope with stressful situations. However, the most important part of a service provider's reaction is to deal with the incident of violence without an over-emphasis on the victim's disability. If unsure about the best method of communication, ask the individual directly about her/his needs - take the lead as you would with non-disabled individuals. Speak to the person with a disability directly, not to her/his personal aide, family member, interpreter, or other person accompanying her/him.

SAFETY PLANNING FOR PERSONS WITH DISABILITIES

Persons with disabilities may face unique challenges when leaving a situation of abuse. Such individuals may be dependent on his/her abuser for affection, communication, and financial, physical, and medical support. If they report the abuse, they may be at risk of poverty or homelessness. Additionally, such individuals may fear that they will not be believed if they speak out. Contacting women's shelters or victim services may be complicated if the agencies do not have Telecommunication Devices for the Deaf (TDDs). Additionally, individuals may not be able to leave the situation due to physical restrictions, like a lack of accessible transportation.

Creating a Safety Planning Guide is complicated and special considerations must be given. Some of these considerations include:

- Setting up alternative personal assistance ahead of time;
- Keeping extra medications/prescriptions, medical supplies and adaptive equipment ready and on hand;
- Planning how to get out safely, having a safe place to go, and asking for necessary assistance from a trusted individual;
- Ensuring the shelter can accommodate people with disabilities (including service animals, special equipment, medical companions, etc).

PROTECTION FOR PERSONS IN CARE ACT (2010)

The new *Protection for Persons in Care Act*, proclaimed on July 1, 2010, requires that all abuse be reported to Protection for Persons in Care, the police or another regulatory body. The toll-free reporting line is available at: **1-888-357-9339**.

For more information, visit: <http://www.health.alberta.ca/services/protection-persons-care.html>

The Relationship Between Animal (Pet) Abuse and Family Violence

The correlation between animal abuse, family violence, and other forms of community violence has been well established.⁴⁸ Child and animal protection professionals have recognized this link, noting that abuse of both children and animals is connected in a self-perpetuating cycle of violence. Specifically, children who witness animal abuse are at a greater risk of becoming abusers themselves. When animals in the home are abused or neglected, it is a warning sign that others in the household may not be safe.

In a 2001 collaborative study⁴⁹ (the Calgary Humane Society, YWCA Family Violence Prevention Centre, researcher Sue C. McIntosh, supported by RESOLVE Alberta) of 100 women in shelters who owned pets:

- Between 25% and 48% delayed leaving an abusive situation out of fear of what would happen to their pet;
- 45% to 61% reported that their abuser either threatened to and/or actually hurt their pet;
- 21% were aware that their abuser had abused animals as a child or adolescent.⁵⁰

Of those women in the Calgary study who stated their partner had abused their pet:

- 65% reported that their children were aware that their pets were being abused;
- 65% believed that their children were impacted by the abuse of their pets;
- 59% talked with their children about their pets being hurt or threatened, but only 6% discussed it with a counsellor or a social service worker.

For many victims of domestic violence, their relationship to their pet is the strongest positive connection with another living being. In abusive relationships, pets are often targeted by the abusive partner and threatened or killed in order to exert power and maintain control over the victim. In part, such behaviour could occur out of jealousy. It could also occur as a cruel attempt to inflict hurt on the victim. Through animal cruelty, abusers:

- Demonstrate their power;
- Teach submission;
- Isolate victim(s) from a network of support;
- Perpetuate the context of terror;
- Launch a pre-emptive strike against a victim leaving;
- Punish and terrorize by stalking and executing an animal;
- Force the victim to become involved in the abuse;
- Confirm their power.

⁴⁸ American Humane Association Fact Sheet, "Understanding the Link Between Animal Abuse and Family Violence," 2003.

⁴⁹ McIntosh, Sue C.

⁵⁰ The statistics above and below are taken from Alberta SPCA "Animal Cruelty and Family Violence – A Resource Book for Albertans," 2011.

WHAT ARE THE LAWS PROTECTING ANIMALS?⁵¹

Animal Protection is offered under both provincial legislation and the *Criminal Code of Canada*. Under section 446 of the *Criminal Code of Canada*, it is a criminal offence to cause unnecessary pain, suffering or injury to an animal or a bird, by either the animal's owner or by someone else. In Alberta, *the Animal Protection Act* (APA) provides a mechanism to help mistreated animals and hold negligent owners accountable for their actions.

Anyone found guilty of an offence under the *Animal Protection Act* can be ordered by the court to pay a fine of up to \$20,000, and/or be prohibited from owning animals for any period of time as specified by the court.

Amendments that became effective on April 17, 2008 created hybrid offences which can proceed by way of a summary conviction or indictment. The maximum penalty for an indictable offence is imprisonment for up to five years (two years for uttering threats), while a summary conviction is subject to a fine of up to \$10,000 and/or imprisonment up to 18 months.

In some cases of domestic violence where there is animal abuse in addition to spousal or child abuse, the animal abuse may be easier to prove or more readily reported by a victim or witness.

REPORTING ANIMAL CRUELTY IN ALBERTA

To report suspected animal abuse or neglect in Alberta, call the appropriate animal welfare agency:

In Calgary, call the **Calgary Humane Society** at **403-205-4455**

In Edmonton, call the **Edmonton Humane Society** at **780-491-3517**

In all other areas of Alberta, call the **Alberta SPCA** at **1-800-455-9003**

If an animal is in immediate danger outside of regular office hours, call the municipal police or RCMP.

⁵¹ Ibid. Special thanks to Tim Battle, Director of Education, The Alberta Society for the Prevention of Cruelty to Animals.

Safety Planning for Victims

While victims cannot always avoid violent incidents, in order to increase safety, they should be given a list of safety strategies. Following a risk assessment, it is helpful to work through a safety plan with victims. It is also a good idea to refer victims to shelter staff or other safety-planning experts about additional safety planning to meet the needs of a given situation.⁵²

Women's shelters provide a wide range of family violence services, including outreach programs, crises lines, and training on family violence-related topics. Some shelters have also been trained in conducting danger assessments. Victim advocates within the police service or community are also good resources to use in risk assessment and safety planning.

The main components in domestic violence safety plans are:

- How to leave safely;
- Where to go to be safe;
- Where to keep important papers and documents;
- Which neighbours to tell about the violence so they can call police if necessary;
- Teach children how to call the police;
- How to protect self and children in dangerous situations;
- Local telephone numbers for shelter, crisis center, police, child protection agency;
- Importance of practicing and reviewing safety plan regularly with children;
- Possible safety measures at home (e.g. locks, lights, rope ladders, smoke detectors and fire extinguishers, code words for children to be picked up by another adult, to call police or to get out of the house quickly);
- Inform school of pick-up permission for children if necessary;
- Inform employer and co-workers of risk;
- Other friends, neighbours, family members who can look after children and help support the non-offending parent when stress/depression/anxiety levels are high.

Each intervener in the criminal justice system must ensure that the relevant information is obtained on each person who uses violence in his/her relationship, that the information is shared with other interveners who need the information, and that the information is incorporated into the decisions about how the case is handled.

It is also important to:

- Ensure perpetrator is no longer a threat in the current situation;
- Carry out risk assessment with the victim to determine risk of the current situation;
- Listen to victim's assessment of risk and offer feedback;
- Discuss safety planning;
- Make referrals for more comprehensive risk assessment and safety planning.

⁵² Ontario, Ministry of the Solicitor General, Policing Services Division, *A Guide to the Domestic Violence Supplementary Report Form* (Toronto, 2000).

Victims should also be informed about:

- Victim Impact Statements;
- Financial Benefits Program;
- Requesting Restitution Programs.

Information about these programs is available at:

http://www.solgps.alberta.ca/programs_and_services/victim_services/help_for_victims/Pages/default.aspx

Victims interested in safety planning should also visit Justice Canada's *Family Violence Initiative* website at <http://www.justice.gc.ca/eng/pi/fv-vf/index.html>.

FOLLOW UP TO ENSURE VICTIM RISK IS BEING MINIMIZED

Police are in the best position to follow up with victims. The greater the risk, the more closely the police should monitor victims' safety. Conditions imposed as a result of a bail hearing should be entered on the Canadian Police Information Centre (CPIC) using the probation category currently used for entry of restraining orders, conditions on probation, and firearms prohibitions.⁵³

Police services should also be aware of "Spousal Assaults" or "Other Family Violence" caution flags, which, as of January 1997, may now appear on the Criminal Record Synopsis when checking the CPIC system. Police services should ensure that the sections of fingerprint form C-216C allowing for the flagging of convictions for a number of offences, including "Spousal Assaults" and "Other Family Violence," are used where applicable. This tool provides police services with immediate recognition that a subject they may be dealing with or responding to has had previous convictions for spousal assaults or family violence. It is also information that can be immediately relayed to the Crown prosecutor on bail applications.

INFORMATION FOR VICTIMS OF CRIME

Victim Impact Statement Program

Under section 722 of the *Criminal Code of Canada*, a Victim Impact Statement allows victims of domestic violence to express, in writing to a judge how being a victim of crime has affected them and their family.

The Victim Impact Statement should describe the harm done, the loss suffered by the victim, and the emotional impact that they have experienced. Information or evidence regarding the offence should already have been included in the witness statement provided to police and should not be included on the Victim Impact Statement. The statement should not contain criticisms of the offender or recommendations as to the severity of punishment.

⁵³ Alberta Justice Domestic Violence Registry.

A Victim Impact Statement form is available from the local Victim Service Unit. The Victim Service Unit cannot help the victim complete the form as it would then be subject to disclosure to the court prior to sentencing, but they are able to refer the victim to a community support who can help them. Victim Services will fax a notification form to the Court and Crown to indicate that a statement is forthcoming.

Once completed by the victim, the Victim Impact Statement is placed into an envelope and mailed directly to the courthouse where it remains sealed until sentencing.

The sealed statement will be provided to the court and will be considered by the judge at the time the offender is sentenced. The victim will be given the option of reading this statement aloud in court if they choose. It is important that the victim is aware that a copy of the Victim Impact Statement will be provided to the defence counsel and/or offender.

A victim may be cross-examined in court on the contents of his/her statement.

Following sentencing, the Clerk of the Court forwards Victim Impact Statements to any relevant federal and provincial Correctional Centres and Probation Offices by attaching it to the Warrant of Committal. It will be used to make future decisions with regard to the offender.

FINANCIAL BENEFITS PROGRAM

The Financial Benefits Program assists victims of violent crime in Alberta, who have suffered physical and emotional injury, by providing one-time payments based on the injuries they received. Victims make their own decisions on the use of the money depending on their own individual priorities. Victims usually do not need to submit anything else to the program except a completed application form.

An application for financial benefits must be received within two years of the injury or within two years of the applicant becoming aware of the nature of the injury. As a result, the victim should be encouraged to apply immediately and not wait for the completion of the court process. If the victim was not a legal adult at the time of the offence, an application can be made for up to two years after the victim turns 18.

It is important to note that a copy of the Application for Financial Benefits **should not** become part of the disclosure package so as to prevent defence counsel from arguing that the victim reported the abuse to police exclusively to receive money.

There are two different application forms for the Victims of Crime Financial Benefits Program. The **Injury Application** is to be completed by a victim who was injured as a direct result of a crime. The **Death Benefit Application** is used by a person applying on behalf of a victim who died as a result of their injuries.

Eligibility is not dependent on an offender being convicted or charged. For information on how to apply, contact the Financial Benefits Program at (780) 427-7217 or the victim service program in your community. Information is also available at the following:

REQUEST FOR RESTITUTION PROGRAM

If a victim has suffered financial loss as a result of a crime, they may have the right to seek restitution from the offender. Restitution is a way for the offender to repay the victim for the loss that they have suffered. It is an acknowledgement of the victimization that has occurred and it is also a way of holding the offender accountable for their behaviour. Restitution may be ordered by the court as a result of:

1. **Damage, destruction, and loss of property:** restitution order will not exceed the value of property and will be reduced by the value of any property that has been returned;
2. **Bodily or psychological harm:** the restitution order will cover monetary loss including income or support;
3. **Expenses incurred in moving out of the offender's house:** the restitution order will cover any reasonable expenses;
4. **Losses incurred by unknowingly purchasing or lending money on stolen property:** where the property has been returned to its lawful owner, the restitution order will cover the loss you have incurred. The order will not exceed the original amount you paid or the amount outstanding on a loan.

Information about restitution and a **Request for Restitution** form is available from the police or the local Victim Service Unit. Once the victim has completed the form and established the amount of restitution that they are seeking in a way that is easily verifiable or determined by the Court, they should return the form to the police or Victim Service Unit as quickly as possible. The form is needed quickly in the event the offender pleads guilty early. The form is then given to the Crown prosecutor who may make application to the court for a Restitution Order. The request will be addressed at the time of sentencing.

It is important that the victim is aware that a copy of the request, minus any personal identifiers will be provided to the defence counsel and/or offender.

If the Crown has difficulty contacting the victim, they may contact the local Victim Service Unit for their assistance.

CONTACT INFORMATION

Alberta Solicitor General and Public Security helps communities assist victims of crime. Victims of crime who want further information or feel they have not been treated fairly can contact:

Victims Services

Telephone: 780-427-3460

Fax: 780-422-4213

For more information on applying for benefits for injuries suffered as a result of crime contact:

Financial Benefits Program

Telephone: 780-427-7217

Fax: 780-422-4213

Alberta Solicitor General and Public Security

10th Floor, J.E. Brownlee Bldg.

10365 – 97 Street, Edmonton, AB T5J 3W7

See also *Victims of Family Violence – Information and Rights* at:

http://www.solgps.alberta.ca/safe_communities/community_awareness/family_violence/Pages/assistance_and_resources.aspx

Victims may also wish to visit Justice Canada's *Family Violence Initiative* website at:

<http://www.justice.gc.ca/eng/pi/fv-vf/index.html>.

Appendix #15 - Includes a list of agencies to assist victims of crime, as provided by Alberta Solicitor General and Public Security.

Appendix #20 - Includes information for victims of crime regarding Victim Impact Statements.

Domestic Violence Investigation Guidelines for Police Services

These Guidelines are to be used in conjunction with the [*Domestic Violence Handbook for Police and Crown Prosecutors in Alberta*](#) (DV Handbook).

PURPOSE OF GUIDELINES

The purpose of these Guidelines is to provide assistance to police services in developing policy and procedure relating to the investigation of domestic violence. It is important for police services to consider the best practices outlined in the Guidelines.

It is recognized that terms may vary amongst police services in Alberta and across the country, and includes terms such as domestic violence (DV), intimate partner violence (IPV), family violence (FV), domestic conflict, and violence against women (VAW).

DEFINITIONS

INTIMATE PARTNER VIOLENCE (IPV)/Domestic Violence (DV) is defined as any use of physical or sexual force, actual or threatened, in an intimate relationship. It may include a single act of violence, or a number of acts forming a pattern of abuse through the use of assaultive and controlling behaviour. The pattern of abuse may include:

- Physical assault or abuse;
- Sexual assault or abuse;
- Criminal harassment (stalking);
- Threats to harm children, other family members or pets;
- Property damage;
- Verbal intimidation or conflict; and/or
- Emotional abuse/psychological abuse.

INTIMATE RELATIONSHIP is defined as a relationship between opposite-sex or same-sex partners regardless of age. These relationships vary in duration and legal formality, and include:

- Current and former dating relationships;
- Current and former common-law relationships;
- Current and former married relationships; and

- Persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time.

Domestic violence or intimate partner violence may also include violence towards a new or former intimate partner, their children, friends or family. This violence may be direct or indirect and include such acts as assaults, mischief, uttering threats, or criminal harassment.

Either gender can be the victim of domestic violence/intimate partner violence; the majority of reported incidents involve violence against women.

NEED FOR CO-ORDINATION AND COLLABORATION

Police and Human Services are able to share information under provincial and federal legislation when investigating and safety planning. RCMP should be familiar with the requirements of federal privacy legislation. It is beneficial when all parties (Human Services, prosecutions, probation, community agencies) work in partnership.

As such, every police service is encouraged to work in partnership with the following community service providers, systems and agencies:

- Crown Prosecutors' Office;
- Probation;
- Victim Services;
- Alberta Human Services;
- Municipalities;
- Women's shelters (See Appendix B for Alberta Police Services and Women's Shelters Working Relationship Guidelines ;
- Community representatives responsible for issues related to domestic violence; and
- Other local service providers.

Every police service is encouraged to participate in a domestic violence coordinating committee with the above community service providers, systems and agencies. A coordinating committee can assist in addressing a number of community related issues surrounding family violence such as:

- Defining roles and responsibilities of organizations involved in providing services to victims;

- Providing assistance to victims and children in cases which do not proceed to court, or where no charges have been laid;
- Establishing criteria for case and/or systems review;
- Subject to privacy requirements, sharing case specific information among relevant member organizations to provide a coordinated response;
- Monitoring and evaluating the responses by organizations;
- Reviewing the availability of services to victims;
- Risk assessment and safety planning;
- Developing local community strategies and responses to address and prevent repeat victimization, including promoting and supporting follow-up with victims of domestic violence; and
- Developing initiatives/programs for prevention and early intervention.

POLICY AND PROCEDURE

Police Services are required to develop and maintain procedures for undertaking and managing investigations into domestic violence occurrences. Best practice is outlined in each of the areas of investigation below:

1. Communications and Dispatch
2. Initial Response Procedures
3. Conducting a Comprehensive Investigation
4. Interviewing Procedures
5. Criminal Harassment
6. Charge Policy
7. Mutual or Dual Charges
8. Criminal Proceedings Against Victims
9. Bail Procedures
10. Case Management Strategies
11. Firearms
12. Children Exposed or at Risk
13. Support to Victims
14. Specialized Victims
15. Training
16. Monitoring and Supervision
17. Occurrences Involving Police Members

1. Communications and Dispatch

Best practice is:

- That persons who provide communications functions are trained with respect to context and risk factors associated with domestic violence occurrence calls for service;
- That all domestic violence occurrence calls be given priority even if the call is withdrawn, including calls relating to alleged breaches of bail, probation, or protection orders;
- Police respond to the victim's location in all cases; and
- That Communications personnel obtain as much information about the event from the reporter as is possible, and provide this information to responding officers.

2. Initial Response Procedures

Best practice includes the following:

- Follow Police Service policy regarding entry into residence to check on the welfare of a person or 911 hang-up call;
- Follow Police Service policy regarding officer safety;
- Upon arrival:
 - Separate the parties;
 - Assist any party in obtaining medical assistance, if necessary;
 - Locate children at the scene and ensure they are provided with appropriate support/assistance in compliance with the [Child, Youth and Family Enhancement Act](#);
 - Preserve evidence; and
 - Make detailed notes, including the actions, utterances and injuries of all parties involved;
- A detailed occurrence report is to be completed for every Intimate Partner Violence (IPV) or domestic violence occurrence regardless of whether any charges are laid or an offence alleged, and the information entered on the Police Service's information system for future reference; and
- All officers responding to an IPV or DV occurrence complete the Family Violence Investigation Report (FVIR) (mandatory).

Warrant Permitting Entry (WPE)

If the police member is unable to justify immediately entering the residence to check on the welfare of a person pursuant to Police Service policy, the [Protection Against Family Violence Act](#) (PAFVA) provides the authority to obtain a warrant to enter. Under s.10 of PAFVA, the police may obtain a warrant to enter a dwelling house to check on the welfare of a person suspected to be the victim of family violence. In cases where there is reason to believe a family member has been the subject of family violence and the

police have been refused access to that person, a police officer may apply to the court for a Warrant Permitting Entry (WPE).

A Justice of the Court of Queen's Bench, Provincial Court Judge, or a Justice of the Peace may issue a WPE on application made by a peace officer if satisfied by information on oath that there are reasonable and probable grounds to believe:

- The person providing the information on oath has been refused access to a family member; and
- The family member may have been the subject of family violence and will be found at the place to be searched.

The warrant permits the police:

- To enter the place named in the warrant and any other structure or building used in connection with the place, to search for, assist or examine the family member; and
- With the family member's consent, to remove the family member from the premises for the purpose of assisting or examining the family member.

3. Conducting a Comprehensive Investigation

1. Victim

- Statement taken.
- Photographs taken initially.
- Photographs taken 2-3 day later.
- Evidence seized.
- Injuries detailed (If strangulation, immediate EMS is required/Sexual assault examination kit).
- Consent for Release of Medical Form completed.
- Complete FVIR (mandatory).

2. Offender

- Located and arrested (if applicable) or request warrant.
- Cautioned statement taken.
- Photographs taken.
- Evidence seized from offender.
- Previous domestic violence police reports.

3. Witnesses

- Statements taken.
 - Neighborhood inquiries.
4. **Children**
- Human Services contacted if there are any children stemming from the relationship, living at the home, or under the care of either party.
 - Statements taken (if applicable)(Video under s. 715.1).
 - Child custody/access orders obtained.
 - Age of the children; biological or step.
 - Family Law orders/actions.
5. **Scene**
- Photographs of any damage.
 - Photographs of location.
 - Evidence seized (ripped clothing, damaged property etc.).
6. **911/Emergency Operational Communication Centre recording(OCC)**
- Recording requested.
7. **Firearms/Weapons**
- Seize weapons/firearms if used.
 - Seize licensing documents (if applicable).
 - Canadian Firearms Registry Office (CFRO) check.
 - Consider application for Stand Alone/Preventative-Prohibition if firearms owned by accused, but not used in the offence.
 - Information to obtain warrant if weapons/firearms not seized initially.
8. **Referrals**
- Victim Services.
 - Women’s Shelter.
 - Integrated Threat and Risk Assessment Centre (I-TRAC).
9. **Protection Against Family Violence Act (PAFVA)**
- Emergency Protection Order (EPO) application.
 - Referral to Queen’s Bench Protection Order (QBPO) application (in non-emergency situations).
 - Conditions and firearms addressed in EPO/QBPO.
 - Warrant Permitting Entry (See Initial Response Procedures, Section 2).
10. **Judicial Interim Release (JIR) Process**
- Prepare Bail package ([DV Handbook Chapter 22](#)).

- Consider bail revocation.
- Remand/ Release with conditions.
- Firearms addressed.
- Conditions of release.
- Victim informed of results.

11. Canadian Police Information Centre (C.P.I.C).

- Add Warrant in first instance if applicable.
- Special Interest Police (SIP).
- Accused entry.
- EPO.
- Caution “Family Violence”.
- Release conditions.
- Address of Interest.

12. Specialized Team, Family Violence Unit Coordinator/Supervisor

- Guidance sought

13. Documentation

- Detailed notes to include actions, utterances, injuries, and all observations at the scene.
- Detailed reports outlining all the action taken.

4. Interviewing Procedures

Best practice is to address the interviewing of the victim(s), suspect, and witnesses, including:

- Person(s) who reported occurrence to police communications;
- Neighbours;
- Family members;
- Emergency personnel;
- Children (where appropriate); and
- Any other person who observed or heard the incident.

Method of Interview

Best practice is:

- Witnesses be interviewed separately from one another and directed not to discuss the events among themselves;

- An interpreter (non-family member) is utilized when necessary to obtain a full account of the incident;
- Members obtain a handwritten statement (pure version) from the witness, followed by Q&A recorded on the statement to obtain a full account of the witness's recollection of the events. The witness should review and sign their statement;
- In addition to a written statement, with adult victims consider taking a KGB statement;
- If the witness is unable to provide a written statement, the member may record the statement of the witness, have the witness review the statement, confirm it is accurate, and sign/initial the statement (even if it is recorded in the member's notebook); and
- In cases where a child has witnessed the incident, or is a victim of an offence, all efforts to ensure a "child friendly" interview must be taken. Where possible, the interview should be videotaped pursuant to s.715.1 so that it can be used in evidence.

Sworn Video Recorded Witness Statements

The Police Service procedures should address obtaining sworn video recorded witness statements, in accordance with the KGB ([R v B. \(K.G.\), \[1993\] 1 S.C.R. 740](#)) guidelines, from the victims(s) in all cases and especially in those cases involving victims at high risk for future violence, and abusers who are the most serious, violent offenders.

The more of the following criteria that exist in a single case, the more compelling the need for a sworn statement:

- The accused has a criminal record with prior convictions for family violence;
- The accused has a criminal record which contains 3 or more convictions for offences of violence;
- The accused has a criminal record which contains 1 or more convictions where a penitentiary sentence (2 years jail or more) has been imposed;
- The current case involves one or more of the following charges against the accused:
 - s. 267 – assault with a weapon or causing bodily harm;
 - s. 268 – aggravated assault;
 - s. 239(1) – attempted murder;
 - s. 279(1) – kidnapping;
 - s. 279(2) – forcible confinement;
 - s. 271 – sexual assault;

- s. 272 – sexual assault with a weapon or causing bodily harm;
- s. 273 – aggravated sexual assault; and
- Attempts to commit any of the *Criminal Code* offences listed above;
- The victim (in the case the police are investigating) has been subject to a pattern of fear and intimidation by the accused, such that he/she has recanted or become unavailable for trial in the past. This type of information may be available from *JOIN* or the police records management system;
- The accused’s conduct is characterized by domination, intimidation, degradation and control, and is not a minor act of violence during conflict in an otherwise non-abusive relationship; and/or
- The victim is identified through risk assessment tools to be at high risk for homicide.

5. Criminal Harassment (Stalking)

Criminal harassment is a form of domestic violence, the motivation for which primarily relates to a desire to control a current or former partner. It may include the following:

- Repeatedly following from place to place the other person or anyone known to them;
- Repeatedly communicating, directly or indirectly with the other person or anyone known to them;
- Watching a dwelling house or location where the person resides or works; or
- Engaging in threatening conduct towards another person or any member of their family.

Police members should consider:

- That stalking creates *psychological harm* such as fear and loss of control over the victim’s life. Victims of stalking are most commonly diagnosed with Post-Traumatic Stress Disorder. It may also be a precursor to subsequent violent acts;
- That marriage or cohabitation does *not* prohibit a charge and conviction;
- The importance of safety planning and intervention for victims of criminal harassment;
- Recognition of controlling behaviours/characteristics consistent with stalking;
- Methods of evidence gathering to support criminal harassment charges;
- In cases where the harassment involves use of text messaging or social media, it is important for the investigator to ensure that all forms of communication are preserved and seized as evidence; and
- In cases where repeated contact is over the phone, the investigator should consider obtaining phone records.

For additional information regarding investigating criminal harassment, please refer to: [A Handbook for Police and Crown Prosecutors on Criminal Harassment](#).

6. Charge Policy

Best practice is:

- Police Service policy include a statement regarding the requirement to lay charges when a comprehensive investigation reveals reasonable grounds to believe that an offence has been committed.

In addition, best practice includes:

- All domestic conflict/violence related occurrences are noted as DV on the police records management system and as Spousal Abuse (*SAB*) on JOIN;
- If reasonable grounds exist to lay a charge, every reasonable effort is made to locate and apprehend the suspect if the suspect is not present when the police arrive;
- If the investigator is unable to locate the suspect, a warrant for the arrest of the suspect is obtained as soon as practicable. Once obtained, the warrant should be entered on CPIC as soon as practicable (no later than 24 hours following the issuance of the warrant); and
- Where resources are available, locating the accused and executing the warrant should be assigned to an investigator. The warrant should not be left on the system with no follow up.

7. Mutual or Dual Charging

It is recommended that Police Service policy and procedures include a statement regarding the importance of determining which party is the principal or dominant aggressor and lay charges against that individual when a comprehensive investigation reveals reasonable grounds to believe that an offence has been committed. [See Chapter 19 in the DV Handbook](#) for information regarding this assessment, which considers the following:

- Distinguishing assault from defensive self-protection;
- Recognizing abusive behaviors/characteristics;
- Recognizing victim behaviours/characteristics;
- Determining the context of relationship to assist in identifying abusive partner;
- Ascertaining injuries consistent with victim; and

- Establishing injuries consistent with abuser.

It is a best practice for Police Service policy to include a requirement to consult with the local Crown prosecutor prior to charging both parties or laying a charge against a victim in an abusive relationship.

8. Criminal Proceedings Against the Victim

It is recommended that Police Service policy include a statement advising caution when considering laying charges against the victim in an abusive relationship as charges against a victim can be considered as revictimizing the victim. Potential charges against a victim include perjury, public mischief, contempt of court, breach of probation/recognition, etc.

Best practice is:

Police Service policy includes a requirement to consult with senior or specialized DV investigators and the local Crown prosecutor prior to laying a charge against a victim in an abusive relationship.

9. Bail Procedures

Each Police Service is required to have a separate policy or procedure in relation to the release of an accused in IPV/DV cases.

Best practice is:

Prior to Considering Release

- Complete the FVIR (mandatory);
- Obtain a criminal history of the accused;
- Determine whether there are outstanding charges (especially whether the accused is on release for actions relating to the same victim);
- Where there has been a breach of release conditions (or about to be a breach), members will comply with the Police Service's procedures relating to revocation of bail. It is important to avoid the situation of conflicting orders of release. If the accused is on release (especially in relation to charges against the same complainant), the policy and procedures should address the method of bringing the previous charges before the court to speak to bail in conjunction with the new charges;
- Review current and previous court orders (EPO, Bail, Probation, Conditional Sentence Order, Peace Bonds, etc.) especially in relation to conditions regarding the same victim;

- Determine whether there is a history of compliance with release conditions (especially in relation to contact conditions on domestic cases);
- Inquire as to the victim's opinion on the likelihood that the suspect will obey a term of release, particularly a no contact order; and
- Inquire as to whether the victim fears further violence and the basis of that fear. Victims may minimize, misinterpret, or deny risk factors. However, victims are also in the best position to assess the danger posed by their abuser. Victims are keenly attuned to the signals that indicate violence is about to occur. Their assessment of their situation is borne of experience and is worthy of consideration with respect to implications for behavior including aggression and stress response.

Best practice also includes:

- Obtaining information regarding whether the accused has a history of alcohol or drug problems or mental illness (especially previous suicide ideation); and
- Gathering details of previous domestic violence charges and convictions (especially in relation to previous incidents involving the same victim).

Bail Hearing

When the investigator has determined that a denial of release is appropriate, best practice is:

- Members speaking to bail in DV/IPV cases should be familiar with the FVIR rationale in order to provide appropriate submissions to the JP;
- Notify the victim of the date and time of the bail hearing;
- Member speaking to bail has all the material referred to above prior to speaking to bail;
- Obtain a s. 516(2) order of no contact if the bail hearing is adjourned;
- Obtain a s. 515(12) order if bail denied;
- Rationale for denial of bail clearly set out in police report; and
- Recommended conditions clearly set out in police report should bail be granted.

Police are responsible for notifying the victim of the outcome of the bail hearing and first court date (whether bail adjourned, bail denied, or bail granted). Amendments to the *Corrections Act* (2007), provides that victims of crime are entitled to receive information regarding an offender who caused them harm. Best practice for police is to advise correctional centers of the need to contact the victim upon the offender's release when bail is granted.

Release from Custody

Where release is appropriate, and the investigator is considering a method of release of an accused, the following release options are **INAPPROPRIATE** *in most situations* due to an absence of conditions to protect victims:

- Summons (to Court).
- Appearance Notice.
- Promise to Appear, *alone, unless accompanied by an Undertaking with appropriate safety conditions.*

When the accused is being released from custody, best practice is to consider the following as conditions on release:

- No contact, directly or indirectly, with the victim, children, or other specified person(s);
- Geographical area restrictions from going within 200, 500 or 1000 meters of any specified places such as the victim's residence, place of work, children's schools;
- Abstaining from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription;
- Prohibition from possessing firearms, and surrendering any license, registration certificate or authorization for firearms;
- Reporting at specified times to probation, a peace officer, or other designated person; and
- Other conditions as appropriate to the individual case (consult the victim).

In addition:

- Procedures should include that the accused be required to attend court within 7 days of the initial occurrence, wherever operationally possible;
- Include a copy of the release with the Prosecution Package; and
- If the accused is released by police, police are responsible for notifying and informing the victim as soon as possible of the conditions of release of the accused.

Preparing For Crown and Court

Best practice is:

- Prepare a complete package for the prosecution (including photos);
- Ensure personal information (addresses/contact info) is highlighted to be redacted by the Crown or if police prepare defence disclosure, redact all personal information that might allow the accused to find the victim;
- Advise victim of release conditions/bail status;
- Advise the victim of the first appearance date;

- Advise victim of right to submit a Victim Impact Statement and Request for Restitution, if appropriate;
- Offer support services including court preparation – Victim Services Unit (VSU); and
- Provide victim with contact information for the local Crown Prosecutors’ Office.

10. Case Management Strategies

Effective Case Management

The **Family Violence Investigative Report (“FVIR”)** (Appendix A) is a mandatory report designed to be completed within 12 hours of the investigation of incidents involving DV or intimate partner violence. The “Officer’s Notes” sections are to be completed where applicable and used for preparing the police report.

Safety considerations are an important follow-up to the FVIR, which may identify specific areas of risk for the victim. [*Strategies for Safety: Considerations for Individuals Experiencing Family Violence*](#) was designed to provide safety planning information to professional and front line responders who are working with individuals impacted by family violence. It provides information and questions that assist in beginning the conversations around the issues of victim safety and engaging other community partners as required and appropriate.

Victim Service Units are a collaborative team of professionals who operate out of police services across the province. Victim Service Units assist in safety planning in partnership with police and in collaboration with the victim. It is important that police lead the process as they identify areas of risk through the investigation which guides the development of strategies for safety. Victim Service workers will work closely with the victim to understand and support their needs.

A referral may be made to the [Integrated Threat and Risk Assessment Centre \(I-TRAC\)](#), the provincial, multidisciplinary threat assessment unit dedicated to reducing domestic violence, non-domestic violence and stalking. If consultation is required, I-TRAC staff members are available to provide timely advice on risk management in the service of protecting victims. Consultation can occur and referrals can be made by calling (780) 509-3415.

In every case of Domestic Violence (DV) or Intimate Partner Violence (IPV), police officers, with the consent of the victim, should consider applying for an Emergency

Protection Order (EPO) under PAFVA. The fact that criminal charges have been or may be laid against the accused/respondent does not preclude the seeking of an EPO. It is important to note that criminal release conditions will only be in place until there is a disposition in the criminal matter. A protection order may remain in effect for up to a year.

In every case where a child is the victim, is exposed to, or has witnessed IPV/DV, the police shall contact Human Services. (See Section 14: Children Exposed or at Risk)

In addition to the above, police members should consult with supervisors, senior members, and subject matter experts in more complex investigations. Further, police members should consider contacting the local Crown Prosecutors' Office for either informal advice on the investigation or a formal opinion regarding reasonable likelihood of conviction.

A. Safety Planning

Police members should ensure that issues surrounding the victim's safety are thoroughly addressed, including providing the victim with information on safety planning and assistance within the community. The [*Strategies for Safety: Considerations for Individuals Experiencing Family Violence*](#) booklet is available by clicking on the link. It is a resource booklet designed to assist police and frontline responders in providing safety information to victims of family violence. The booklet will provide police with a starting framework to ensure that, following the completion of the FVIR, issues of safety are addressed with the victim. Where there is a risk of repeat victimization, the member should warn the victim about the potential risk to the victim or any children, and assist them with completing a safety plan. Local Victim Services Units are also able to assist with safety planning and community referrals.

B. High Risk and Repeat Offenders

Best practice should address the investigative supports that may be available to assist in cases determined to be high risk, or where there is a repeat offender with a history of domestic violence with the same or multiple victims, including:

- The use of physical surveillance;
- Electronic interception;
- Video and photographic surveillance; and
- Victim/witness protection services.

The Alberta Witness Security Program may be available to assist. The Witness Security Coordinator can be reached at 780-638-3974 or at jeff.w.anderson@gov.ab.ca.

Additionally, best practice is that investigators will:

- When available, obtain the details of previous domestic violence charges and convictions to be included in the Prosecution Package;
- Conduct safety planning;
- Contact the National Flagging Coordinator, Alberta Justice and Solicitor General, at (780-427-6064) if the police officer believes an accused should be flagged or considered for a Dangerous Offender or Long Term Offender designation;
- Assist the Crown prosecutor with gathering documentation when dangerous offender, long term offender, or Section 810.1 or 810.2 applications are contemplated pursuant to the *Criminal Code*; and
- In cases involving high risk, or where there is a repeat offender, the offender should be entered into the "SIP" category on CPIC as soon as possible, and no later than within 24 hours. Victims may also be entered into the "SIP" category on CPIC.

C. Integrated Threat and Risk Assessment Centre (I-TRAC)

Threat assessment is performed by I-TRAC to offer assistance, to all law enforcement and criminal justice agencies; including prosecutors and corrections, in the management of high risk non-domestic, domestic violence, criminal harassment and stalking occurrences. The head office is located at ALERT West Campus, 18807-Stony Plain Road, T5S 0C1 Edmonton, Alberta.

I-TRAC services include:

- Assessing the level of risk an individual poses;
- Providing case management strategies;
- Training;
- Safety planning;
- Expert testimony;
- Facilitation of new identities in conjunction with Confidential Services for Victims of Abuse, (CSVA) Program; and
- Facilitating access to certified threat assessors, forensic psychologist, and external agencies including: mental health and specialized law-enforcement and criminal justice units.

Some of the benefits of I-TRAC involvement include:

- Primary investigators are better equipped to prioritize their workload in areas such as case management, officer safety, and deployment of staff and/or other resources;
- Police, courts, corrections, and child protection workers are better informed of whom they are dealing with and how they might better manage potential risk;

and

- Criminal and family courts have access to known history of an individual and the level of risk he or she poses.

D. Protection Against Family Violence Act (PAFVA)

The [Protection Against Family Violence Act](#) (PAFVA) is a provincial statute intended to provide protection for victims, children and the elderly impacted by family violence by providing a procedure to obtain Protection Orders and Warrants Permitting Entry. PAFVA is civil in nature where the legal test is based on a balance of probabilities. Victims of family violence are referred to as Claimants with offenders referred to as Respondents. Persons applying for a Protection Order on behalf of a Claimant are known as Applicants. See [Chapter 24 in the DV Handbook](#) and the [PAFVA Guide](#) for an in-depth description of PAFVA Protection Orders and Warrants Permitting Entry.

Best practice is:

- In every case of domestic violence or conflict where the criteria is met, the police member seeks the victim's consent and applies for an EPO on behalf of the victim. Obtaining an EPO does not preclude the use of any other tools such as bail under the *Criminal Code* or the *Child, Youth and Family Enhancement Act*;
- The following criteria must be met:
 - The Claimant is a family member (dating relationships do not meet the criteria);
 - Evidence of an act of family violence;
 - The Claimant has reason to believe that the Respondent will continue or resume carrying out family violence;
 - Seriousness or urgency requires an EPO to ensure the safety of a Claimant; and
 - Claimant's consent. In cases where the Claimant is unable to provide consent, an Applicant, with leave of the Court, may apply on behalf of the Claimant. Cases involving very young children or where the Claimant has been rendered incapable of communicating are examples where the Court may grant permission to apply;
- Police members are responsible for serving the Respondent with a copy of the EPO, completing an Affidavit of Service, filing the documentation in QB, and submitting the information to CPIC (regardless of whether the application was made by police or the Claimant);
- PAFVA documents are entered onto CPIC as soon as practicable;

- Where it would not interfere with operational concerns, police members assist Claimants by serving other documents related to PAFVA (Confirming Orders, QBPO, Notice to Respondent, Amended Orders, etc.);
- All breaches of PAFVA Protection Orders are investigated as offences under s.13.1 of PAFVA;
- In those cases where an investigation reveals that there are criminal offences in addition to a breach offence, all charges are laid on one Information; and
- Victim Services personnel be trained to provide information to Claimants about PAFVA.

11. Firearms

Best practice includes the following:

- Follow the Police Service procedures on responding to occurrences involving firearms, regardless of whether any charges are laid;
- When responding to IPV or DV calls, officers shall determine if firearms are located in the residence or are accessible to the party making the threats;
- Where firearms are present or accessible, determine whether there is compliance with the sections of the *Criminal Code* and *Firearms Act* relating to safe storage of firearms (See [Chapter 25](#) on Firearms in the DV Handbook);
- Where appropriate, seize firearms and related documents with a warrant in compliance with the *Criminal Code*;
- Providing grounds exist, perform seizure without a warrant in compliance with the *Criminal Code*. If exigent circumstances such as possible danger to the safety of any person make obtaining a warrant impracticable, the responding member may conduct a warrantless search;
- Where appropriate, obtain *preventative* prohibition orders in compliance with the *Criminal Code*;
- Where appropriate, obtain prohibition as a condition of bail in compliance with the *Criminal Code*; and
- Obtain a prohibition order for use and possession of regulated weapons if such person lives with or associates with a suspect who is the subject of prohibition order.

12. Children Exposed or at Risk

The procedures should include a direction that Human Services is to be contacted in every case where children are involved in the relationship, have been exposed to, or witnessed domestic violence. Domestic violence is highlighted in the [Child, Youth and](#)

[Family Enhancement Act](#), as emotional injury which is defined as exposure to domestic (family) violence.

Children exposed to domestic violence are affected and may require intervention and supports. *Children do not have to directly witness the violence to be negatively impacted*, they may not be in the home at the time of the incident, but are affected. Children can be exposed to family violence in a variety of ways, including:

- Witnessing the violent act directly;
- Hearing a violent event;
- Being directly involved physically (i.e., assaulted accidentally, or used as a shield);
- Physically intervening in a violent event;
- Experiencing the aftermath of a violent episode;
- Being forced to participate in the abuse; (i.e., physically assault or taunt the non-offending parent); and/or
- Being used as a “spy” or pawn.

The impact may be immediate and visible or delayed and subtle. Exposure to domestic violence can impact children in several ways including, but not limited to, brain development being altered, increased difficulty dealing with anxiety and stress, mimicking anti-social behaviours, developing healthy emotional intimacy, addictions issues, and low self-esteem.

Intervention services can be provided by Human Services to support children and families. Human Services receive referrals from a variety of sources including police, other professionals, and community members. Trained caseworkers assess allegations of child abuse to ensure the well-being of children. A variety of services and supports are available to children and families under the CYFEA.

The document: [Responding to Child Abuse in Alberta: A Handbook](#), outlines the protocols on reporting and investigating child abuse.

13. Support to Victims

Victims of IPV or DV may experience severe trauma, particularly when the abuse has continued for an extended period of time. Victims may have experienced years of cumulative stress and depression resulting from abuse. Hopelessness, combined with what they may perceive as catastrophic loss with the arrest of the perpetrator, or loss of

financial support could result in suicidal ideation. It is important for police members to be aware of these risk factors.

The guidelines contained in the [Victims of Crime Protocol](#), and the companion Roles and Responsibilities document, make reference to specific procedures for police officers when dealing with victims, such as those affected by domestic violence. These victims are entitled to “outreach” services due to the serious and violent nature of the offence. The procedures should note police are responsible for:

- Notifying victims that they can access a Victim Services program;
- Providing information to the victim on services that are available, and offering immediate contact with Victim Services who may be able to assist with the following:
 - Addressing any special needs of the victim (i.e. dealing with communication barriers);
 - Providing a localized pamphlet on domestic violence that includes information on local resources to assist victims; and
 - If charges are laid, providing updates regarding the criminal justice process to the victim;
- 24hr crisis response, as well as information about the criminal justice process, practical emotional support, and referrals to community agencies based on need (i.e. shelter, counseling);
- Court orientation and support; and
- Police may delegate to Victim Services Units (VSU) their responsibility to provide victims of crime with more detailed information about how to prepare and submit a victim impact statement, how to apply for financial benefits, how to request restitution, and other assistance and programs.

For detailed responsibilities of police when assisting victims through the investigation and criminal justice processes, please refer to page 72 of the Victims of Crime, Roles and Responsibilities document which provides a chart showing when police and/or Victim Services is responsible for assisting victims with notification about the investigation and criminal justice processes. To request copies of this document, contact the Victims Programs Office at 780 427-3460 or link to: [Victims of Crime Protocol](#).

In addition to completing a comprehensive investigation, best practice for police members responding to domestic violence occurrences includes:

- Attending the residence of the victim to ensure peaceful entry when the victim or suspect returns to take possession of personal belongings if concerns for the

victim's safety exist. If either party contests property removal, the member should advise the parties of the need to seek a civil remedy; and

- Arranging for transportation to a shelter or place of safety, if necessary, with the location remaining confidential and not released to the suspect and third parties.

14. Specialized Victims

In addition to the assistance outlined above, best practices include direction that, certain victims require information specific to their situation. It should be noted that, in addition to police-based Victim Service Units, some communities have specialized community-based Victim Services Agencies that focus their support on one or more "specialized" groups of victims such as the following:

Aboriginal Victims

Best practice includes the recognition of the special history and circumstances of Aboriginal people to ensure culturally sensitive services. Considerations may include the following:

- Resources may be very limited for the victim and the community;
- The perpetrator could be an important member of the community;
- The makeup of the community and availability of support systems are unique and vary between communities. Be aware of the availability of support networks for victims in your area;
- The perpetrator may have possession of the house or the house may be on family land that belongs to the perpetrator;
- Suspicion about the criminal justice system may discourage many Aboriginal people from seeing police intervention as an option;
- Many victims in cases of family violence fear police will take their children; and
- In some communities culturally appropriate services may be limited or not exist at all. In many instances there are no culturally appropriate services.

Further information at the [National Aboriginal Circle Against Family Violence](#), the [National Family Violence Prevention Program \(Aboriginal Affairs and Northern Development Canada\)](#), and also at the [Aboriginal Families](#) webpage on the Human Services site.

Honour-Based Violence Considerations

Police have experience responding to incidents of family violence; however they may be less familiar with the specific context within which an incident of family violence involving Honour Based Violence (HBV) or Forced Marriage (FM) may occur. Understanding the context and the unique characteristics of crimes committed in the

name of honour will assist police members in effective interventions, assessing the risks associated with threats of HBV and FM, responding to the unique victim vulnerabilities present, and identifying patterns that may expand the scope of their investigation. Further information is available at: [Forced Marriage & Honour-based Violence](#).

Immigration Status

Best practice includes the following considerations:

- Police may need to explain the role of the police in Canada as many new immigrants may be fearful of law enforcement based on experiences in their country of origin;
- Members should explain that police will arrest an abusive partner if an offence has occurred and there are reasonable and probable grounds to do so;
- If the victim is a **Canadian citizen or a permanent resident** they cannot be deported for leaving an abusive situation;
- If the victim does not know whether or not he/she is a Canadian citizen, they may call their local citizenship office; and
- Victims should obtain legal advice regarding their immigration status particularly if the alleged abuser has confiscated the victim's documents.

Further information may be obtained at [Citizenship and Immigration Canada](#) or by calling 1-888-242-2100.

Language Barriers

When a language barrier is apparent, police members **should not** rely on a family member to interpret during interviews. Police members should check their Service policies with respect to translation services available.

Victims Programs has contracted a language translation service to provide a phone based translation service for all Victim Service programs which receive funding through the Victims of Crime Fund. This translation program is designed to provide Victim Services advocates an ability to communicate with victims when language is a challenge. The service provider is [CanTalk \(Canada\) Inc.](#), a global service company that provides a number of communication services including immediate interpretation and translation services in over 110 languages, twenty-four hours a day, seven days a week. Victim Services programs access this service by calling a toll free number and providing a unique identifier number. Please note that [CanTalk](#) is only available for Victim Services Units and that various police agencies will also have translation services available, through their Police Service. For more information about [CanTalk](#) services and a list of languages available please visit: www.cantalk.com

Additional information regarding specialized victims may be obtained from the following websites:

- General victims of crime information: www.victims.alberta.ca
- [Victims of Crime Protocol](#)
- [Alberta Victim Services Programs Directory](#)

Victims with disabilities

Some victims of IPV or domestic violence may have special needs because of their limited physical or cognitive abilities. These factors increase their vulnerability and make it extremely difficult for them to report their victimization, call for assistance or in some cases participate fully in the investigation and prosecution of their case.

Best practice is:

- Victims with special needs should be referred to specialized support services, where available, to ensure they receive protection, physical assistance, medical treatment, or other services as needed; and
- Ensure that victims are in a safe environment before leaving the scene. It is important to recognize that the people (family members or service providers) the victim is dependent on to meet their needs could be the offender and that an alternate caregiver for the victim may be needed.

Sexual and Gender Minorities (Lesbian Gay, Bisexual, Transgender, Queer) (LGBTQ)

Sexual and gender minorities encompass a constellation of identities, including lesbian, gay, bisexual, transgender, transsexual, intersexual, and queer individuals. LGBTQ is a common initialism used to represent these identities. The concerns of sexual and gender minority victims of domestic violence may be unique. In Canada, sexual minorities are one of the three most targeted groups for hate crimes. Of all the hate crimes committed, those targeting sexual minorities (or those perceived as such) are the most violent in nature, often requiring medical attention.

Police members may not recognize initially that an incident occurred in the context of intimate partner violence as victim and perpetrator may downplay their relationship for fear of being “outed” to family, friends or the community. It is only upon further investigation that the relationship becomes apparent. Sexual and gender minorities may fear being “re-victimized” by encountering homophobia, transphobia, heterosexual or gender bias by law enforcement based on past negative experiences or may anticipate it based on personal stories they may have heard by other in the LGTBQ community.

In addition, the abuse suffered by sexual and gender minority victims may be qualitatively different than that experienced by a heterosexual or a cisgender (when an

individual's self-perception of their gender matches the sex they were assigned at birth) victim. Internalized homophobia may also be a factor for victims who feel that “no one else will love them” so they cannot leave an abusive partner.

Best practice is:

- Consultation with a recognized LGBTQ community organization should be considered; and
- Caution must be taken to ensure that the physical danger involved in same-sex intimate partner violence is not underestimated, especially when a physically smaller partner may be the perpetrator.

15. Training

Best practice includes ensuring that IPV or domestic violence training is available to all police members.

Every Police Service should ensure that it has trained domestic violence investigators. Training should be approved by Alberta Justice and Solicitor General and satisfy the key elements outlined in the curriculum described below:

- The dynamics of abusive relationships including the effects of physical assault and psychological abuse;
- The initial police response to domestic violence occurrences, including officer safety;
- The need to complete the FVIR in all IPV incidents of domestic violence;
- Interviewing, including interviewing child witnesses;
- Collection, care and handling of evidence;
- Search, seizure and warrants;
- Firearms seizures and legislation;
- Charge, dual charges and dominant aggressor policy;
- Strangulation investigations;
- Court orders; (i.e. Restraining orders, peace bonds, Emergency Protection Orders, judicial interim release orders, other relevant legislation and probation orders);
- Victim assistance and local Victim Services;
- Victims with special needs (disabilities, cultural, e.g. honour based);
- Risk factors for further violence and homicide;
- Procedures relating to post-arrest;
- Strategies for addressing repeat victimization and high-risk cases;
- Safety planning;

- Issues relating to children who are exposed to, witness, or experience violence;
- How to establish domestic violence working groups and collaborate with the community including women’s shelters;
- Encourage first responders to participate in cross-sector training; and
- Cultural considerations.

16. Monitoring and Supervision

Best practice includes:

- Requirements for supervisors to monitor and ensure, compliance with the Police Service’s procedures related to domestic violence occurrences;
- Designation of a domestic violence coordinator who will be responsible for:
 - Monitoring the response to, and investigation of, domestic violence occurrences, including compliance with the Police Service’s procedures by supervisors, officers and other members;
 - Monitoring and evaluating follow-up to domestic violence cases;
 - Liaising with the Crown prosecutor, Probation, Parole Services, Victim Services, Human Services, Shelters, and other local services and community representatives responsible for responding to issues related to domestic violence occurrences; and
 - Informing the public and media about the Police Service’s domestic violence occurrences procedures.

17. Occurrences Involving Police Members

Best practice includes:

- A procedure that sets out the steps to be followed when a domestic violence occurrence involves a member of its own Police Service or another Police Service;
- In addition to the general procedures involved in non-member incidents, best practice is to reflect the following considerations: victim safety, objectivity, accountability, confidentiality and lack of bias towards the member;
- Each agency should consider the involvement, whether it be as primary or supportive, of the respective Professional Standards Branch when investigating member involved domestic violence incidents; and
- A protocol for contacting ASIRT in appropriate circumstances. The [Alberta Serious Incident Response Team \(ASIRT\)](#) is an independent investigative agency whose mandate is to investigate police misconduct and incidents that come within the scope of s. 46.1 of the *Police Act*. Specifically, ASIRT investigates incidents where the actions of a member officer cause serious injury or death or, incidents of a serious or sensitive nature.

Appendix #1 - Includes a document entitled, “Signs to Look for in a Battering Personality.”

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies’ practice guidelines.

Appendix #5 - Includes a sample form that may be used by police to report children exposed to family violence. Because of the *Child, Youth and Family Enhancement Act*, there may be a positive duty on police to report children exposed to domestic violence to Children’s Services.

Appendix #7 - Includes an “Information Sheet on Sworn Videotaped Statements in Domestic Violence Occurrences.

Appendix #8 - Includes a “Domestic History Questionnaire,” recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Appendix #22 – Includes The Family Violence Investigation Report.

Appendix #23 – Includes the Alberta Police Services and Women’s Shelters Working Relationship Guidelines.

Gathering and Documenting Evidence

When gathering and documenting evidence, police officers should follow these procedures:

➤ **DOCUMENT:**

- Victim's, suspect's, and child's condition and demeanour;
- Torn clothing;
- Smearred make-up;
- Whether the victim is pregnant;
- Disarray in house;
- Suspect's symptoms of alcohol or controlled substance use;
- Ask victim and suspect if they have pain even if there are no visible injuries;
- Determine whether the victim was physically assaulted and whether any internal or external injuries occurred and noting their response (including where possible on a diagram).

Be sure to look for and document:

➤ **WITH RESPECT TO VICTIM:**

- Signs/symptoms of strangulation/choking (refer to Strangulation/Choking section);
- Injuries under hair;
- Injuries behind ears;
- Bikini area injuries.

➤ **WITH RESPECT TO SUSPECT:**

- Offensive injuries (e.g. scraped knuckles);
- Injuries inflicted in self-defence by victim;
- Document the size of the victim and the suspect in relation to each other. This will help to determine the dominant aggressor;
- In apparent 'mutual combat' situations, determine the dominant aggressor (dual arrests are discouraged, but not prohibited (refer to section on Dominant Aggressor/Dual Charging).

➤ **PHOTOGRAPH:**

- Crime scene (e.g., overturned furniture or destroyed property, blood stains);
- With the victim's consent, the victim's injuries at the time of the occurrence;
- With the victim's consent, the victim's injuries within 24-48 hours of the initial occurrence; when the injuries are more visibly apparent (if possible by a member of the same gender. Consideration should be given to using Polaroid photographs when appropriate);
- Suspect's injuries (e.g., offensive injuries such as scraped knuckles or injuries depicting self-defence actions of victim such as scratch/bite marks to hands).

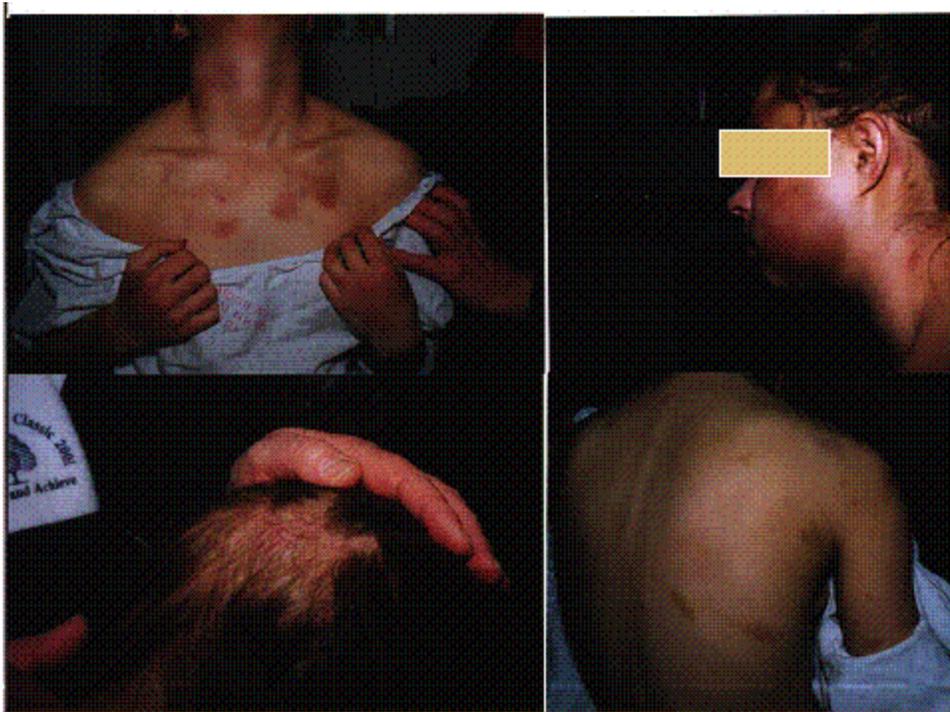
This victim sustained serious structural injuries to the left side of her face requiring surgical reconstruction. The first photograph taken the day of the offence does not reflect the serious harm. Below, the photograph taken a few days after the offence is a much better reflection of the trauma actually sustained.





Courtesy San Diego Domestic Violence Unit

Left: Taken first day of assault Right: 4 days after assault



Photograph all signs of injuries

- **GATHER ANY OTHER EVIDENCE, INCLUDING:**
 - Voice message tapes;
 - Torn and/or blood stained clothing from suspect and victim;
 - Damaged phone;
 - Weapons;
 - Anything used as weapon;
 - Fingerprint evidence if the suspect has broken into the victim's residence;
 - Seize firearms/weapons.

- **DETERMINE WHETHER:**
 - The suspect has any guns, or any access to other firearms or other weapons;
 - The suspect has a licence, registration certificate or authorization, or a document issued under the *Criminal Code* provisions;
 - The suspect ever had a licence, registration certificate or authorization for a firearm revoked.

- **OBTAIN MEDICAL INFORMATION:**
 - Victim's consent to release of medical information;
 - Hospital/Emergency Room records;
 - Sexual Assault Response Report;
 - Victim's spontaneous utterances made to medical staff.

- **OBTAIN AND DISCLOSE 911 TAPES THAT RECORD THE CALL FOR SERVICE.**

- **OBTAIN AND DOCUMENT THE NAMES AND DATES OF BIRTH OF ALL CHILDREN PRESENT, OR WHO NORMALLY RESIDE, IN THE HOME. INCLUDE INFORMATION ON THEIR WHEREABOUTS AFTER THE INCIDENT. NOTE THAT SUSPECTED CHILD ABUSE MUST BE CROSS-REPORTED.**

- **CHECK FOR THE EXISTENCE OF ANY RESTRAINING ORDERS, EMERGENCY PROTECTION ORDERS, PEACE BONDS, PROBATION ORDERS ETC. AGAINST THE SUSPECT.**

- **BE SURE TO OBTAIN SEARCH WARRANTS WHEN REQUIRED TO OBTAIN EVIDENCE.**

- **WHERE THE VICTIM IS BEING STALKED/HARASSED, INVESTIGATIVE TECHNIQUES TO GATHER CORROBORATIVE EVIDENCE MIGHT INCLUDE THE FOLLOWING:**
 - Photograph any items vandalized, damaged or written on;
 - Check for fingerprints on vandalized items or other objects sent to or left for the victim;
 - Obtain telephone and cellular phone records of the victim and suspect, which may provide evidence of calls;
 - Have the victim obtain a telephone answering machine and retain recorded messages;
 - Interview any potential witnesses, such as neighbours, family members, friends and co-workers;

- Research the suspect’s whereabouts during times of alleged acts to rebut or verify “alibi defences;”
- In serious cases, consider surveillance, which may include static surveillance of the victim’s residence or other locations where harassment is occurring, mobile surveillance of the victim at points of vulnerability (such as times when they are travelling between home and work) to gather evidence that the suspect is following the victim, and surveillance of the suspect.

➤ **SEIZE ALL PHYSICAL EVIDENCE; DO NOT LEAVE THIS EVIDENCE WITH THE VICTIM. COMMON SOURCES OF EVIDENCE INCLUDE THE FOLLOWING:**

- Taped phone messages (record all relevant voice mail messages);
- Letters, notes, documents, photographs, diaries and any other record or item made by the suspect regarding the victim;
- Documents containing the signature and handwriting or hand printing of the suspect; computer hard drives and computer disks containing, for example, e-mail messages and poems by the suspect that concern the victim or were sent to the victim;
- Hard copies of e-mail messages from the suspect to the victim.

Appendix #7 - Includes an “Information Sheet on Sworn Videotaped Statements in Domestic Violence Occurrences.”

Appendix #8 - Includes a “Domestic History Questionnaire,” recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Appendix #9 - Includes a sample “Domestic Violence Investigation” form that can be utilized by police agencies when responding to a domestic violence incident.

Investigating Criminal Harassment

Criminal harassment (“stalking”) has been a crime in Canada since 1993. The primary motivation for stalking another person relates to a desire to control a current or former partner and is often an extension of domestic violence. Indeed, a significant factor in the swift enactment of section 264 of the *Criminal Code* was the increasing concern among criminal justice personnel that existing provisions did not adequately capture “stalking” conduct, which was emerging as a new form of violence against women. In a criminal harassment study based on 2300 North American police files (313 being Canadian); it was found that 75% of female victims of stalking were harassed by an intimate partner with an additional 15% being harassed by an acquaintance. Only 9% were harassed by a stranger. Victims of stalking are predominantly female, encompassing 95% of the victim population.

The psychological effect of stalking on victims can produce an intense and prolonged fear. This fear usually includes an increasing fear of the escalation of the frequency and nature of the conduct (for example, from non-violent to life-threatening) and is accompanied by a feeling of loss of control over one’s life. Victims of stalking are most commonly diagnosed with Post-Traumatic Stress Disorder, which can manifest itself in flashbacks, nightmares, eating disorders, depression, suicidal thoughts, and/or emotional distress. Although stalking in and of itself is harmful to victims, it may also be a precursor to subsequent acts of violence.

Criminal Code of Canada Section 264 (1) - No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

The conduct mentioned in subsection (1) consists of:

- i. Repeatedly following from place to place the other person or anyone known to them;
- ii. Repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- iii. Besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- iv. Engaging in threatening conduct directed at the other person or any member of their family.

Despite its purpose and the best intentions of police and prosecutors, criminal harassment continues to be overlooked in many domestic violence cases. This oversight can have tragic consequences, particularly for victims who have left abusive relationships.⁵⁴

ADVANTAGES IN THE USE OF CRIMINAL HARASSMENT IN DOMESTIC VIOLENCE CASES

- Marriage or cohabitation is not a bar to a conviction under s. 264;⁵⁵

⁵⁴ Stats from the Domestic Violence Death Review Committee “Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002.”

- Evidence of pre-charge conduct and similar fact evidence is relevant to prove two elements of the offence:⁵⁶
 - Whether the victim had a reasonable fear for her/his safety; and
 - Whether the accused knew or was reckless as to whether his/her conduct harassed the victim (the accused implies his/her intent or intends to harass the victim).
- One incident/threat, considered together with the offender’s past conduct towards the victim, could constitute threatening conduct.⁵⁷
- The maximum sentence for criminal harassment is now 10 years (when proceeding by indictment) making it possible:
 - To argue that criminal harassment fits the criteria of a “serious personal injury offence” for the purpose of recognizance orders under s. 810.2 of the *Criminal Code*; and
 - For bringing Long Term Offender or Dangerous Offender applications under Part 24 of the *Criminal Code*. See “Sentencing” section for more information on these applications.
- S. 231(6) of the *Criminal Code* makes murder committed in the course of criminally harassing the victim a first-degree murder offence, irrespective of whether it was planned and deliberate. The relevant inquiry breaks down into four parts:
 - At the time of the murder, was the accused engaged in any conduct that would constitute criminal harassment, as set out in section 264(2)?
 - If so, did the accused know that the victim was harassed or was the accused reckless as to whether or not the victim was harassed by such conduct?
 - Did the accused have any lawful authority for such conduct?
 - Did any such conduct cause the victim, reasonably in all the circumstances, to fear for their safety or the safety of anyone known to them?

Every responding professional should be adept at recognizing stalking behaviours and take the necessary steps to protect the victims with adequate safety planning and intervention. In many cases, this may only be achieved through collaboration with victims, police, Crown, judges, social agencies, treatment and correctional services. Remember, because an abuser’s primary motivation is power and control over the victim, continued attempts to control often occur and intensify after separation.

Some examples of continued attempts to control through harassment may include:

- Physical assaults or threats against those providing refuge to the victim;
- Threats to take the children through custody/access;
- Coercion to withdraw the charges or recant;

⁵⁵ *R. v. Browning* (1995), 42 C.R. (4TH) 170 (Ont. Ct.Prov.Ct.).

⁵⁶ *R v Ryback* (1996), 105 CCC (3d) 240 (BCCA), leave to appeal to SCC refused, [1996] SCCA. No. 135 (QL). Also *R. v S.B.*, 1996 Carswell, Ont 1576 (Ontario Court of Justice, General Division) (QL) held that in domestic violence cases, evidence of pre-charge conduct is frequently admissible to provide narrative context or background to the charges before the court.

⁵⁷ *R v Kosikar* (1999), 138 CCC (3D) 217 (Ont. CA), leave to appeal to SCC refused (2000), [1999] SCCA No. 549 (QL).

- Threatening messages to the victim through body language that will go unnoticed by all others present;
- Engaging family or friends to intimidate the victim;
- Repeated requests to meet or speak with the victim;
- Intervening in the delivery of information from the court to the victim so that the victim will be unaware of when to appear;
- Requests for mutual orders of protection as a way to continue control over the victim and manipulate the court;
- Continually testing the limits of parenting time or support arrangements (e.g. arriving late or not appearing at appointed times, failing to make support payments);
- Threats and/or initiation of custody fights to gain leverage in negotiations over financial issues;
- Initiating retaliatory litigation against the victim or others who support the victim;
- Enlisting the aid of parent rights groups to verbally harass the victim (and sometimes courts) into compliance with demands;
- Using any evidence of damage resulting from the abuse as evidence that the victim is an unfit parent;
- Information gathering and defamation of character (i.e. garbage grabs, internet research, social media site blogs, mail theft, etc.);
- Break and enter, theft of sentimental objects, tampering with the victim's house and property (i.e. vehicles, moving objects in the yard, tampering with BBQs, gas lines, railings, etc.);
- Surveillance of the victim or her new romantic interests/confidants.

The following sections 1-13 are taken from Justice Canada's "Criminal Harassment: A Handbook for Police and Crown Prosecutors" (2004), also available online at <http://www.justice.gc.ca/eng/pi/fv-vf/pub/har/index.html>.⁵⁸

1. VICTIM INTERVIEW

- Obtain a detailed chronology of all relevant incidents, including words uttered or gestures made by the suspect and conversations and other communications with the suspect;
- Determine whether and how the victim has directly or indirectly, through family or friends, indicated to the suspect that any contact is unwelcome (dates, times, and methods are important evidence to show offender intent);
- Ascertain where and when the conduct occurred, as these factors can affect the victim's fear;
- Ascertain whether the incident(s) involved others or occurred in the presence of others (such as family, friends, co-workers and/or neighbours);
- Obtain background information on any previous relationship with the suspect (such as whether there have been any previous incidents of domestic violence);
- Obtain information about the impact of the suspect's conduct on the victim. Has the conduct caused the victim to fear for their safety or that of someone known to them and if so, how?
- Has the victim taken any security or preventative measures, such as getting an unlisted telephone number, or changing their residential or work address?

⁵⁸ Justice Canada. "Criminal Harassment: A Handbook for Police and Crown Prosecutors," March 2004.

- Has the victim sought medical treatment or counselling?
- Where the victim and suspect had a prior intimate relationship involving children, are they currently involved in a custody/access legal action?
- Determine what, if any, custody or access terms and conditions apply;
- Is the suspect subject to any peace bonds; civil restraining orders; recognizance, bail or probation conditions; or weapons or firearms prohibition orders? If so, can the victim provide a copy of the order(s) and/or the relevant details?
- Does the suspect have any guns, or any access to other firearms or other weapons? Does the suspect have a license, registration certificate or authorization, or a document issued under the *Criminal Code* provisions? Has the suspect ever had a license, registration certificate or authorization for a firearm revoked?

2. **ADVICE TO THE VICTIM**

- That the potential threat remains, even if they have reported the incident to police and/or have obtained a restraining order;
- They have a primary role to play in ensuring their own safety and that the victim may be required to alter their lifestyle and usual routines, schedules, transportation routes and places regularly frequented;
- **Have NO** contact with the suspect whatsoever – use third parties for child access issues;
- Do not change your telephone number, get an additional number or call display instead—often offenders use telephone calls and voice messages to vent. If this is unavailable, the offender may resort to face-to-face contact, which heightens the victim’s risk;
- Do not block emails – set-up another email account that you want others to email and let the suspect continue to email to the old email account – again, blocking emails may put the victim at increased risk;
- Carry a cell phone at all times and know your current location – police are unable to immediately determine a person’s whereabouts via a call to 911 on a cell phone;
- Maintain a log of all contact (date, time, nature and summary of contact) with the suspect, including drive-bys and all unusual events, no matter how trivial they seem or whether they can be definitively attributed to the suspect;
- Retain for police all notes, gifts, telephone answering machine tapes and messages, and electronic mail and postings, and any other evidence related to the investigation;
- Not to handle or open any items received from the suspect, in order to prevent further distress to him or herself and to ensure that they do not contaminate the evidence for purposes of forensic analysis;
- To use available telephone services that may help police trace telephone calls. Such as *57 trace feature (this is a free feature that the police can get detailed information from) and pay-per-use services may include “last call return” and “name that number” (which enables the victim to obtain the name and locality associated with a given telephone number);
- Inform relatives, neighbours, friends, co-workers, employers, property managers and doormen of the on-going harassment and, if possible, provide them with a photograph of the suspect;
- Carry a copy of any criminal or civil protection/restraining order at all times.

3. VICTIM WELFARE

Take appropriate action to increase the victim's security, such as the following:

- Inform the victim about the importance of security measures, such as making safety or contingency plans; carrying a cellular phone; installing better locks, improved lighting and a security system; getting a guard dog; and identifying safe places, including police stations, domestic violence shelters and busy public areas;
- Have a panic alarm installed, either privately or through local victim protection programs;
- Flag the victim's address on police databases (such as premise history on CAD systems);
- Request special attention from area patrols, parade briefings, and notify the watch commander;
- If the suspect does not have any firearms, apply for a preventative prohibition order under section 111 of the *Criminal Code*. If the suspect does have firearms, seize the firearms pursuant to section 117.04 of the *Criminal Code*;
- Relocate the victim when the threat level is high or, in extreme cases, suggest that the victim consider seeking a new identity;
- Address the special needs of victims who face particular barriers. Cultural, communication, mobility, age and other barriers can increase the victim's risk;
- Help the victim protect their children. Children's safety and emotional health are affected, whether or not they witness the threats or violence;
- Help the victim contact victim services for support and assistance as soon as practicable after the complaint has been made. Victim service workers play a collaborative role in helping victims to identify risks and to develop and implement a personal safety plan for themselves and their children;
- Provide the victim with an occurrence report or incident number, and advise the victim to quote that number when making future complaints or inquiries. Provide the name of one officer who will be responsible for coordinating the investigation, even if other officers become involved;
- Victims and police need to be aware of dramatic moments and highest risk times, such as the termination of a relationship; the arrest of the suspect; court dates, custody proceedings; and release or escape from custody.

4. COLLECTING EVIDENCE – INFORMATION TO INVESTIGATE AND DOCUMENT

Ask the victim about, and query all relevant databases for, information on the suspect. Search under known aliases as well. Databases queried should include CPIC, CFRO, SIP, FIP, local and provincial information systems, google and other open-source information, and available probation information (for summary conviction offence details not captured by CNI/Level II).

Where applicable, immigration and refugee authorities may have relevant information. These queries should include searches for criminal records, prior contact with police and contact with police in communities where the suspect may have previously lived. If the criminal record indicates similar charges determine the identity of the victim in those cases and the nature of their relationship with the accused. These queries should cover the following:

- The nature, frequency, and specific details of threats and actual violence against the victim or someone known to the victim (note whether they are increasing in frequency and intensity);
- Any prior threats against the victim or someone known to the victim;
- Any actual pursuit or following of the victim or someone known to the victim;
- Any history of violence (including sexual assault) against the victim or someone known to the victim;
- Any violations of civil restraining orders, peace bonds, recognizances, or bail or probation conditions;
- Any information on the suspect's tendency toward emotional outbursts or rage;
- Other incidents involving threatening, violence or pursuit, including cruelty to animals;
- Homicidal or suicidal behaviour or threats;
- Major stress factors, such as loss of employment or termination of a relationship;
- Vandalism to the victim's property;
- Intense jealousy, including sexual jealousy;
- A history of mental illness;
- Substance abuse problems.

In the case of former intimates involving children, include any history of involvement with child protection authorities.

Determine possession of or interest in weapons or access to weapons (search CPIC including CFRO and FIP). Determine:

- Whether there are any weapons prohibition orders flowing from conviction or discharge, as a condition of bail or recognizance, or in preventative prohibition orders;
- The type of firearms documentation the person has (for example, does the suspect have restricted firearms, and how many firearms does the suspect have?);
- Whether authorities have ever refused or revoked a license, registration certificate or authorization (or Firearms Acquisition Certificate, permit or registration certificate under the former firearms provisions of the *Criminal Code*).

Any information discovered should be entered into the FIP database. This would include any conduct that gives rise to concerns about violence, including criminally harassing behaviour. If the information is not entered in FIP, then Chief Firearms Officers (CFOs) will not be advised. They will not know whether to consider revoking existing licenses and will not have this information when considering new applications. This type of information is crucial when CFOs are deciding whether to issue or revoke a license.

5. ADDITIONAL INVESTIGATIVE TECHNIQUES

Investigative techniques to gather corroborative evidence might include the following:

- Photograph any items vandalized, damaged or written on;
- Check for fingerprints on vandalized items or other objects sent to or left for the victim;
- Obtain telephone and cellular phone records of the victim and suspect, which may provide evidence of calls;
- Have the victim obtain a telephone answering machine and retain recorded messages;

- Interview any potential witnesses, such as neighbours, family, friends and co-workers;
- Production Orders on cellular phone records of the offender (including the cell tower site information) can be sought. Production Orders are similar to search warrants in that they compel third parties to produce documents and data regarding cell phone information. If the offender is blocking his or her telephone number when calling, the victim can use the *57 trace feature (this can only be used on the victim's landline);
- Download any text messages from the victim's cellular phone that were sent by the offender;
- Obtain the IP addresses of the sender when the victim is receiving emails from the offender – this can be used to locate the computer being used. Once the location of the computer being used by the offender is determined, seize the computer via search warrant. Confirm that it was the offender who was responsible for the emails (interview others with access to the computer in question in order to eliminate them as potential suspects);
- Obtain video surveillance footage from public places if the offender is calling from a pay phone or using an internet café;
- Research the suspect's whereabouts during times of alleged acts to rebut or verify "alibi defences;"
- In serious cases, consider surveillance, which may include static surveillance of the victim's residence or other locations where harassment is occurring, mobile surveillance of the victim at points of vulnerability (such as times when they are travelling between home and work) to gather evidence that the suspect is following the victim, and surveillance of the suspect.

6. PHYSICAL EVIDENCE

Seize all physical evidence; do not leave this evidence with the victim. Common sources of evidence include the following:

- Taped phone messages (record all relevant voice mail messages)
- Letters, notes, documents, photographs, diaries and any other record or item made by the suspect regarding the victim
- Documents containing the signature and handwriting or hand printing of the suspect
- Computer hard drives and computer disks containing, for example, e-mail messages and poems by the suspect that concern the victim or were sent to the victim
- Hard copies of e-mail messages from the suspect to the victim.

7. SEARCH WARRANTS

If necessary, seek advice from experts to assess the type of stalking behaviour in question, in order to determine what collateral material might be included in the warrant, and whether to seek a public safety warrant under s. 117.04 of the *Criminal Code* or a weapons search warrant under s. 487. Where reasonable grounds exist, consider executing search warrants of the suspect's residence, vehicle and any recreational property to seek the following:

- Photographs of the victim;
- Photographs, diagrams or drawings of the victim's home or workplace;
- Writings, logs or diaries kept by the suspect that describe stalking activities or thoughts or fantasies about the victim or other victims, including information contained in computer files or on diskettes;

- Personal items belonging to the victim;
- Video or audio tapes that might contain information concerning the stalking, such as surveillance footage;
- Any collateral material—including books, journals, or other materials and electronic documentation or data—describing stalking techniques or containing subject matter dealing with stalking, harassment or violence;
- Any equipment that appears to have been used to “stalk” the victim, such as cameras, binoculars, video recorders, computer hard drives and computer disks;
- Clothing worn by the suspect during the stalking episodes;
- Firearms, weapons, knives and ammunition belonging to the suspect.

Note that firearms and weapons are treated separately under the *Criminal Code*, as shown by the following examples:

- **Section 117.02** authorizes a warrantless search for weapons, except in a dwelling house, where an offence has been committed and the grounds for obtaining a warrant exist but, because of exigent circumstances, it is not practicable to obtain the warrant;
- **Section 117.03** allows police to seize firearms and other items if they find someone in possession of such an item without proper documentation;
- **Subsection 117.04(1)** enables police to apply to a justice for a warrant to search for and seize any weapon (including firearms), prohibited device, ammunition, prohibited ammunition or explosive substance, as well as any licenses, registration certificates or authorizations held by or in the possession of the suspect, if there are reasonable grounds to believe that continued possession of weapons by the suspect poses a risk to public safety;
- **Subsection 117.04(2)** authorizes such a search and seizure without a warrant in exigent circumstances. If police do not find any documents relating to seized weapons, all such documents held by the suspect at that time are automatically revoked.

8. “EXPERT” ASSISTANCE

Investigators may wish to seek the assistance of experts in this area, who may include forensic psychologists and psychiatrists, criminal police threat specialists, computer forensic specialists and firearms investigation specialists. Expert assistance can include the following:

- Risk assessment;
- Risk management strategies;
- Assistance in obtaining search warrants, public safety warrants, or weapons prohibition orders;
- Interview strategies;
- Intervention strategies;
- Expert evidence;
- Determination of characteristics and traits of an unidentified or unknown suspect (suspect profiling).

9. INTERVENTION STRATEGIES

- **Face-to-face deterrence:** Warning the alleged offender shows the victim that the police have taken their complaint seriously, and informs the offender that the behaviour is inappropriate. It also gives the offender an opportunity to explain their conduct at an early stage, so that police can make more informed case management decisions.
- **Peace Bonds, and Emergency Protection Orders:** Should be considered when the victim fears for their safety and the suspect poses a risk of physical violence, but there is insufficient evidence to support a charge. Peace bonds and civil protection orders are not substitutes for criminal charges. Charges should be laid where there is evidence to support the charges.
- **An application for an order under s. 810.2:** Should be considered where there is fear that the suspect will commit a “serious personal injury offence.” Note that the definition of “serious personal injury offence” in s. 752 includes “severe psychological damage.” More extensive conditions are available for a recognizance under s. 810.2 than under s. 810, including a condition that prohibits the defendant from being in possession of firearms or ammunition, and a condition that requires the offender to report to police or a correctional authority. Section 810.2 has been particularly useful in cases where prior incidents of physical harm resulted in a sentence that is now finished, and the accused has contacted the victim again.
- **Prohibition against possessing weapons:** Where appropriate, obtain a weapons prohibition order as a preventive measure.
 - a) If the suspect does not currently possess weapons and police want to prevent the suspect from obtaining them in the future, police can apply to a provincial court judge for an order under section 111 of the *Criminal Code* prohibiting the person from possessing weapons where they have reasonable grounds to believe that it is not in the interests of public safety for the person to possess weapons. This prohibition may last up to five years.
 - b) If the suspect possesses weapons and police have seized them, there will be a disposition hearing (provided the Return to a Justice was made immediately after the seizure and the Application for Disposition was made within 30 days of the seizure). At the hearing, the judge may impose a weapons prohibition order lasting up to five years.
 - c) Consider, as well, an application under section 117.011 of the *Criminal Code*. When a person is prohibited from possessing weapons, this provision is designed to limit their access to weapons belonging to someone with whom they live or associate. Accordingly, even if the suspect is already prohibited by a court order from possessing weapons for up to five years, if the suspect lives with another person who is not prohibited from possessing weapons and who has several firearms, an application can be brought to a provincial court judge for an order against this other person to restrict the suspect’s access to the firearms.

10. ARREST AND CHARGES

A strong and consistent response to criminal harassment requires that all allegations of criminal harassment be taken seriously. If there are reasonable and probable grounds to believe that the suspect has committed the offence of criminal harassment, arrest and charge(s) should likely result in all but the most exceptional circumstances (keeping in mind that different considerations apply in determining whether to make an arrest versus whether to lay charges). Arrest will often be necessary under subsection 495(2)(iii) in order to prevent the continuation or repetition of the criminal harassment, either by having the suspect enter into an undertaking to abide by certain conditions, or by seeking to have the suspect detained in custody.

Where one or more of the incidents giving rise to the complaint of criminal harassment can be construed as a single criminal offence other than criminal harassment, consider laying both the separate charge and the inclusive count of criminal harassment. Examples of other criminal offences include the following:

- Intimidation (section 423);
- Uttering threats (section 264.1);
- Mischief (section 430);
- Indecent or harassing telephone calls (section 372);
- Trespassing at night (section 177);
- Assault (section 265);
- Assault with a weapon or causing bodily harm (section 267);
- Aggravated assault (section 268);
- Aggravated sexual assault (section 273);
- First degree murder (subsection 231(6));
- Failure to comply with a condition of undertaking or recognizance (subsection 145(3));
- Disobeying court order (section 127);
- Breach of recognizance (section 811);
- Failure to comply with a probation order (section 733.1).

Consideration should also be given to laying charges relating to serious incidents in the past.

An accused who has outstanding charges against them and (a) has contravened, or was about to contravene, their form of release, or (b) has committed an indictable offence after having been released in any of the manners described in subsection 524(8), should be arrested under section 524, as well as under the provisions related to the breaches.

Being arrested under section 524 gives the accused notice that any previous forms of release may be cancelled.

11. CODING OR SCORING FILES/INCIDENTS

Many police agencies collect statistical information on the occurrence of criminal harassment incidents. The Royal Canadian Mounted Police collect statistical information on the incidence of

crimes using the Operational Statistical Reporting (OSR) system. Police agencies using the OSR system of coding or scoring files for incidents of criminal harassment should follow the OSR tables, as follows:

- Code: AC41
- Nature of Event: criminal harassment or stalking crimes
- Effective Date: 1993-08-01

Officers using systems other than the OSR system should consult the appropriate people in their agencies to determine the appropriate coding to use in reporting incidents of criminal harassment.

12. RELEASE FROM CUSTODY

Given the nature of criminally harassing conduct, when an officer in charge determines that it is appropriate to release the accused pursuant to section 499 or subsection 503(2.1) of the *Criminal Code*, such a release should normally be made subject to the suspect entering into an undertaking prohibiting contact with, or proximity to, the complainant or other witnesses. If possible, the police should speak to the victim before deciding whether to release the suspect; such a discussion will help the officer assess the risk to the victim and determine which conditions might decrease that risk if the suspect is released. The following undertakings should be considered:

- 1) The accused shall have no contact directly or indirectly, nor be within 200 metres of the victim or any member of his or her family;
- 2) The accused shall not frequent, or be within 500 metres of the victim's home, work, or other places he or she regularly frequents, such as the homes of family members, schools, or daycares;
- 3) The accused should be prohibited from the purchase, possession, and ownership of any firearms or weapons dangerous to the public;
- 4) The accused should be mandated to abstain from the use, possession, or purchase of alcohol or non-prescription drugs. Additionally, the accused should not attend any place that serves or sells alcohol, including private residences where alcohol is present;
- 5) The accused should be ordered to remain in his/her approved place of residence between the hours of 2200 and 0600, 7 days a week except for specific circumstances that must be approved through the accused's court-appointed supervisor in writing, in advance;
- 6) The accused must live where approved, in writing, in advance, through his or her court appointed supervisor;
- 7) The accused must present his or herself at the door, in person, or on a landline telephone, or to police/surveillance vehicle for curfew checks;
- 8) The accused must remain within city limits of the location where the alleged offence occurred unless approved in writing in advance by his or her court appointed supervisor;
- 9) The accused must carry and present on demand of a police officer a piece of up-to-date photo identification and release documentation;
- 10) The accused is to refrain from the use of any and all internet-based social media or networking sites, such as Facebook, MySpace, Nexopia, etc;
- 11) The accused is to refrain from the use of any and all internet-based classified buy and sell sites such as Kijiji, Craigslist, etc;

- 12) The accused is to refrain from owning, possessing, or otherwise utilizing any handheld electronic communication device. Any item currently fitting this description, such as a cell phone or mobile web browsing device, must be turned over to the lead investigator for the duration that this condition remains in effect;
- 13) The accused is to refrain from owning, possessing, or otherwise utilizing a computer or similar device capable of web browsing or location information via the internet, with the exception of employment related use only. Any item currently fitting this description must be turned over to the lead investigator for the duration that this condition remains in effect;
- 14) The accused is not to reside with or otherwise be in an intimate relationship without fully disclosing his or her full criminal history and prior convictions at the onset of said relationship or co-habitation. Any failure to disclose the true and complete nature of this history will constitute a breach of this condition.

Where the accused is released on a recognizance, forward the Report to Crown Counsel as soon as possible so that the Crown prosecutor can address any application by the accused to change bail conditions before the first appearance.

Advise the victim of the fact of the release and any release conditions.

13. REPORT TO CROWN COUNSEL

The Report to Crown Counsel must clearly address and document the key elements of the offence.

- Include information on the prohibited conduct;
- Document reasons why the victim reasonably fears for his/her physical, emotional or psychological safety. Include all historical information that has contributed to the fear, such as details of previous incidents of domestic abuse;
- Details of changes the victim has made in response to the fear. For example, note whether the victim has done any of the following:
 - Moved to a new location or obtained a new phone number;
 - Recorded all telephone conversations and messages;
 - Told friends, family, co-workers or building security of the harassment and given photos of the suspect to these persons;
 - Arranged escorts to their car and work site;
 - Changed their work schedule or route to work;
 - Stopped visiting places previously frequented;
 - Taken a self-defence course;
 - Installed a security system;
 - Acquired a guard dog;
 - Received counselling or other psychotherapy;
 - Altered their behaviour in any other way.
- Include evidence of the suspect's intent to harass the victim, or of the suspect's recklessness as to whether the victim was harassed;
- Address any steps the accused has taken since the incident to address emotional, attitudinal or other problems. What factors in the accused's life tend to show either stability or

instability (for example, place of residence, family support, job changes, and stability of employment);

- Include all available information necessary for a bail application hearing relating to a detention order or to pre-trial release conditions. This information should specifically address the risk to the victim if the accused is released. Consider recommending appropriate or necessary conditions that the Crown should seek at a pre-trial release hearing.

14. OFFENDER MANAGEMENT

The best way to manage victim safety, once safety planning is complete, is through proactive compliance and evidence gathering techniques; if the offender is compliant or in custody, risk to the victim is greatly reduced.

Many domestic violence perpetrators have court-ordered conditions. This may be in the form of Recognizant Orders, Probation Orders, or Emergency Protection Orders. Police arrests for breaches of these orders have traditionally been reactive. Section 12 of this chapter suggests possible conditions for release and/or Probation Orders which can be requested in order to effectively manage offenders in the community. Liaise with your local Crown Prosecutor and Probation Officer to accurately produce such conditions.

Once conditions are set in place, check on the accused regularly as most offenders are non-compliant but never caught. Examples of checks include, but are not limited to:

- Random physical curfew checks;
- Random follow-up and physical confirmation that the offender is living at the approved address;
- Random compliance checks with court-ordered counselling;
- Random offender contact to obtain up-to-date contact information, check alcohol use and living conditions;
- Random door knocks at the victim's residence to check on his/her welfare.

Keep in touch with the victim, neighbours, family members, and other sources of information. Investigate any tips regarding stalking or harassing behaviours. Often peripheral witnesses are your best source of information.

Research the offender's history and patterns of behaviour for the most effective use of resources.

Consider the use of surveillance resources like stationary cameras, GPS trackers, and mobile surveillance operations to monitor and gather evidence of offences.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Dominant Aggressor / Dual Charging

Dual arrests may occur for a variety of reasons. Police responding to family violence calls may be confronted with sharply conflicting accounts of what transpired, with each party claiming to be the victim. The victim may have used justifiable force against the abuser in self-defence. A false cross-complaint may be made by the abuser. Both parties may exhibit some injury. The police may fear that failure to arrest/charge both parties may result in civil liability.

The following issues are some of the potential problems associated with dual charges:

- The true victims are further victimized;
- There is a decreased chance of victims seeking further help;
- If victims don't seek further assistance it may place them and their children at risk of emotional, psychological and/or physical harm;
- In some jurisdictions, victims (who are charged) can not access Victim Services or Victims Assistance Programs and/or other community agencies;
- Dual charges severely decrease the ability to prosecute (there is no reasonable likelihood of conviction when both parties are charged);
- There is an increased liability for police services;
- There is an increased potential for eventual homicide by the abuser;
- There is a (total) lack of offender accountability;
- It could bring the administration of justice into disrepute.

Consequences of dual arrest include:

- They are rarely prosecuted as charges are often withdrawn;
- Children may need temporary placement or care;
- The aggressor gains more power, continues to be a threat in the home;
- It leaves the victim with other serious issues:
 - They are NOT protected;
 - They experience the fright of being arrested;
 - They may NOT call police again when in danger;
 - They receive a criminal record.

It is common for abusers to try to convince police officers that they were the victims and were injured by their partners, or that the violence was mutual. In these cases, every attempt should be made to identify the dominant (primary) aggressor. The term "dominant aggressor" or "predominant aggressor" refers to the individual who was the principle excessive aggressor rather than the individual who initiated the violence.

Police must have reasonable and probable grounds to lay charges. They must evaluate to determine:

- Who is the primary aggressor (dominant aggressor)?
- Is this self-defence?

HOW TO ASSESS MUTUAL CLAIMS OF ABUSE

According to University of New Brunswick Professor, Linda C. Neilson,⁵⁹ careful scrutiny of past conduct and the power and control dynamics of the relationship are critical to accurately assess when intimate partners make allegations of abuse against each other. She argues that when male partners claim that female partners were also violent, this can be a reflection of the following several distinct realities:

- Women and men may engage in acts of violence, usually relatively minor acts of violence, during conflict in non-abusive relationships;
- Such acts of violence tend to be far less dangerous than abusive violence;
- Abusive violence causes more psychological and physical damage, is more likely to escalate, and is far more dangerous than non-threatening, isolated violence;
- Domination, intimidation, degradation, and control are the essential elements of abusive violence;
- When domination and control are absent, it is questionable that what is being reported is abusive violence - it is more likely that what is being reported is a form of violence during conflict;
- The majority of victims of domestic violence are women;
- Women who are victims of intimate-partner abuse do engage in violence and violent self-defence, violent retaliation, violent reaction to abuse, violent resistance;
- Victims of abuse may even initiate violence in an effort to get imminent violence over with or as a reaction to past abuse;
- Although abuse victims can and do commit violent acts, the violence is not abusive because it is the abuser, not the victim, who is dominating, intimidating, degrading, and controlling.

When partners are abusive, they do not have to use violence to terrorize. Threats in the face of prior violence will suffice. Despite the absence of objective, observable violent action, patterns of abuse may continue. A victim of abuse will quickly learn to read signals from the abuser – certain words, or body language may easily convey threats of harm if understood in the context of that relationship.

In sum, Neilson states that the only way to assess mutual claims of intimate-partner violence is by careful consideration of context, including:

- Indicators of domination and control;
- Patterns of violent action;
- Emotional abuse;
- Social and cultural context;
- Victim vulnerability;
- Psychological (as well as physical) impact on victim.

⁵⁹ Linda C. Neilson, “Assessing Mutual Partner-Abuse Claims In Child Custody and Access Case,” *Family Court Review*, Vo. 42 No. 3, July 2004, 411-438.

FAMILY VIOLENCE INVESTIGATIVE REPORT (FVIR)

Alberta Solicitor General has developed a Family Violence Investigation Report (FVIR) for front-line police officers to utilize in cases of family violence as part of their investigative process. This form is designed to augment case coordination of high-risk cases and to raise the awareness of the dynamics and contributing factors that may be present in serious family violence incidents.

The FVIR is comprised of 19 questions that will assist police officers, Crown, and victims in family violence occurrences. The questions cover a number of aspects of the relationship between the suspect/accused and the victim, as well as other contributing factors. Specifically, the FVIR:

- Assists in assessing the family violence situation in the first instance;
- Assists in identifying suspect management strategies;
- Identifies important factors to be considered by police, supervisors and Crown regarding bail;
- Provides Crown with a quick and comprehensive overview of the case that speaks to the context of the crime, to supplement the Show Cause Report and Court Brief.

In addition to the above list, the FVIR is also intended to help front-line responders determine the validity of mutual claims of intimate-partner violence. The questions are designed to capture the current incident and situate it within a larger context, thus allowing for a more accurate response to the situation.

INJURIES IDENTIFYING DOMINANT AGGRESSOR

There are typical injuries that are strong indicators (red flags) of the injuries having been made by another person acting in self-defence. They include:

- Bite/scratch marks;
- Injuries to genital area;
- Offensive injuries – scraped/cut knuckles (see photographs below).

In a physical attack, females are more likely to scratch their aggressor as a way to deflect attack or try to escape injury. Scratches are a common injury to a male aggressor when attempting to choke or strangle a female. A female may claw the male's hands or face to escape serious injury or death.

Bites to the chest occur when the aggressor is holding the victim down, straddling or in a bear hug. Bite marks on the arms occur when the victim is being held in a chokehold or arm lock. These are "defensive injuries."



Offender has offensive injuries to his knuckles after using his fists to punch the victim.

INJURIES TO VICTIM CONSISTENT WITH ABUSE

Victims of domestic violence sustain physical injuries to the body including broken bones, bruises, burns, choking, bites and sexual assault. Most injuries are inflicted on the head, neck, chest, abdomen and breasts. Injuries occur on the hands and arms, which are used to deflect the blows.



Severe trauma to back of hands and arms from attempts to deflect blows.

INJURIES ON VICTIM:

- Injuries to face, neck, throat, chest, abdomen, genitals;
- Spinal fractures;
- Evidence of sexual assault;
- Chronic pain or repeated injuries;
- Injuries during pregnancy, vaginal bleeding, spontaneous abortion;
- Multiple injuries in various stages of healing including contusions, abrasions, and minor lacerations;
- Bruises on back of arms, legs, or hands;
- Bruises on back of buttocks and lower back because victims may curl into a fetal position to escape injury;
- Bruising/swelling inside mouth and under lips;
- “Bikini” injuries – sophisticated batterers will leave marks where no one else can see them;
- Head injuries hidden under hairline;
- Injuries behind the ears;
- Hair loss – bald spots;
- Symptoms of being choked: hoarseness, nausea, throat pain, loss of consciousness, involuntary urination/defecation, uncontrollable shaking, scratches, abrasions, scrapes to neck, scrapes to chin by lowering to protect, petechiae around eyes and in orbital region, blood red eyes, ligature marks, and swelling of neck.⁶⁰

⁶⁰Strack, Gael B. and McClane, Dr. George. “How to Improve Investigation Your Investigation and Prosecution of Strangulation Cases.” Edited by David C. James, Deputy San Diego Attorney (October 1998, updated May, 1999) 1-16. According to the Strack and McClane study, where over 300 strangulation cases were reviewed, most victims of strangulation lack sufficient physical evidence of being strangled because they either had no visible injury (50%)



Bald spot from hair pulled out

Look for Injuries from the Sophisticated Batterer

- ⌘ Leaves no marks
- ⌘ Hits in places where it is difficult to leave or see marks
- ⌘ Hits in places where you won't look



Courtesy San Diego Domestic Violence Unit

Injury from breast being twisted by abuser

or their injuries were too minor to photograph (35%). Significant visible injuries, such as red marks, bruises, or rope burns, were found in 15 percent of the cases. While these injuries were significant enough to photograph, the majority of these photographs were unusable due to a lack of technical expertise on the part of first responders in close-up photography, suggesting a need for police officer training. Victims sought medical attention in only 3 percent of the cases, primarily due to persistent pain, voice changes, or trouble swallowing.

OTHER SIGNS CONSISTENT WITH ABUSE - VICTIM'S BEHAVIOURAL AND EMOTIONAL CUES:

- Nervous or inappropriate laughter or smiling;
- Signs of anxiety, crying, sighing;
- Defensiveness/anger;
- Lack of eye contact or fearful eye contact;
- Substantial delay between onset of injury and reporting;
- Suicidal ideation or suicide attempt;
- An overly attentive or aggressive partner;
- Describes the alleged "accident" in a hesitant, embarrassed or evasive manner;
- Minimizes the seriousness of an injury.

Domestic violence victims often report other symptoms resulting from the stresses associated with abuse including the following:

- Headache;
- Musculoskeletal pain;
- Fatigue, decreased concentration;
- Insomnia;
- Chest pain/palpitations;
- Hyperventilation;
- Gastrointestinal disorders/appetite disturbances;
- Depression/anxiety;
- Sexual dysfunction/gynaecologic problems;
- Drug abuse/addiction.

Appendix #1 - Includes a document entitled, "Signs to Look for in a Battering Personality."

Strangulation / Choking

Historically, “choking” was minimized and rarely prosecuted as a serious offence because victims will minimize the level of violence and uninformed officers and prosecutors may fail to recognize it. With proper training and education, we can improve our documentation, investigation, and prosecution of strangulation cases with immediate results.

Strangulation is one of the most lethal forms of domestic violence. When perpetrators use strangulation to silence their victims, this is a form of power and control. Strangulation has a devastating psychological effect on victims and a potentially fatal outcome.

It is suggested that police and Crown prosecutors use the term “strangle” as opposed to the word “choke.” “Strangle” means to obstruct seriously or fatally the normal breathing of a person. “Choke” means having the windpipe blocked entirely or partly by some foreign object like food. Police officers are encouraged to investigate all strangulation cases as attempted homicides or aggravated assault cases.

WHAT YOU NEED TO KNOW ABOUT STRANGULATION/CHOKING

- Only eleven pounds of pressure placed on both carotid arteries for ten seconds is necessary to cause unconsciousness. However, if pressure is released immediately, consciousness will be regained within ten seconds. To completely close off the trachea, three times as much pressure (33 lbs.) is required. Brain death will occur in 4 to 5 minutes, if strangulation persists;
- Victims may have no visible injuries whatsoever, with only transient symptoms — yet because of underlying brain damage by lack of oxygen during the strangling, victims have died as long as several weeks later;
- Because of unforeseen consequences of injuries from a strangulation attempt that may appear minor, police officers at the scene should radio for medics for a medical evaluation of all victims who report being strangled.

LOOK FOR SYMPTOMS (AS OPPOSED TO INJURIES)

- Voice changes occur in up to 50 percent of victims;
- Hoarseness or complete loss of voice;
- Swallowing changes;
- Breathing changes;
- Difficulty breathing;
- Mental changes, restlessness, and combativeness due to temporary brain anoxia and/or severe stress reaction;
- Involuntary urination and defecation;
- Visible injuries to the neck include scratches, abrasions, and scrapes;
- Redness to the neck may be fleeting, but may demonstrate a detectable pattern. These marks may or may not darken to become a bruise;

- Bruises may not appear for hours or even days;
- Chin abrasions, redness or bruising as the victim lowers the chin in an instinctive effort to protect the neck;
- Injuries inside mouth – bruising or swelling inside lips;
- The tiny red spots (petechiae) due to ruptured capillaries—the smallest blood vessels in the body—sometimes may be found under the eyelids, around the eyes, face, and neck; tend to be most pronounced in ligature strangulation;
- Blood red eyes due to capillary rupture in the white portion of the eyes suggests a particularly vigorous struggle between the victim and assailant;
- Ligature marks:
 - Ligature marks are a clue that the hyoid bone may be broken;
 - As a general rule, on a post-mortem exam, if a hyoid bone is fractured the death will be a homicide from strangulation until proven otherwise;
 - However, because the two halves of the hyoid do not fuse until age 30, the hyoid may not break in younger victims who die as the result of strangulation;
 - One third of manual strangulation victims have fractured hyoids.
- Lung damage due to vomit inhaled by the victim during strangulation;
- Swelling of the neck may be caused by internal bleeding, injury of any of the underlying neck structures, or fracture of the larynx allowing air to escape into the tissues of the neck.

INVESTIGATING STRANGULATION

- Take full body photographs of the victim, and close-ups of the face and neck area, including the front, back, and sides of the neck and chest area;
- Take follow-up photographs 24, 48, or 72 hours later (or as long as visible injuries are present);
- Identify the dominant/primary-aggressor. It is crucial to be aware that depending on the method of strangulation being used, the suspect may be the only individual with visible injuries.⁶¹

⁶¹ Frequently, in attempted strangulation cases there are claims of mutual combat or self-inflicted injuries. Because victims fear for their lives, they may protect themselves by trying to get perpetrators to release their holds by either pushing them back, biting them, scratching their faces, or pulling their hair.



Top left photograph reveals no sign of physical injuries shortly after police arrival, notwithstanding that the victim had been strangled to unconsciousness three times (bottom left photograph reveals redness to the chin from lowering to protect her neck). Suspect then forced his hand down the victim's throat attempting to suffocate her (photographs on the right display bruising to the inside of lips). Due to lack of visible injuries on victim, and scratches and bite marks on suspect's hands inflicted by victim in self-defence, appropriate charges were not initially laid. Four months after this occurrence, the suspect shot and killed the couple's two-year old son and himself.⁶²

- Encourage the victim to seek medical attention;
- Police officers should note their experience and training in domestic violence cases and strangulation training in their report;⁶³
- Obtain copies of your 911 tapes. At least 50 percent of strangulation victims experience voice changes;
- Tape-record your follow-up investigations wherever possible;⁶⁴
- Conduct follow-up:
 - Ask the victim to describe and demonstrate how he/she was strangled;

⁶² Cole Harder murder/suicide December 1, 2002, Camrose, Alberta.

⁶³ For example: "Based on my experience and training, I know that strangulation can cause serious injury. Unconsciousness can occur within seconds. Death can occur within minutes. The symptoms and injuries in this case are consistent with someone being strangled. I strongly encouraged the victim to seek medical attention."

⁶⁴ As a result of the strangulation training and application of the follow-up questions, San Diego Police detectives noted that in approximately 8 out of 10 cases victims reported changes in their voices. Based on this anecdotal evidence, it is important to tape record or videotape your follow-up investigations in order to document voice changes for later evaluation by medical experts.

- Take photographs of the victim's injuries;
- Document whether victim was strangled with 1 or 2 hands, Forearm, or object;
- If an object was used to strangle the victim, locate, photograph, and impound the object.
- Determine if the suspect was wearing any jewellery, such as rings or watches. Look for pattern evidence;
- If an object was used, how did it get there? Determine if the suspect brought the object with him to the crime scene. This information may be used to show premeditation;
- What did the suspect say when he/she was strangling the victim? Use quotes.
- Describe the suspect's demeanour and facial expression;
- Was the victim shaken simultaneously while being strangled?
- Was the victim thrown against the wall, floor, or ground? Describe surface;
- How long did the suspect strangle the victim?
- How many times and how many different methods were used to strangle the victim?
- How much pressure or how hard was the grip?
- Did the victim have difficulty breathing or hyperventilate?
- Any complaint of pain to the throat?
- Any trouble swallowing?
- Any voice changes? Complaint of a hoarse or raspy voice?
- Any coughing?
- Did the victim feel dizzy, faint, or lose consciousness?
- What did the victim think was going to happen? (e.g. Did he/she think he/she was going to die?)
- Did the victim urinate or defecate as a result of being strangled?
- Was the victim pregnant at the time?
- Did the victim feel nauseated or vomit?
- Is there any visible injury, however minor? If so, take photograph and follow-up photos;
- Any prior incidents of strangulation?
- Any pre-existing injuries?
- Were injuries shown to anyone? Any subsequent photos taken?
- Did the victim attempt to protect her or himself? Describe;
- Any medical treatment recommended or obtained? If so, obtain medical release;
- Any witnesses?

Appendix #10 - Includes the "Strangulation Documentation Form," complete with diagrams.

Appendix #11 - Includes a document entitled the "Domestic Violence Strangulation Investigation" form.

Appendix #12 - Includes a document entitled, "Questioning the Expert in Strangulation Cases."

Primary Risk Factors for Homicide

In Alberta and in various other jurisdictions throughout Canada and the United States, homicides have continued to occur between intimate and ex-intimate partners, and sometimes their children and other family members. These tragedies serve as reminders of why incidents of domestic violence must be taken seriously in every case where it occurs.

In a study completed by the Domestic Violence Death Review Committee in Ontario (“DVDRC”), information was collected to establish the context of the deaths, including the history, circumstances, and conduct of the abusers/perpetrators, the history and circumstances of the victims and their families, as well as community and systemic responses. The purpose was to determine the primary risk factors in those cases and identify possible points of intervention, with the goal of preventing similar deaths in the future.⁶⁵

The DVDRC found that many domestic homicides may have been prevented if the criminal justice system, doctors, clergy, counsellors, lawyers, co-workers, families, friends, and neighbours had better engaged the victim in risk assessment and safety planning and taken appropriate action when they recognized risk in a perpetrator’s behaviour. In 2009, the DVDRC reviewed 16 incidents of domestic homicide involving 26 deaths.⁶⁶ Of these 16 incidents, 12 had a history of domestic violence and 11 involved couples that were either separated or were in the process of separating. These represent the most common risk factors involved in domestic homicide. Other prevailing risk factors include obsessive behaviour displayed by the perpetrator (11 incidents), the perpetrator was observed to be depressed (10 incidents), the presence of escalation of violence (5 incidents), or prior threats/attempts to commit suicide (12 incidents). In general, these 16 incidents had an average of 10 identifiable risk factors (ranging from two to twenty) and 12 had five or more identifiable risk factors.

COMMON RISK FACTORS FOR HOMICIDE IDENTIFIED BY THE DVDRC:

- History of violence outside of the family by perpetrator;
- Prior history of domestic violence;
- Pending or actual separation or estrangement;
- Obsessive behaviour displayed by perpetrator;
- Perpetrator depressed in the opinions of professionals and/or non-professionals;
- Escalation of violence;
- Prior threats of suicide or attempted suicide;
- Prior threats to kill victim;
- Prior attempts to isolate victim;
- Victim had intuitive sense of fear;
- History of violence outside the family;
- Perpetrator was unemployed;
- Possession of or access to firearms;

⁶⁵ Ontario. Domestic Violence Death Review Committee. “Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002.” Available at: <http://www.mcscs.jus.gov.on.ca/english/publications/pubs.html>

⁶⁶ Ontario. Domestic Violence Death Review Committee. “Annual Report to the Chief Coroner: 2009.” Available at: <http://www.mcscs.jus.gov.on.ca/english/publications/pubs.html>

- Excessive alcohol and/or drug abuse;
- Controlled most or all of victim's daily activities;
- Actual or perceived new partner in victim's life;
- Perpetrator failed to comply with authority;
- Perpetrator displayed sexual jealousy;
- Prior threats with a weapon against victim;
- Perpetrator was abused and/or witnessed domestic violence as a child;
- History of violence or threats against children;
- Extreme minimization and/or denial of spousal assault history by perpetrator;
- Other mental health/psychiatric problems;
- Misogynistic attitudes displayed by perpetrator;
- Age disparity between couple;
- Victim and perpetrator living common-law;
- Choked/strangled victim in the past;
- Prior hostage-taking or forcible confinement;
- Presence of stepchildren in the home;
- Prior destruction of victim's property;
- Youth of couple;
- Prior assault with a weapon;
- After risk assessment, perpetrator had access to victim;
- Child custody or access disputes;
- Forced sexual acts or assaults on victim by perpetrator;
- Prior assault on victim while pregnant;
- History of suicidal behaviour in perpetrator's family;
- Prior violence against victim's pets.

Every effort has to be made to collect information on these cases to enhance collaboration amongst different service providers and to permit proper assessment and intervention with high-risk domestic violence cases. This has the potential to save lives if the information helps victims to engage in effective safety planning and if perpetrators are challenged by the community to find alternatives to their threatening behaviour.

Cautions are noted regarding the use of risk assessment tools adapted for use at different stages of the justice system. Assessments are only relevant for a specific period of time, and decisions based on their results must be re-evaluated later in the justice process. Further, service providers should remember that violence could occur even in the absence of identified risk markers.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #8 - Includes a "Domestic History Questionnaire," recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Show Cause Hearings

A. GENERAL

Timing:

The Crown cannot address bail in domestic violence (DV) cases without the following specific background information:

- History of violence/criminal record;
- Whether the complainant fears further violence and the basis for that fear;
- The complainant's opinion on the likelihood that the accused will obey terms of release, particularly a no contact order or radius restriction;
- Whether the accused has a history of mental illness (including suicidal or homicidal ideation) or alcohol/drug abuse;
- Whether the accused has a history of breaching court orders;
- Details of all previous domestic violence charges and convictions.

This background information should be addressed on every domestic violence investigation in the first seven questions of the Family Violence Investigation Report (FVIR).

The leading case on bail in domestic violence cases is *R. v. Bleile* (2000), 31 C.R. (5th) (Alta. Q.B.). In that case, Justice Martin stated at paragraph 9:

The proper administration of justice requires that the judge determining bail understand the circumstances of the offence and the background of the offender in order to decide whether the offender is likely to resort to further violence or intimidation if released. That information can only be produced at a bail hearing if it has been elicited during the investigation and passed on to the Crown prosecutors' office, and from the Crown to the court. Unfortunately, that is not being done in all cases. As a consequence, some decisions as to release of persons charged with assaulting their partners are not as informed as they should be. Sadly, Canadian legal history has been punctuated with cases where offenders charged with spousal assault have been released on bail and thereafter visited even greater violence on the victim.

This case highlights the importance of gathering the appropriate information at the first instance and ensuring that it is available for speaking to bail.

Where you do not have all of the necessary background information to allow the court to make an informed decision consistent with the proper administration of justice, you should seek an adjournment pursuant to s. 516(1), which provides:

A justice may, before or at any time during the course of any proceeding under s. 515, on application by the prosecutor or the accused, adjourn the proceedings

and remand the accused..., but no adjournment shall be for more than three clear days, except with the consent of the accused.

When a show cause hearing is adjourned, you should consider whether it is necessary or desirable to seek an order of non-communication pursuant to s. 516(2), which provides:

A justice who remands an accused to custody under ss. (1) or ss. 515(11) may order that the accused abstain from communication directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with any conditions specified in the order that the justice considers necessary.

Information from the Victim:

The bail provisions of the *Criminal Code* make specific reference to victims.

Under s. 518, a justice presiding over a bail hearing can make such inquiries about the accused as he or she considers desirable and the prosecutor may lead evidence of the circumstances of the alleged offence. Furthermore,

the justice shall take into consideration any evidence submitted regarding the need to ensure the safety or security of any victim of or witness to an offence. (s. 518 (d.2)).

As far as practicable, the prosecutor should give victims the opportunity to make their wishes known regarding the terms of any orders of protection and conditions of pretrial release. This input is an important part of the prosecutor's effort to ensure that the victim does not feel victimized again by the justice process. In the context of sexual assault cases, the courts have warned that complainants should not be unduly harassed to the extent of becoming a victim to an insensitive judicial system (*R. v. Mills*, [1999] 3 S.C.R. 668 at paragraph 90). The same admonition is applicable to domestic violence complainants.

Prior Release Considerations:

Unfortunately, it is common for breaches to occur in domestic violence cases. If the Accused is already on release for other criminal matters, even unrelated, consider:

1. Whether it is a reverse onus situation under s. 515(6). The most common application in DV cases is where the accused was on release for an indictable offence and is alleged to have committed another indictable offence or an offence under s. 145(2) to (5). Instead of the Crown, the burden to show cause shifts to the accused who must then show why s/he should be released.
2. Whether to apply to revoke bail under s. 524 because the accused has contravened or is about to contravene his/her past release conditions.

Using these sections when available will greatly increase the chance of having an accused detained in appropriate circumstances.

B. PRIMARY GROUND

Section 515(10) (a) of the *Code* sets out what is commonly referred to as the “primary ground” justifying detention:

where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law.

There are not any circumstances unique to domestic violence cases that arise under this ground.

C. SECONDARY GROUND

The secondary ground justifying detention is:

515(10)(b) where the detention is necessary for the protection or safety of the public including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice.

This is the most common basis for the prosecutor to seek detention in DV cases. To be successful on this ground, it is essential that the prosecutor clearly outline the risks to the victim as well as the likelihood, if any, that this accused will manipulate the victim into becoming uncooperative with the prosecution, thereby frustrating the administration of justice.

As a starting point, the presiding judge should be made aware that upon court intervention, the risk of further physical injury actually increases. This was recognized by the court in [R. v. Simon, 2003 CarswellYukon 213 \(T.C.\)](#) at paragraph 6, when describing why particular vigilance is required in DV cases:

This is because, unlike many other crimes, there is a continuing relationship and a greater likelihood of repetition. Moreover, at the time of separation or planning of separation or when court intervention causes a separation, the risk of further physical injury actually increases; some studies have indicated that the risk increases dramatically.

Also the Alberta Court of Appeal has recognized that the period of separation poses serious risk to the victim:

We do have regard to the fact that the period following separation is often the most dangerous for the abused partner. Often, as here, this period is characterized by a reluctance on the part of the abuser to give up control over the person he has abused. ([R. v. Evans, 1997 CarswellAlta 193 \(C.A.\)](#) at paragraph 12).

A simple recitation of the risk factors has proven ineffective in bail submissions. A better approach is to explain why the particular predictors in a given case put the victim and administration of justice at risk.

Risk factor	Significance
Previous domestic violence history	Both intuitively and through psychiatric experts, we know that the best predictor of future behaviour is past behaviour.
Previous violence	Prior assaults (whether convictions on the record or allegations) on domestic partners shows a strong disposition to do the very thing alleged. When the prior assaults are temporally connected and involve repeated acts of the same kind with the same complainant, the probative value of the prior discreditable acts is at its highest. (See Batte , 2000 CarswellOnt 2113 (C.A.) at paragraphs 102, 106)
Alcohol/drugs	These chemicals depress the inhibitive mechanism in the brain and increase the likelihood that violence will escalate and that the victim will be more seriously injured. The highest incidence of substance abuse by abusers was documented in a population of victims most severely injured during abusive episodes. Several studies have found alcohol to be related to criminal offending and especially violence.
Mental Illness	The Ontario Domestic Violence Death Review Committee has found that mental illness is a very important indicator of risk. Persons experiencing severe or prolonged depression often feel hopeless. This increases risk of suicide as well as homicide. Persons with other severe mental illnesses such as schizophrenia or paranoia who are untreated or non-compliant may respond to delusions or hallucinations of a persecutory or threatening nature.
Suicidal ideation	Threats of suicide indicate a high risk as the abuser may feel there is nothing to lose by taking others with him/her. Suicidal risk is high if the abuser has made an attempt or has access to lethal means.
Current status of the relationship	Victims are most likely to be murdered when attempting to report abuse or leave an abusive relationship. A recent separation is an extremely important risk factor. There is an elevated risk of lethal violence once a victim has told the accused she is leaving but has not yet left. Offenders may escalate their violence to coerce a victim into reconciliation or to retaliate for the victim's perceived rejection or abandonment of the offender. The offender sees this betrayal as a means of justifying the escalation of abuse. Offenders that are faced with any change in access to children could perceive this as an infringement of their rights and are more likely to engage in more severe violence in order to try to regain control of the situation.
Risk factor	Significance
Escalation in Abuse	"A pattern of recent escalation in the frequency or severity of assault is associated with imminent risk for violent recidivism." (Kropp et al, 1995)
Children exposed	Children living with domestic violence, whether they experience it or are exposed by presence, are at greater risk of neglect and well as emotional, sexual or physical abuse. Recent research has revealed that brain development may be compromised when children are exposed to traumatic stimulation – the neural pathways that control the brain's response and what is being sensed is affected.
Threats	The link between homicidal thinking and violence is definitive. Threats made in association with physical violence are more serious.
Firearms	Firearms may be used to intimidate or control victims. One recent study showed that 70% of abused women surveyed said the presence of firearms in their home affected their decisions to tell others or seek help. As well, the presence of firearms increased

	the women's fear when her partner used alcohol or drugs or was threatening suicide (<i>Exploring the Links: Firearms, Family Violence and Animal Abuse in Rural Communities, 2005-2007</i>).
Court Order Breaches	Failure to comply in the past indicates that conditions cannot be relied upon to keep the victim safe or to ensure proper administration of justice (i.e. that accused doesn't compel victim not to cooperate). When the victim apparently consents to contact despite a non-contact order, this should be viewed in the context of the whole power relationship.
Employment instability	This leads to increased stress as well as a loss of control over their own lives. As a result, they attempt to exert even greater control in their domestic lives.
Forced sex	Forced sex is a way to exert power and control. It reinforces a feeling of helplessness in the victim. It is a particularly aggravated breach of trust between couples. Forced sex or assaults during sex were found to be primary risk factors for homicide in an Ontario study (Domestic Violence Death Review Committee. Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002).
Strangling, choking or biting	Strangulation is a form of power and control that can literally silence victims. It may have a devastating psychological effect on victims and it is a potentially fatal act. Only 11 lbs of pressure placed on both carotid arteries for 10 seconds is necessary to cause unconsciousness. If pressure is released immediately, the victim can regain consciousness within 10 seconds. To completely close off the trachea, 33 lbs of pressure is required. Brain death occurs with 4-5 minutes of persistent strangulation. (Report of the Criminal Section, Working Group on Probation, Uniform Law Conference of Canada, May 2006, p.4) Strangulation was found to be one of the primary risk factors for homicide in an Ontario study (Domestic Violence Death Review Committee. "Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002).
Risk factor	Significance
Stalking	This is in many cases an extension of domestic violence against a former partner i.e. a desire to continue to control that partner. It can be harmful to victims in and of itself (intense and prolonged fear, intimidation, loss of control over one's own life) but it may also be a precursor to subsequent violent acts. If intervention strategies have been tried and failed (such as the police warning), it reflects a higher degree of criminal persistence and culpability.
Control over the victim's social life, occupation or finances	Controlling or isolating the victim serves several purposes: it removes "normal" relationship models/influences from the victim, it removes people from the victim's life who can provide security or safety to her, and it makes it more difficult for the victim to leave and / or ask for help. (Difficulties become more acute if there are children in the home.)
Pregnancy	Pregnancy may reduce the victim's ability to defend herself physically. It may put her at greater risk for harm, as well. Injuries during pregnancy or threats to force an abortion may be indicators of a dominant aggressor with a high lethality index (<i>Domestic Violence Handbook</i> , p. 79, 90). Pregnancy may make it more difficult for a victim to report violence as well because the victim has to consider the financial and emotional consequences of raising a child on her own. Assault during a victim's pregnancy was found to be one of the primary risk factors for homicide in an Ontario study (Domestic Violence Death Review Committee. Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002).

I-TRAC (Integrated Threat and Risk Assessment Center) may have performed a risk assessment or you may refer a case to them for risk assessment. They use both actuarial and structured

professional judgment instruments to predict risk. Some of the actuarial tools relating specifically to DV are:

ODARM – risk assessment for spousal abuse
SARA – risk for violence in intimate partners

Keep in mind that the risk assessments completed by I-TRAC are not a substitute for a forensic mental health assessment.

D. TERTIARY GROUND

The third ground that can justify detention is the public confidence in the administration of justice. This section can be relied upon to justify detention where the assault is horrific, highly planned or resulted in death.

s. 515(10)(c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including

(i) the apparent strength of the prosecution's case,

(ii) the gravity of the offence,

(iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and

(iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

For firearm offences, a three year or greater minimum jail sentence applies, *inter alia* to:

- possession of a prohibited or restricted firearm (s. 95(1))
- discharging a weapon with intent to wound (s. 244)
- aggravated sexual assault with a firearm (s. 273(2)).

When considering the gravity of the offence, a judge should consider that by virtue of s. 718.2(a)(ii), abuse of the offender's spouse or common-law partner is an aggravating factor.

When assessing public confidence in the administration of justice, the court must only consider the views of reasonable, informed citizens who are aware of the facts and relevant legal principles. ([R. v. White](#), 2006 ABCA 65 at paragraph 18).

The Alberta Court of Appeal considered public confidence in the administration of justice in the *White* case, *supra*, which involved a man charged with killing his wife, and stated at paragraphs 20-21:

...despite the fact the accused is not likely to abscond or commit further crimes while awaiting trial, his presence in the community will call into question the public's confidence in the administration of justice. Whether such a situation has arisen it is judged by all of the circumstances, but in particular the four factors that Parliament has set out in s. 515(10)(c)...Where as here, the crime is horrific, inexplicable, and strongly linked to the accused, a justice system that cannot detain the accused risks losing the public confidence upon which the bail system and the justice system as a whole repose.

Other domestic violence cases which have considered the tertiary ground include [R. v. Janvier](#) 2009 CarswellAlta 41 at para. 26 (Q.B.). The Court stated, in considering the tertiary ground, that:

[t]he fact that the offence was one of domestic violence . . . is also a serious concern, given the vulnerability of individuals in domestic relationships, a vulnerability which is starkly evidenced by the fact the deceased was killed in his own bed.

Similarly, the Ontario Court of Appeal in [R. v. M. \(E.W.\)](#) 2006 CarswellOnt 5519 (C.A.) at para. 36 overturned the decision to allow release in the case of a domestic homicide, stated:

more weight should have attached to the circumstances of the offence. Explicit consideration should have been given to the domestic nature of the murder and the extent of the violence used in committing it in assessing the effect of release on the public's confidence in the administration of justice. In this case, it is alleged that the respondent brutally murdered his wife because she had left him and had started seeing another man. As already noted, the evidence that he did so is quite overwhelming. A reasonable member of the community would rightly be concerned with the public's confidence in how the justice system responds to acts of domestic violence if the respondent were granted bail.

E. TIME TO TRIAL

In *R. v. White*, *supra*, the Alberta Court of Appeal stated at paragraph 25:

People denied bail must be offered dates which allow their matters to come to trial on a reasonably expeditious basis – three to five months from the date of arrest to preliminary inquiry or trial in the Provincial court, and the same interval between the preliminary inquiry and the trial in the Court of Queen's Bench. It must be the truly exceptional case which cannot be brought to trial within one year of the charge when the accused has been denied bail.

As such, if a trial date cannot be offered within this time frame, then the accused is more likely to be released.

A just outcome to the case is more likely to occur where a prompt trial date can be secured. Studies have shown consistently that timely court proceedings are better at protecting victims, preventing the escalation of abuse and leading to victim cooperation.

F. WHERE RELEASE IS GRANTED

Terms of Release:

In order to ensure effectiveness, the prosecutor should urge the judge to make orders that are clear and specific.

Police procedures should include that the accused be required to attend court within seven days of the initial occurrence, wherever possible.

Crown prosecutors should consider the following release options inappropriate due to an absence of conditions to protect victims:

- Summons (to court)
- Appearance Notice
- Promise to Appear (unless accompanied by a Form 11.1 Undertaking containing appropriate conditions).

The following conditions should be considered/ sought where a person accused of domestic violence is released from custody:

- Abstaining from communicating directly or indirectly with the victim or other specified persons [Note: this condition is distinct from and must be kept separate from the radius restriction. The no contact condition governs contact anywhere regardless of location.]
- Abstaining from going within 200, 500 or 1000 meters or other specified distance of a specified place. This may include the victim's residence, place of work, residences of family members or children's schools. The place must be specific and address given as the Accused must know where not to attend. If the accused does not know a location, do not include it unless the victim wants the address disclosed. In those situations, the no contact condition should remain as it will govern contact anywhere.
- Abstaining from consuming alcohol or other intoxicating substances or drugs except in accordance with a medical prescription.
- Prohibiting the use and possession of regulated weapons; surrendering any licence, registration certificate or authorization.
- Reporting to a bail supervisor.

In the modern context of technology, other orders may be appropriate, especially where there is a concern about stalking or harassment. These include:

- Prohibiting the possession or use of spyware or other computer monitoring programs.
- Prohibiting the possession or use of GPS tracking systems or programs.

The general authority for imposing conditions is found in s. 515(4). Also there are some particular provisions in relation to violent offences and weapons.

Victim protection:

Prior to making any order of release, where violence was used, threatened, or the accused is charged with criminal harassment,

The justice shall consider whether it is desirable, in the interest of the safety and security of any person, particularly a victim of or witness to the offence..., to include in that order [of release]

(a) that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order; or

(b) that the accused comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of those persons. (s. 515 (4.2))

Weapons:

Prior to making any order of release, where violence was used, threatened, or the accused is charged with criminal harassment,

The justice shall add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law unless the justice considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person. (s. 515)(4.1)(a)

Where a weapons prohibition is made, an order for disposal or surrender of weapons in possession of the accused may also be necessary (s. 515(4.11)). Where a weapons prohibition is not made, the justice must provide reasons.

Where appropriate, obtain a prohibition order for use and possession of regulated weapons in compliance with the *Criminal Code*, and surrendering any license, registration certificate or authorization.

The police or prosecutor may also seek a prohibition order under s. 117.011(1), for use and possession of regulated weapons if such person lives with or associates with an accused that is the subject of prohibition order.

Duty to Inform:

Whether bail is addressed by the police or prosecutor, procedures must be in place to ensure that victim is promptly advised of the accused's release and the conditions of release. This should be done in conjunction with appropriate risk assessments and safety planning as the case may be.

Consideration should also be given to the need for an Emergency Protection Order under the *Protection Against Family Violence Act (PAFVA)*.

G. WHERE RELEASE IS NOT GRANTED

Pursuant to s. 515(12), the prosecutor may request an order that the accused not communicate with the victim while detained. This should be sought where it appears the accused may continue to harass a victim or may attempt to convince the victim to be uncooperative with the prosecution.

The victim should be advised that the accused has not been released on bail and whether a no contact order is in place.

Appendix #16 - Includes guidelines issued by Alberta Justice in 1999 regarding bail notification for victims of domestic violence.

Best Practices for Crown Prosecutors

Addressing Victim's Issues

Victims of domestic violence face different problems from those of other victims of violent crimes. Legitimate survival and safety strategies employed by victims (such as unwillingness to give information, resistance to testifying, recanting all or part of previous statements) may come into conflict with the goals or requirements of the legal system.

Crown prosecutors should be committed to understanding the unique dynamics of an abusive relationship including the cycle of violence and the particular social, economic and psychological problems faced by the victim. To respond effectively, Crown prosecutors should approach domestic violence cases with the following factors in mind:

Domestic violence:

- Is a serious crime;
- Is an abuse of trust;
- Takes many forms, although only behaviour that is “criminal” can trigger prosecution;
- Can have devastating effect upon the victim, families, and children who witness or live with the consequences of that violence;
- Is likely to become more frequent and more serious the longer it continues; and
- Can result in death.

In some cases, victims of domestic violence:

- Continue to live with their abuser;
- Are financially, emotionally, and psychologically dependent on their abuser;
- Experience continuing threats to their safety;
- Find it difficult to give evidence in court because of the complex nature of domestic violence;
- Have difficult decisions to make that will affect their lives and the lives of those close to them (particularly those who may have suffered over a considerable period of time);
- May blame themselves or feel that others blame them;
- Do not make complaints of domestic violence in a timely fashion or at all for fear of reprisals, intimidation, or a number of other factors;
- May fear reporting offences, especially if they are disabled people or elderly and the abuser is also the caregiver;
- May not report the violence after the first incident;
- May be involved in a criminal proceeding, a civil matter, custody, support and visitation proceedings, and a matrimonial action, in multiple courts. This fragmentation coupled with differing standards of proof and rules of procedure can demoralize and inadvertently endanger victims and their children;
- The costs of being involved with the criminal justice and legal systems in terms of money, time, work, privacy, and retaliation by the abuser can be daunting for victims;

- The lives of others (including children) may be at risk;
- Failure to obey a subpoena or failure to testify against the abusive partner *may* be a product of the victim's judgment, that it is better *not* to aggravate the abuser by testifying.

Early intervention and a coordinated response to domestic violence:

- Provides the best path to protecting victims and their children;
- Prevents the escalation of a pattern of abuse;
- Reduces the rate of domestic homicide and serious assaults; and
- Where possible, maintain family stability.

Prosecutors, police and social service agencies can use a variety of approaches in their dealings with victims to help restore some of what the victim has lost and help end the battering, namely:

1. EARLY CONTACT WITH VICTIM:

View the victim's request to have the charges dropped as an opportunity to make early contact, establish rapport and provide information respecting:

- Steps in the criminal justice process;
- Community resources;
- Police and Victim Services Units which can assist with safety planning;
- Victim Impact Statements, the Victims of Crime Financial Benefits Program, and information on how to request Restitution;

2. SHIFT TRADITIONAL THINKING:

- Shift focus to the accused;
- Ask why the batterer batters, not why the victim stays.

3. VICTIM CONSULTATION/EDUCATION:

- Conduct victim interview in presence of a police witness;
- Engage the victim in a discussion about keeping him/her safe through the use of peace bonds;
- When appropriate, the victim may cooperate once it is explained that jail is not necessarily the outcome and treatment and counselling for the abuser can be ordered;
- Make it clear that the goal is to stop the violence in the victim's life;
- Give the victim opportunity to express her/his desired outcome;
- Connect the victim with local service agencies;
- Let the victim know that their reluctance is normal and understood.

4. WHEN APPROPRIATE, PREPARE TO RUN ABSENT VICTIM PROSECUTIONS AND EVIDENCE-BASED PROSECUTIONS USING:⁶⁷

- Crime scene photos;
- Photos of victim's injuries;
- Photos of suspect's wounds inflicted by victim in self-defence;
- 911 recordings;⁶⁸
- Independent witnesses;
- Spontaneous utterances of victim, suspect;
- Confessions;
- Medical records/reports;
- Sexual Assault Response Team (SART) report;
- Expert testimony;
- Out of court statements – exception to hearsay rules, Res Gestae and principled approach (Sworn statements or KGB).⁶⁹

5. SIMILAR FACT EVIDENCE

In some domestic violence cases, there is a possibility of the Crown introducing similar fact evidence, either by way of similar acts of domestic violence by the accused towards the same victim or towards another victim. This can include external similar fact – acts not alleged in the Indictment, or internal similar fact – acts alleged in the Indictment.

6. EVIDENCE OF PRIOR CONDUCT

Victims of abuse who engage in violent resistance tend to be left with little or no protection. In part this has been because the dynamics of partner abuse have been poorly understood; in part it has been because evidentiary rules seemed to preclude admission of evidence of prior bad conduct. This made it difficult for courts to consider the nature and the meaning of violent action in the context of the power and control dynamics of the relationship. As discussed earlier, abusive violence can only be understood in context. Two Canadian Court of Appeal decisions, *R v FDS*⁷⁰ and *R v C (DAR)*⁷¹ make it clear that courts may consider evidence of past conduct

⁶⁷ In *R v Lafferty*, 1999 CarswellNWT 64 (SC), the Northwest Territories Supreme Court heard an appeal from a spouse convicted of assault against his spouse. At trial, defence counsel had asked the trial judge to draw an adverse inference against the Crown from its failure to call the complainant as a witness in the proceedings. The appeal court upheld the trial judge's decision stating that there was ample evidence upon which the trial judge could reasonably convict the accused of all charges, without hearing evidence from the victim.

⁶⁸ 911 recordings will often contain valuable evidence such as spontaneous utterances made by the suspect, victim or a child witness, independent witnesses, confessions, recording of crime in progress (threats, shouting, furniture breaking) and evidence of victim who was strangled/choked (hoarseness, loss of voice). More importantly, a 911 recording can be admitted as an exception to the hearsay rule for proof of the truth of its content. In which case the victim's prior out of court statement can be admitted as a spontaneous utterance or Res Gestae as proof of the truth of the contents (and not merely to attack the witness' credibility), or pursuant to *R v B (KG)*.

⁶⁹ *R v Esford*, 2003 CarswellOnt 1885 (CJ). Six out of court statements made by domestic assault/threatening complainant, who later disappeared, admitted into evidence under traditional Res Gestae exception to hearsay rule and also found to be necessary and reliable under principled exception.

⁷⁰ *R v F (DS)* 132 CCC (3d) 97 (1998) (Ont. CA).

and the dynamics of the relationship in domestic violence cases. This broadened access to information may enhance judicial assessments in partner-abuse cases.

7. USE EXPERT WITNESS AT TRIAL

When necessary, expert testimony may be used to explain the victim's absence or hostility.⁷² It is also useful in strangulation cases. Even when the victim has not obtained medical treatment, it is important to use medical experts at trial in order to inform the jury and the judge about the seriousness of strangulation. Jurors and Judges need to know that strangulation can cause unconsciousness within seconds and death within minutes. They also need to know that symptoms (as opposed to physical signs) are important evidence of strangulation, and that victims can die from strangulation without a single mark. (Refer to Strangulation/Choking section for further information).

8. EFFECTIVE ADVOCACY PRACTICES IN DOMESTIC VIOLENCE CASES

Use Bail Hearings and Sentencing Hearings as opportunities to disclose history of abuse, dynamics of relationship and impact on victims and children. When possible and relevant, obtain details of all past police reports involving domestic violence occurrences involving the accused. Use 911 recordings and photographs to show the extent of fear and suffering caused by the accused's actions, and to deflect claims by reluctant/recanting victims.

To explain domestic violence, prosecutors can in appropriate cases inform triers of fact by eliciting certain information from victim witnesses. Simply asking the victim in direct examination why she/he stays in the relationship can satisfy questions a reasonable jury would have, as long as the questioning is properly constructed: For example: "For those of us who have never experienced violence in a relationship, we wonder why you would not have left by now? Can you explain what keeps you in this relationship?"

Asking a victim how she/he felt when they were being assaulted can result in an answer that clearly defines the victim's perspective and in particular, the degree of fear that she/he may have of the abusive partner.

A trier of fact can get a good glimpse of how violent and enraged the accused can be if the victim witness is asked to explain what he/she looked like and said during the attack.

Closing and/or sentencing submissions could include quoting for the court Madam Justice Wilson's remarks about battered women from *R v Lavallee*. This should send a clear message that battered victims do stay in abusive relationships and it should not be a factor used to minimize, excuse, or deny the violent behaviour.

Sentencing submissions should include the details of all relevant, prior domestic violence convictions that reveal an accused's propensity for abusing intimate partners and his/her response to treatment in the past.

⁷¹ *R v C (DAR)* 170 CCC (3d) 64 (P.E.I. CA).

⁷² *R v Lavallee* (1990) 55 CCC (3d) 97.

9. SOME OTHER MEASURES OF SUCCESS IN DOMESTIC VIOLENCE PROSECUTIONS

- The victim feels that the criminal justice system is available to them if and when they need to use it in the future;
- Victim is informed about criminal justice system;
- Victim is connected with necessary community services;
- Victim is made aware that treatment is available for abusive partner;
- Victim is given information on what domestic violence is, typical battering personality, risk factors for further violence and lethality, and risks of exposing children to domestic violence
- Victim and children have safety plans in place;
- Victims recognize that the Crown has special training and knowledge in the area of domestic violence

Prosecutors wanting more information on victims of family violence may wish to visit Justice Canada's *Family Violence Initiative* website at <http://www.justice.gc.ca/eng/pi/fv-vf/index.html> .

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #5 – Includes a sample form that may be used by police to report children exposed to family violence.

Appendix #8 - Includes a "Domestic History Questionnaire," recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Other Court Proceedings

PROTECTION AGAINST FAMILY VIOLENCE ACT

The [Protection Against Family Violence Act \(PAFVA\)](#) came into force in 1999. It is an Alberta statute that protects family members from family violence. Family members include seniors, women, men and children whether they reside together or apart. Those in a dating relationship are not included in the definition of a family member. The law protects abused family members in a variety of living situations or relationships such as: married, separated, divorced, common-law, parents who have not resided together, step-children, and people who live together where one person has legal care and custody over the other. For more information regarding the *Protection Against Family Violence Act* (PAFVA) see the [PAFVA Guide](#) prepared by Human Services. In addition, the Human Services website contains general information in relation to the [Prevention of Family Violence](#).

PAFVA sets out the process and criteria for obtaining Protection Orders as well as a Warrant Permitting Entry (WPE). There are two types of Protection Orders: Emergency Protection Orders (EPO) and Queen's Bench Protection Orders (QBPO).

WARRANT PERMITTING ENTRY (WPE)

Under s.10 of PAFVA, the police may obtain a warrant to enter a dwelling house to check on the welfare of a person suspected to be the victim of family violence. In cases where there is reason to believe a family member has been the subject of family violence and the police have been refused access to that person, a police officer may apply to the Court for a Warrant Permitting Entry (WPE).

A Justice of the Court of Queen's Bench, Provincial Court Judge or a Justice of the Peace may issue a WPE on application made by a peace officer if satisfied by information on oath that there are reasonable and probable grounds to believe:

- The person providing the information on oath has been refused access to a family member, and
- The family member may have been the subject of family violence and will be found at the place to be searched.

The warrant permits the police:

- To enter the place named in the warrant and any other structure or building used in connection with the place, to search for, assist or examine the family member, and
- With the family member's consent, to remove the family member from the premises for the purpose of assisting or examining the family member.

EMERGENCY PROTECTION ORDER (EPO)

An Emergency Protection Order (EPO) may be obtained through an application made personally by a family member (Claimant) or through an application made by a police member (or designated Human Services worker). An application may also be made by a non-family member with the leave of the Court.⁷³

Claimant Application

Under PAFVA, a family member (Claimant) may obtain an EPO against a perpetrator of family violence (Respondent) which can include conditions of no contact, area restriction and exclusive possession of the family home. Claimants can personally apply for an EPO without police involvement by attending at the courthouse.

There are no court fees charged to the Claimant for obtaining an EPO. At the application, the Claimant may represent him/herself, may hire counsel of choice, or may avail themselves of the assistance offered by Duty Counsel in Edmonton and Calgary. Legal assistance may be available for Claimants through Legal Aid in other areas of the Province, by contacting the nearest Legal Aid Alberta Legal Services Centre at 1-866-845-3425 (toll free), Monday to Friday, 8:30am to 4:00pm.

All applicants may access the required [PAFVA forms](#) (EPO Application, Order and Affidavit of Service) on the Alberta Courts website as well as information regarding [Family Justice Services](#).

EPO Application Requirements

The requirements to obtain an EPO are the same for Claimants, police, and Human Services workers. To grant an EPO, the Court (Justice of the Peace or a Provincial Court Judge) must determine that family violence has occurred, that the Claimant has reason to believe that the Respondent will continue or resume carrying out family violence, and that immediate protection of the Claimant and other family members is required due to the seriousness and urgency of the matter.⁷⁴

In order to qualify for a Protection Order, the Claimant must fit within the PAFVA definition of a family member:⁷⁵

- Persons who **are or have been married** to one another, who are or have been adult interdependent partners of one another **or who are residing or have resided together in an intimate relationship**;
- Persons who are the **parent** of one or more children, regardless of their marital status or whether they have lived together at any time;
- Persons who are **related to each other by blood, marriage or adoption** or by virtue of an adult interdependent relationship;
- **Any children in the care** and custody of a person referred to above; or

⁷³ s.6(1)(c)

⁷⁴ s.2(1)

⁷⁵ s.1(1)(d)

- **Persons who reside together** where one of the persons has care and custody over the other pursuant to an order of the court.

In order to obtain a Protection Order, it must be shown that family violence has occurred. Family violence is defined in PAFVA at s.1(1)(e) and includes:

- Any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member;
- Any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member;
- Forced confinement;
- Sexual abuse; and
- Stalking.

EPO Application Procedure for Claimants

A Claimant may personally make an application to a Justice of the Peace (JP) or a Provincial Court Judge (PCJ) for an EPO. Generally, the Claimant must appear before a Provincial Court Judge for the application during regular business hours. In Edmonton and Calgary, the Claimant may be able to appear before a JP after hours. A Claimant cannot make an application to a JP by telephone; this procedure can only be done by a police officer or a designated person from Human Services.

The EPO hearing is conducted *ex-parte* (in the absence of the Respondent) and an EPO is granted only where there is an urgent need for protection.⁷⁶ The EPO takes effect immediately; however it is not enforceable until the Respondent has actual notice of the Order (which includes being served with a copy of the Order). The police are mandated to serve the EPO following the *ex-parte* hearing.

In determining whether an EPO should be granted, the Court must consider, but is not limited to considering, the following:⁷⁷

- The history of family violence by the Respondent toward the Claimant and other family members;
- Whether there is or has been controlling behaviour by the Respondent toward the Claimant and other family members;
- Whether the family violence is repetitive or escalating;
- The existence of any immediate danger to persons or property;
- The vulnerability of elderly Claimants;
- The effect of exposure to family violence on any child of the Claimant or on any child who is in the care and custody of the Claimant;
- The best interests of the Claimant and any child of the Claimant or any child who is in the care and custody of the Claimant; and

⁷⁶ s.2(1)(b)

⁷⁷ s.2(2)

- The Claimant’s need for a safe environment to arrange for longer-term protection from family violence.

The following situations should **not** preclude the granting of an EPO:⁷⁸

- A Protection Order or other no contact types of orders have been previously granted;
- The Respondent has previously complied with a Protection Order and the conditions;
- The Respondent is temporarily absent from the residence at time of application;
- The Claimant is temporarily residing in an emergency shelter or other place;
- Criminal charges have been or may be laid against the Respondent; and
- The Claimant has a history of returning and residing with a Respondent after acts of family violence.

Potential Conditions of an EPO

In preparation for the Application, the Claimant should consider what conditions would be most effective in ensuring the safety of the Claimant, children, and other family members. The following conditions may be contained in an EPO:⁷⁹

- Prohibition on the Respondent from attending at or near a specified place that is attended regularly by the Claimant or other family members. This could include the residence, property, business, school, or place of employment of the Claimant or family members;
- Prohibition on the Respondent from communicating with or contacting the Claimant and other specified persons. Note: this is to be interpreted as prohibiting communication and contact by any means, including through a third party, unless the order expressly provides otherwise;
- Granting the Claimant, and other family members, exclusive occupation of the residence for a specified period. This is regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;
- Directing the police to remove the Respondent from the residence immediately or within a specified time;
- Directing the police to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the Claimant;
- Directing the police to seize weapons where the weapons have been used or threatened to be used to commit family violence; and
- Any other provision that the Court considers necessary to provide for the immediate protection of the Claimant.

If a Claimant personally obtains an EPO from the Court, the Clerk of the Court will fax a copy of the EPO to the local police service. The police will enter the EPO on CPIC. In addition, the Claimant is required to bring a certified copy of the EPO to the local police for service. The police will serve the EPO on the Respondent and file an Affidavit of Service with the Court. Standard forms of these documents are available on the Alberta Courts website: [PAFVA forms](#).

⁷⁸ s.2(2.1)

⁷⁹ s.2(3)

When an EPO is granted, the Court will set a date for a review of the Protection Order in Queen's Bench. The Claimant and Respondent should appear, or arrange for counsel to appear on their behalf, on the date for the review (See section on QB Reviews below). At the QB Review, the Court can confirm the EPO, replace it with a QBPO, revoke the EPO, or direct that an oral hearing be held.⁸⁰

EPO Application Procedure for Police

When the police are involved in a family conflict or violence investigation, if there is a reasonable fear of injury or property damage, confinement, sexual abuse or stalking⁸¹, the police will typically make an application for an EPO on behalf of the Claimant (consent required)⁸². In these cases, there are often concurrent criminal proceedings. The police (and designated Human Services workers) are permitted to make an application to a JP over the phone, 24 hours a day, 7 days a week.

An EPO may co-exist alongside a judicial interim release (bail) document and may contain many of the same conditions. The benefit of a Protection Order is that it remains in place for a specified term regardless of what occurs with the criminal charges. The existence of criminal proceedings and a bail order does not preclude the imposition of a Protection Order under PAFVA.

In all cases where the statutory conditions are met, regardless of the result of a bail hearing, it is recommended that the police make an application for an EPO. An EPO does not take the place of bail conditions, but works alongside to provide stability and security for the complainant. An EPO remains in force for the period in the Order regardless of the outcome of the criminal matter. The continued existence of the Protection Order is dependent upon the complainant.

Steps Police Should Follow When Applying for an EPO⁸³

1. Conduct an investigation and gather information:

- Complete the FVIR⁸⁴
- Complete the Application form available on the public website: [PAFVA forms](#) or you may use the EPO Intake Sheet⁸⁵ that was designed for use by the JP.
- These forms are part of the police member's notes and must be referred to when making the application.
- In the "Nature of Family Violence" section, include all information about the Respondent, including unreported incidents of family violence.

⁸⁰ s.3(4)

⁸¹ s.1(1)(e)

⁸² s.6(1)(b)

⁸³ These steps contain abbreviated segments of the *Protection Against Family Violence Act*. The *Act* itself is more detailed, but the above steps should be sufficient for most cases; direct any questions to the Justice of the Peace at the time of the application.

⁸⁴ Family Violence Investigation Report

⁸⁵ Available on the [secure forms website](#), accessible by police.

2. Have the Claimant sign an EPO Consent Form.
3. Locate the nearest fax machine to the location. This can be a house, business, or at the Station/Detachment.
4. Prepare submissions regarding the three statutory conditions:
 - The Claimant is a family member and that family violence has occurred;
 - The Claimant has reason to believe that the Respondent will continue or resume carrying out family violence; and
 - That, by reason of seriousness or urgency, the Protection Order should be granted to provide for the immediate protection of the Claimant and other family members who reside with the Claimant.
5. The police member contacts the JP by phone to make an application for an EPO. It is important to provide a telephone number where the member can be reached, as the JP will return the call. This facilitates the set up of the transcriptional recording of evidence.
6. The police member will give sworn testimony, either under oath or by affirmation. The Claimant is not required to attend the hearing, however if the Claimant is present and is asked questions by the JP, the Claimant must also be under oath. All testimony from the hearing will be transcribed and used at the Queen's Bench Review of the EPO.
7. If the EPO is granted, a copy will be faxed by the JP to the police member. The police member is required to make 4 copies of the EPO:
 - i. Provide a copy to the Claimant and explain the document:
 - There must be a review of the EPO by a Queen's Bench Justice, within nine working days of the EPO being granted. The review hearing date will be indicated on the EPO.
 - At the review, the Queen's Bench Justice will determine if the EPO should be revoked, confirmed, or revoked and replaced by a Queen's Bench Protection Order (QBPO). The Queen's Bench Justice may also direct that an oral hearing is required.⁸⁶
 - ii. Serve a copy on the Respondent. The police member is required to serve the Respondent with a copy of the EPO. If unable to effect personal service, the member must apply to the Court for an Order for Substitutional Service.
 - iii. Attach a copy of the EPO to the investigation report.
 - iv. Save a copy of the EPO to go to CPIC with the Affidavit of Service.
8. After service of the EPO, complete an Affidavit of Service and have it sworn by a Commissioner of Oaths. Make 3 copies of the Affidavit:

⁸⁶ The power of the Court to revoke, direct a hearing, confirm, or replace the Order is not dependant upon the presence of either the Claimant or the Respondent (s.3(4)). However, it is highly recommended that both parties attend and they should attend if their lawyer advises them to.

- i. Fax (or hand deliver) a copy of the EPO and Affidavit of Service to CPIC (include the police case number).
- ii. Deliver a copy of the EPO and Affidavit of Service to the appropriate Clerk of the Queen's Bench Court within 24 hours.
- iii. Attach a copy of the EPO and Affidavit of Service to the police report.

9. Perform tasks directed in the Order, such as:

- Remove the Respondent from the residence.
- Assist the Claimant in removing belongings.

EPO must be entered on CPIC

All EPOs along with an Affidavit of Service must be entered on CPIC by the appropriate police agency, regardless of whether they were obtained with police assistance.

QB Review Hearing

Following a successful application for an EPO, the matter is immediately transferred to Queen's Bench and must be reviewed within 9 working days.⁸⁷ The Respondent and the Claimant receive notice of the QB review date in the EPO. Police are not obligated to appear at the Review Hearing.

At the review, the QB Justice may:

- Revoke the EPO;
- Direct that an oral hearing be held;
- Confirm the EPO; or
- Revoke the EPO and grant a Queen's Bench Protection Order.⁸⁸

Legal Aid provides Duty Counsel for the Review Hearing for both the Claimant and the Respondent in all jurisdictions at no cost to the parties (and not "means-tested" as would otherwise be required for Legal Aid coverage).⁸⁹

The [Family Law Office \(Legal Aid\)](#) helps victims of family violence through its Emergency Protection Order Program (EPOP). Offered in Edmonton and Calgary (and surrounding areas), this program is free and there are no eligibility requirements. This means that Claimants do not have to apply for Legal Aid and/or be granted coverage to access this service. To read some frequently asked questions regarding the *Protection Against Family Violence Act*, please refer to the [Legal Aid website](#) regarding EPOP. In Edmonton and Calgary, legal assistance is provided to Claimants through the [Emergency Protection Order Program](#).⁹⁰ In the rest of the province, private lawyers on Legal Aid rosters provide assistance.

⁸⁷ s.2(6) and s.3

⁸⁸ s.3(4)

⁸⁹ If the Justice orders an oral hearing, Legal Aid will only provide counsel to the parties if the individual is financially eligible for assistance.

⁹⁰ Family Law Office of Legal Aid in Edmonton: 780-422-9222. In Calgary: 403-355-4868.

The Emergency Protection Order Program provides clients with information and lawyers that can assist in confirming Protection Orders. The lawyers at EPOP are staff lawyers that work at the Family Law Office and attend court on a daily basis to represent clients who have experienced violence in their lives. The EPOP also provides ongoing information, risk assessments, and safety plans to victims of family violence.

If Respondents have questions about the meaning and effect of an EPO or they would like a lawyer to represent them at the review hearing, they can contact the nearest Legal Services Centre at 1-866-845-3425 (toll free), Monday to Friday, 8:30am to 4:00pm.

The Respondent should be present at the Review Hearing. When the Respondent attends the review hearing they hear the terms of the order and are deemed to have been served and therefore service of the confirmation EPO is not required. If the Respondent is not present, the confirming EPO, or replacement QB Protection Order, must be served and an Affidavit of Service prepared. In some circumstances, upon the request of the Claimant, the police may serve the confirmation Order (or replacement QBPO) and complete an Affidavit of Service (which is then filed in Queen's Bench). If the police do not serve the confirmation EPO (or replacement QBPO), the responsibility for service is on the Claimant. It is highly recommended that Claimants utilize a professional document service company to serve the documents.

Following the Review Hearing, the Queen's Bench Clerk's office will fax a copy of the Order from the Review Hearing to the local police service. It is recommended that the Claimant also deliver a certified copy of the Order to the police as well. This information is essential in ensuring information on CPIC is current and accurate. When the police receive the confirming EPO or QB Protection Order, it will be entered onto CPIC.

QUEEN'S BENCH PROTECTION ORDER (QBPO)

There are two ways to obtain a QBPO:

- Through review of an EPO (as noted above); or
- By application directly to the Court of Queen's Bench.

QBPO Application Process

A Queen's Bench Protection Order may be granted by a Justice of the Court of Queen's Bench on application by a Claimant if the Justice believes that the Claimant has been the subject of family violence. This is the proper procedure where there is no urgency to the circumstances. The police do not assist in QBPO applications and there may not be concurrent criminal proceedings. Claimants must complete a [Queen's Bench Protection Order Questionnaire](#) in order to commence the application.

The Family Law Office/Legal Aid does not provide free assistance to people making an application for a QBPO. The individual must apply for and qualify for coverage. Instructions and forms for self represented litigants are available at the Family Law Information Centres. They can be contacted in Calgary at (403) 297-6600 or in Edmonton (780) 415-0404. Claimants and Respondents may also review the information available online at the [Family Law Information](#)

[Centre](#) for assistance. There is no cost to the Claimant in relation to the application to obtain a QBPO.

A QBPO can contain the same provisions as an EPO, plus the following:

- Require the Respondent to reimburse the Claimant for monetary losses suffered by the Claimant and child as a direct result of the family violence. This could include loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under PAFVA;
- Grant either party temporary possession of personal property, including a vehicle, cheque book, bankcards, children's clothing, medical insurance cards, birth certificates, immunization cards, identification documents, keys or other necessary personal effects;
- Prohibit either party from taking, converting, damaging, or otherwise dealing with property (animals are deemed personal property) the other party may have an interest in;
- Require the Respondent to post a bond to secure compliance with the terms of the order;
- Order the Respondent to attend counselling and/or require other family members to attend counselling; and,
- Authorize the Claimant to take a child to counselling without the consent of the Respondent.

Notifying the Respondent

Generally, Claimants are required to notify the Respondent of the QBPO application by serving a notice on the Respondent. Given the volatility of the relationship, it is highly recommended that Claimants utilize a professional document service company to serve the documents to notify the Respondent.

In addition, following a successful QBPO application, the Claimant is responsible for arranging for service of the QBPO if the Respondent was not present at the hearing. Claimants are also required to forward a certified copy of the QBPO, [Affidavit of Service](#), and statement of description to the police for entry on CPIC. If a request is made by the Claimant, police agencies may assist with service of QBPO documents. In circumstances where the police do not serve the QBPO, the responsibility for service is on the Claimant. It is highly recommended that Claimants utilize a professional document service company to serve the documents.

AMENDMENTS TO PROTECTION ORDERS

A Protection Order (EPO and QBPO) may be in force for up to one year and may be extended for further one-year periods. During the course of the Order, either the Claimant or Respondent may make an application to Queen's Bench to amend or change the conditions, extend, or reduce the period of the Order.

Should the Protection Order be extended, reduced or amended, it is imperative that the new Protection Order be served on the Respondent (if not present at the hearing), an [Affidavit of Service](#) be filed, and along with the amended order be forwarded to the police for entry on CPIC.

It is the responsibility of the Claimant to ensure that the documents are served, filed and copies provided to the police.

In some circumstances, upon the request of the Claimant, the police may serve the amended EPO and complete an Affidavit of Service (which is then filed in Queen's Bench). If the police do not serve the amended EPO (or amended QBPO), the responsibility for service is on the Claimant. It is highly recommended that Claimants utilize a professional document service company to serve the documents.

Information Regarding the Court Procedure

There is a Court Procedure Booklet available at Court of Queen's Bench locations or online to assist people in relation to an EPO or QBPO. Contact the Family Law Information Centre in Calgary (403-297-6600) or in Edmonton (780-415-0404) or review the information available online at the [Family Law Information Centre](#) for assistance.

BREACH OF A PROTECTION ORDER

It is critical to the protection of those who have been victimized by family violence and to the integrity of Protection Orders made under PAFVA that alleged breaches are effectively addressed. Serious contraventions or breaches of an EPO or a QBPO are contrary to the effective administration of justice.

When a breach of a Protection Order occurs, it should be investigated by the police as a contravention of s.13.1 of PAFVA. In addition, depending on the circumstances of the alleged breach, there may be a concurrent criminal investigation.

PAFVA contains two offence provisions as well as a graduated penalty scheme:

13.1(1) A person who

(a) contravenes or fails to comply with a provision of a protection order, other than a provision referred to in section 4(2) (d), or

(b) obstructs or interferes with any person who is exercising a right or power or carrying out a duty or function under a provision of a protection order,

and who has actual notice of the provision under section 5, is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) (a) or (b) is liable

(a) for a first offence, to a fine of not more than \$5000 or to imprisonment for a term of not more than 90 days, or both,

(b) for a 2nd offence, to imprisonment for a term of not less than 14 days and not more than 18 months, and

(c) for a 3rd or subsequent offence, to imprisonment for a term of not less than 30 days and not more than 24 months.

A prosecution is **prohibited** if the breach of the Protection Order is in relation to a payment of money clause made pursuant to s.4(2)(d) of PAFVA. The available remedy for the Claimant in this situation is through the [Maintenance Enforcement Program](#).

A breach of a Protection Order is an offence under PAFVA and should be pursued as such. As Protection Orders under PAFVA are granted in civil court, there may be rare circumstances where the Claimant may pursue enforcement of the Order through the civil contempt process. If a civil contempt process is utilized, a charge under PAFVA for the same incident cannot proceed. If a Claimant wishes to pursue civil contempt (instead of a PAFVA offence), they must follow the procedure set out in rules 10.51- 10.53 of the [Alberta Rules of Court](#).

Standard charge texts for PAFVA breaches are available on JOIN. For those Services not using JOIN to format informations, the standard charge text is available in Appendix 22.

ARREST POWER

PAFVA contains a power of arrest: a peace officer may arrest an accused for a breach of a Protection Order or obstruction based on reasonable grounds to believe that an offence has been committed:

s.13.2 A peace officer may arrest without warrant a person the peace officer believes on reasonable grounds has committed an offence under section 13.1(1).

JUDICIAL INTERIM RELEASE

The PAFVA offences are summary conviction matters and subject to the *Criminal Code* provisions pursuant to s.3 of the *Provincial Offences Procedures Act*.

Following an arrest for a breach or obstruction under PAFVA, the police should determine whether the safety of the complainant requires that the accused remain in custody. In situations where an accused is in custody and judicial interim release is delayed, police and prosecutors should consider requesting a no-contact order pursuant to s.516(2) of the *Criminal Code*. In the case of a denial of release, police and prosecutors should consider requesting a no-contact condition pursuant to s.515(12) of the *Criminal Code*.

In those cases where the accused is released, a Summons, Appearance Notice, or Promise to Appear (unless accompanied by an Undertaking with appropriate safety conditions), will be rare given the inability to impose conditions to protect victims.

In those cases where the accused is released, the following terms should be considered as potential conditions:

- Prohibition on communicating, directly or indirectly, with the victim or other specified person(s);
- Prohibition on going within 200, 500 or 1000 meters of any specified places such as the victim's residence and place of work;
- Abstaining from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription;
- Prohibition on possessing firearms, and surrendering any license, registration certificate or authorization for firearms;

- Reporting at specified times to a probation officer, peace officer, or other designated person; and,
- Other conditions as appropriate to the individual case.

PROCEDURAL CONSIDERATIONS FOR PROSECUTORS

PAFVA offences are prosecuted by Crown prosecutors in Provincial Criminal Court and should be transferred to Domestic Violence Court if one exists in the jurisdiction. PAFVA charges are sworn on a long form information. The police should include PAFVA charges on the same information as any associated criminal charges arising out of the same incident. In the event that the prosecutor proceeds by indictment on the criminal charges and the accused elects to proceed to Queen’s Bench for trial, the PAFVA charges cannot follow along and must be dealt with in Provincial Court prior to the matter being transferred to Queen’s Bench.

Prior to November 1, 2011, the police had the option of laying an information alleging a violation of s.127 of the *Criminal Code*. Section 127 is no longer available for a breach of a Protection Order, and prosecutors should have a new information laid charging s.13.1(1)(a) of PAFVA if the offence date is after November 1, 2011.

PROOF OF OFFENCE

In order to obtain a conviction, the prosecutor must prove that the accused had actual notice of the provision(s) allegedly breached; notice will typically be proven by an Affidavit of Service. Section 5 of PAFVA and the [PAFVA Regulation](#) set out the acceptable forms of notice. Additional information regarding service of documents in Queen’s Bench may be found in the [Alberta Rules of Court](#). Certified copies of the Protection Order and Affidavit of Service are available upon request to the issuing court.

NOTICE OF INTENTION TO SEEK GREATER PUNISHMENT

PAFVA contains minimum penalties for second and subsequent offences.⁹¹ Pursuant to s.727 of the *Criminal Code*, in order to remove discretion from the judge in sentencing and require the imposition of the statutory minimums, the accused must be advised of the possibility of a greater penalty prior to entering a plea.⁹² Prior to a plea being entered, prosecutors will be required to advise the accused either in writing or on the record that it is the Crown’s intention to seek a greater punishment as set out in s.13.1(2) of PAFVA. The *Criminal Code* does not require any special form for the Notice; prosecutors may determine what form of Notice is best suited to the case.

⁹¹ Every Protection Order contains a warning regarding the offence and penalty provisions in PAFVA.

⁹² s.727 (1) *Subject to subsections (3) and (4), where an offender is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, no greater punishment shall be imposed on the offender by reason thereof unless the prosecutor satisfies the court that the offender, before making a plea, was notified that a greater punishment would be sought by reason thereof.*

(2) *Where an offender is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, the court shall, on application by the prosecutor and on being satisfied that the offender was notified in accordance with subsection (1), ask whether the offender was previously convicted and, if the offender does not admit to any previous convictions, evidence of previous convictions may be adduced.*

Appendix #17 – Contains EPO-related forms, including: an EPO Intake Sheet, an EPO form, an Affidavit of Service, an Order for Substitutional Service of the EPO, an Application for a Warrant Permitting Entry, and a Warrant Permitting Entry.

Appendix #22 – Contains standard charge texts for PAFVA breaches.

Firearms

Access to firearms and weapons is a primary risk factor in domestic violence. Therefore, police and prosecutors should be familiar with the following sections of the *Criminal Code*:

SEIZURE WITH A WARRANT

Police are able to use the normal search warrant provision in s. 487 to obtain a warrant to search any place for firearms or devices that have been used in an offence, which are the subject matter of an offence or which are intended to be used to commit an offence.

When there are no reasonable grounds to believe that an offence has been committed:

The police are allowed to apply for a warrant under s. 117.04 (1) to seize firearms or other regulated items or registration or licensing documents, which have been issued for those items if they believe it is not desirable to the safety of any person that he/she possesses those items.

SEIZURE WITHOUT A WARRANT

Place other than dwelling house

Section 117.02 permits a police officer to search any place other than a dwelling house where the officer has reasonable grounds to obtain a warrant but cannot do so because of exigent circumstances. A search under this section is undertaken to find evidence of an offence.

Dwelling house

Section 117.04(2) allows the warrantless search of any place including a dwelling house for public safety reasons if the exigent circumstances that make obtaining a warrant impracticable specifically relate to the safety of any person.

SEIZURE

Section 117.03 allows a police officer to seize a firearm or other regulated item from a person who fails on demand to produce the documentation that authorizes the possession of the item. This section does not authorize a search. A demand can be made under the section only if the officer finds the person in possession of the firearm or other regulated item.

DISPOSITION OF SEIZED ITEMS

If firearms or other regulated items have been seized, they will either be held for court because a charge has been laid and they will be required as evidence, or they will have to be disposed of. In cases where charges will not be laid, the procedure by which seized firearms may be disposed of depends upon the circumstances of their seizure.

If a firearm was seized pursuant to a warrant issued under s. 487 of the *Criminal Code*, the usual report to a justice will be required under s. 490 and the procedure for disposition as provided in that section will be followed.

If a firearm was seized for public safety reasons under s. 117.04, whether the seizure was with warrant or not, a report to a justice must be prepared and the seized items must be listed. The report should also set out the reasons why a warrant was not obtained if the seizure was a warrantless one. A police officer must also apply to the justice within 30 days of the seizure for an order for the disposition of seized items. If this is not done, the items must be returned to the person from whom it was seized.

If the item has been seized under s. 117.03 because the possessor could not produce valid documentation, a peace officer must wait 14 days from the date of the seizure to allow the possessor to produce the required documentation. If the documents are produced within that time, the item will be returned. If not, the officer must make an application to a justice for an order of disposition.

Section 490 of the *Criminal Code* which sets out a procedure for the return of seized items has no application to any item which has been tendered as an exhibit in a criminal trial; *R v Spindloe*, 2001 Carswell Sask 303 (CA).

PREVENTATIVE PROHIBITION ORDERS

There are two types of hearings that may lead to a preventative prohibition order.

Under s. 111 of the *Criminal Code* a police officer or firearms officer may apply to court for an order that would prohibit a person from possessing a firearm or other regulated item. If a court determines that it is not desirable in the interests of the safety of the respondent or any other person that the respondent possess firearms the court shall prohibit the respondent from possessing any or all of the following items:

- Firearms;
- Cross-bows;
- Prohibited weapons;
- Restricted weapons;
- Prohibited devices;
- Any kind of ammunition;
- Explosive substances.

If the circumstances change, a person may apply under s. 112 to have a prohibition order made under s. 111 revoked.

A court may also make a prohibition order under s. 117.05 of the *Criminal Code*. This section applies when police have seized weapons or documents but there has been no criminal conviction that would allow a court to impose an order under either s. 109 or s. 110. A section 117.05 hearing will be required if a police officer has seized a firearm or other regulated item for public safety reasons and applies to a justice for directions on how the item should be disposed.

The strict rules of evidence applicable in criminal proceedings do not apply in these kinds of hearings. Thus, hearsay evidence is admissible; *R v Zeolkowski* (1989), 50 CCC (3d) 566 (SCC).

PROHIBITION ORDERS

There are various situations in which a court is either required to make, or required to consider making, an order that prohibits a person from possessing a firearm or other regulated item.

MANDATORY ORDERS UNDER SECTION 109 OF THE CRIMINAL CODE

If an accused is convicted of:

- An indictable offence punishable by a maximum term of imprisonment of 10 years in which violence was used, threatened, or attempted;
- An offence under s. 85, 95(1), 99(1), 100(1), 102(1), 103(1), or s. 264;
- A drug trafficking offence contrary to the *Controlled Drugs and Substances Act* or;
- Any offence involving a firearm or other regulated item that the offender was prohibited by court order from possessing.

The court must impose a minimum 10-year prohibition order under s. 109. This order applies to all firearms and other regulated items.

DISCRETIONARY PROHIBITION ORDERS UNDER S. 110

A court is obligated to consider making an order of prohibition under s. 110 when an accused is convicted of:

- A summary conviction offence involving actual, threatened or attempted violence;
- An indictable offence of the same nature with a maximum sentence of less than ten years;
- Any offence involving a firearm or other regulated item where the person was not already the subject of a prohibition order.

The court must consider whether it is desirable, in the interests of the safety of any person, to make such an order. If the person has been convicted of an offence as described in s. 110(1) and the court does not make a prohibition order or the court makes an order of prohibition that does not prohibit possession of all classes of firearms or other regulated items, the court is obligated to state reasons for not making the order or making an incomplete order. There is no minimum period of prohibition under this section.

OTHER TYPES OF PROHIBITION ORDERS

A) PROHIBITION AS A CONDITION OF BAIL

Section 515(4.1) of the *Criminal Code* obligates a court to at least consider whether to prohibit an accused person from possessing any firearm or other regulated item if that person is released on bail after being charged with any offence involving actual or threatened violence, a drug trafficking offence or any offence involving a firearm, cross-bow or other regulated item. If the court does not believe the safety of any person would be threatened if a prohibition order were not made, it may decline to make a prohibition order. However, it must state the reasons for not making a prohibition order.

If the court does make an order of prohibition, the court must specify how the items subject to the prohibition order are to be disposed of. The court must also specify the method by which the accused is to surrender all licenses, authorizations and registration certificates.

B) PROHIBITION AS A CONDITION OF PROBATION

Section 732.1(3) allows a court to impose a condition of probation that prohibits a person from owning or carrying a weapon.

C) PROHIBITION UNDER A RECOGNIZANCE

When a court is considering what conditions to impose on a person who is being ordered into a recognizance under s. 810, s. 810.01 or s. 810.2, it must consider whether to prohibit the person from possessing firearms or other regulated items. If the court does not impose that condition, it must state why.

D) LIMITATIONS ON ACCESS ORDERS

Consider, as well, an application under section 117.011 of the *Criminal Code*. When a person is prohibited from possessing weapons, this provision is designed to limit their access to weapons belonging to someone with whom they live or associate. Accordingly, even if the suspect is already prohibited by a court order from possessing weapons for up to five years, if the suspect lives with another person who is not prohibited from possessing weapons and who has several firearms, an application can be brought to a provincial court judge for an order against this other person to restrict the suspect's access to the firearms. While these orders must be minimally intrusive, they are still an important preventive measure that may require the other person to either add to the storage security requirements already in place or to store the firearms at another location for a period of time.

FOR ADDITIONAL INFORMATION CALL:

1. National Weapons Enforcement Support Team (NWEST) at 1-800-731-4000 ext. 2053
2. NWEST Edmonton at 780-421-2697 or 780-421-2337
3. NWEST Calgary at 403-589-0282 or 403-589-6342

Sentencing Domestic Violence Cases

Section 718.2 of the *Criminal Code* mandates that the court shall consider the abuse of the offender's spouse or common-law partner or child, to be an aggravating factor, and increase the sentence accordingly. If the offender abuses a position of trust in committing the offence, it too shall be deemed an aggravating factor.

The Alberta Court of Appeal decision in *R v Highway, Brown and Umpherville*⁹³ is the leading sentencing authority in domestic violence cases. The court recognized that the phenomenon of "repeated beatings of a wife by a husband" is a serious problem in our society and that the courts have an opportunity, by their sentencing policy, to denounce wife-beating in clear terms and to attempt to deter its recurrence on the part of the offender as well as other men.

The court went on to say that the sentencing court must examine circumstances peculiar to the relationship between the parties and that when a man assaults his wife or other female partner, his violence toward her constitutes a breach of a position of trust and is an aggravating factor. Such an assault constitutes an abuse of power and control and the vulnerability of women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape. The paramount considerations must be general deterrence and denunciation. Rehabilitation and individual deterrence are of secondary importance.

The court must consider whether:

1. The assault is relatively minor in nature;
2. The assault is an isolated incident;
3. There are circumstances that make it desirable that the sentence not be counter-productive to the possibility that the family relationship will be preserved.

Use Bail Hearings and Sentencing Hearings as opportunities to disclose the history of abuse, the relationship dynamics and the impact on victims and children. Note that *R v Bleile* of the Alberta Court of Queen's Bench directs that information required by court prior to addressing bail includes whether there is history of violence and related details, whether complainant fears further violence if accused released and basis for fear, complainant's opinion as to likelihood of accused to obey terms of release, and whether accused has substance abuse problems or history of mental illness.⁹⁴

Obtain details of all past police reports involving domestic violence occurrences involving the accused. Use 911 recordings and photographs to show the extent of fear and suffering caused by the accused's actions, and to deflect claims by reluctant/recanting victims.

Be sure to detail for the court the following:

1. Total number of prior assault related convictions;

⁹³ *R v Highway, Brown and Umpherville* (1992) 73 CCC. (3d) 242 (AB CA).

⁹⁴ *R. v. Bleile*, 2000 CarswellAlta 88

2. Total number of prior domestic violence convictions;
3. Total number of prior convictions for assaulting same victim;
4. Details of past domestic assaults;
5. Whether children were present for the offence;
6. The wishes of the victim in relation to future contact;
7. Any child welfare involvement and their position on contact with the children, if any, of the relationship;
8. Dispositions for related offences;
9. Responses to court ordered sentences in past.

AGGRAVATING FACTORS (NOT EXHAUSTIVE)

1. History of spousal abuse;
2. Previously assaulted same victim;
3. Criminal record for violence or related convictions;
4. Spouse or common law spouse - breach of trust;
5. Serious injuries to complainant;
6. Planned or pre-meditated;
7. Use of weapon;
8. Children witnessed the assault or were present when the assault occurred;
9. Offence occurred in the sanctity of home;
10. Degradation of victim;
11. Separate acts occurring over a period of time;
12. No remorse;
13. Home invasion;⁹⁵
14. Intoxicated at time of offence.

MITIGATING FACTORS

1. Early guilty plea;
2. Youthfulness of accused;
3. No previous violence on record;
4. Remorseful accused.

LONG TERM OFFENDER AND DANGEROUS OFFENDER APPLICATIONS

It is strongly recommended that Crown prosecutors consider applying for Long Term Offender and/or Dangerous Offender designations for offenders with a history of serious domestic violence.

⁹⁵ In *R v Nadolnick*. Of significance is the Court's use of *R v Matwiy*, despite the fact that not all of the prerequisites to a home invasion robbery were evident.

DANGEROUS OFFENDER APPLICATIONS

If a Crown prosecutor believes that an individual may be an appropriate candidate for proceedings under the Dangerous Offender (DO) provisions of the *Criminal Code of Canada*, the accused must be convicted following trial or guilty plea of a "serious personal injury offence." In addition, Crowns and the police should be aware that recent case law has indicated that a certain level of harm must have occurred in the commission of the crime for the court to consider a Dangerous Offender application.

A "SERIOUS PERSONAL INJURY OFFENCE" IS DEFINED IN THE CANADIAN CRIMINAL CODE AS (SEC. 752):

752. (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving;

(i) the use or attempted use of violence against another person;

Or (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person.

and for which the offender may be sentenced to imprisonment for ten years or more, or:

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

LONG-TERM OFFENDER APPLICATIONS⁹⁶

An application for a finding that an offender is a Long-Term Offender (LTO) can be brought as a stand-alone application (after conviction) or, having not met the standard for a Dangerous Offender designation, a Dangerous Offender application can be changed to a Long-Term Offender application. This process, however, does not work in the reverse direction and a stand-alone Long-Term Offender application cannot result in a Dangerous Offender finding. The application to have the offender declared a Long-Term Offender is heard by judge alone.

As in the Dangerous Offender application, an assessment of the offender's psychological state and behavioural patterns is required. The assessment process is the same and the final report would be substantially the same as in a Dangerous Offender application assessment. However, where the DO assessment report would comment upon the potential dangerousness of the offender in the future, the LTO assessment report should comment upon the possibility of eventual control of the offender in the community after a period of federal incarceration. After such an assessment has been presented to the court, the court may find an offender to be a Long-Term Offender if the court is satisfied that:

Section 753.1 (1) (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

⁹⁶ For an excellent resource on high-risk offenders, please refer to: Solicitor General Canada. "High Risk Offenders: A Handbook for Criminal Justice Professionals," May 2001.

- (b) there is a substantial risk that the offender will re-offend; and
- (c) there is a reasonable possibility of eventual control of the risk in the community.

The *Criminal Code* goes on to define the concept of "substantial risk" for the court.

Long-Term Offender orders are primarily about management of risk and protection of society, with less emphasis on rehabilitation of the offender. Unlike breaches of probation (which are a dual process offence), breaches of Long-Term Offender orders carry a maximum sentence of ten years incarceration (s. 753.3(1)). This difference demonstrates that Parliament regarded breach of Long-Term Offender order conditions as being more serious than breach of probation. The Alberta Court of Appeal has held that the protection of society is the paramount goal when sentencing an offender who has breached a condition of his/her Long-Term Offender order. **If the condition breached is connected to the offender's risk of re-offending, it will call for a more significant sentence.**⁹⁷

ALBERTA JUSTICE NATIONAL FLAGGING PROGRAM

Alberta implemented a "flagging system" in 1995 to enhance public safety by targeting high-risk violent offenders. Through the flagging system, case information is made available to other Crown prosecutors and law enforcement agencies about high-risk violent/dangerous offenders before crucial decisions are made with regard to appropriate charges and prosecution strategies, including commencing a Dangerous Offender or Long Term Offender Application.

As of 2007, in excess of 2600 offenders have been identified, profiled, and are currently being tracked. All of their names have been listed in JOIN on a developed program. Each week JOIN produces a list of those offenders who have again been charged with a new offence that has been entered on the tracking system. If the new offence is a serious personal injury offence, the Crown prosecutors' office responsible for the new offence is notified that file material has been developed for that offender.

If a Crown prosecutor believes an accused should be flagged, or considered for a Dangerous Offender or Long Term Offender designation, contact the National Flagging Coordinator, Alberta Justice, at (780) 427-5781.

DOMESTIC VIOLENCE CASE LAW

SEPARATION OF THE PARTIES:

R v Lee, 2004 ABCA 46. Sentences should reflect the need to deter violence during the period following separation or termination of a relationship.

⁹⁷ *R v W (HP)*, 2003 Carswell Alta 564 (CA).

R v Evans (1997), 196 AR 207. Sentences imposed for offences occurring after separation of the parties must still consider the need to deter violence as “this period is characterized by a reluctance on the part of the abuser to give up control over the person.”

CONTROL DYNAMIC:

R v Harris [1993] AM No. 814. The important thing to analyse in domestic violence cases is the control dynamic. Sentencing principles in *R v Brown* will apply regardless of the fact that a complainant is in a new relationship.

DETERRENCE AND ISOLATED ACTS OF VIOLENCE:

R v Ollenberger, 1994 CarswellAlta 323 (CA). It is as necessary to deter isolated instances of spousal assault as it is to deter repeated instances. A sentencing judge faced with a first assault has no way of knowing whether it will be an isolated incident, or whether it will turn out to be the first of many.

“The message which this court wishes to send out, however, is that domestic violence is a serious problem, and that it will not be tolerated by this court. We are prepared to do everything within our power to help society to deal with this social problem. The only way we can do this is to impose sentences on those convicted of domestic assaults, which will deter them and others from committing such offences. Those sentences must also denounce domestic violence and express the condemnation of such conduct by society” (at par. 33).

INAPPROPRIATENESS OF CONDITIONAL SENTENCE ORDERS IN DOMESTIC VIOLENCE CASES:

R v Hunter (1998) ABCA 125 CCC (3d) 121. In cases of spousal assault, the aims of deterrence and denunciation usually would not be met by the imposition of a conditional sentence.

Appendix #18 – Includes a SOIRA and Designated Offences Chart.

Appendix #19 - Includes an example of a Probation Order specific to family violence.

Appendix #20 - Includes information for victims of crime regarding Victim Impact Statements.

Appendix #21 - Includes a Sentencing Checklist for adults.

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