

THE LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

A TRAINING RESOURCE

**A North Dakota Supplement to the Victim Services Agency Manual
"The Training Challenge"**

135747

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INTRODUCTION

The following materials are intended to supplement a curriculum entitled THE LAW ENFORCEMENT RESPONSE TO FAMILY VIOLENCE: THE TRAINING CHALLENGE, developed by the Victim Services Agency, New York, New York.

The Victim Services Agency conducted an intensive training session for North Dakota law enforcement trainers in January, 1991, utilizing that curriculum. Over 150 people participated in the training, including a significant number of law enforcement agencies. Since then, curriculum materials have been field tested across the state and have been very well received. Therefore, there appeared to be no need to develop another entire curriculum on generic issues.

What you have before you are some resources unique to North Dakota: our state laws on domestic violence, tribal codes from three Tribal Nations, listings of victim service agencies and community task forces, a list of training videos and manuals available on loan, and other selected information.

Training on domestic violence issues is available from the ND Attorney General's Office, the ND Council on Abused Women's Services and its 18 community based members, the ND Law Enforcement Training Center in Bismarck, and the UND-Devils Lake Law Enforcement Training School. Each of these agencies has trainers available to assist with local training and can assist police trainers and policy makers in accessing training resources.

Law enforcement agencies are encouraged to tap the resources contained in this manual in order to continue to build on a base of knowledge and skill which already exists in a number of police and sheriffs' departments across the state. Family violence is such a deeply rooted problem in our society that it demands the highest level of attention and expertise.

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A STRATEGY FOR DEVELOPING POLICY & PROCEDURAL GUIDELINES FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

I. INTRODUCTION AND PURPOSE

Domestic violence is a crime. North Dakota law enforcement views domestic violence as a preventable crime. The goals of a domestic violence policy are:

- A. To reduce family homicides.
- B. To reduce family assaults.
- C. To reduce police call-backs.
- D. To reduce liability risks for the department.
- E. To reduce injuries to officers.

Effective domestic violence crime prevention requires a team approach: the dispatcher must input the call with the information necessary to safeguard the lives of the officer and the victim. The patrol officers must restore order and conduct a thorough on-scene investigation. If the investigation establishes probable cause that a crime has been committed, the officers will make an arrest. In both arrest and non-arrest situations, the officers will do all they can to help the victim, the offender, and the children--all those trapped within the cycle of violence. The investigator must conduct a thorough follow-up investigation that leads to the apprehension of the suspect. Supervisors must motivate, teach, and direct their personnel, so that they perform their jobs in a compassionate, professional manner.

II. DEFINITIONS

- A. **"Family or household member"** means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together any any time, and for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person. N.D.C.C. Section 14-07.1-01.
- B. **"Domestic Violence "** occurs when a person causes, or attempts to cause, to another family/household member (N.D.C.C. 14-07.1-01(2)):
 - 1. Physical harm, bodily injury or assault;
 - 2. Infliction of fear of imminent physical harm, bodily injury or assault;
 - 3. Sexual assaults.
- C. **"Domestic Dispute"** occurs where officers respond to a call involving potential domestic violence but the officer determines upon investigation that no probable cause of domestic violence exists.

- D. **"Probable Cause"** are those facts known to the officer that would lead a reasonable person to believe that the suspect has committed, or is committing an offense. The officer may use training and experience as a law enforcement officer to make deductions that would elude a lay person. Also, the facts do not have to be sufficient to sustain a conviction.

The police officer should not consider the following factors when determining probable cause:

1. The marital status of the parties;
2. The existence of a protection order (except if the violation of such an order would constitute a crime);
3. The disposition of previous police calls involving the same victim and offender;
4. The victim's past or present unwillingness to prosecute;
5. The police officer's belief that the victim will not be able to assist in the prosecution;
6. Verbal assurances by either party that the violence will stop;
7. Denial by either party that the violence occurred when there is evidence of domestic violence;
8. The police officer's concern about reprisals against the victim by the offender;
9. The race, ethnicity, sexual preference, social class, or occupation of the victim and/or the offender.

The police officer should consider the following factors when determining probable cause:

1. The existence of a protection order (inasmuch as the violation of such order would constitute a crime);
2. The statements of the victim, offender and any witness which support the police officer's observations;
3. The evidence of recent physical injury or impairment of physical condition of the victim;
4. The status of the parties as defined by "family or household member."

- E. **"Victim/Complainant"** means any person who is the victim of domestic violence. This includes victims who are unwilling to file charges or to prosecute the offender.

- F. **"Bodily Injury"** means impairment of the victim's physical condition.

- G. **"Self-Defense"** means a person is justified in using force upon another person to defend against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, other performance of duty by a public servant under color of law, but excessive force may be resisted.
- N.D.C.C. Section 12.1-05-03.

POLICY AND PROCEDURES

III. DISPATCHERS

Policy: The dispatcher who receives a domestic violence call can provide the responding officers with vital information that could save the victim's and the officer's life. The dispatcher will give a domestic violence call the same priority as any other life threatening call and will, whenever possible, dispatch at least two officers to the scene.

Procedures:

A. During the initial call for assistance, the call taker will ask these questions:

1. Where is the emergency? What apartment? What phone number?
2. What is happening? Is it happening now?
3. Are weapons involved? If yes, what kind?
4. Who am I speaking to? (Keep them on the line)
5. Are you the victim? If not, are you a witness?
6. Has anyone been injured? If yes, is an ambulance needed?
7. Is the suspect present? If not, a description of the suspect and expected whereabouts.
8. Is the offender under the influence of drugs or alcohol? If yes, what substance?
9. Are children present?
10. Have the police been to this address before? If yes, how many times?
11. Does the victim have a current protective/restraining order?

B. Cancellation of a call: If the dispatcher receives a second call to cancel the original call, he will still send the unit to the location to make sure the family is safe.

C. Relay the pertinent information to the responding officer(s).

D. If injuries have occurred, dispatch ambulance with information of what the call is about and the unit number(s) of the responding officer(s).

E. Assist the responding officers and/or other emergency agencies during the time of this emergency.

IV. PATROL OFFICERS

Policy: Domestic violence calls can involve any number of situations and will be one of the most hazardous type of call an officer can respond to. Great care is to be exercised in responding to a domestic disturbance call as anything can and has happened. Officers will respond to all calls of a disturbance as promptly as possible.

Procedures:

A. On-Scene Investigation

The purpose of any on-scene investigation is to establish "probable cause" through interviewing of all parties, recording statements, preserving the crime scene, and collecting evidence.

When responding to a domestic violence call, the officers will:

1. Restore order by separating the parties and calming them down;
2. Assess the need for medical attention and call for medical back-up if indicated;
3. Interview all parties separately (the victim, offender, and witnesses) using supportive interviewing techniques; (children should be interviewed in a manner appropriate to their age);
4. After each party has been interviewed separately, decide if an arrest should be made and/or other actions taken;
5. When appropriate, inform the parties that domestic violence is a crime that, without intervention, often increases in frequency and severity;
6. When appropriate, take color photographs of injuries and property damage;
7. Collect and record evidence;

If the offender has left the scene and a crime has been committed, the officers will also:

8. Conduct a search of the immediate area;
9. Obtain information from the victim and witnesses as to where the offender might be (at his job, a relative's or friend's house); and
10. If appropriate, continue an investigation.

B. Arrests

1. Officers will arrest when the officer has probable cause to believe the person, within four (4) hours of the ascertainment of probable cause, has assaulted that person's family or household member.
2. If it has been more than four (4) hours since the officer determined that there was probable cause to make an arrest, written reports will be forwarded to the prosecuting attorney with the recommendations that a complaint and warrant be issued for the perpetrator.
3. 14-07.1-10 Arrest Procedures
 - a. A law enforcement officer's decision to arrest and charge a person for a crime involving domestic violence may not be dependent on the specific consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim.
 - b. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine whether to seek an arrest warrant.
4. Dual Arrest: When officers respond to a domestic violence call and two or more people are injured, the officers will follow this procedure before making an arrest: determine if any person has acted in self-defense. If so, do not arrest that person who acted in self-defense and maintained that defensive position.

C. Post-Arrest Procedure

1. Field release and the issuance of a citation will not be allowed in domestic violence crimes. All persons arrested for domestic violence crimes will be brought before a judge.
2. The officers should emphasize to the victim and the offender that the criminal action is being initiated by the state, not the victim.

D. Victim Assistance/Crime Prevention

When responding to a domestic violence call, officers must remember that the intent of the policy is to protect victims and to enforce the law. Victims of domestic violence may require a variety of assistance to meet their immediate needs for safety, medical treatment and information. Arrest, however, by providing immediate safety to the victim and taking control away from the offender, is probably the most significant assistance that officers can provide. Therefore, officers are required to provide the following assistance to victims, offenders and children:

1. Conduct a thorough on-scene investigation;
2. If a crime has been committed, arrest the offender;
3. Inform the parties that domestic violence is a crime and that help is available;
4. Secure medical treatment for victims;
5. Insure the safety of the children;
6. Remain on the scene until satisfied that there appears to be no immediate threat to the victim;
7. If one person is removing essential personal belongings, remain on the scene to preserve the peace;
8. Give the victim written information as to the phone numbers of shelters, advocacy groups, batterers' groups, and crime victims compensation, or any other appropriate agency. (Reminder to officers: If uncertain of specific data information, contact the nearest domestic violence program to obtain information to give victims)
9. Arrange for, or provide, transportation to a shelter or safe place.

E. Reports

1. Prepare a report pursuant to N.D.C.C. 14-07.1-12 which provides:
"A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports."
2. REMINDER: Officers must fully document their response to every domestic violence call regardless of whether or not a crime has been committed or an arrest has been made.
3. If no probable cause for domestic violence has been established, the officers will write "domestic dispute" in the offense caption. This report would include : direct quotes from each party, as well as a history of the previous calls and their dispositions. This report should be filed in the same manner as a "domestic violence" report pursuant to N.D.C.C. 14-07.1-12.

4. The reports, regardless of type, should be kept for a period of three (3) years, or as consistent with state record keeping policies and procedures.
5. If appropriate, it is suggested copies of the report be provided:
 - a. nearest victim witness advocate
 - b. nearest domestic violence program
 - c. other law enforcement authorities

V. INVESTIGATION

Policy: Because many offenders in domestic violence crimes have left the crime scene by the time the patrol officers arrive, continuing investigation is critical in the apprehension of the suspect. The responding officer or investigating officer is an integral part of the process and departments are encouraged to make the information of disposition available to these officers.

Procedure: The investigation will be conducted with the same diligence as any other criminal investigation.

VI. TRAINING

Every law enforcement agency shall be responsible for implementing a comprehensive training program for members of the department on domestic violence.

The goals of the training are to inform officers of:

- A. the domestic violence laws;
- B. the department's domestic violence policy and procedures;
- C. the dynamics of family violence; and
- D. police officer safety techniques.

Dispatchers, police officers, investigators and their supervisors, will be trained on the topic of domestic violence on an annual basis.

VII. EVALUATION

Every law enforcement agency shall insure the review of this policy on an annual basis and make any revisions deemed necessary.

The purpose of the evaluation will include, but will not be limited, to:

- A. Determining whether policy goals have been met;
- B. Determining whether the policy and procedures should be modified;
- C. Determining the effectiveness of the officers' response;

- D. Determining the effectiveness of the data collection system;
- E. Measuring the community response to the department's performance; and
- F. Identifying additional training needs.

14-07.1-17. Duties of health officer. The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications, whether or not the applicant is eligible for funds.
2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.
3. Distribute grants to eligible applicants in accordance with the purposes of sections 14-07.1-15 through 14-07.1-18.

Source: S.L. 1989, ch. 177, § 17.

14-07.1-18. Domestic violence or sexual assault program records — Confidentiality — Exceptions — Penalty.

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information that relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or
 - d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

Source: S.L. 1989, ch. 177, § 18; 1989, ch. 179, § 1.

Note. Section 14-07.2-06 was amended by section

1 of chapter 179, S.L. 1989, and repealed by section 21 of chapter 177, S.L. 1989. Pursuant to section 1-02-09.1, section 14-07.2-06 was treated as repealed; however, the amendments made by section 1 of chapter 179 were incorporated into this section.

CHAPTER 14-07.2**DOMESTIC VIOLENCE VICTIM ASSISTANCE**

[Repealed by S.L. 1989, ch. 177, § 21, effective July 11, 1989]

Note.

Section 14-07.2-06 was amended by section 1 of chapter 179, S.L. 1989, and repealed by section 21 of chapter 177, S.L. 1989. Pursuant to section 1-02-09.1, the section is treated as repealed; however, the amendments made by section 1 of chapter 179 were incorporated into section 14-07.1-18.

Cross-References.

For present provisions, see chapter 14-07.1.

CHAPTER 14-08**ACTION FOR SUPPORT OF MARRIED WOMEN****Section**

- 14-08-01. Action against husband or wife for support of spouse and minor children — When maintained.
- 14-08-02. Power of court to render judgment.
- 14-08-03. Procedure for action.
- 14-08-04. What payments made by spouse pending action.
- 14-08-05. Security required — Receiver.
- 14-08-06. Modifying or vacating judgment.
- 14-08-07. Support payments — Payment to court — Transfer of payment to court of recipient's resi-

Section

- dence — Transfer of proceedings for enforcement of decree — Procedures upon failure to pay — Repealed.
- 14-08-08. Notification and duties of county social service board — Repealed.
- 14-08-09. Aid of court available to recipients of support — Repealed.
- 14-08-10. Remedies additional to those existing — Repealed.

14-08-01. Action against husband or wife for support of spouse and minor children — When maintained. Any married person may maintain an action in the district court of the county in which the person resides against his or her spouse for failure on the spouse's part to provide for:

1. The support of the party bringing suit; and
2. The support of minor children by said husband or wife living with the party bringing suit.

Source: S.L. 1890, ch. 167, § 1; R.C. 1895, § 5923; R.C. 1899, § 5923; R.C. 1905, § 7541; C.L. 1913, § 8169; R.C. 1943, § 14-0801; S.L. 1983, ch. 172, § 24.

Cross-References.

Abandonment or nonsupport of child or wife a felony, see §§ 14-07-15, 14-07-16, 14-09-22.

Additional Venue.

This section is not a jurisdictional limita-

tion on the district courts, the usual rule being that an action for support may be tried in the county in which the defendant resides. This section merely permits the wife an additional venue for enforcing her right to support. *Johnson v. Davis* (1966) 140 NW 2d 703.

Jurisdiction.

The district court can obtain jurisdiction to compel a husband to support his wife only by service of a summons as in other cases in eq-

officer's supervisor or to any other person to whom the officer is required to submit similar reports.

Source: S.L. 1989, ch. 177, § 12.

14-07.1-13. Order prohibiting contact — Penalty.

1. If a person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial, the court authorizing the release of the person shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the person from having contact with the victim, an order prohibiting the person from having contact with the victim. The order must contain the court's directives and must inform the person that any violation of the order constitutes a criminal offense. The court shall provide a copy of the order to the victim. The court shall determine at the time of the person's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section prior to the time the person is charged, the order expires at the person's arraignment or within seventy-two hours of issuance if charges against the person are not filed.
2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court may require that the person surrender for safekeeping any firearm or dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the city in which the person resides.
3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order on or before the next business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.
4. A person who willfully violates a court order issued under this section is guilty of a class A misdemeanor.

Source: S.L. 1989, ch. 177, § 13.

14-07.1-14. Law enforcement guidelines and training.

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.
2. The peace officers standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

Source: S.L. 1989, ch. 177, § 14.

14-07.1-15. Domestic violence prevention fund established. The domestic violence prevention fund is a special fund in the state treasury. The moneys accumulated in the fund are allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund is not subject to section 54-44.1-11.

Source: S.L. 1989, ch. 177, § 15.

Cross-References.

Funds from supplemental marriage license fee, see § 14-03-22.

14-07.1-16. Grants — Eligibility — Conditions — Limitation. The department shall administer moneys in the domestic violence prevention fund for grants to private nonprofit organizations that are engaged in providing emergency housing for victims of domestic violence and their dependents. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section. No initial grant may exceed the amount of twenty thousand dollars per biennium, but any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.

Source: S.L. 1989, ch. 177, § 16.

party is able to pay the fees, the court may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

Source: S.L. 1987, ch. 178, § 1.

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal contempt of court subject to penalties therefor.

Source: S.L. 1979, ch. 193, § 6; 1983, ch. 177, § 1; 1985, ch. 82, § 25; 1987, ch. 179, § 1; 1989, ch. 177, § 7.

Cross-References.

Offenders subject to arrest without warrant, see § 29-06-15.

14-07.1-07. Nonexclusive remedy. Any proceeding under sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

Source: S.L. 1979, ch. 193, § 7; 1989, ch. 177, § 8.

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from domestic violence. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section. Any order issued under this section expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support of the order must be immediately certified to the court. The certification to the court has the effect of commencing proceedings under section 14-07.1-02.

Source: S.L. 1979, ch. 193, § 8; 1987, ch. 177, § 2; 1989, ch. 177, § 9.

satisfied jurisdictional requirements. Patten v. Beauchamp (1984) 599 FSupp 288.

Immunity from Civil Liability.

Municipal court judge was immune from civil liability with regard to issuance of a protection order where order was issued in accordance with jurisdictional requirements of this section; failure to certify order to district court did not result in a loss of subject matter jurisdiction. Patten v. Beauchamp (1984) 599 FSupp 288.

14-07.1-09. Immunity from liability — Penalty for false reports.
Repealed by S.L. 1989, ch. 589, § 16.

14-07.1-10. Arrest procedures.

1. A law enforcement officer's decision to arrest and charge a person for a crime involving domestic violence may not be dependent on the specific consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim.
2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately, including the comparative severity of injuries involved, to determine whether to seek an arrest warrant.

Source: S.L. 1989, ch. 177, § 10; 1991, ch. 149, § 4.

this section, by section 4 of chapter 149, S.L. 1991, became effective on July 7, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of subsection 2 of

14-07.1-11. Arrest without warrant.

1. A law enforcement officer may arrest a person without a warrant if:
 - a. The person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer; or
 - b. The officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's family or household member as defined in section 14-07.1-01, although the assault did not take place in the presence of the officer. A law enforcement officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.
2. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

Source: S.L. 1989, ch. 177, § 11.

Cross-References.

Offenders subject to arrest without warrant, see § 29-06-15.

14-07.1-12. Reports. A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The officer shall submit the report to the

DECISIONS UNDER PRIOR LAW

Issuance of Protective Order.

Consent of an abused adult is not required for issuance of a protective order provided that a spouse or family member is the applicant for such order. Lucke v. Lucke (1980) 300 NW 2d 231.

Physical or Mental Examinations.

Rule 35, North Dakota Rules of Civil Pro-

cedure, concerning trial court's authority to order a party to submit to a physical or mental examination, is applicable to an adult abuse proceeding under this chapter. Lucke v. Lucke (1980) 300 NW 2d 231.

Relief Available.

The restraining of action which is prohibited by the penal laws is specifically authorized when the activity constitutes adult abuse. Lucke v. Lucke (1980) 300 NW 2d 231.

14-07.1-03. Temporary protection order — Copy to law enforcement agency.

1. If an application under section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, based upon an allegation of a recent incident of actual domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
2. An ex parte temporary protection order may include:
 - a. Restraining any party from having contact with or committing acts of domestic violence on another person.
 - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
3. An ex parte temporary protection order remains in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.
4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.

6. If the filing fee for filing the application has been waived by order of the court, the court may waive the fee for service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs.

Source: S.L. 1979, ch. 193, § 3; 1981, ch. 167, § 2; 1985, ch. 194, § 2; 1989, ch. 177, § 4; 1991, ch. 149, § 3.

this section, by section 3 of chapter 149, S.L. 1991, became effective on July 7, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of subsection 2 of

14-07.1-04. Assistance of law enforcement officer in service or execution. When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to a domestic violence shelter care facility.

Source: S.L. 1979, ch. 193, § 4; 1989, ch. 177, § 5.

14-07.1-05. Right to apply for relief. A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 is not affected if the person leaves the residence or dwelling to avoid domestic violence. The court may not require security or bond from any party unless the court deems it necessary in exceptional cases.

Source: S.L. 1979, ch. 193, § 5; 1989, ch. 177, § 6.

14-07.1-05.1. Appointment of guardian ad litem for minor. The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time prior to the full hearing. The role of the guardian ad litem shall consist of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem shall expire immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither

- f. Referral to other sources for services not provided by the domestic violence program.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Willfully" means willfully as defined in section 12.1-02-02.

Source: S.L. 1979, ch. 193, § 1; 1989, ch. 177, § 2; 1991, ch. 149, § 1.

Effective Date.

The 1991 amendment of subsection 2 of this section, by section 1 of chapter 149, S.L. 1991, became effective on July 7, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

DECISIONS UNDER PRIOR LAW

Forms of Abuse.

Adult abuse is not limited to physical harm, bodily injury and assault or the imminent threat thereof, but includes all forms of abuse, including mental harm. Lucke v. Lucke (1980) 300 NW 2d 231.

In a proceeding under this chapter, consid-

eration of abuse is not limited to the abuse against the complaining adult; abuse of the complaining adult is only one of the abuses that is within the contemplation of the adult abuse statute. Lucke v. Lucke (1980) 300 NW 2d 231.

Incest.

Incest constitutes adult abuse and consent to such relationship by all parties involved provides no defense. Lucke v. Lucke (1980) 300 NW 2d 231.

Question of Fact.

Whether or not there was adult abuse directed against the complaining adult is an issue of fact to be determined by the trier of fact. Lucke v. Lucke (1980) 300 NW 2d 231.

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
- Restraining any party from threatening, molesting, injuring, or having contact with any other person.
 - Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
 - Awarding temporary use of personal property, including motor vehicles, to either party.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
7. No order or agreement under this section affects title to any real property in any matter.

Source: S.L. 1979, ch. 193, § 2; 1981, ch. 167, § 1; 1985, ch. 194, § 1; 1987, ch. 177, § 1; 1989, ch. 177, § 3; 1991, ch. 149, § 2.

tive on July 7, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Note.

Effective Date.

The 1991 amendment of this section by section 2 of chapter 149, S.L. 1991, became effective

Effective January 2, 1995, subsection 1 of this section is amended by S.L. 1991, chapter 326, section 52. The amendment will be set out in the 1993 supplement.

Source: S.L. 1923, ch. 166, § 1; 1925 Supp., § 9594a1; R.C. 1943, § 14-0717.

Parent's Incarceration.

A parent's incarceration is not alone a defense to abandonment; however, abandonment may rest upon the parent's confinement coupled with other factors such as parental neglect, absence of contact, failure to support, and disregard for the child's general welfare. *Myers v. C.K.H.* (1990) 458 NW 2d 303.

14-07-18. Penalty for abandonment and nonsupport. Repealed by S.L. 1975, ch. 106, § 673.

14-07-19. Bond may be given in lieu of punishment. In a prosecution for desertion or for nonsupport, before the trial and with the consent of the defendant, or at the trial, on the entry of a plea of guilty, or after conviction, instead of imposing the penalty, or in addition to the penalty, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may make an order accepting the bond of the defendant to the state, in such amount and with such sureties as the court shall prescribe and approve. If there has been a plea of guilty or a conviction, judgment must be suspended until some condition of the bond is violated.

Source: S.L. 1923, ch. 166, § 2; 1925 Supp., § 9594a2; R.C. 1943, § 14-0719.

14-07-20. Conditions of bond. The bond given in lieu of or in addition to the punishment for abandonment or nonsupport must provide that the defendant shall furnish a spouse or child with proper food, shelter, clothing, and medical attention for such a period, not exceeding five years, as the court may order. The bond, in the discretion of the court, may be conditioned upon the payment of a specified sum of money at stated intervals.

Source: S.L. 1923, ch. 166, § 2; 1925 Supp., § 9594a2; R.C. 1943, § 14-0720; S.L. 1983, ch. 172, § 21.

14-07-21. Violation of conditions of bond — Who may sue on breach. Upon the filing of an affidavit showing the violation of the conditions of a bond given in lieu of or in addition to the punishment for nonsupport or desertion, the accused shall be heard upon an order to show cause. If the charges are sustained, the court may proceed with the trial of the defendant on the original charge, or may pronounce sentence under the original conviction, or may enforce the suspended sentence, as the case may be. The spouse or child, and any person furnishing necessary food, shelter, clothing, or medical attention to either, may sue upon the bond for a breach of any condition.

Source: S.L. 1923, ch. 166, § 2; 1925 Supp., § 9594a2; R.C. 1943, § 14-0721; S.L. 1983, ch. 172, § 22.

14-07-22. Evidence required to prove relationship. In any prosecution for desertion or failure to support a wife, husband, or child, no other or greater evidence is required to prove the relationship of the defendant to such wife, husband, or child than is or shall be required to prove such relationship in a civil action.

Source: S.L. 1923, ch. 166, § 3; 1925 Supp., § 9594a3; R.C. 1943, § 14-0722; S.L. 1983, ch. 172, § 23.

CHAPTER 14-07.1

ADULT ABUSE

Section	Section
14-07.1-01. Definitions.	14-07.1-10. Arrest procedures.
14-07.1-02. Domestic violence protection order.	14-07.1-11. Arrest without warrant.
14-07.1-03. Temporary protection order — Copy to law enforcement agency.	14-07.1-12. Reports.
14-07.1-04. Assistance of law enforcement officer in service or execution.	14-07.1-13. Order prohibiting contact — Penalty.
14-07.1-05. Right to apply for relief.	14-07.1-14. Law enforcement guidelines and training.
14-07.1-05.1. Appointment of guardian ad litem for minor.	14-07.1-15. Domestic violence prevention fund established.
14-07.1-06. Penalty for violation of a protection order.	14-07.1-16. Grants — Eligibility — Conditions — Limitation.
14-07.1-07. Nonexclusive remedy.	14-07.1-17. Duties of health officer.
14-07.1-08. Emergency relief.	14-07.1-18. Domestic violence or sexual assault program records — Confidentiality — Exceptions — Penalty.
14-07.1-09. Immunity from liability — Penalty for false reports — Repealed.	

14-07.1-01. Definitions.

1. "Department" means the state department of health and consolidated laboratories.
2. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, not committed in self-defense, on the complaining family or household members.
3. "Domestic violence program" means a program that provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:
 - a. Counseling.
 - b. Advocacy.
 - c. Community education on domestic violence.
 - d. Support groups.
 - e. Twenty-four hour crisis lines.

LUCKE vs. LUCKE

The following 1980 North Dakota Supreme Court case is significant because it expands the definition of "adult abuse" as it relates to those eligible to petition the court for a Protection Order.

Dawn M. LUCKE, Applicant
and Appellee,

v.

E. Stewart LUCKE, Jr., Respondent
and Appellant.

Civ. No. 9796.

Supreme Court of North Dakota.

Nov. 21, 1980.

Rehearings Denied Dec. 19, 1980.

In prosecution of defendant for adult abuse of members of his family, the District Court, Grand Forks County, A. C. Bakken, J., issued two protective orders and defendant appealed. The Supreme Court, Pederson, J., held that: (1) question whether there was "adult abuse" directed against defendant's daughter, the complaining adult in prosecution of defendant, was an issue of fact to be determined by the trier of fact, and there was no basis for conclusion by appellate court that trial court's findings, that such "adult abuse" had occurred, were clearly erroneous; (2) findings by trial court that defendant's mental and/or emotional health was in controversy, and that good cause was shown for the ordering of an examination pursuant to rule authorizing court to order such an examination was not clearly erroneous, and not an abuse of discretion by the trial court; (3) trial court did not err in ordering defendant to pay the cost of his own examination, despite fact that such examination was ordered by court under rule authorizing court to order a party to submit to a physical or mental examination; and (4) order by court requiring defendant's daughter, with whom defendant was involved in incestuous relationship, remove herself from the residence of her father for a period of 30 days expired by its own terms and therefore question whether such order violated daughter's constitutional rights was moot.

Affirmed.

1. Breach of the Peace ⇌20

Question whether there was "adult abuse" directed against defendant's daughter, the complaining adult in prosecution of defendant for abuse of members of his family, was an issue of fact to be determined by the trier of fact. NDCC 14 07.1 01; Rules of Civil Procedure, Rule 52(a).

2. Breach of the Peace ⇌20

Finding by trial court that there was "adult abuse" directed against defendant's daughter, the complaining adult in prosecution of defendant for abuse of members of his family, was not clearly erroneous in light of finding by court that defendant had been having an incestuous relationship with his other three daughters. NDCC 14-07.1-01.

3. Statutes ⇌199

Ordinary sense of the word "includes" is that it is not a word of limitation but of enlargement.

See publication Words and Phrases for other judicial constructions and definitions.

4. Breach of the Peace ⇌17

Abuse of the complaining adult is only one of the abuses that is within the contemplation of adult abuse statute. NDCC 14-07.1 01.

5. Breach of the Peace ⇌17

In context of statute, "adult abuse" is not limited to physical harm, bodily injury and assault or the imminent threat thereof, but includes all forms of abuse, including mental harm. NDCC 14 07.1 01.

See publication Words and Phrases for other judicial constructions and definitions.

6. Incest ⇌7

Consent is no defense to a charge of incest.

7. Injunction ⇌102

The restraining of action which is prohibited by the penal laws is specifically authorized when the activity constitutes adult abuse. NDCC 14 07.1 01.

8. Breach of the Peace ⇌18

Consent of an abused adult is not required before a protective order can be issued under adult abuse statute, provided, however, that a spouse or "family member" must be the applicant. NDCC 14 07.1 02, subd. 1.

9. Breach of the Peace ⇌20

A proceeding under adult abuse statute is "an action" in context of rule authorizing a court to order a party to submit to a physical or mental examination. Rule of Civil Procedure, Rule 35; NDCC 14 07.1-02, subd. 1.

10. Action ⇌1

"Action" is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. NDCC 32 01-02.

See publication Words and Phrases for other judicial constructions and definitions.

11. Breach of the Peace ⇌20

Finding by trial court, in prosecution of defendant for adult abuse of members of his family, that defendant's mental and/or emotional health was in controversy, and that good cause was shown for the ordering of an examination pursuant to rule authorizing court to order such an examination, was not clearly erroneous, and not an abuse of discretion by the trial court. Rules of Civil Procedure, Rules 35, 52(a).

12. Breach of the Peace ⇌20

Trial court did not err in ordering defendant in prosecution for adult abuse of members of his family to pay the cost of his own examination, despite fact that such examination was ordered by court under rule authorizing court to order a party to submit to a physical or mental examination. Rules of Civil Procedure, Rule 35.

13. Breach of the Peace ⇌20

In prosecution of defendant for adult abuse of members of his family, order by court requiring defendant's daughter, with whom defendant was involved in incestuous

relationship, to remove herself from the residence of her father for a period of 30 days, expired by its own terms and therefore question whether such order violated daughter's constitutional rights was moot.

Murray, Olson, Larivee & Bohlman, Grand Forks, for applicant and appellee; argued by Bruce E. Bohlman, Grand Forks.

Shaft, McConn, Fisher & Thune, Grand Forks, and Ronald I. Meshbesh, Minneapolis, Minn., for respondent and appellant; argued by Patrick W. Fisher, Grand Forks.

Vivian E. Berg, Grand Forks, for Kimberly Lucke, intervenor.

PEDERSON, Justice.

E. Stewart Lucke, Jr., has appealed from two protective orders by the district court, dated April 9, 1980, and May 27, 1980, in an "adult abuse" proceeding under Chapter 14 07.1, NDCC. Lucke's 18-year-old daughter, Dawn, instituted the action, claiming that she and all members of the family, but primarily her 23-year-old sister, Kimberly, who was a witness only at the trial, intervened in the proceedings at the appellate level, asking for dismissal of all orders that run against her. We affirm the orders appealed from as to E. Stewart Lucke, Jr., and grant Kimberly's motion to dismiss the orders insofar as they require action by her. We are told that criminal contempt proceedings against Lucke, but not against Kimberly, have been instituted subsequent to the appeal, pursuant to the provisions of § 14 07.1 06, NDCC, and that a bail order has been issued pursuant to Rule 46, NDR. Crim.P., which inter alia granted Lucke's motion for a jury trial under Rule 42, NDR. Crim.P. These matters are not before us.

We will paraphrase and itemize those parts of the orders of April 9, 1980, and May 27, 1980, most of which are not labeled, which we understand to be challenged by Lucke or by Kimberly, as follows:

From the April 9 order:

1. A *finding of fact* that Lucke has been having sexual intercourse with three of his daughters.

2. A *finding of fact* that incestuous relationship between Lucke and his daughter, Kimberly, has continued for approximately ten years.

3. A *finding of fact* that Lucke has attempted to establish an incestuous relationship with his daughter, Dawn.

4. A *finding of fact* that Lucke has committed adult abuse upon Dawn and other members of the family.

5. An *order* restraining Lucke from threatening, molesting, or injuring any other member of the family.

6. An *order* restraining Lucke from having any sexual intercourse or contact with his daughter, Kimberly, or any of his other children.

7. An *order* requiring Kimberly to remove herself from Lucke's residence for a period of 30 days from and after April 8, 1980.

8. A *recommendation* that Lucke and Kimberly undergo psychiatric evaluation and counseling.

9. An *order* that Lucke pay for the psychiatric evaluation and counseling for himself and for Kimberly.

10. A *recommendation* that Kimberly establish a separate and permanent residence for herself.

From the May 27 order:

1. An *order* restating the restrictions in items 5 and 6 above.

2. An *order* requiring Kimberly to continue to remove herself from Lucke's residence for a period of 30 days from and after May 27, 1980.

3. An *order* that Lucke not contact Kimberly during the 30-day period from and after May 27, 1980.

4. An *order* requiring Lucke to submit to a psychiatric examination and evaluation pursuant to Rule 35, NDR.Civ.P., and that Lucke pay the costs thereof.

5. A *finding of fact* that Lucke's mental and/or emotional health is in controversy and that good cause has been shown for ordering an examination pursuant to Rule 35, NDR.Civ.P.

6. An *order* requiring Lucke to pay the cost of any psychiatric or psychological counseling that any member of the family, including Dawn, may obtain from and after April 9, 1980.

The adult abuse statute was enacted by the Forty-sixth Legislative Assembly, leaving minimal legislative history. It appears to be an innovative, unique effort to provide an alternative remedy in domestic violence matters.

Our first question relates to Dawn's eligibility to institute the proceedings in light of the definition of adult abuse in § 14 07.1-01, NDCC:

"For purposes of this chapter, 'adult abuse' includes physical harm, bodily injury, or assault on the complaining adult, or the imminent threat thereof." [Emphasis supplied.]

Lucke argues that the only adult abuse that can be involved in a proceeding under Chapter 14 07.1, as contemplated by the Legislative Assembly, is physical abuse directed against the "complaining adult." He overlooks the fact that Dawn alleged that she and the other members of the family were harmed by "unlawful conduct," "abusive behavior," and "incestuous acts," and that the trial court specifically found:

"... that there is a showing of adult abuse committed by the Respondent as to the Applicant and other family members"

The court further found:

"... that the Respondent has been having sexual intercourse and therefore an incestuous relationship with three of his daughters, namely: Shari, Kimberly and Lynette; that such relationship has continued for approximately the past ten (10) years with Kimberly, who is presently twenty-three (23) years of age, and such relationship with Lynette and Shari has terminated; that the Respondent has also attempted to establish an incestuous relationship with his daughter, Dawn M. Lucke, the Applicant herein."

[1, 2] The question whether or not there was "adult abuse" directed against Dawn, the complaining adult, is an issue of fact to be determined by the trier of fact and is reviewable by this court only pursuant to Rule 52(a), NDR.Civ.P. For us to continually cite authority and discuss the appellate role in reviewing findings of fact only adds to the volume of print researchers must cope with in the future. It is sufficient that we say that there is no basis for a conclusion that the trial court's findings on this fact issue are clearly erroneous.

Lucke further argues that, as a matter of law, only the abuse against the complaining adult may be considered. To support this position he cites § 1 02 02, NDCC, and *Weber v. State Farm Mut. Auto. Ins. Co.*, 284 N.W.2d 299 (N.D.1979), and *City of Mayville v. Rosing*, 19 N.D. 98, 123 N.W. 393 (1909).

Section 1 02 02, NDCC, provides:

"Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained."

We agree that § 1 02 02 and the *Weber* and *Rosing* interpretations apply here. But Lucke misapplies them. The word "includes" as used in § 14 07.1 01 is, of course, to be understood in its ordinary sense and, if it is explained in the code, it is to be understood as thus explained.

[3] The ordinary sense of the word "includes" is that it is not a word of limitation but of enlargement. See 42 C.J.S. Include, at 525, and following; 20A Words and Phrases, Include, at 144, and following; and *Fed. Land Bank v. Bismarck Co.*, 314 U.S. 95, 100, 62 S.Ct. 1, 4, 86 L.Ed. 65 (1941). A definition by the parties may cause the word "includes" to become a word of limitation. See *Park View Manor, Inc. v. Housing Authority of the County of Stutsman*, 300 N.W.2d 218 (N.D.1980). Although it has no direct application to the word "includes" in § 14 07.1 01, the only statutory definition called to our attention is in our criminal law, and that states:

"'Includes' should be read as if the phrase 'but is not limited to' were also set forth." Section 12.1 01 04(16), NDCC. See also § 1 01 09, NDCC.

[4, 5] Although legislative corrections may be necessary to make all provisions of the adult abuse law fully operative, we construe § 14 07.1 01 "liberally, with a view to effecting its objects and to promoting justice," (§ 1 02 01, NDCC) and accordingly conclude that abuse of the complaining adult is only one of the abuses that is within the contemplation of this remedial statute. We further conclude that, as a matter of law, adult abuse is not limited to physical harm, bodily injury and assault or the imminent threat thereof, but includes all forms of abuse, including mental harm.

Another feature of Lucke's argument is that the relationship between him and Kimberly is "totally consensual," therefore it does not constitute adult abuse. Incest is a Class C felony in this state:

"A person who ... has sexual intercourse with another person related to him [or her] within a degree of consanguinity within which marriages are declared incestuous and void by section 14 03 03, knowing such other person to be within said degree of relationship, is guilty of a class C felony." Section 12.1 20-11, NDCC.

Included among marriages declared incestuous and void by § 14 03 03 are those between a parent and child. Incest between consenting adults is, by statute, declared to be a felony, a more serious crime than even sexual assault under § 12.1 20-07, class A and class B misdemeanors.

Incest is not only a male felony. As early as 1899, this court said:

"That the female participant in incestuous intercourse, whose action in the matter is voluntary, and uninfluenced by any element of coercion, either by force, fear, fraud, or undue influence, is an accomplice in the commission of the crime of incest, is, we think, firmly settled in the law." *State v. Kellar*, 8 N.D. 563, 80 N.W. 476 (1899).

[6] Because of the position she took as a witness during the trial, claiming Fifth Amendment privilege, as well as her argument as intervenor here, we are not able to state whether Kimberly's position is that of an accomplice or a victim, and it is not necessary that we do so. See VII Wigmore on Evidence, § 2060, at 443; Annotation, Consent as element of incest, 36 A.L.R.2d 1299; Annotation, Incest--Accomplice or Victim, 74 A.L.R.2d 707; and *Bishop v. State*, 39 Md.App. 384, 385 A.2d 1206 (1978). See, generally, 41 Am.Jur.2d, Incest, and 42 C.J.S. Incest. Consent is no defense to a charge of incest. *Angus v. State*, 76 Wis.2d 191, 251 N.W.2d 28, 33 (1977).

[7] Ordinarily, specific relief is not granted to enforce a penal law (§§ 32 04 03 and 32 05 02, NDCC); however, special laws prevail when the conflict is irreconcilable. See § 1 02 07, NDCC. The restraining of action which is prohibited by the penal laws is specifically authorized when the activity constitutes adult abuse. We do not understand Lucke's argument, apart from his contention about "consent," to even suggest that it is not adult abuse for a father to engage in sexual intercourse with his daughters. That argument would surely fail if it were made.

[8] We next address the question whether or not a protective order can be issued under the statute over the objection of a person who appears to be a beneficiary of the protective order. We conclude that consent of an abused adult is not required, provided, however, that a spouse or "family member" must be the applicant. Section 14 07.1 02(1), NDCC.

A question has been raised as to the availability of Rule 35, NDR.Civ.P., to proceedings under Chapter 14 07.1, NDCC. When the mental or physical condition of a party is in controversy, Rule 35 authorizes a court in which an action is pending, upon good cause being shown, to order a party to submit to a physical or mental examination. Lucke argues that, first, this is not an "action," second, that his mental condition was not "in controversy," and, third, that "good cause" has not been met.

[9, 10] A proceeding under the adult abuse statute is labeled "an action for a protection order." Section 14 07.1 02(1), NDCC. Section 32 01 02, NDCC, defines "action" as:

"An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."

Further comments are not warranted on that question.

[11] The trial court specifically found that Lucke's "mental and/or emotional health is in controversy, and that good cause has been shown for the ordering of the examination pursuant to the said Rule 35." No showing has been made that these findings are clearly erroneous under Rule 52(a), NDR.Civ.P., nor do we consider this to be an abuse of discretion under the circumstances in this case.

"Rule 35 vests a wide discretion in the court as to whether or not to require an examination, the type, and number of examinations that may be ordered and the terms and conditions that may be imposed." 4A Moore's Federal Practice, 2d Ed., § 35.04.

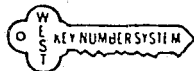
[12] Lucke complains that the court erred in ordering him to pay for the costs of his own examination, contending that the moving party must bear the expense of an examination under Rule 35. We acknowledge that the statement is made in 8 Wright and Miller, Federal Practice and Procedure, § 2234, at 679, that "the moving party must bear the expense of the examination itself." The authority cited therefore is *Klein v. Yellow Cab Co.*, 7 F.R.D. 169 (D.C. Ohio 1944). We do not agree that *Klein* supports the statement made. There may very well be cases in which the circumstances warrant assessing the costs against the moving party. This is not one that does.

[13] Finally, we need to address Kimberly's argument that her constitutional

rights have been violated by the protective orders of the trial court. The orders of April 9 and May 27 each required of Kimberly only one thing, to wit: that she remove herself from the residence of her father for a period of 30 days. She was not a party, but should have been brought in as a defendant or involuntary plaintiff under Rule 19(a), NDR.Civ.P. The orders running against her appear to have expired by their own terms and, to that extent, the question is moot. To the extent that orders against Kimberly contain any continuing directive against her, they are void because they are not authorized by the adult abuse statute and exceeded the jurisdiction of the court. This does not apply to recommendations made by the trial court.

As to appellant E. Stewart Lucke, Jr., the orders are affirmed. Both Dawn and Kimberly are entitled to costs on the appeal.

ERICKSTAD, C. J., and PAULSON, SAND and VANDE WALLE, JJ., concur.



**BENSON COUNTY COOPERATIVE
CREDIT UNION,**
Plaintiff/Appellee,

v.

**CENTRAL LIVESTOCK ASSOCIATION,
INC.,** Defendant/Appellant.

Civ. No. 9818.

Supreme Court of North Dakota.

Nov. 21, 1980.

A cooperative credit union filed an action against livestock association for conversion of property secured by union security agreement. The Cass County District Court, John O. Garaas, J., entered summary judgment in favor of the plaintiff, and the

defendant appealed. The Supreme Court, Paulson, J., held that considering the pleadings, depositions and answers to interrogatories, there were genuine issues of material fact, particularly as to whether debtors conducted their farming operations as a partnership, whether security agreement was executed in partnership capacity, and whether union waived the requirement of a written consent to sale, precluding summary judgment in favor of the union.

Reversed and remanded.

1. Appeal and Error ⇐863, 934(1)

On appeal from a summary judgment, evidence must be viewed in light most favorable to the party against whom the summary judgment was granted; the Supreme Court cannot decide disputed issues of material fact and may only determine whether a genuine issue exists and whether the law was applied correctly. N.D.R.Civ.P., Rule 56(c).

2. Judgment ⇐181(2, 3)

Summary judgment is not appropriate if the moving party is not entitled to judgment as a matter of law or if reasonable differences of opinion exist as to inferences to be drawn from undisputed facts. N.D.R.Civ.P., Rule 56(c).

3. Secured Transactions ⇐171

In action by secured party for conversion against one who has purchased collateral from the debtor, allegedly in violation of provision of security agreement requiring secured party's written consent to any sale of collateral by the debtor, it is a valid defense if secured party is shown to have consented to the sale, which consent may be shown by implication arising from course of conduct as well as by express words. NDCC 41 09 27, subd. 2.

4. Judgment ⇐181(33)

In action by cooperative credit union against livestock association for conversion of property secured by the credit union's security agreement, question whether sale of the collateral was authorized by the secured party was under the circumstances a

FACT SHEET
ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT
IN NORTH DAKOTA

JANUARY - JUNE 1991

ND Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota have released statistics for the first six months of 1991.

- * 15 sexual assault programs served 387 primary victims in the first 6 months of 1991. This is a rise from 342 primary victims served during the same period last year.
- * 84% of the victims were female; 96% of the assailants were male.
- * In about half (47%) of the cases the crime was reported to law enforcement.
- * In 93% of the cases, the assailant was known to the victim.
- * 12% of the cases were male assailant/male victim.
- * 74% of the assaults occurred in the victim's or the assailant's home.
- * 41% of the victims waited 1 to 15 years to report the crime.

Domestic violence stats reveal the following:

- * A total of 2,532 incidents of domestic violence were reported to 18 crisis intervention programs in the first six months of 1991. This figure includes 1,352 new victims, 233 additional incidents of violence suffered by these new victims, and 947 phone reports. These figures represent a 29% increase over the first six months of 1990.
- * 96% of the victims were female.
- * 10% of those served were disabled in some way.
- * 35% of all incidents reported occurred in rural areas or small towns under 5,000.
- * 1,977 children were impacted by these incidents.
- * Weapons were involved in 1 out of every 4 incidents.
- * 377 Protection Order petitions were filed by these victims, up 50 from the same period last year.

* Fact sheets are compiled semi-annually and are available from the ND Council on Abused Women's Services, 418 E. Rosser #320, Bismarck, ND 58501



State of North Dakota
Office of the Attorney General
Bureau of Criminal Investigation

Criminal Justice Statistics Special Report

Homicide in North Dakota 1990

Prepared by
Judith H. Volk
Research Analyst
May, 1991

In 1990, eight deaths due to homicide were known to the Uniform Crime Reporting (UCR) program. Based on a Census Bureau population estimate of 638,800, the resulting homicide rate is 1.3 per 100,000 inhabitants. National homicide rates are not yet available for 1990. The figure below illustrates the number of deaths due to homicide in North Dakota from 1970-1990.

The term "homicide" for purposes of this report refers to the "willful killing of one human being by another." It does not include attempts to murder, assaults to murder, suicides, accidental deaths, justifiable homicides, or deaths caused by gross negligence.

Victims:

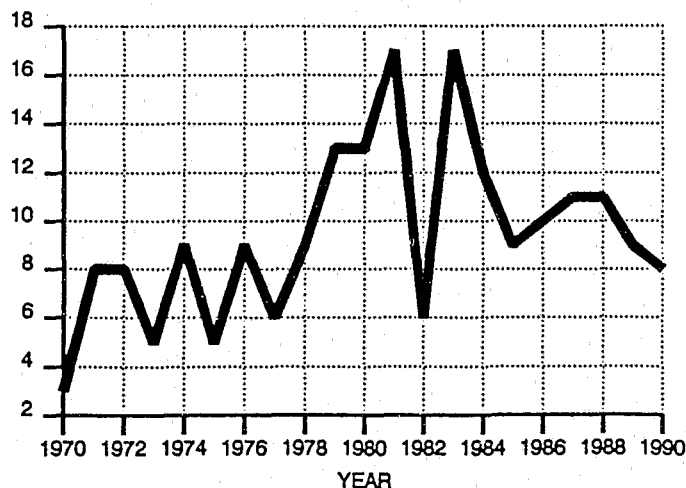
All of the victims were adults and five were female.

Four of the eight victims were slain with firearms. Two victims died as the result of stabbings, one died as the result of a beating, and another drowned after sustaining multiple bruises and internal injuries.

Assailants:

Assailants have been identified in seven of the eight deaths. The assailant in the shooting death of a rural Moffit man has not been identified by law enforcement. All of the known assailants were adults and relatives, friends or acquaintances of their victims.

Homicides in North Dakota
1970 - 1990



The table below presents data for 1990 on characteristics of the homicide incidents including the date and location; age, sex and number of victims and assailants; weapons used; victim-assailant relationship and circumstances.

Table I
Homicides in North Dakota
1990

Date and Location of Incident	Victim(s)		Assailant(s)		Weapon Used	Relationship of Victim to Assailant	Circumstances
	AGE	SEX	AGE	SEX			
02/07/90 Dickinson	30	F	26	F	.44 Cal. Handgun	Acquaintance	Victim shot by assailant while both were in victim's vehicle.
06/09/90 Turtle Mt. Res.	30	F	63	M	Hands, blunt instrument	Fiancee	Victim was beaten to death at assailant's cabin.
06/16/90 Grand Forks	20	F	28	M	Hands	Acquaintance	Victim sustained multiple bruises and internal injuries prior to drowning.
09/05/90 Ft. Totten	27	M	24	F	Knife	Boyfriend	Victim was stabbed in the back.
12/01/90 Mandan	38 43	F M	19	M	.22 Cal. Handgun	Step-mother Father	Assailant shot victims and later turned himself in to the police.
12/19/90 Rural Moffit Burleigh County	34	M	UNKNOWN		.22 Cal. Weapon	UNKNOWN	Victim was found shot to death in his rural home. (apparent robbery)
12/29/90 Fort Yates Standing Rock Res.	28	F	39	F	Knife	Roommate	Stabbing was the result of a drunken argument.

Homicides in 1989:

In 1989, nine homicides were known to the North Dakota UCR program. Based on a population estimate of 660,000, the resulting homicide rate was 1.4 per 100,000 inhabitants. National crime rates reported in Crime in the United States - 1989 indicate that in 1989 the national homicide rate was 8.7 per 100,000 inhabitants. North Dakota's homicide rate ranked 49th out of the 50 states in 1989.

Of the nine victims, 5 were shot with firearms, 2 died in stabbing incidents, one victim was strangled and one died as the result of suffocation. Seven of the victims were adults, and 5 were female.

Eight assailants were identified by law enforcement regarding these incidents. The assailant in the shooting death of a man in rural Morton County has not been identified. All known assailants were male and two were juveniles. All known assailants were relatives, friends or acquaintances of their victims.

**Questions Most Frequently Asked
By Police Officers About The
North Dakota Domestic Violence Statute
(ND Century Code Chapter 14-07.1)**

1. Does the Domestic Violence statute cover people who are not married?

Yes. North Dakota's domestic violence laws cover not only married people, but those who are divorced, separated, living together, in a dating relationship, same sex relationships, or any other persons sharing the same household. Furthermore, the court has the discretion to extend the protections of the statute even further to any other relationship it finds appropriate.

2. If the persons involved are not married, does the assault have to be witnessed by the officer before an arrest can be made without a warrant?

The marital status of the people is not a factor in determining whether or not an arrest is made. In any situation covered by the domestic violence statute, the officer may make a warrantless arrest regardless of whether or not he or she witnessed the assault. Indeed, most often domestic assaults have no witnesses, which is the primary reason that this discretion was granted.

3. How long after the assault does an officer have to make a warrantless arrest?

An officer has four hours from the time probable cause is established in which to make a warrantless arrest under Chapter 14-07.1

Of course an arrest may still be made after four hours, but a warrant must then be obtained.

One who willfully causes bodily injury to another human being is guilty of assault.

4. Does a Protection Order need to be in effect before a warrantless arrest can be made?

There are two scenarios in which a warrantless arrest may be made under chapter 14-07.1. In the first, an officer may arrive at the scene of a domestic assault for the first time ever, and if there is probable cause that an assault occurred, he or she can make a warrantless arrest.

In the second scenario, a Protection Order may be in effect between the parties, and in this case also, once an officer has probable cause to believe that a person has violated a Protection Order, a warrantless arrest can be made.

5. What's the difference between a Protection Order and an Interim Order?

A Protection Order is much stronger than an Interim Order because breaking a Protection Order is a criminal act (Class A Misdemeanor). An officer may also make an immediate arrest if a Protection Order is broken. No such remedy is available if an Interim Order is broken.

Interim Orders routinely accompany divorce filings; however, when violence is an issue, only a Protection Order can provide the necessary protections.

6. Does an officer have to witness the breaking of a Protection Order before a warrantless arrest can be made?

No. The same requirements of establishing probable cause must be met, but if such cause can be established, the officer need not have personally witnessed the violation before he or she can make a warrantless arrest under 14-07.

7. If I make an arrest, what can I do if the victim won't sign the complaint?

A peace officer or other person can sign a complaint if the victim is reluctant. In fact, this can be a very positive action, especially if the victim's fear is a major factor.

Obviously, the availability of the victim as a "willing witness" may play a part in the State's Attorney's decision to prosecute, but that should not be a consideration in the decision to sign a complaint.

8. Am I in danger of being sued for false arrest if later no charges are filed?

Probably not. Obviously, no absolute guarantees exist against lawsuits. Frivolous and unfounded suits are filed every day. N.D.C.C. ch. 14-07 does specifically offer "good faith" protections to officers doing their duty however.

The trend in lawsuits over the last few years has been toward suits against officers who had **not** made an arrest when one was clearly called for. Thus, it is more likely that someone will sue an officer for failing to act than for a so-called "false arrest."

9. Who violates the Order if the respondent says he/she was invited back into the house?

In spite of any invitations, lures, tricks, or promises, the respondent's name is on the Order, and the responsibility is on him or her not to break it.

This may be a frustrating reality for law enforcement officers, but since it is often virtually impossible to distinguish an Order broken by coercion from one broken by invitation, courts have repeatedly held that the burden of abiding by an Order — and the penalty for breaking it — falls on the respondent.

10. What is the process for dissolving an Order?

The process for dissolving an Order varies from one district to another. In some districts a phone call is enough. In others, the court requires the petitioner to come into court and sign a paper under oath that says dissolving the Order is what the petitioner wants and that no one is coercing her or him to drop the Order.

11. If both parties have sustained physical injury, do I have to arrest both, especially if my department has a mandatory arrest policy?

No. In fact, officers **must** consider each complaint separately when complaints are received from two or more family members. Also, as of July 1, 1991, officers must consider the "comparative severity of injuries" and ascertain whether or not self defense was a factor in inflicting any defensive wounds, when determining whether to make an arrest.

LAW ENFORCEMENT TRAINING RESOURCES

The following film and videos are available on loan from the Council on Abused Women's Services Office for a \$5.00 cover charge:

"A FAMILY AFFAIR": a 28 minute film dramatizing the impact of domestic violence on one family. Includes response of law enforcement, courts, victim advocates.

"AGENTS OF CHANGE": a 27 minute video which provides the perspectives of two law enforcement agencies on implementing change in domestic violence policies. Includes actual scenes of interventions.

"ALBUQUERQUE JOURNAL": a 24 minute follow-up to "Agents of Change" in which Officer Mark Wynn rides along with an officer from Albuquerque as he responds to domestic violence calls.

"DAMNED IF YOU DON'T": a lecture format relating to liability issues for police departments as they respond to domestic violence calls.

"THURMAN TAPE": a brief segment of a dramatic "60 Minutes" presentation of the Tracey Thurman Case in which a Connecticut law enforcement agency was successfully sued for "failure to respond" appropriately to a domestic violence call.

"POLICE FOUNDATION VIDEO ON DOMESTIC VIOLENCE": a roundtable discussion about the merits of mandatory arrest from a variety of perspectives.

"DULUTH LAW ENFORCEMENT RESPONSE TRAINING VIDEO": includes seven, 3-5 minute case scenarios used to explore various issues including: probable cause; officer liability; defining self-defense and mutual assaults; enforcing restraining orders; effective evidence gathering and report writing; impact of officer attitude on investigations; making decisions regarding arrest, separation, mediation. (Overheads and handouts in accompanying manual can be adapted for local use).

MANUALS

LAW ENFORCEMENT RESPONSE TO FAMILY VIOLENCE: NATIONAL SEMINARS ON POLICY DEVELOPMENT:

A guide to writing effective police policies produced after extensive research and field testing by the New York based Victim Services Agency. ('91)

MANUALS (Continued)

LAW ENFORCEMENT RESPONSE TO FAMILY VIOLENCE: THE TRAINING CHALLENGE

A format for police training on domestic violence issues. Developed and field tested by the Victim Services Agency. ('91)

DOMESTIC VIOLENCE TRAINING CURRICULUM

Produced by The Family Violence Project, District Attorney's Office, San Francisco. (1988)

BROCHURES/INFORMATION SHEETS

"North Dakota's Domestic Violence Laws: How They Work": a guide for service providers and victims of domestic violence.

"Victim's Guide": a mini-brochure designed for law enforcement officers to distribute to victims on-scene.

"Guide to Domestic Violence Counselling Services in North Dakota": outlines referral resources for victims and perpetrators of domestic violence in North Dakota.

"Model Strategy for Developing a Law Enforcement Protocol in Response to Domestic Violence": includes sample guidelines for developing protocols by various professional disciplines, including law enforcement.

"Questions Frequently Asked by Law Enforcement Officers About North Dakota's Domestic Violence Statutes": a one page sheet of questions and answers about North Dakota's domestic violence laws. Designed for easy access.

VICTIM/WITNESS ASSISTANCE PROJECTS

BURLEIGH COUNTY

Victim/Witness Assistance Program
221 N. 5th Street
PO Box 5503
Bismarck, ND 58502
Phone: 222-6629

TURTLE MOUNTAIN

Victim/Witness Assistance Program
Turtle Mt. Tribe
Box 900
Belcourt, ND 58316
Phone: 477-3956

CASS COUNTY

Victim/Witness Assistance Program
Office of States Attorney
Cass County Courthouse
PO Box 2806
Fargo, ND 58108
Phone: 241-5850

WALSH COUNTY

Victim/Witness Assistance Program
422 Hill Avenue
Grafton, ND 58237
Phone: 352-3265
352-3059 (Hotline)

GRAND FORKS COUNTY

Victim/Witness Assistance Program
111 South 4th Street
Grand Forks, ND 58201
Phone: 746-0405
746-8900 (crisis)

WARD COUNTY

Victim/Witness Assistance Program
Box 881
Minot, ND 58701
Phone: 852-2258
857-2000 (Crisis Line)

MERCER COUNTY

Victim/Witness Assistance Program
Office of States Attorney/Women's
Action Resource Center
Stanton, ND 58571
Phone: 745-3518

WILLIAMS COUNTY

Victim/Witness Assistance Program
Williams County Office of States Attorney
PO Box 2047
Williston, ND 58802
Phone: 572-1724

STUTSMAN COUNTY

Victim/Witness Assistance Program
Stutsman County Courthouse
Jamestown, ND 58401
Phone: 252-6688

U.S. Victim/Witness Coordinator,
U.S. Attorney's Office
Box 699
Bismarck, ND 58502
Phone: 250-4396

* Information on the services provided by the Victim/Witness Assistance Network is available from any of the programs listed above. In general, these programs provide services to all types of victims of crime, including domestic violence victims going through court processes.

ND COUNCIL ON ABUSED WOMEN'S SERVICES/COALITION AGAINST SEXUAL ASSAULT IN ND
DOMESTIC VIOLENCE/SEXUAL ASSAULT PROGRAMS

BISMARCK RAPE CRISIS PROGRAM
221 N. 5th Street
Bismarck, ND 58501
(701)222-8782

ABUSED ADULT RESOURCE CENTER
Box 167
Bismarck, ND 58502
(701)222-8370 Office,
1-800-472-2911 Crisis Line

BOTTINEAU COUNTY COALITION AGAINST
DOMESTIC VIOLENCE
Box 371
Bottineau, ND 58318
(701)228-2028 Office,
(701)228-3171 Safe Line

SAFE ALTERNATIVES FOR ABUSED FAMILIES
Box 646
Devils Lake, ND 58301
(701)662-7378 Office
(701)662-5050 Crisis Line

DOMESTIC VIOLENCE & RAPE CRISIS CENTER
Box 1081
Dickinson, ND 58601
(701)225-4506 Office and Crisis Line

KEDISH HOUSE
Box 322
Ellendale, ND 58436
(701)349-4729 Office

RAPE AND ABUSE CRISIS CENTER
Box 2984
Fargo, ND 58108
(701)293-7273 Office and Crisis Line

COALITION AGAINST DOMESTIC VIOLENCE
Box 935
New Town, ND 58763
(701)627-4171 Office

TENDER HEARTS AGAINST FAMILY VIOLENCE
Box 478
Ft. Yates, ND 58538
(701)854-3402

DOMESTIC VIOLENCE PROGRAM OF WALSH COUNTY
422 Hill Ave.
Grafton, ND 58237
(701)352-0647 Office
(701)352-3059 Crisis Line

CAWS STATE NETWORKING OFFICE
418 E. Rosser #320, Bismarck, ND 58501
Office: (701)255-6240
In State Toll-free Number:
1-800-472-2911

Executive Director: Bonnie Palecek

ABUSE AND RAPE CRISIS CENTER
111 South 4th St.
Grand Forks, ND 58201
(701)746-0405 Office,
(701)746-8900 Crisis Line

S.A.F.E. SHELTER
Box 1934
Jamestown, ND 58402
(701)251-2300 Office and Crisis Line

WOMEN'S ADVOCACY NETWORK
Box 919
Lisbon, ND 58054
(701)683-5061

MCLEAN FAMILY RESOURCE CENTER
Box 506
Washburn, ND 58577
(701)462-8643 Office and Crisis Line

WOMEN'S ACTION & RESOURCE CENTER
Box 940
Beulah, ND 58523
(701)873-2274 Office
(701)748-2274 Hotline

DOMESTIC VIOLENCE CRISIS CENTER
(WOMEN'S ACTION PROGRAM)
Box 881
Minot, ND 58701
(701)852-2258 Office
(701)857-2000 Crisis Line

ACTION RESOURCE CENTER
Box 538
Stanley, ND 58784
(701)628-3233 Office

ABUSED PERSONS OUTREACH CENTER
Box 508
Valley City, ND 58072
(701)845-0078 Office
(701)845-0072 Crisis Line

FAMILY CRISIS SHELTER
Box 1893
Williston, ND 58802
(701)572-0757 Office
(701)572-9111 Hotline

COMMUNITY RESPONSE TEAMS

"Community Response Teams" are inter-agency groups in local communities which come together periodically in order to improve and coordinate local responses to family violence situations.

Some have produced manuals including all participating agencies' policies on handling domestic violence cases; others function as "trouble-shooting" vehicles and help to facilitate communication among agencies dealing with families enmeshed in violence; still others have focused on a specific aspect of family violence such as adult or child victimization.

Some Response Teams are city-wide; others involve counties; one is multi-county; and one is reservation-wide. Their experiences could provide valuable insights to communities wanting to explore the benefits of such a group.

Further information on beginning a Community Response Team can be gathered from the contact people listed or the ND Council on Abused Women's Services.

DOMESTIC VIOLENCE
COMMUNITY RESPONSE TASK FORCES
IN NORTH DAKOTA
SEPTEMBER, 1991

BISMARCK/BURLEIGH COMMUNITY RESPONSE TASK FORCE

ORGANIZED: 1985 (Fall)

MEETS: Quarterly and as needed

PRODUCED: Manual of agency policies

CONTACT PERSONS: Diane Zainhofsky, Abused Adult Resource Center
Chief Bob Matzke, Bismarck, North Dakota

PHONE: 222-8370

MULTI-COUNTY TASK FORCE ON DOMESTIC VIOLENCE

(Ellendale, ND and five surrounding counties)

ORGANIZED: 1988

MEETS: Quarterly

PRODUCED: Manual of agency policies

CONTACT PERSON: Sharron Brady, Kedish House, Ellendale

PHONE: 349-4729

TENDER HEARTS COMMUNITY RESPONSE TASK FORCE, FT. YATES

ORGANIZED: 1991

MEETS: Monthly

PRODUCED:

CONTACT PERSON: Eldora Poitra, Tender Hearts

PHONE: 854-3402

MINOT/WARD COUNTY COMMUNITY RESPONSE TO VICTIMIZATION

ORGANIZED: 1986

MEETS: Monthly

PRODUCED: No documents

CONTACT PERSON: Capt. Dan Draovitch, Minot Police Department

PHONE: 852-0111

TURTLE MT. TRIBE DOMESTIC ABUSE TASK FORCE

ORGANIZED: February 1, 1991

MEETS: Twice monthly

PRODUCED: Working on manual of agency policies

CONTACT PERSON: Dale Brien, Turtle Mt. Victim Assistance Program

PHONE: 477-5614

WILLIAMS COUNTY DOMESTIC VIOLENCE NETWORK

ORGANIZED: March, 1989

MEETS: Semi-annually

PRODUCED: Specific training for all law enforcement officers
in county and training manual

CONTACT PERSON: (changes annually) Debbie Hanson, Family Crisis Shelter, Williston

PHONE: 572-9111

BOTTINEAU TASK FORCE ON FAMILY VIOLENCE
ORGANIZATIONAL MEETING: Summer, 1991
MEETS: Planning stages
PRODUCED:
CONTACT PERSON: Darci Jelleberg, Bottineau,
Coalition Against Domestic Violence
PHONE: 228-2028

CASS COUNTY DOMESTIC VIOLENCE TASK FORCE
ORGANIZED: 1986
MEETS:
PRODUCED: Conferences and trainings
CONTACT PERSON: Beth Haseltine, Rape and Abuse Crisis Center, Fargo
PHONE: 293-7273

MERCER COUNTY COMMUNITY RESPONSE TASK FORCE
ORGANIZED: Fall, 1991
MEETS: Not determined yet
PRODUCED: Resource reference manual is planned
CONTACT PERSON: Linda Isaacson, Mercer County Women's Action
and Resource Center
PHONE: 873-5493
(ANTI-DRUG AND VIOLENT CRIME GRANT WILL FUND BEGINNING OCT. 1, 1991)

GRAND FORKS MULTI-DISCIPLINARY TASK FORCE
ORGANIZED: 1989
MEETS: Monthly
PRODUCED: No documents as yet
CONTACT PERSON: Dr. Myron Veenstra, Northeast Human Service Center
PHONE: 746-0405
(FOCUS HAS BEEN ON CHILD SEXUAL ABUSE VICTIMS)

GENERAL PROVISIONS

27-01-09

Source: S.L. 1977, ch. 254, § 1.

Discretion of Court.

Indigency is the threshold for the granting of leave to proceed in forma pauperis. Yet, even if indigency is alleged sufficiently, the trial court still has discretion to deny a petition according to the language of this section. *Patten v. Green* (1985) 369 NW 2d 105.

The legislature intended that a court be entitled to exercise its discretion in examining a request to proceed in forma pauperis. At the same time, the legislature contemplated that a court would not be allowed to arbitrarily deny such a request. *Patten v. Green* (1985) 369 NW 2d 105.

Marriage Dissolution Fee.

The marriage dissolution fee does not significantly interfere with a person's right to obtain a divorce; the fee does not prohibit a person from a divorce because it may be waived if the applicant is indigent. *Gange v.*

Clerk of Burleigh County Dist. Court (1988) 429 NW 2d 429.

Review on Appeal.

Review of the district court's decision denying a petitioner's request to proceed in forma pauperis in a civil action is limited to determining whether or not the court abused its discretion. *Patten v. Green* (1985) 369 NW 2d 105.

Right to Waiver.

There is no constitutional right to the waiver of fees in a civil action. *Patten v. Green* (1985) 369 NW 2d 105.

Unlike this section, which allows any court in the judicial system to waive, at its discretion, filing fees for indigents in a civil action, the language of Rule 7, N.D.R.App.P., indicates that a request concerning a bond for costs on appeal must be made to the trial court. *Federal Land Bank v. Overboe* (1988) 426 NW 2d 1.

27-01-08. Service of process by mail by federal marshals. Repealed by S.L. 1981, ch. 314, § 1.

27-01-09. Reciprocal recognition of certain state and tribal court judgments, decrees, and orders — Conditions. The district courts and county courts shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. The tribal court judgment, decree, or order must be rendered by a judge who is a graduate of an accredited law school and holds a current valid license to practice law in at least one state. A state court may inquire as to the facts of the case or tribal law only to the extent necessary to determine whether the tribal court had jurisdiction over the subject matter of the judgment, decree, or order and personal jurisdiction over the parties to the action. Recognition and enforcement of tribal court judgments, decrees, and orders under this section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies under the same limitations provided by this section for recognition and enforcement of tribal court judgments, decrees, and orders by state courts.

Source: S.L. 1989, ch. 381, § 1.

Note.

Effective January 2, 1995, this section is amended by S.L. 1991, chapter 326, section

81. The amendment will be set out in the 1993 supplement.

Discretion of Court.

This section does not limit state courts' dis-

PROSECUTOR'S POLICIES ON DOMESTIC VIOLENCE

1. THE VICTIM IS NOT TO BE ARRESTED.

CONTACT THE TENDER HEARTS PROGRAM: ELDORA POITRA 854-3402
EVENINGS CALL BIA LAW ENFORCEMENT TO CONTACT HER.
IF YOU CAN'T REACH TENDER HEARTS, CALL THE PROSECUTOR'S
OFFICE OR AT HOME. MAGGIE PENN 255-6345
SANDY LECOMPTE THROUGH BIA LAW ENFORCEMENT.

2. THE ABUSER MUST BE ARRESTED IF PRESENT WHEN THE OFFICER ARRIVES.

IF THE ABUSER IS NOT PRESENT, THE PROSECUTOR'S OFFICE WOULD TAKE THE POSITION, THAT IF YOU OBSERVE PHYSICAL HARM - BLOOD, BRUISES OR WORSE - ON THE VICTIM, YOU HAVE PROBABLE CAUSE TO ARREST THE ABUSER WITHOUT A WARRANT WHEN YOU LOCATE HIM.

3. IF THE ABUSER IS NOT IN CUSTODY, AT THE TIME THE DOMESTIC ABUSE COMPLAINT IS PRESENTED TO THE PROSECUTOR'S OFFICE, THE TRIBE ISSUES WARRANTS ON ALL DOMESTIC ABUSE CHARGES.

4. THE TRIBE WILL ASK FOR A 72 HOUR HOLD ON ALL DOMESTIC ABUSE ARRAIGNMENTS. GOD HELP THE JUDGE WHO RELEASES AN ABUSER EARLY.

5. THE TRIBE WILL ASK FOR EITHER (A) NO CONTACT WITH VICTIM; OR (B) NOT TO ANNOY OR HARRASS COMPLAINING WITNESS ON EVERY DOMESTIC ABUSE.

THE TRIBE WILL ASK FOR NO ALCOHOLIC BEVERAGES ON EVERY DOMESTIC ABUSE IF ALCOHOL IS INVOLVED.

6. THE TRIBE WILL MOVE TO REVOKE THE RELEASE OF ANY DOMESTIC ABUSE DEFENDANT WHO VIOLATES CONDITIONS OF RELEASE - HARASS OR HARM VICTIM / INTOXICATED.

REVOCATION OF RELEASE RESULTS IN THE DEFENDANT BEING REQUIRED TO WAIT IN JAIL UNTIL THE DAY OF TRIAL.

7. ALL DEFENDANTS FOUND GUILTY OF DOMESTIC ABUSE WILL BE SENTENCED TO DOMESTIC ABUSE COUNSELING - 11 WEEKS OF ONE THURSDAY NIGHT CLASS. ANY PERSON WHO DOES NOT ATTEND WILL BE CHARGED WITH CRIMINAL CONTEMPT ON FRIDAY MORNING AND A WARRANT ISSUED FOR ARREST.

IF PERSONS DO NOT COMPLETE THE DOMESTIC ABUSE 11 WEEKS OF COUNSELING SESSIONS, THE TRIBE WILL REVOKE THEIR SENTENCE AND HAVE THEM SERVE ANY OF THE REMAINING 30 DAYS OF THE SENTENCE (1ST OFFENSE).

REMEMBER: NO POLICE OFFICER AND NO TRIBAL COURT EMPLOYEE HAS THE RIGHT TO DECIDE THAT THERE IS NO HELP FOR SOMEONE.

EVERY ABUSER MUST BE PROSECUTED. EVERY VICTIM MUST BE HELPED.

NATIVE AMERICAN TRAINING RESOURCES

The following videos and other training materials have been specifically designed by and for Native American people for use as training and awareness tools.

VIDEOS:

"THE BRIDGE": an 18½ minute video addressing the issue of adult survivors of incest. It is culturally specific to victimization in Indian Country and includes interviews with both male and female survivors.

"FINDING OUR WAY": a 20 minute video produced in Eagle Butte, South Dakota. It graphically depicts domestic violence on the reservation and its impact on all family members.

"FIRST STEPS": a 23 minute sequel to "Finding Our Way" dealing with the aftermath of domestic violence.

WORKING WITH NATIVE AMERICAN MEN WHO BATTER- AN INDIAN APPROACH: a 40 minute video of a Marlin Mousseau lecture on "The Medicine Wheel."

"THE JOURNAL, PARTS I & II (Bah-Me-Di-Zi-Win)": two half hour videos featuring interviews with victims of domestic violence. Part I includes discussions of Racism, Sexual Abuse, Spirituality, and Sisters. It is designed for public presentations and trainings. Part II is designed to be used in Indian women's groups to stimulate discussion.

MANUALS:

DOMESTIC ABUSE ACTION MANUAL

Produced by Positive Indian Development Center.
Includes chapters on "Battering and the Indian Woman"; workshop outlines on Intervention, Prevention, and Community Development; Principles of Proper Living; Positive Alternatives; and action steps.

POSITIVE INDIAN PARENTING

Produced by the Northwest Indian Child Welfare Institute, Portland, Oregon.
A culturally specific parent education curriculum; also a series of modules on various specific topics such as "Cross-Cultural Training: and "The Indian Child Welfare Act."

TRIBAL CODES AND POLICIES RELATING TO DOMESTIC VIOLENCE

Several Tribal Nations share space within North Dakota's borders. Many times our law enforcement and legal systems overlap and sometimes they conflict with each other.

The following Tribal Codes are included in order to facilitate communication on family violence issues, which are obviously a concern to all of us. A reciprocal agreement has been formalized between the Three Affiliated Tribes of Ft. Berthold and the State of North Dakota by which certain orders are mutually recognized. A copy of the Century Code statute is included.

Also, it should be noted that in some cases the Tribal Codes are stronger than state law and could provide models for stronger policies on a statewide or local department level.

NOTE: The Devils Lake Sioux Tribe is in the process of adopting a Tribal Code provision on domestic violence. The Sisseton-Wahpeton Sioux Tribe also has a Tribal Code provision relating to domestic violence.

CHAPTER 1.27

DOMESTIC VIOLENCE

PURPOSE: The purpose of this chapter is to recognize domestic abuse as a serious crime against our society and to assure the victim of domestic abuse the maximum protection from abuse which the law and those who enforce the law can provide.

It is the intent of the Turtle Mountain Tribal Council that the official response to cases of domestic abuse shall be that violent behavior is not to be excused or tolerated, whether or not the abuser is intoxicated. Furthermore, it is the intent of the Tribal Council that criminal laws be enforced without regard to whether the persons involved are family members, were or are married, cohabiting, or involved in a relationship. It is also the intent of the Tribal Council that the Elders of this Tribe be cherished and protected according to the traditions of the Tribe.

1.2701 DEFINITIONS

Terms used in this ordinance, unless a different meaning is clearly indicated by context, are defined as follows:

- A) Family member or household member shall mean a relative, spouse, former spouse, adult or elderly person related by marriage or an adult or elderly person who resides or formerly resided in the residence.
- B) Bodily injury shall mean physical pain, illness, or an impairment of physical condition.
- C) Causing apprehension of bodily injury shall mean any physical act which is intended to cause another person to reasonably fear imminent serious bodily injury or death.

1.2702 CRIME OF DOMESTIC ABUSE

A person commits the crime of domestic abuse if he or she

- 1) Purposely or knowingly causes bodily injury to a family member or household member; or
- 2) Purposely or knowingly causes apprehension of bodily injury to a family member or household member.

1.2703 MANDATORY ARREST

- A) A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe: (1) that an assault has occurred; (2) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable to the officer or not; (3) that any physical action has occurred which was intended to cause another person

to reasonably fear imminent serious bodily injury or death, and the victim is the person's family member, household member or former household member. The arrest shall be made even though the assault did not take place in the presence of the officer.

- B) The officer, under this ordinance, is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest a person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider: (1) the intent to protect victims of domestic abuse under this ordinance; (2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

1.2704 12 to 72 HOUR HOLD

Any person arrested under this ordinance shall be held without bail, in the custody of the police department, for a period of not less than twelve (12) hours and not to exceed seventy-two (72) hours, as a mandatory "cooling off" period. Release under this section is at the discretion of a Turtle Mountain Tribal Judge.

1.2705 FILING OF COMPLAINT

1. The law enforcement officer making an arrest under this ordinance shall sign a complaint against the alleged abuser on behalf of the Turtle Mountain Tribe. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.
2. The victim shall be subpoenaed as the primary witness for the prosecution.
3. If the perpetrator and victim are married to one another, the Husband and Wife Communication Privilege shall not apply in the crime of domestic abuse.

1.2706 LIABILITY OF LAW ENFORCEMENT OFFICERS

A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

1.2707 NOTICE OF RIGHTS

The officer shall tell the victim of domestic abuse whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include the victim's right to the following:

1. An order restraining the abuser from further acts of abuse;
2. An order directing the abuser to leave the household;
3. An order preventing the abuser from entering the residence, school, business or place of business;
4. An order awarding custody of visitation with any minor children;
5. An order directing the abuser to pay support to the victim and minor children where appropriate.

1.2708 WRITTEN REPORT

Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, with a copy of the report being sent to the Tribal Prosecutor, setting forth the reason or reasons for his or her decision.

1.2709 PENALTIES

The purpose of this ordinance shall be to stop all family violence on the Turtle Mountain Reservation and to promote the healing of families where possible.

- A. The person convicted of a first offense of domestic abuse shall be imprisoned for a term of not more than ninety (90) days as a maximum and may be fined in amount not to exceed \$500.00 or both such imprisonment and fines, with costs. The court shall require mandatory counseling as part of the sentence. Such counseling may include, but is not limited to: alcohol/drug abuse counseling, anger control, and family counseling.
- B. A person convicted of a second offense of domestic abuse shall be imprisoned for a term of not less than ten (10) days or more than one hundred eighty (180) days, and may be fined in an amount not to exceed \$1,000.00 or both such imprisonment and fines, with costs. The court shall require mandatory counseling as part of the sentencing. Such counseling may include, but is not limited to alcohol/drug abuse counseling, anger control and family counseling. Counseling shall be made available for the children of the perpetrator and the children of the victim.
- C. A person convicted of a third or subsequent offense of domestic abuse shall be imprisoned for a term of not less than thirty (30) days or more than three hundred and sixty-five (365) days, and may be fined in an amount not to exceed \$2,000.00 or both such imprisonment and fines, with costs. The court shall require mandatory counseling as part of the sentencing.

Such counseling may include, but is not limited to alcohol/drug abuse counseling, anger control and family counseling. Counseling shall be made available for the children of the perpetrator and the children of the victim.

1.2710

REPORTING STATISTICS

In all cases of domestic abuse, the officer involved shall make a written report and the numbers of such cases shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to appropriate agencies and the public.

TITLE XXV. DOMESTIC ABUSE

25101 PURPOSE.

The purpose of this chapter is to recognize domestic abuse as a serious crime against society and to assure the victim of such abuse the maximum protection from further abuse which the law, and those who enforce the law, can provide.

It is the intent of the Standing Rock Sioux Tribal Council that the official response to cases of domestic abuse shall be that violent behavior is not to be excused or tolerated, whether or not the abuser is intoxicated. Furthermore, it is the intent of the Standing Rock Sioux Tribal Council that criminal laws be enforced without regard to whether the persons involved are family members, are or were married, cohabiting, or involved in a relationship.

25102 DEFINITIONS.

Terms used in this section, unless a different meaning is clearly indicated by context, are defined as follows:

- A. Domestic violence shall include physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, on the complaining family or household members.
- B. Domestic abuse program shall mean a program that provides emergency housing for victims of domestic violence and their dependents, plus some of the following additional services:
 - (1) Counseling.
 - (2) Advocacy.
 - (3) Community education on domestic violence.
 - (4) Referral to other sources for services not provided by the domestic abuse program.
- C. Family member or household member shall mean a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purposes of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 24-108.

- D. Bodily injury shall mean physical pain, illness, or an impairment of physical condition.
- E. Causing apprehension of bodily injury shall mean any physical act which is intended to cause another person reasonably to fear imminent serious bodily injury or death.

⁵2-103 CRIME OF DOMESTIC ABUSE.

A person commits the crime of domestic abuse if he or she:

- A. Purposely or knowingly cause bodily injury to a family member or household member; or
- B. Purposely or knowingly causes apprehension of bodily injury to a family member or household member.

⁵2-104 MANDATORY ARREST.

- A. A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe that:
 - (1) an assault has occurred, which may or may not have resulted in bodily injury that is observable to the officer; or
 - (2) any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death; and
 - (3) the victim is the person's family or household member, or former household member.
- B. The arrest shall be made even though the assault did not take place in the presence of the officer.
- C. The officer, under this Title, is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest the person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider:
 - (1) the Tribe's intent to protect victims of domestic abuse under this Title; or
 - (2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
 - (3) the history of domestic abuse between the persons involved.

25105 MANDATORY HOLD.

Any person arrested under this Title shall be held without bail, in the custody of the police department, for a period not to exceed seventy-two (72) hours as a mandatory "cooling off" period.

25106 FILING OF COMPLAINT.

A. The law enforcement officer making an arrest under this Title shall sign a complaint against the alleged abuser on behalf of the Standing Rock Sioux Tribe. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

B. The victim shall be subpoenaed as the primary witness for the Tribe.

25107 NOTICE OF RIGHTS TO VICTIMS.

The officer shall advise the victim of domestic abuse whether a shelter or other services are available in the community and give the victim immediate notice of his or her right to petition the court for a protection order.

25108 PROTECTION ORDER.

A. An action for a protection order commenced by a verified application alleging the existence of domestic abuse may be brought in Tribal Court by a family member, household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic abuse protection order. An action may be brought under this section, regardless of whether a divorce action has been filed.

B. Upon receipt of the application, the court shall order a hearing to be held no later than fourteen (14) days from the date of the hearing order.

C. Service shall be made upon the respondent not less than five (5) days prior to the hearing. If service cannot be made, the court may set a new date.

D. Upon a showing of actual or imminent domestic abuse, the court may enter a protection order after due notice and a full hearing. The relief provided by the court may include any or all of the following:

- (1) Restraining any party from threatening, molesting or injuring any other person.

- (2) Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic abuse is occurring, or from a domestic abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - (3) Awarding temporary custody and/or establishing temporary visitation rights with regard to minor children. The court may order that any such visitation be supervised or otherwise restricted.
 - (4) Recommending or requiring that either or both parties undergo counseling with a domestic abuse program or other agency which provides services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court.
 - (5) Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties.
 - (6) Awarding temporary use of personal property, including motor vehicles, to either party.
- E. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
- F. No order or agreement under this section shall affect title to any real property in any manner.

25109 TEMPORARY PROTECTION ORDER.

- A. Where an application under section 24-108 alleges an immediate and present danger of abuse to the applicant based upon an allegation of a recent incident of actual abuse or threat of abuse, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
- B. An ex parte temporary protection order may include:
- (1) Restraining any party from committing acts of abuse on another person.
 - (2) Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic abuse shelter care facility.
 - (3) Awarding temporary custody and/or establishing temporary visitation rights with regard to minor children. The court may order that any such visitation be supervised or otherwise restricted.

- C. An ex parte temporary protection order shall remain in effect, in the court's discretion, for not more than thirty (30) days, unless otherwise terminated by the court.
- D. A full hearing as provided by section 24-108 shall be set not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for hearing.
- E. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification or termination thereof, by the close of the business day on which the order was granted, to the local law enforcement agency with jurisdiction over the residence agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic abuse, which is the subject of the temporary protection order, has occurred, or is likely to occur, if requested by the applicant and approved by the court.
- F. A maximum filing fee of \$10.00 shall be paid to the Tribal Court prior to the issuance of a temporary protection order unless said fee is waived by the court.

25110 PERSONS REQUIRED AND PERMITTED TO REPORT.

- A. Any medical or mental health worker, the personnel of a domestic abuse program, the personnel of a domestic abuse shelter care facility, counselor or social worker having knowledge or reasonable cause to believe that a person coming before him or her in his or her professional or official capacity is a victim of domestic abuse shall report the circumstances to the local law enforcement agency.
- B. Any person having reasonable cause to believe that a person is a victim of domestic abuse may report such circumstances to the local law enforcement agency.

25111 REPORTING.

- A. All persons required to report cases of known or suspected cases of domestic abuse shall immediately cause written reports to be made to the local law enforcement agency.
- B. All persons permitted to report cases of known or suspected cases of domestic abuse may file oral or written reports with the local law enforcement agency.

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25112 IMMUNITY FROM LIABILITY.

- A. Any person, other than the alleged violator, who participates in good faith in the making of a report, assists in an investigation, or provides preventive or remedial services with respect to the domestic abuse, is immune from any civil or criminal liability that might otherwise result from those actions.
- B. A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause or enforcement in good faith of a court order or any other action or omission in good faith under this Title arising from an alleged incident of domestic violence brought by any party to the incident.

25113 PENALTY FOR FALSE REPORTS.

- A. Any person, as defined in section 24-110, who willfully makes a false report, or causes a false report to be made pursuant to this section is guilty of a CLASS A MISDEMEANOR, but the sentence shall not require time be spent in jail for the first offense.

25114 ABROGATION OF PRIVILEGED COMMUNICATIONS.

- A. Any privilege of communication between husband and wife or between any professional person and his client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding domestic abuse resulting from a report made under this Title.

25115 WRITTEN REPORT - WITH NO ARREST.

Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision.

25116 PENALTIES.

The purpose of this ordinance is to stop all family violence on the Standing Rock Sioux Indian Reservation and to promote the healing of families when possible.

- A. A person convicted of a first or second offense of domestic abuse shall be imprisoned for a term of not less than ten (10) days nor more than ninety (90) days and may be fined an amount not to exceed \$500.00. The court shall require mandatory counseling as part of the sentence. Such counseling shall include, but is not limited to: alcohol/drug abuse counseling, anger control, and family counseling.

- B. A person convicted of a third or subsequent offense of domestic abuse shall be imprisoned for a term of not less than thirty (30) days nor more than ninety (90) days, and may be fined in an amount not to exceed \$500.00, or both. The court shall require mandatory counseling as part of the sentence. Such counseling shall include, but is not limited to: alcohol/drug abuse counseling, anger control and family counseling. Counseling shall be made available for the children of the perpetrator and the children of the victim.

25117 REPORTING STATISTICS.

In all cases of domestic abuse, the officer involved shall make a written report, and the number of such cases shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to the appropriate agencies.

3/7/90

Section 5-07.1-01

Adult Abuse Defined.

For the purposes of this Section, the term "adult abuse" shall mean and include physical harm, bodily injury, assault or the infliction of fear of imminent physical harm, bodily injury, or assault, including mental harm on the complaining family or household members.

Section 5-07.1-02

Protection Order.

A. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought in the Fort Berthold District Court by any spouse, family member, former spouse, parent, child, persons related by blood or marriage, person's who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of an adult abuse protection order. An action may be brought under this Section, regardless of whether a petition for legal separation, annulment or divorce has been filed.

B. Upon its receipt of the application, the Court shall order a hearing to be held no later than fourteen (14) days from the date of issuance of the hearing order.

C. Service of copies of the application and hearing order shall be made upon the respondent no fewer than five (5) days prior to the date set for the hearing thereon. In the event that such service cannot be made within the time period prescribed herein, the Court shall be authorized to continue the hearing date.

D. Upon a showing, by a preponderance of the evidence presented at the hearing, of actual or imminent adult abuse, the court may enter a protection order after due notice and full hearing. The relief provided by the Court may include any or all of the following:

1. The restraint of either or both of the parties from threatening, intimidating, molesting, and injuring the other party, or any other person, and any and all minor children of the parties.
2. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the adult abuse is occurring, or from an adult abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.
3. The award of temporary physical custody to either party and the grant of temporary visitation rights to the other party with respect to any and all minor children of the parties.

4. The recommendation or mandate that either or both of the parties participate in counseling provided by an adult abuse facility or by any other agency which provides professional services which the Court should deem appropriate. The Court may request the receipt of any appropriate written report(s) from the designated agency within a period of time as prescribed thereby. The costs incurred in the Court-ordered initial counseling assessment and in the development of any subsequent report(s) shall be borne by the party or parties involved therein if financially capable to do so.

5. The mandate that a party pay such reasonable support as may be necessary for the maintenance of the support of the other party and of any and all minor children of the parties and reasonable attorneys fees and costs.

E. The Court may amend its initial order at any time upon subsequent motion filed by either party.

F. No order issued pursuant to this Subsection shall affect title to any real property of either of the parties.

SECTION 5-07.1-03

Temporary Protection Order; Copy To Law Enforcement Agencies.

A. In those instances wherein an application brought pursuant to Subsection 5-07.1-02 alleges an immediate and present danger of adult abuse to the applicant, based upon an allegation of a recent incident of actual adult abuse or threat thereof, the Court may, within its discretion, issue an ex parte temporary protection order, pending a full hearing on the application, wherein may be ordered any one or combination of the following forms of relief:

1. The restraint of any party from committing acts of abuse on another person.
2. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from an adult abuse shelter care facility.
3. The award of temporary physical custody to either party and the grant of temporary visitation rights to the other party with respect to any and all minor children of the parties.

B. An ex parte temporary protection order shall remain in effect for any period, as prescribed by the Court within its discretion, not to exceed thirty (30) days, unless such order should be vacated by the Court prior to the expiration of the period as initially prescribed thereby.

C. The full hearing prescribed in Subsection 5-07.1-02 B shall be set for a date no later than fourteen (14) days from the date of issuance of the temporary protection order. The respondent shall forthwith be served with copies of the application and the ex parte temporary protection order, together with a notice of hearing.

D. The Clerk of Court shall transmit a copy of each temporary protection order, and any subsequent order amending or vacating the initial order, by the close of the business day on which each such order has been issued, to the Bureau of Indian Affairs and Three Affiliated Tribes Law Enforcement Agencies, at the request of the applicant, with the concurrence of the Court. Each such Law Enforcement Agency, by means of an existing verification system, shall make available any and all information relative to the existence, substance, and current status of the applicable temporary protection order issued pursuant to this Subsection, to any law enforcement officer responding to the scene of reported adult abuse.

SECTION 5-07.1-04 Assistance Of Law Enforcement Officer In Service And Execution.

Upon the issuance of a protection order pursuant to Subsection 5-07.1-02 and to Subsection 5-07.1-03, the Court shall order that a law enforcement officer accompany and assist the applicant in securing possession of the dwelling, if so mandated by the Court in its order, or otherwise assist in the service and execution of the protection order, which assistance may include aid in the referral to an adult care facility.

SECTION 5-07.1-05 Right To Apply For Relief

The right of an individual to make application for relief pursuant to Subsection 5-07.1-02 or to Subsection 5-07.1-03 shall, in no manner nor to any extent, be adversely affected by his or her leaving the dwelling in an effort to avoid adult abuse. The Court shall not require the payment of any security or bond by either party, except in those exceptional instances wherein the Court should deem such payment appropriate and necessary.

SECTION 5-07.1-06 Penalty For Violation Of Protection Order; Arrest Without Warrant.

A. In the event that, subsequent to the issuance of a protection order pursuant to Subsection 5-07.1-02 or to Subsection 5-07.1-03 and the service of such order upon the respondent or other individual restrained thereby, any such individual against whom the order has been issued, who shall be proven to have subsequently violated any proscription or mandate set forth in the order, shall be guilty of (1) a misdemeanor punishable by a fine, the minimum and maximum amounts of which shall be Two Hundred and 00/100 Dollars (\$200.00) and Five Hundred and 00/100 Dollars (\$500.00) respectively and/or imprisonment, the minimum and maximum terms of which shall be

thirty (30) days and six (6) months respectively, and (2) any violation of the Order also constitutes criminal contempt of court subject to the penalties prescribed by the applicable provisions as set forth in the Code of Laws of the Three Affiliated Tribes.

B. A law enforcement officer shall have the authority and right to arrest an individual without a warrant under the following circumstances:

1. The individual has committed the offense of violating the protection order issued against him or her, irrespective of whether or not such offense was committed in the presence of the officer; or
2. A law enforcement officer has probable cause to believe the person, within four (4) hours of the ascertainment of probable cause, has assaulted that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the law enforcement officer. A law enforcement officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of the alleged victim.

No law enforcement officer shall be held criminally or civilly liable for making an arrest pursuant to this Subsection, if the officer acted in good faith on the basis of probable cause and without malice.

SECTION 5-07.1-07 Appointment For Guardian Ad Litem For Minor.

The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support or visitation if either party or the Court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be defined as an appointee from a Tribal Social Services program, Indian Health Service, or some other authorized representative deemed appropriate by the Court. The guardian ad litem may be appointed at the time of a temporary protection order or at any time prior to the full hearing. The role of the guardian ad litem shall consist of investigation and making a recommendation and report to the court. At no time shall the involvement of the guardian ad litem alter the requirements set forth in Section 5-07.1-03. The appointment of the guardian ad litem shall expire immediately after the full hearing unless the court retains the right, upon a specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. If the guardian ad litem so appointed is an attorney at law, the court may direct either or both parties to pay

the guardian ad litem fees established by the court. If either party is able to pay the fees for the guardian ad litem, the court may direct the fees to be paid in whole or in part, if either party is financially capable to do so.

SECTION 5-07.1-08 Nonexclusive Remedy.

Any proceeding brought pursuant to this Section shall be independent of and in addition to any other civil or criminal remedies authorized by law.

SECTION 5-07.1-09 Emergency Relief.

In the event that, in an emergency situation, a judge of the Fort Berthold District Court is unavailable, an application brought pursuant to Subsection 5-07.1-03 may be filed with a magistrate within the Fort Berthold Tribal Court system, who shall have the authority to issue an order granting any relief provided for in such Subsection, upon the showing of good cause in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from abuse. Immediate and present danger of abuse to the applicant or others shall constitute good cause for purposes of this section.

Any order issued pursuant to this Subsection shall be in effect for and expire seventy-two (72) hours subsequent to the time of its issuance, unless continued by the magistrate due to the continuing unavailability of a judge of the Fort Berthold District Court. In addition, any order issued pursuant to this Subsection, together with any documentation submitted in support thereof, shall be forthwith certified to and filed with the District Court. Such certification and filing shall have the effect of commencing proceedings under Subsection 5-07.1-02 and invoking the other provisions of this Section.

SECTION 5-07.1-10 Duty To Assist Applicant.

All magistrates within the Fort Berthold Tribal Court system and the District Court Administrator and Prosecutor shall have the duty to assist individuals requesting aid in making application for relief pursuant to this Section.

SECTION 5-07.1-11 Immunity From Liability-Penalty For False Reports.

Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, or providing preventive or remedial services with respect to the abuse, neglect or exploitation of adults who are unable to protect their own interests, is immune from any civil or criminal liability, that might otherwise result from those actions. Any person who willfully engages in said conduct intentionally, knowingly, or recklessly in the making of a false report, or causes a false report

to be made pursuant to this subsection is guilty of (1) a misdemeanor punishable by a fine of up to Three Hundred and 00/100 Dollars (\$300.00) and/or imprisonment of up to three (3) months, unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made to a law enforcement official is guilty of (1) a misdemeanor punishable by a fine of up to Five Hundred and 00/100 Dollars (\$500.00) and/or imprisonment of up to six (6) months.