

Domestic Violence Protocol Manual



ANDREW P. THOMAS
Maricopa County Attorney

Domestic violence is a serious problem affecting many innocent members of our society. Whether the abuse affects children, the elderly, or a spouse, I am committed to prosecuting those who not only neglect their family responsibilities but cause their family deliberate and violent harm.



Violence in the home has devastating, long-term effects on families – especially children – and must be stopped. From the first response of law enforcement to our ongoing education and prevention efforts, our goal should be the well-being of families and the safety of the entire community.

The Maricopa County Domestic Violence Protocol is a guide for law enforcement, prosecutors, victim advocates, intervention programs, and the judicial system to help ensure that justice is served and the families in our community are kept safe. Our efforts must include:

- Expert investigation and preservation of evidence.
- Accountability for the offender.
- Victim services, to enhance their safety and their right to participate in the criminal justice process and receive follow-up services.

As law enforcement professionals, your role in the prosecution and prevention of domestic violence is of utmost importance. The Maricopa County Attorney's Office is committed to working with you to end the cycle of domestic violence. Please review this protocol which has been updated with important new guidelines and suggestions which will improve the ability of our office to prosecute crimes involving domestic violence.

Sincerely,

Andrew P. Thomas
Maricopa County Attorney

INTRODUCTION

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Domestic violence is affecting communities across the country, including Maricopa County. It is a crime that consists of a pattern (or a single incident) of physical, sexual, and/or psychological abuse. Due to the intimate relationship that exists between the victim and the accused, domestic violence is a crime that differs from all others. It is a crime that affects millions of homes every year and, as a result, it is a problem that requires strict and specialized attention.

Domestic violence produces numerous indirect social and psychological costs to women, children, and communities. Children who are exposed to domestic violence endure depression, developmental problems, acute and chronic physical and mental health problems, and aggressive or delinquent behavior.¹ Women who are victims of domestic violence are often required to stay home; are forced to sever social relations with neighbors, friends, and family; are embarrassed by visible injuries in public situations; are constantly on the move in order to avoid their batterers; feel unable to protect their children; hide with family and friends until they become an unacceptable burden; stay in shelters in remote locations making them difficult to track; and lose control of joint resources or custody of their children.²

The most pressing concern is the abuse itself. National studies have shown that domestic violence is a learned and culturally reinforced pattern of behavior that, without intervention, becomes more destructive over time. It often consists of more than just a single assault. Perpetrators of domestic violence use a variety of tactics to control and maintain power over their victim. The assaults are part of a history of emotional and psychological abuse that has continued to escalate over a period of time. This continued abuse forms a pattern that is often described as the “cycle of violence.”

The cycle of violence has three separate components: a tension building phase, an acute battering incident, and a honeymoon stage. While law enforcement is usually notified of the abuse following a battering incident, it is most often during the honeymoon stage that the victim is contacted and asked to assist with prosecution.

Given that the victim wants this “honeymoon” to continue, they are often reluctant to aid in the prosecution of their batterer. The cycle repeats itself, however, shortening in length after each new abuse.

¹ National Research Council, *Understanding Violence Against Women*, eds. Nancy A. Crowell and Ann W. Burgess (1996).

² Louise Laurence and Roberta Spatler-Roth, “Measuring the Cost of Domestic Violence Against Women and the Cost-Effectiveness of Interventions: An Initial Assessment and Proposals for Future Research,” *Victims Services and the Institute for Women’s Policy Research* (May 1996).

Maricopa County law enforcement agencies recognize that domestic violence is a preventable crime and that the cycle of violence can be broken. By thoroughly investigating these incidents, realizing that physical and testimonial evidence should be properly collected and documented, prosecution can proceed even without victim participation. In addition to such an investigation, appropriately enforcing applicable laws utilizing “zero tolerance” policies will lead to successful prosecution of domestic violence offenders.

The criminal justice system, therefore, plays a significant role in ending domestic violence by:

- Sending an important message that there are consequences for committing acts of domestic violence;
- Holding domestic violence offenders accountable for their actions;
- Enhancing victim safety;
- Disrupting the “cycle of violence” resulting in intervention opportunities for victims and offenders; and
- Breaking the generational cycle and learned effect of domestic violence on children.

The document that follows is a work in progress and is not to be construed as a completed task but viewed as a step toward eliminating the violence perpetuated in homes and the workplace. The protocol itself draws from the collaborative efforts of those agencies that have paved the way in making sure that violence in the home will not be a secret anymore.

TABLE OF CONTENTS

PROTOCOLS

911 Communication	1
Patrol Response	4
Medical Response	24
Prosecution	32
Aggravated Domestic Violence	45
Aggravated Harassment	47
Stalking	49
Victim Services	54
Probation	61

APPENDICES

A. Orders of Protection	68
B. Local Resources	73
C. Arizona Revised Statutes on Domestic Violence	88

911 COMMUNICATION

COMMUNICATIONS PROCEDURES

911 Operator/Dispatch Response

The communications/911 operators will dispatch a domestic violence call.

1. All calls involving a domestic violence incident “in progress” should be given the same priority as any other 911 emergency call. Time delay, if parties are separated, whereabouts of the suspect, weapons, injuries/nature of the injuries, threats of harm, physical fighting and verbal fighting can all be determining factors as to the priority assigned.
2. A minimum of two officers should be dispatched to all domestic violence calls.

Responses should indicate concern for the victim, when appropriate, and offer reassurance that help is on the way.

1. The communications/911 operator will not discuss the victim’s desire to “press charges,” “drop charges,” or “prosecute” because an on-scene officer has not yet determined if a crime has been committed. The caller’s immediate concerns are for intervention or assistance and he/she should not be dissuaded from calling by the possibility that legal action may be necessary.
2. Any comment that places responsibility on the victim for causing the incident, for enforcement action, or minimizes or trivializes the incident should be avoided.

For example, it would be inappropriate to say:

- “He only slapped you?” or
- “You said WHAT to him?”

The communications/911 operator should work with the caller to obtain all necessary information while providing reassurance. They should attempt to determine the following information:

1. What is the emergency?
 - Is the caller the victim?
 - If not, did the caller observe the incident?
 - When did the incident occur (if it is not currently in progress)?
2. Where is the emergency?
 - Address, including apartment number if applicable.

3. Are there any injuries?
 - What kind of injuries?
 - Is an ambulance needed?
4. Was there a weapon involved?
 - If “yes,” what kind? Where is the weapon now?
 - If “no,” are there weapons on the premises?
5. Who is the assailant? What is the caller’s relationship to the assailant?
6. Where is the suspect now?
7. What is the physical description of the suspect?
8. What is the suspect’s name?
9. Has anyone involved been drinking alcohol or using drugs?
10. What is the caller’s name?
11. Is there an order of protection against the suspect?
12. Have the police been there before?
 - Have there been calls to the police in other cities or states?
13. Are there any other witnesses:
 - What are their names?
 - Are any of the witnesses children?
 - How old are they?

Once the basic information is obtained, additional questions may be appropriate. Not every question is appropriate in every situation. The circumstances of the emergency may limit the inquiry.

911 TAPES IN COURT

Rules of evidence allow for the introduction of 911 tapes at trial. Depending upon who the caller is and other circumstances, excited utterances from the tape may be admissible in court. A.R.S. § 13-3989.01 allows for the introduction of this evidence without the operator or records custodian appearing if accompanied by the signed form outlined in the statute. The officer should contact the communications/911 operator to obtain the emergency 911 call and the signed form to be submitted with the report.

PATROL RESPONSE

PATROL RESPONSE¹

Enforcement of Laws

1. Suspects arrested “on-scene” cannot be cited and released per A.R.S. § 13-3601(B) if there is a physical injury or a weapon was used. The offender must be held until seen by a judge at an initial appearance.
2. The existence of probable cause for a domestic violence crime will be the sole determinant in making an arrest.
3. The following factors will NOT influence the officer’s course of action in a domestic violence investigation except as it relates to the elements of the crime:
 - The relationship or marital status of the suspect and the victim, e.g., not married, separated, or pending divorce;
 - Whether or not the suspect lives or does not live on the premises with the complainant;
 - The existence or lack of an Order of Protection;
 - The potential financial consequences of arrest;
 - The complainant’s emotional state;
 - The lack of visible injuries on the victim (many injuries are not visible for 24 to 48 hours);
 - The location of the incident, i.e., public or private property; or
 - Speculation that the complainant may not follow through with the criminal justice process or that the arrest may not lead to charges being filed or a conviction.
4. An officer will not make statements that tend to discourage a victim from reporting an act of domestic violence.

Examples of such statements are:

- “You know that we will have to arrest your husband and he won’t be able to work.”
- “This is likely to make him angrier than he already is.”
- “We might have to arrest you both. Is there anyone to take care of the kids?”

¹ This protocol, in part, was developed by the Arizona Peace Officers Standards Training Board.

5. An officer responding to an incident of domestic violence shall conduct a thorough investigation and, when the elements of a crime are present, prepare a domestic violence report, irrespective of the wishes of the victim or the presence or absence of the suspect.

Investigation of Domestic Violence Cases

1. Officers arriving at a domestic violence call should conduct a thorough investigation and submit a long form report for all domestic violence crimes.
2. Officers should approach all domestic violence scenes with caution. If practical, officers should look and listen to what is occurring at the scene prior to announcing their presence. This may help officers determine which individual is the primary aggressor. Listening to what is occurring will provide the officer with valuable information for the investigation. This information should be documented in the report.
3. If a tape recorder is available and officer safety is not compromised, an officer should activate the recorder prior to arrival and record the time and date prior to approaching the scene. This tape may be useful in recording excited utterances and the demeanors of the victim, suspect, and other involved parties.
4. Victim and witness statements should be tape recorded and written down (per County Attorney protocol) whenever possible. Statements made by children should be recorded regardless of the child's age and documented in the officer's report. As a reminder all witnesses, suspects and victims should be separated prior to conducting an interview.

The following steps should be included in an officer's investigation and documented in the report:

1. Determine the location and condition of the victim and suspect.
2. Determine if a weapon is involved or in the home.
3. Provide the appropriate level of aid to injured parties.
4. Determine if anyone else is in the residence.
5. Determine if a victim advocate should be called to the scene (see Victim Services Protocol).

6. Separate the suspect, victim, and witnesses (victims/witnesses should be out of the suspect's view and hearing) as much as possible without compromising officer safety.
7. Photograph all injuries. 35mm or digital photographs should be taken. All photographs should also be taken with a scale and a photolog documenting what photographs were taken should also be utilized.
8. Tape record all interviews and impound the tapes as evidence. Tape and/or digital recording of interviews should be completed in all cases and only if tape and/or digital recording is not possible, victims and witnesses should complete written statements. Written statements by witnesses should be carefully reviewed by the officer and any discrepancies between the written statement and verbal statement should be discussed and documented in the report.
9. Document the condition of the scene. Use photographs and diagrams as warranted.
10. If 911 was called, if possible, attempt to determine who made the call and what was occurring during the call. If possible obtain a copy of the 911 call on audio cassette tape and impound as evidence if it contains information regarding primary participants. Specifically if one of the primary participants is the caller.

In the following circumstances, a detective and a Maricopa County Family Violence Bureau Attorney should be called to the scene:

1. There is serious physical injury resulting in loss of a major body function, such as the loss of a limb, paralysis, loss of eyesight or other significant injury;
2. There is a shooting, stabbing or other event that requires hospitalization beyond an emergency room visit;
3. There is a complex crime scene, numerous victim/witness interviews, or a search warrant is needed;
4. A Domestic Violence Homicide or Child Homicide has occurred. In a case such as this where children are involved, forensic interviews are recommended.

Victim Services Assistance

Several municipalities have a Victim Services Specialist who may be called to the scene.

1. Contact the Communications Division as early in the process as possible to request this additional resource.
2. It is important to document the presence of a Victim Services Specialist, with complete name and telephone number, in the report.

See the Victim Services section of the Protocol for additional information.

Preliminary Investigation

Interview everyone separately: victim, suspect, children, and any witnesses.

1. Officers should ensure the victim's safety and privacy by interviewing the victim in an area away from the suspect, witnesses and bystanders.
2. When questioning the victim, officers should use supportive interview techniques.
 - The officer should ask the victim about previous domestic violence incidents, including their frequency and severity.
 - It is very important to document the victim's state of mind in the report (Were they afraid? What did they think the suspect was going to do?).
3. Document each interview separately.
 - Officers should separate the primary participants involved in the dispute and tape record each witness's statement individually.
 - ◆ Do not group statements (i.e., "Witnesses 1, 2 and 3 all related the same story.").
 - Officers should interview each witness out of the hearing distance of others.
4. Record and document all "excited utterances."
 - Emotionally charged, spontaneous statements are exceptions to the hearsay rule (Rules of Evidence 803.2). It may be possible for the prosecutor to introduce these statements at trial irrespective of the declarant's presence. When documenting these statements, it is essential that the declarant's emotional and physical state be recorded in the report. Written **and** audio recordings of spontaneous statements are important to a successful prosecution.

For example:

- ◆ When I approached the victim, she was crying and shaking. She immediately blurted out, “He wouldn’t stop hitting me,” and, “I thought he was going to kill me.” She was crying and shaking the entire time I was interviewing her.

As opposed to:

- ◆ I contacted the victim who related the following information: She and her husband were fighting most of the evening when he began hitting the victim in the face multiple times.

5. Family witnesses, including children, should be interviewed.

- Officers should exercise care when interviewing small children. Remind children that what they witnessed was not their fault and that the incident was beyond their control.
- It is recommended that patrol officers limit the questioning of children to the following:
 - ◆ What happened?
 - ◆ Who did this?
 - ◆ Where were you when this happened?
 - ◆ When did this happen?
 - ◆ Where do you go to school?
- Police officers should always document the child’s demeanor and any spontaneous statements. A tape recorder should be used to record any and all statements.

6. Interview neighbors and any individual(s) who may have called 911 or have knowledge of the incident..

7. If an officer receives complaints of domestic violence from one or more parties (a mutual combat situation), each complaint shall be evaluated separately to determine who was the primary aggressor.

- The following questions will help determine the primary aggressor:
 - ◆ Was one party in actual fear of the other?
 - ◆ Did one party escalate the level of violence? For example, did one party react to a slap by beating the other party up?
 - ◆ Was one party physically larger and stronger than the other?
 - ◆ Was there a history of violence by one of the parties against the other or against other persons?

- ◆ Does one party have a history of being the aggressor?
 - ◆ Does one party have more serious injuries than the other party?
 - ◆ Do any injuries appear to be defense wounds, i.e., wounds inflicted by a person as a last means of escape (bite marks, scratching)?
- When considering who the primary aggressor is in “mutual combat” incidents, officers should consider A.R.S. § 13-411 (Justification of Force).
 - If the officer determines that one person was the primary physical aggressor, the officer shall not arrest the other person in the incident.
 - Mutual combat situations may result in the arrests of both parties for disorderly conduct. This typically occurs when there is an independent third party whose peace was disturbed. Mutual combat participants cannot disturb each other’s peace.
 - An officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention.
8. If a suspect is taken into custody:
- Advise the suspect of his/her rights. If the suspect does not invoke the right to remain silent or to an attorney, the officer should conduct an interview.
 - Prevent communication between suspect and victim or witnesses.
 - Document and tape record all statements of the suspect.
 - Delineate any injuries to the victim. Include other information the judge should have when determining release conditions and availability of bond.
 - Determine if the suspect is currently on probation. If so, notify the adult probation officer of record.
 - Document confiscated weapons. Follow departmental policy and procedures regarding weapon impoundment or forfeiture. See A.R.S. § 13-3601 for weapon seizure in a domestic violence case.

Orders of Protection

Officers should advise the victim of the availability of Orders of Protection, both Non Emergency Orders and Emergency Orders.

When an officer responds to a call involving an Order of Protection violation, it is crucial to remember while an Order of Protection is a civil order, the violation of that order is a criminal matter and needs to be treated as such. The officer is obligated to enforce the Order.

The officer needs to recognize there may be more than a violation of a court order occurring and assess the incident for possible stalking or aggravated harassment.

If the plaintiff and defendant of the Order of Protection are in a public place, the officer should read the language on the Order carefully to determine the intent of the judicial officer. At times, the language in the Order is very specific.

If the plaintiff listed in the order is unable to produce the affidavit of service for the Order of Protection, the existence of the Order can be verified through the Maricopa County Sheriff's Office. The validity of the Order can also be verified including date of service and any modifications made during a hearing. Maricopa County Sheriff's Office can fax a copy of the Order of Protection and Affidavit of Service to the officer. The officer should include a copy of the Order of Protection and Affidavit with the departmental report.

If the officer determines that there is not an Order of Protection or the Order is no longer valid, the victim should be notified of that fact. An Emergency Order of Protection may be requested after business hours, from the on-call Judicial Officer.

An officer may obtain an Emergency Order of Protection by calling the Maricopa County Sheriff's Office for access to the on-call Judicial Officer. The officer will call the Judicial Officer and describe the facts of the domestic violence case. After hearing the details, the Judicial Officer may order the Emergency Order of Protection. The officer will call the Sheriff's Office again and obtain the Emergency Order of Protection case number, and fill out the form. If present, the defendant will be served immediately. If the defendant is not present, all copies of the form may be left with the victim so the defendant can be served in the future by an officer. An officer may serve the defendant verbally with the Emergency Order.

1. An Emergency Order of Protection can be obtained and is valid until the close of the next business day. Let the victim know that arrested batterers are often released after they have had their initial appearance.
2. Remind the victim that a non-emergency Order of Protection must be applied for, in person, the next business day.

See the Orders of Protection section of the Protocol for additional information.

Special Considerations

1. Aggravated Domestic Violence A.R.S. 13-3601.02

- A person is guilty of aggravated domestic violence if the person within a period of sixty months (five years) commits a third or subsequent violation of a domestic violence offense (13-3601.A) or is convicted of a violation of a domestic violence offense and has previously been convicted of any combination of convictions of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a violation of a domestic violence offense.
- The Maricopa County Attorney's Family Violence Bureau will require certified copies of the convictions (i.e., sentencing documents), along with the departmental report in order to review charges under this statute.

See the Aggravated Domestic Violence section of the Protocol for additional information.

2. Aggravated Assault

- The Aggravated Assault statute, A.R.S. § 13-1204, was amended, effective August 6, 1999, to include a new category of aggravated assault. If an assault occurs, and the victim has a valid Order of Protection against the defendant, the defendant can now be charged with Aggravated Assault, a class 6 felony.

3. Aggravated Harassment

- Aggravated Harassment is committed when there is a charge of harassment under A.R.S. § 13-2921 and one of the following applies:
 - ◆ There is a valid Order of Protection or Injunction Against Harassment against the defendant and in favor of the victim of the harassment.
 - ◆ The defendant has been previously convicted of an offense included in A.R.S. § 13-3601, and the victim of any previous offense is the same victim in the current offense.

Patrol Response and Investigation:

- When an officer responds to a call and determines that the incident qualifies as aggravated harassment, a thorough case history must be developed. During the course of taking the history, the following issues, as well as any others that may require additional investigation, should be addressed with the victim:
 - ◆ Inquire about cases or reports in other jurisdictions. What is their current status?
 - ◆ Inquire about any use of *57 (call tracing) or *69 (last call return) following phone calls. See the Investigative checklist at the end of this section for more information.

- ◆ Inquire about the effect of the suspect's behavior upon the victim. Include any excited utterances and spontaneous statements made. Use direct quotes in the departmental report.
- Police officers should encourage the victim to keep a log of all phone calls and other contacts made by the suspect and to retain any items that may be used to link the suspect to the incidents.
 - ◆ The victim may choose to tape record phone calls or voice mails from the suspect and turn the tapes over to an officer.
 - ◆ If caller ID is present or the use of cellular phone text messaging the officer should photograph and document the evidence.
- The victim should be encouraged to develop a safety plan and to be more cognizant of his or her surroundings. Additionally, if victim services are offered through the officer's department, those services should be offered to the victim.
- Prior to submitting the departmental report to the Maricopa County Attorney's Office for review, confirm the victim is the same as the listed victim from the prior offenses. Any history of prior diversion services should be documented. A certified copy of the order, proof of service, and verification of validity of the order should be attached to the submitted report.

See the Aggravated Harassment section of the Protocol for additional information.

4. Stalking

- Stalking requires a course of conduct that proves an intent to harass and place in fear of harm or death. It may prove difficult, at times, to differentiate from Aggravated Harassment. Logs of contacts will be vital in both scenarios. Questions should be directed to the Maricopa County Attorney's Office Family Violence Bureau at (602) 506-5999.

Patrol Response and Investigation:

Stalking should be considered when an officer responds to the following calls:

1. Interference With Judicial Proceedings
2. Burglaries
3. Assaults
4. Criminal Damage
5. Trespassing

6. Kidnapping
7. Harassment

The Patrol Officer should complete a thorough case history.

1. If the case reveals a history between the parties, all other Departmental Reports that list the suspect and victim should be documented. It is important to develop a paper trail to assist both the detective and prosecutor with the case.
2. An Assault Detective (if available) should be contacted if either the victim or the officer suspects stalking. If a suspect is to be arrested, a Family Violence Bureau Attorney from the Maricopa County Attorney's Office should also be contacted. Assault Detectives should check for prior reports that list the victim or other family members to determine if a pattern can be developed to support a charge of stalking.
3. Property Detectives should be alerted to the possibility that stalking may be occurring if there is a history of prior departmental reports with the same victim.
4. It is preferable that one detective investigates all Interference with Judicial Proceedings cases so that there is a greater likelihood of identifying behavioral patterns.
5. Officers and detectives should discuss with the victim how to preserve information related to the case.
 - A victim should be encouraged to keep a detailed log of any contacts. At a minimum, the log would include the date, time, place, and a description of the occurrence.
 - Preserved information includes:
 - ◆ Documentation of all telephone calls;
 - ◆ Recorded telephone conversations;
 - ◆ Obtained witness information for in-person contacts;
 - ◆ Retention of any mailed communications (including the envelope);
 - ◆ Preserved electronic communication (e-mail);and
 - ◆ Photographs of caller ID screens or cellular phone text messages.

Victims should be advised to contact the Police Department and request a report whenever there is contact.

6. When the suspect is interviewed, videotape should be used to document behaviors and verbal responses. Any statement the suspect makes indicating that there was contact by the victim, or other consensual behavior on the victim's part, needs to be investigated.
7. A report should be written for all calls, no matter how seemingly insignificant.

See the Stalking section of the Protocol for additional information.

5. Domestic Violence in the Workplace

- A domestic violence call originating from a workplace will require additional considerations.

See the Domestic Violence in the Workplace section of the Protocol for additional information.

6. Medical Treatment

- Officers should document any medical attention that is provided at the scene and whether or not hospitalization was required. Unless a detective assumes the investigation, the officer should:
 - ◆ Obtain authorization for release of medical records from the victim, if hospital follow-up is required;
 - ◆ Document extent of injury and treatment, if known; and
 - ◆ Obtain names, addresses, and phone numbers of fire, ambulance, or paramedic personnel treating the victim.

See the Medical Response section of the Protocol for additional information.

Domestic Violence Firearm Seizures

A.R.S. § 13-3601(C,D) allows police officers to:

1. Question persons present at domestic violence incidents to determine if a firearm is present on the premises.
2. Temporarily seize the firearm, upon learning or observing that one is present, if it is in plain view, or if it was found pursuant to a consent search.
 - The officer must reasonably believe that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death.
 - The officer must document the reasons for seizing the firearm in the report.

3. Seize firearms owned or possessed by the victim if there is probable cause to believe that both parties independently have committed an act of domestic violence.
4. Impound a seized weapon.
 - Impounded weapons must be held for a minimum of 72 hours. There is no maximum time limit.
 - Weapons seized per A.R.S. § 13-3601 (E), require the victim is to be notified by law enforcement before the firearm is released from temporary custody.

If spouses are residing together, either may give consent to search the residence. In situations involving non-spouses residing together, or other family members over the age of 18, permission may be given to search any common areas to which that person has access, even if the other party objects to the search.

If the officer concludes that no domestic violence crime was committed, consideration should be given to having the parties consent to having any firearms impounded for safekeeping.

Written Reports

An officer responding to any call covered in this protocol must complete a domestic violence report. Thorough documentation provides the basis for successful prosecution of the case.

Officers should include the following information in their report:

1. Elements of the offense
 - Document each element of the crime in the report. Be specific with names, what occurred, and who witnessed the incident.
2. Injury
 - Document in detail any injuries that the victim or suspect sustained. The preferred method for this to be accomplished is to have photographs taken of the injuries if cameras are available.
3. Addresses
 - Ensure that the names and personal information of all victims and witnesses are documented.

- In addition to the address given by the victim on the date of the incident, document a second address and telephone number for the victim (such as a close family member or friend).
- Include school information for any children.

This information will assist the follow-up detectives and the prosecutor's office if they need to contact the victim and/or any witnesses.

4. Photographs

- Photograph and document any physical evidence including holes in walls, broken doors, damaged furniture or other items that were destroyed. Document the photographs in detail including the factual information surrounding the photograph.

5. History

- Document any history of previous acts of domestic violence whether reported or not, in this jurisdiction or others.

6. Diagrams

- In serious-injury aggravated assaults, crime scene diagrams and measurements are helpful for successful prosecution.

7. 911 Tapes

- Rules of evidence allow for the introduction of 911 tapes at trial. Depending upon who the caller is and other circumstances, excited utterances from the tape may be admissible in court. A.R.S. § 13-3989.01 allows for the introduction of this evidence without the operator or records custodian appearing. Be sure to secure the 911 tape prior to its destruction date.

8. Recanting Victim

- If the victim recants, the officer should contact the communications/911 operator to obtain the emergency 911 tape to determine what information was obtained during the call. If it is determined that relevant information is on the 911 tape, the officer should request a copy to be submitted with the report and document the pertinent information **in their written report.**

9. Written Documentation

- The officer should, whenever applicable, directly quote the victim or witness and describe in detail both their emotional and physical state.

For example:

- ◆ The victim stated, "He hit me on the right side of the face with an open hand and he tried to choke me using both hands."

- ◆ The victim stated, “I was afraid he was going to kill me.”

As opposed to:

- ◆ The victim was struck on the face and choked.
- Document all history of violence, including the victim’s account of police responses to domestic violence incidents in the past.
- Note victim/witness emotional state when they are making their statement.

Statements

1. All parties will be interviewed separately, including children, regarding their involvement in the case.
2. Miranda warnings are not required if the suspect is out of custody at the scene. Once an officer decides to make an arrest, the officer must read the suspect Miranda warnings if the suspect is to be questioned regarding the incident.
3. Maintain professional objectivity in reporting. The officer’s personal opinions regarding comments made by the victim or suspect are inappropriate.
4. A notation of the fact that a party or witness does not speak English should be included in the witness/victim/suspect information section of the report. Indicate what language was spoken, the name(s) of interpreters, and all vital information, such as social security number, addresses, etc.
5. Indicate in the departmental report if children were present during the incident or reside in the home. Document names and ages of the children.
6. Document in the departmental report if alcohol or drug use has been indicated.
7. Document if the victim is pregnant at the time of the incident.
8. Officers should document whether they have been to the location before and whether they know the suspect or the victim.
9. Officers should document relationships of victim and suspect to establish domestic violence.
10. If available, officers should use their C.A.D. (Computer Assisted Dispatch) or M.D.T. (Mobile Digital Terminal) systems to research prior police responses to the same address and record the information in the police report.

11. Document whether the victim received notification of victims' rights and if he/she invoked those rights at the scene.

Note: Officers should not advise victims of domestic violence that they can either press or drop charges. If the victim states that prosecution is not desired, the officer should state that the decision to prosecute is made by the appropriate prosecutorial agency. If made in front of the suspect, this statement can be very effective in alleviating further harassment by the suspect, or others operating on the suspect's behalf, to have the victim drop the charges.

Victim Safety

If an officer is unable to establish that a crime was committed, the victim should be encouraged to seek help again, if necessary. It should be made clear to all parties that although a crime was not committed, abusive behavior is not acceptable. Officers should provide information regarding social service assistance to victims.

The following information may be provided to the victim, out of sight and hearing distance of the suspect:

- Distribute an information card that includes telephone numbers and the general geographic area of all domestic violence shelters.
- Caution the victim to keep safety plans in a place where the batterer cannot find them.
- Discuss and emphasize Orders of Protection.
- Supply the following numbers:
 - ◆ National Domestic Violence Hotline: 1-800-799-SAFE.
 - ◆ Local shelter hotlines: (602) 263-8900 or 1-800-799-7739.

Further information, including safety planning and local resource numbers, can be found in the Victim Services and Local Resources sections of the Protocol.

Departmental Personnel Involved in Domestic Violence Situations

Each department should adopt policies regarding departmental personnel who are parties in a domestic violence case. These are suggested guidelines to consider when developing these policies:

1. The Human Resources Department should be included in the development of these policies to determine what resources, such as counseling, are available.

2. Involve the prosecutor's office early in the process.
3. Make reciprocal agreements with another agency that will complete any investigation.

When sworn personnel are dispatched to a domestic violence scene where employees of the department are involved, the following procedures will be applied:

1. The first responding officer will notify their duty supervisor.
2. After obtaining the facts, the duty supervisor will contact the department's specialty unit/detectives to investigate.
3. The assigned detectives will call their supervisor to the scene.
4. The specialty supervisor will notify his commander and provide updates on the progress of the situation.
5. The specialty commander will make periodic reports to the bureau commander of the involved personnel and the final disposition of the investigation.
6. Detectives will submit the case for review to the appropriate prosecuting authority.

All officers should be familiar with their department's policies and procedures regarding personnel who become involved in domestic violence.

DOMESTIC VIOLENCE INVESTIGATION REPORT CHECKLIST

Agency

Department Report Number

1. Victim

- Described the victim's location upon arrival
- Described first aid administered to the victim
- Recorded spontaneous statements by the victim
- Described the victim's emotional condition
- Described the victim's physical condition (make specific note of any changes in victim's demeanor)
- Documented the victim's injuries in detail
- Made note of the victim's relationship to the suspect
- Recorded any history of abuse
- Provided the victim with written information about available resources
- Documented a temporary address and telephone numbers of family and friends that can be used to leave a message for the victim
- Explained victims' rights and how to request those rights
- Documented addresses and telephone numbers of friends and relatives who will always be able to contact the victim in the future

2. Suspect

- Described the suspect's location upon arrival

- _____ Described first aid administered to the suspect
- _____ Recorded any spontaneous statements made by the suspect
- _____ Described the suspect's emotional condition
- _____ Described the suspect's physical condition
- _____ Documented the suspect's injuries in detail
- _____ Documented evidence of substance abuse and/or chemical abuse by the suspect
- _____ Interviewed the suspect
- _____ Documented suspect's statements about his/her relationship with the victim

3. Witness(es)

- _____ Interviewed the reporting party
- _____ Identified all witnesses and interviewed separately
- _____ Listed names, ages, and schools of the children present
- _____ Interviewed the children
- _____ Recorded names, addresses and phone numbers of emergency personnel
- _____ Identified treating physician
- _____ Recorded any statements made by victims/witnesses to emergency personnel and noted the demeanor of the person making the statements
- _____ Recorded the 911 # _____ and the incident # _____

1. A police domestic violence documentation report was attached to this section.
2. Victims receiving harassing phone calls should be asked about any use of either *57 or *69 following phone calls.

*57 is known as the “call tracing system”. If the client performs the function, they will be connected with a pre-recorded message system to log the call. After the third call has been activated in the message system, the US West or Cox Security Department will be notified. They will contact the client to verify the three pre-recorded messages and keep a record of all traced calls for future reference. They will contact the caller by phone or by letter to cease calling the client or legal action will be initiated. There is a cost attached to the use of this service.

*69 is known as the “last call return.” If a client performs the function, the phone system will automatically redial the last number a call came from. There is a cost attached to the use of this service.

MEDICAL RESPONSE

MEDICAL RESPONSE

Health care providers perform a vital role in identifying, assessing, and intervening with victims of domestic violence. Yet many health care providers fail to properly recognize the signs and symptoms of domestic violence. It is recommended all health care providers ask screening questions as part of every health history.

Medical Records

Health care providers treating victims of domestic violence should bear in mind the importance of fact-based documentation in the medical chart. Victim information can be vital in prosecution and the prevention of further abuse. Health care providers should make HIPAA-compliant release forms available for patients. These forms should authorize the immediate release of information to the proper law enforcement agency to better facilitate a prompt response and more thorough investigation.

Documentation is critical even in cases where the victim is unable to cooperate in the prosecution process. Health care providers should utilize a domestic violence screening documentation form to record the essential elements.

Elements of Documentation¹

1. History

A patient's history should be broadly developed to better assist in evaluating the patient's situation. Histories should include a specific chronological sequence of events, transport history, identification of family members present at the health care facility, and the patient's demeanor.

- Chief complaint/history of present illness for purposes of diagnosis and treatment. Record verbatim, use quotation marks, clarify ambiguous statements, and do not use the term "alleged" in the history or final diagnosis.
- Past medical history/review of systems
- Sexual history
- Medication history

¹ Carol Warsaw, MD. "Identification, Assessment, and Intervention with Victims of Domestic Violence." *Improving the Health Care Response to Domestic Violence – A Resource for Health Care Providers*. June 1995.

- Relevant social history
- Safety assessment

2. Physical Exam

Record precise details of findings related to the abuse, including a neurological and mental status exam. Most common areas for injury include: the head, face, chest, breast and abdomen. Most common injuries seen are: contusions, sprains, minor lacerations, fractures, abdominal injuries, gunshot or knife wounds and strangulation.

- Injuries, including tenderness, should be described in narrative that includes location, measurement in centimeters, description, and mechanism or cause if known.
- Use a body map: Body maps are extremely useful when documenting sites of injury and assist the health care provider in recalling the physical condition of the patient (see page 31).
- Photographs: Whenever possible, photographs of injuries are instrumental in assisting in the prosecution. Photographs should be of the actual injuries, with a color spectrum bar to better assist in the evaluation of the type and nature of injuries. Law enforcement may assist with this process.

3. Laboratory and Other Diagnostic Procedures

- Record the results of any lab test, x-rays, or diagnostic procedures.

4. Safety Assessment

- Is the abuser present at the location of the exam?
- Assess and record information pertaining to the patient's risk for suicide or homicide and potential for serious harm or injury.
- Determine if it is physically/psychologically safe for the victim to go home. Are the children or other dependents safe?
- Assess the victim's degree of entrapment and level of fear.
- It is critical to obtain the history from the patient alone and in a confidential setting regarding the current injuries and events.
- Do not use a family member as a translator for this process.

5. Police Report

- Hospital staff should be aware of mandatory reporting requirements in Arizona.
- Note whether one was filed and record the name of investigating officers actions taken.

6. Options Discussed and Referrals Offered

- Health care providers should request a consult by social workers, case managers or other specialized resource (i.e. crisis intervention specialist or police department victim services) if possible to review options and local referrals.

7. Arrangements for Follow-Up/Discharge Information and Safety Plans.

Signs and Symptoms to Recognize if the Patient is a Victim of Domestic Violence

1. History

- Traumatic injury or sexual assault
- Was this a suicide attempt, overdose, or does the victim have suicidal ideation
- Vague or non-specific complaints
- Injuries inconsistent with patient history.
- Delay in seeking needed care
- Repeated visits
- Physical symptoms related to stress

2. Physical Clues

- Patient is reluctant to speak in front of partner
- Patient may be evasive in responses
- Partner is over-protective or controlling (partner will try and answer questions for the patient)

3. Verbal Clues

- Directly or indirectly brings up the subject of abuse. Include specific quotes used by the patient.

Health Care Issues For Domestic Violence Victims²

1. Health Impact

- Sleep Disturbances
- Drug abuse
- Chronic pain/somatization
- Disorders
- Anxiety, panic attacks
- Depression
- Post-traumatic stress disorder

²Dr. Elaine Albert, MD. *Partner Violence: How to Recognize and Treat Victims of Abuse – A Guide for Physicians and Other Health Care Professionals*. (Massachusetts Medical Society Committee on Violence, 1996.)

- Hyper vigilance
- Dissociation during medical procedures
- Suicidal ideation or attempts
- Unwanted pregnancies
- Miscarriages
- Sexually transmitted infections

2. Barriers to Care

- System issues
 - ◆ Time demands
 - ◆ Confidentiality issues
 - ◆ Role definition for health plans
 - ◆ Hospital infrastructure
 - ◆ Community infrastructure
 - ◆ Money
 - ◆ Society and culture
- Provider issues
 - ◆ Provider/patient relationship
 - ◆ May be the health plan for the abuser
 - ◆ May know the family socially
 - ◆ Time restraints for screening and responding, especially in ensuring follow-up

3. Screening – How to Ask

- Direct Questions
 - ◆ At any time has a partner hit, kicked, or otherwise hurt or frightened you?
 - ◆ Has your partner or ex-partner ever hit you or hurt you?
 - ◆ Has he/she threatened to hurt you or someone close you?
 - ◆ Has your partner ever tried to restrict your freedom or keep you from doing things that were important to you?
- Indirect Questions
 - ◆ When I see a woman with an injury like yours, it is sometimes because someone hurt her. Has someone been hurting you?
 - ◆ How has the abuse affected the patient's health?
- Current Episode Questions
 - ◆ What happened?
 - ◆ How were you hurt?
 - ◆ Were alcohol or drugs involved?
 - ◆ Was a weapon involved?
- Follow-Up Questions
 - ◆ Have your children ever seen or heard the abuse?
 - ◆ Have your children ever been threatened or hurt?

- ◆ Have you sought help in the past?
- ◆ Have you ever tried to leave? What happened?
- ◆ What resources are available in the community?

4. Lethality Assessment – Homicide Risk

- How has the control or violence changed in frequency/severity?
- Does the abuser use drugs and/or alcohol?
- Has he/she ever threatened or tried to kill you or others close to you?
- Do you believe he is capable of killing you?
- Is there a firearm in the home?
- Have you ever been threatened with a weapon or has a weapon been used on you?
- Are you planning to leave/divorce him/her? Is he/she aware of your plans?
- Is it safe for the victim to go home? How much danger is the victim in if she/he stays/leaves?
- Are there warning signs that allow her/him to anticipate impending danger? Does the victim have a safety plan?
- What kind of access does the perpetrator have to the victim?

Legal Obligations

1. Duty to Warn

- If a health care provider is aware of a patient's intent to injure a third party, the provider has a legal duty to breach patient confidentiality and warn the third party of impending danger. In cases of domestic violence, the provider must intervene in a way that protects the victim and the batterer.
 - ◆ The victim must be told of the provider's intent and offered protective services.
 - ◆ If the patient has been committed to a psychiatric facility, the third party is protected and does not have to be warned.

2. Duty to Report

- A.R.S. § 13-3620 requires health care providers to report non-accidental injuries of minors. For minors, refer to the Maricopa County Multidisciplinary Protocol for the Investigation of Child Abuse.
- A.R.S. § 13-3806 requires health care providers to report gunshot wounds, stab wounds, and material injury that may have resulted from a fight or brawl.
- A.R.S. § 46-454 Health care providers responsible for the care of an incapacitated or vulnerable adult and who has a reasonable basis to believe that abuse or neglect of the adult has occurred or that exploitation of the adult's property has occurred shall immediately report. For elders and vulnerable adults, refer to the Maricopa County Elder Abuse Protocol.

- Although the provider is required to make a report in certain circumstances, it is up to the victim to determine if she or he would like to speak to the responding officer. In cases where mandatory reporting does not apply, patient permission or patient request must be obtained to notify law enforcement or other outside agencies to avoid a HIPAA violation.
 - ◆ Providers should document the officer responding to the call, the badge number, and the report number in the case notes.

Standards of Intimate Partner Violence, International Association of Forensic Nurses,

BODY MAP

Patient Name: _____

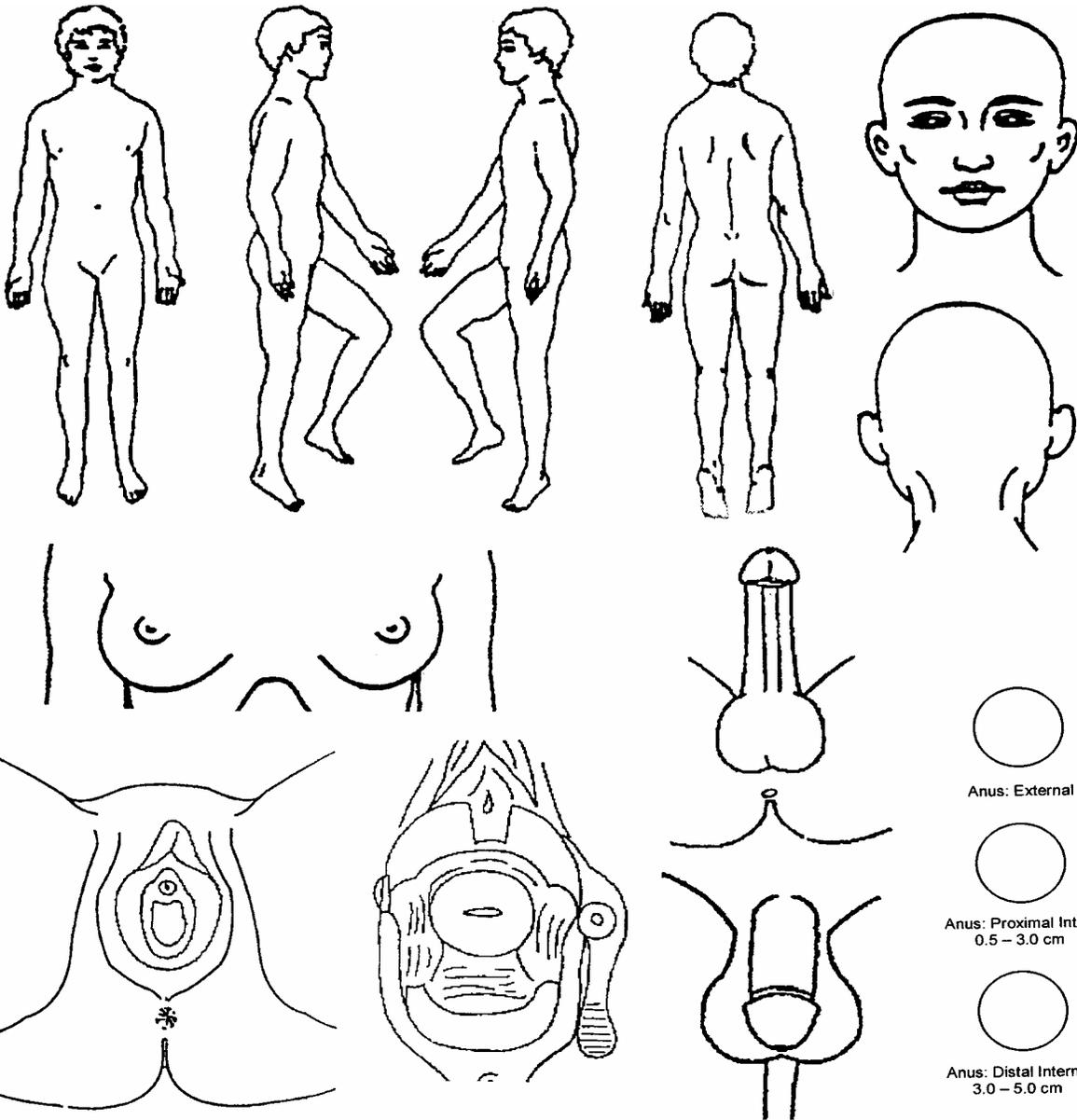
Agency Name: _____

Date Of Examination: ____/____/____

Agency Report #: _____

Shade area of injury and assign number to each injury. Describe each injury on Injury Log. If additional space is needed to document injury, copy this sheet prior to use.

Examiner's Signature: _____ Title: _____



PROSECUTION

PROSECUTION

Domestic violence occurs when an offense listed in A.R.S. § 13-3601 (A) is committed and one of the following applies:

1. The victim:
 - Is the spouse or former spouse of the defendant
 - Is the parent of a child of the defendant
 - Is pregnant by the defendant
 - Resides or resided in the same household as the defendant
2. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
3. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.

The goal of domestic violence prosecution is to:

1. Provide safety for the victim;
2. Uphold the law;
3. Hold the offender accountable; and
4. Provide an opportunity for offender rehabilitation, if appropriate.

Initial and continued domestic violence training for all attorneys working in family violence is strongly encouraged.

Submittal

When an officer believes that a suspect has been identified and that sufficient evidence exists, a case will be submitted to a prosecutor for review.

A Deputy County Attorney will review the case if:

1. The offense is a felony that was committed within Maricopa County; or
2. The offense is a misdemeanor that was:

- committed within the county but outside of any city limits
- a violation of an order of protection which was issued from a Justice Court by a Justice of the Peace or from the Superior Court.

If it is determined that the crime presented is not a felony, it may still be charged as a misdemeanor by the Maricopa County Attorney's Office or it may be submitted to a municipal prosecuting agency.

Charging Domestic Violence

Considerations:

The prosecuting attorney must determine, from the available evidence, whether a reasonable likelihood of conviction exists. The following are general considerations established to assure that cases filed have a reasonable likelihood of conviction.

1. Does the police report contain sufficient evidence (including foundation, recorded statements/911-calls and photos, if applicable) to support all elements of the crime?
2. Are the witnesses credible, available, and competent to testify?
3. Does the investigation as submitted provide all the documentation, scientific evidence, and witnesses or does it need to be "furthered" (i.e., referred back to police for additional information)?
4. Are there any obvious defenses to the crime? If there are, does the available evidence overcome those defenses?

Based on the nature of domestic violence cases, the likelihood of recidivism, and the ongoing danger to the victim and others, a domestic violence case will be charged (if it meets the criteria) even if the victim does not wish to proceed with prosecution.

Offenses:

The following offenses are included in A.R.S. § 13-3601 (A) and should be given special consideration:

1. Aggravated Assault

- The Aggravated Assault statute (A.R.S. § 13-1204), effective August 6, 1999, includes a new category of Aggravated Assault. If an assault occurs, and the victim has a valid Order of Protection against the defendant, the defendant can be charged with Aggravated Assault, a class 6 felony.

2. Aggravated Domestic Violence

- Aggravated Domestic Violence is a class 5 felony and occurs when an offender is convicted of a third or subsequent domestic violence offense within a period of five years (A.R.S. § 13-3601.02). The prior convictions may be from another state, a tribal court, or a court of the United States if they would be considered domestic violence offenses had they occurred in this state.

“A person is guilty of aggravated domestic violence if the person within a period of sixty months commits a third or subsequent violation of a domestic violence offense or is convicted of a violation of a domestic violence offense and has previously been convicted of any combination of convictions of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a violation of a domestic violence offense.” A.R.S. § 13-3601.02

- Prior convictions for misdemeanor domestic violence offenses must have been committed on or after January 1, 1999.
- The Maricopa County Attorney’s Family Violence Bureau will require certified copies of the convictions (i.e., sentencing documents), including usable fingerprint documentation, along with the departmental report in order to review charges under this statute.

See the Aggravated Domestic Violence section of the Protocol for additional information.

3. Aggravated Harassment

- Aggravated Harassment is committed when there is a charge of harassment under A.R.S. § 13-2921 and one of the following applies:
 - ◆ There is a valid Order of Protection or Injunction Against Harassment against the defendant and in favor of the victim of the harassment.
 - ◆ The defendant has been previously convicted of an offense included in A.R.S. § 13-3601, and the victim of any previous offense is the same victim in the current offense.

- It is possible that a case may appear to be an aggravated harassment and upon further investigation, it is actually a stalking. It is also possible that a presumed stalking case will not meet the level of stalking but can be filed as an aggravated harassment. Review the Stalking Protocol for more information.

See the Aggravated Harassment section of the Protocol for additional information.

4. Stalking

- A prosecutor assigned to a defendant's case that has several Interference with Judicial Proceeding charges should review the charges and determine whether the elements of stalking are present.
 - ◆ According to A.R.S. § 13-2923, in order to file a class 3 felony stalking charge, there must be proof that the defendant's conduct would cause a reasonable person to fear death to that person or that person's immediate family.
 - ◆ In order to file a class 5 felony stalking charge, there must be proof that the defendant's conduct would cause a reasonable person to fear for that person's safety or the safety of that person's immediate family.
- If a prosecutor determines that the elements of stalking exist, he or she should contact the law enforcement agency involved and request that a detective be assigned to further investigate the case, if needed.
 - ◆ The detective should gather existing Interference with Judicial Proceeding departmental reports from all law enforcement agencies in Maricopa County.
 - ◆ Questions about the availability and location of victims and witnesses should be resolved prior to submitting Stalking charges.
- If the prosecutor determines that no follow-up investigation is necessary to prove stalking charges, the prosecutor should still request that a detective be assigned to the case for the purpose of becoming the case agent. The detective will then submit charges to the Maricopa County Attorney's Office.

See the Stalking section of the Protocol for additional information.

5. Custodial Interference

- Custodial Interference charges may be brought against anyone who takes, entices, or keeps from lawful custody any child under the age of 18, or any person who is incompetent, and who is entrusted to the legal custody of another person or institution (A.R.S. § 13-1302). This may include situations where the parties have co-equal or joint custody, and the intent of taking the individual is to totally exclude the other party.
- Charges may be filed when:
 - ◆ A child is taken from the state under legal conditions and not returned.
 - ◆ A child is taken and does not leave the state.
- If the person suspected of taking the child is the biological parent of the child, it must be determined if the parents were ever married.
 - ◆ If the person suspected of taking the child is the biological parent of the child and is currently married to the other parent of the child, a certified copy of the marriage license and child's birth certificate are needed before charges can be considered.
 - ◆ If the person suspected of taking the child is the biological parent of the child and is divorced from the other parent of the child, a certified copy of the child's birth certificate, the divorce decree, and any signed orders concerning custody and/or visitation are required before charges can be considered.
 - ◆ All court orders must be signed by the judge in order to be enforceable in a criminal case for custodial interference.
- If the suspect was never married to the child's other parent, and if the suspect is male, it must then be determined whether or not the suspect ever filed to establish paternity and visitation. If the suspect did file, certified copies of court paperwork will be needed before charges can be considered. A copy of the child's birth certificate will also be needed.
- Charges will not be filed where there is verifiable, substantial evidence that the suspect is protecting the child from immediate danger. In addition, if the suspect is questioned, the suspect shall be asked his or her motive for taking the child and will be specifically asked if the suspect recently sought an Order of Protection or recently filed to change custody. Any statements the suspect makes concerning abuse or neglect by a custodial parent must be included in the departmental report.

6. Class 6 Felony

- A.R.S. §13-604(E): “A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which such person currently stands convicted.”

Furthers and No Files

1. All domestic violence submittals are reviewed for determination of filing charges. If additional information is required, the prosecutor will generate a request for further information from the submitting police department stating the reasons for denial of prosecution at that time. The prosecutor will request the information required to proceed with a final decision on prosecution.
2. If the prosecuting attorney determines charges cannot be filed, a no file decision is also sent to the submitting department with reasons for denial of charging the case. The victim should be notified of the decision not to file charges.
3. If an officer/detective has questions as to why a case was not filed or further information requested, then the officer/detective should contact the charging prosecutor directly.
 - If, after speaking with the prosecutor, the officer/detective still has sufficient reasons for disagreeing with the decision, the officer/detective and/or the officer/detective’s supervisor may contact the prosecutor’s supervisor to review the matter.

Plea Negotiations

Maricopa County Attorney’s Office policies and procedures should be followed when negotiating plea agreements. The following elements should be considered:

1. Victim’s input.
2. Defendant’s criminal history.
3. Past arrests.
4. Nature and circumstances of the offense(s).

5. Level of violence.
6. Whether children were present.
7. Whether or not the victim was pregnant at the time of the incident and the defendant had reason to know of the pregnancy.
8. Whether a domestic relationship as defined by statute exists. (The nature of the domestic violence relationship should be stated in all plea agreements.)

For information on misdemeanor sentencing provisions, see A.R.S. §§ 13-707, 13-802, 13-902, 13-3601.02.

For information on felony sentencing provisions, see A.R.S. §§ 13-604, 13-604.01, 13-701, 13-702, 13-702.01, 13-702.02, 13-801, 13-902.

Trial Preparation

The prosecutor should take the following steps when assigned a case for trial.

1. Obtain and disclose all relevant evidence. This would include but is not limited to:
 - Police Departmental Reports
 - Photographs
 - 911 tapes
 - Medical Reports
 - ◆ Doctors Notes
 - ◆ Nurses' Notes
 - ◆ Hospital Records
 - ◆ Paramedic reports
 - Documentation of any Weapons
 - Documentation of any Damaged Property
 - Tape-recorded Interviews
 - Certified Copies of Orders of Protection
 - Certified Copies of Prior Convictions
2. Speak to the victim as soon as possible after the case is assigned, even if the victim has already spoken to an advocate. It is important to speak with the victim to explain trial expectations and make the victim more comfortable with the judicial process. It is also important to speak with the victim at an early stage in the proceedings to determine if he/she is a reluctant or recanting witness, which will materially affect how the case is prepared for trial.
3. All witnesses should be interviewed when appropriate.

4. Consider filing any and all appropriate pre-trial motions, including:
 - All applicable sentencing enhancements, including
 - Notice of all aggravating factors/circumstances
 - Notice of all allegeable prior felony and misdemeanor convictions
 - Notice of dangerous nature of offense(s) if not included in charging document
 - Notice if the victim was known by the Defendant to be pregnant at the time of the offense(s) – A.R.S. §§ 13-711, 13-3601(L).
 - Notice of the State’s intent to present testimony from a domestic violence expert, which may include noticing an outside expert or the designation of a qualified officer/detective as an expert.
 - Rule 404 (b) motions: Although evidence of a defendant’s crimes and other bad acts is not admissible to prove that he/she has a bad character and that he/she has acted in conformity with this character, such evidence is admissible for other purposes, such as proof of motive, opportunity, knowledge, identity, or lack of mistake.
 - Rule 609 motions: Evidence of a witness’s (including the defendant) prior convictions can be used to impeach his/her credibility at trial.
 - Motions in Limine: In domestic violence cases, an appropriate motion in limine would include a motion to prohibit defense counsel from offering evidence of an unduly prejudicial nature, or irrelevant evidence, such as evidence of the victim’s infidelity during her marriage to the defendant.
 - Weapons Forfeiture: Under A.R.S. § 13-3105 (A), upon the conviction of any person for the violation of any felony in this state in which a deadly weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed by such person, the court shall order the article forfeited and sold, destroyed or otherwise properly disposed.
5. Subpoena Witnesses.

Trial Issues in Domestic Violence Cases

1. Testimony of Victim

- If the victim recants on the stand, his/her testimony can be impeached with evidence of his/her prior statements to the police and other available evidence. It is therefore necessary that the victim’s statements to police personnel be recorded and any injuries be photographed. Those audiotapes and photographs must be provided for disclosure to defense counsel as soon as practical. The audiotapes of the victim’s police interviews and photographs of any injuries should be available at trial.
- If the victim is uncooperative, the court may allow the prosecutor to ask leading questions of the witness under Rules of Evidence 611(c).

- In exceptional cases, expert witnesses may be used to explain the victim's recantation or lack of cooperation.
- Establish that a domestic relationship did exist between the victim and the defendant.

2. Witnesses

- Question witnesses regarding observations of both victim and defendant including physical and emotional state, statements made by either party, and conduct observed.

Sentencing

1. Sentencing Memorandum

- Prosecutor shall develop a sentencing memorandum for the court, identifying all aggravating circumstances, including information that may not have been admissible at trial, as well as victim and State sentencing recommendations.

2. Victims' Rights

- Either through the State's Sentencing Memorandum or during the actual courtroom sentencing proceedings, the prosecutor should convey the sentiments of the victims. If the victim chooses, the victim may personally address the court. If the victim prefers, the prosecutor can inform the court of the victim's position regarding sentencing. Under the Victims' Bill of Rights, the state must convey the victim's position even if that position differs from the sentencing requests of the state.

3. Supervised Probation

- The prosecutor should have the court consider whether a "no contact" order should be a provision of the defendant's terms of probation.
- Counseling should be requested whenever the circumstances dictate that it would be appropriate, regardless of the defendant's desires, interest, or acknowledgment of responsibility.
- Deferred jail time is often an incentive for the defendant to successfully comply with the terms of probation. It can and should be imposed if the defendant is found in violation of probation for any reason. Felony cases should include a request for domestic violence terms.

- If the defendant is incarcerated as a condition of his probation, he may be permitted to continue to work during the day while remaining incarcerated at night through three distinct programs: Work Release, Work Furlough or the Day Reporting Center.
 - ◆ A recommendation of Work Release should be opposed in domestic violence cases because the defendant's release is unmonitored by either the jail or the adult probation office.

4. Supervised Probation for Misdemeanor Domestic Violence

- As of January 1 1999, a person who commits a second misdemeanor domestic violence offense within sixty months may be placed on supervised probation by a limited jurisdiction court for up to 36 months and may be incarcerated as a condition of probation. In order to ensure that the defendant receives proper supervision, it is essential that the following steps be taken for placement on a domestic violence caseload:
 - ◆ The defendant must sign a copy of the domestic violence probation terms and include his/her address and phone number.
 - ◆ Court sentencing forms along with a signed copy of the probation terms, police departmental reports, and terms of confinement (if applicable), should be faxed to the Maricopa County Probation Department at (602) 372-5557 by the court. These documents serve as a notice of placement on probation and it is imperative that they be sent as quickly as possible. It is equally imperative that the originals be sent as quickly as possible to:

Maricopa County Probation Department
Attention: Domestic Violence Program
East Day Reporting Center
245 N. Centennial Way
Mesa, Arizona 85201

5. Imprisonment/Incarceration

- A prison disposition or a term of incarceration as an initial condition of probation should be requested in all appropriate cases.

6. Fines

- Fines may be requested as a punitive sanction.

7. Summary Probation

- With required counseling per A.R.S. §§ 13-3601.01 in an offender treatment program that is approved by the department of health services or probation department.

8. Restitution

- If the victim has incurred economic loss as a result of the acts of the defendant, restitution must be requested by the state and may be ordered by the court as a term of the defendant's sentence.

Victims' Rights in Prosecution

Victims in Arizona have the right to confer with the prosecutor prior to release hearings, trial, any plea agreement, and have the right to refuse a defense interview. At sentencing, the victim has the right to make a statement to the court regarding the impact that the crime has had on the victim's life.

1. Prosecutors' offices may require a victim to request notification in order to exercise victims' rights.
2. In domestic violence cases, it is recommended that every effort be made to contact the victim(s) soon after charges have been filed to ascertain the safety of the victim(s) and to ensure that the victims' opinions are taken into consideration throughout the prosecution of the case.
3. Files should be kept so that the prosecutor knows when notices have been mailed and whether those mailings have been returned for whatever reason.
 - If the notification has been returned, a reasonable attempt (including telephonic) should be made to contact the victim.
 - If the prosecutor's office has been unsuccessful in making contact with the victim prior to significant hearings (for instance, change of plea or sentencing hearings), a motion to continue should be made so that all reasonable efforts to locate and confer with the victim can be made.
 - The prosecutor is responsible for assuring that every effort was made to contact the victim before disposing of the case.

4. If a victim has asserted his or her victims' rights, the prosecutor or victim services advocate must make all reasonable efforts to speak with the victim about the disposition of the case before conveying a plea offer to the defendant.
 - The prosecutor shall consider the views of the victim when deciding how to proceed with the case and whether to dispose of it by plea agreement or diversion.
 - According to A.R.S. § 13-4419, the prosecutor alone decides how to proceed after conferring with the victim.

It is the policy of the Maricopa County Attorney's Office to make a reasonable effort to consult with the victim regarding plea agreements, even if the victim has not opted in for victims' rights.

Weapon Seizures in Prosecution

The police may be authorized to seize a firearm while at the scene of a domestic violence call. After this seizure occurs, the prosecutor is required to make a determination of the necessity of retaining the firearm. See A.R.S. §. 13-3601 (C) (D) (E).

1. The officer should document any firearms seized at the scene pursuant to A.R.S. § 13-3601 (D) in addition to notifying the prosecutor's office pursuant to A.R.S. § 13-3601 (F). A required form outlines the following details:
 - the owner's and/or possessor's name, date of birth, and address;
 - a description of the firearm; and
 - a written incident narrative.
2. Upon notice, the prosecutor will decide whether to retain the firearm. If the decision is made to retain the firearm, notification is sent to the police agency, the court is notified, and a certified letter is sent to the owner or possessor. A.R.S. § 13-3601 (F)
3. If the owner of the firearm requests a hearing, the court immediately notifies the prosecutor of the request. The prosecutor provides notices to substantiate the grounds for retention of the firearm.

Note:

Federal law (18 U.S.C. § 922) prohibits the release of firearms to persons under an Order of Protection or convicted of a domestic violence crime.

AGGRAVATED DOMESTIC VIOLENCE

AGGRAVATED DOMESTIC VIOLENCE

Under A.R.S. § 13-3601.02, an offender commits Aggravated Domestic Violence when convicted of a third or subsequent domestic violence offense within a period of sixty months (five years).

1. The prior convictions may be from another state, a tribal court, or a court of the United States, if they would be considered domestic violence offenses had they occurred in this state.
 - A “domestic violence offense” means an offense as defined in A.R.S. § 13-3601.
2. A person convicted of two previous domestic violence offenses within a sixty-month period is not eligible for probation until the person has served a minimum of four months in jail.
3. A person convicted of three previous domestic violence offenses within a sixty-month period is not eligible for probation until the person has served a minimum of eight months in jail.
4. The dates of the commission of the offenses are the determining factor in applying the sixty-month provision. A third or subsequent violation for which a conviction occurs may not include a conviction arising out of the same series of acts.
5. Aggravated Domestic Violence is applicable to misdemeanors committed after January 1, 1999.
6. Aggravated Domestic Violence is a class 5 felony.

In order to review Aggravated Domestic Violence charges, the Maricopa County Attorney’s Office will require certified copies of the prior convictions along with the departmental report for the submitted offense.

AGGRAVATED HARASSMENT

AGGRAVATED HARASSMENT

AGGRAVATED HARASSMENT IS COMMITTED WHEN THERE IS A CHARGE OF HARASSMENT

UNDER A.R.S. § 13-2921 AND ONE OF THE FOLLOWING APPLIES:

1. There is a valid Order of Protection or Injunction Against Harassment against the defendant and in favor of the victim of the harassment.
 - A person violating the statute under this condition is guilty of a class 6 felony.
 - A person who commits a second or subsequent violation of the statute under this condition is guilty of a class 5 felony.
2. The defendant has been previously convicted of an offense included in A.R.S. § 13-3601 and the victim of any previous offense is the same victim in the current offense.
 - A person violating the statute under this condition is guilty of a class 5 felony.

For the purposes of this statute, a juvenile adjudication may be used if that act had constituted an offense included in A.R.S. § 13-3601, and if the juvenile was tried as an adult for the offense.

Similarity to Stalking

It is possible that a case may appear to be aggravated harassment and upon further investigation, it is actually a stalking. It is also possible that a presumed stalking case will not meet the level of stalking but can be filed as an aggravated harassment. Review the Stalking Protocol for more information.

STALKING

STALKING

Under A.R.S. § 13-2923, a person commits stalking if they intentionally or knowingly engage in a course of conduct¹ that is directed toward another person and either:

1. Causes that person to fear for their safety or the safety of an immediate family member.
2. Causes that person to fear death to themselves or to an immediate family member.

A person violating the statute under the first condition is guilty of a class 5 felony. If an individual violates the statute under the second condition, it is a class 3 felony.

Stalker Profiles²

There are four main categories of stalkers:

1. Simple Obsessional

- A prior relationship exists.
- It can be a love relationship gone sour or a perception of mistreatment.
- Stalking begins after a schism in the relationship.
- It is shorter in duration.

This is the most common type of stalker. It is usually a male who knows the victim as an ex-spouse, ex-lover, or former boss and begins a campaign of harassment against them.

2. Erotomania

- The suspect believes (falsely) that it is the victim who really loves the suspect.

¹ "Course of conduct" means that on two or more occasions over a period of time, however short, a person either: 1) Maintains visual or physical proximity to a specific person; or 2) Directs verbal, written, or other threats to a specific person, whether expressed or implied. This does not include a constitutionally protected activity.

² Dr. Michael Zona, M.D., "Psychiatric Factors Involved in Stalking Cases," (Threat Management Conference, 1994). Dr. Zona is a consultant for the Los Angeles Police Department Threat Management Unit.

- The suspect usually knows the victim through the media only (TV anchor, actor or actress, political figure).
- The suspect may have delusional disorders, in rare cases.

The stalker is usually female and falsely believes that the victim is in love with her. The stalker believes that, if not for some external influence, they would be together.

3. Love Obsessional

- Usually, no prior relationship exists.
- The suspect may be fanatic in the extreme and usually has schizophrenia or bi-polar mania.
- The suspect begins a campaign of stalking and other contact behavior.

This stalker is a stranger to the victim but is obsessed and thus mounts a campaign of harassment to make the victim aware of the stalker's existence.

4. False Victimization Syndrome

- A fictitious campaign of stalking or harassment developed by the victim.
- Motivation can be either conscious or unconscious.

This is not a true stalking. The victim creates the scenario of being stalked by an alleged stalker to receive attention.

Victims of Stalking Safety Issues³

The detective, victim advocate, or prosecutor from the Maricopa County Attorney's Office should remind the victim to be extra cautious regarding their personal safety. Time should be spent reviewing the following guidelines with the victim. These are only suggestions.

Residential safety suggestions:

1. Be alert for suspicious persons. Positively identify anyone at the door prior to opening, and request identification of all repairmen prior to admission to the residence.

³ Detective Diane McNair, "Victim's Handbook," (Los Angeles Police Department).

2. Install security lighting, dead bolt locks on all outside doors, and locks on all fence gates.
3. Account for all keys or change locks. Keep all doors locked when gone and at home. Keep garage doors closed and locked at all times.
4. Trim all shrubbery so windows and doors can be seen from the street.
5. Keep the fuse box locked and backup flashlights in the residence.
6. Obtain an unlisted telephone number. If unusual calls are received, notify law enforcement. Record any such phone calls if possible and save any answering machine or voice mail messages. List emergency numbers on all phones.
7. Be alert for unusual packages or boxes found. Notify law enforcement prior to touching such packages if the source cannot be accounted for. Install smoke detectors and keep fire extinguishers in more than one location in the residence and in the garage.
8. When away from the home, leave lights, a radio, or television on.
9. Prepare an evacuation plan for the household and teach children what to do in an emergency.
10. Consider purchasing a dog.
11. Know the whereabouts of family members at all times. Children should always be accompanied.
12. Routines should be varied. Do not consistently use the same routes or times.
13. Provide trusted neighbors with information regarding the situation and request that law enforcement be alerted if suspicious activity is noted.
14. Save any correspondence from the suspect, including envelopes and enclosures whether received at home, work, or at a separate location.
15. Do not contact the suspect under any circumstances.

Workplace safety suggestions:

1. If possible, a receptionist should handle packages and visitors. Do not accept or open packages unless you have ordered them.
2. Co-workers should be advised, if possible, of the situation.

3. Park in a secured area if at all possible. Have your name removed from any parking spot or other areas that are accessible.
4. Consult with security if available.
5. Have calls screened by someone else if possible.
6. Be vigilant about anyone following you to or from work.

Vehicle safety suggestions:

1. Park vehicles in a well-lit and secure area. When parked in a garage at home, lock both the vehicle and the garage.
2. Equip the vehicle with a locking gas cap, ideally controlled from the interior of the vehicle.
3. Visually check the vehicle before entering.
4. Keep vehicle doors locked at all times, whether in or out of the vehicle.
5. Be alert to vehicles that appear to be following you. Make contingency plans and know where assistance is available.
6. Do not stop to assist a stranded motorist, call for help instead.

Personal security suggestions:

1. Remove home address from personal checks and business cards.
2. Utilize a private mailbox service (mail drop, not a U.S. Post Office Box) to receive all incoming mail. File a change of address with the U.S. Postal Service, Motor Vehicle Division, and all current creditors listing the mail drop address as your new address.
3. Contact credit reporting agencies and request all past addresses be removed and that the new mail drop address be used.
4. Place real property in a trust and list all contracts, titles, and utilities in the name of the trust.
5. Register to vote using the mail drop address and file for confidential status.
6. Destroy all discarded mail.

VICTIM SERVICES

VICTIM SERVICES

The criminal justice system offers victims of domestic violence several assistance resources. There are two types of assistance in addition to that provided by community-based organizations: on-scene responders and prosecution-based advocates.

The purpose of victim services specialists is to keep victims informed and prepared. The victim services specialist in a domestic violence case can assist the victim in understanding the criminal justice process, in assessing their needs, and in determining how to meet those needs.

Each group of specialists has specific parameters regarding what assistance can be offered. The Arizona Coalition for Victim Services has developed standards that can be obtained by calling the Arizona Attorney General's Office at (602) 542-8409. In addition to the information provided below, the Local Resources section of the Protocol contains information that can be utilized by victims.

On-Scene Responders

1. After assessing a domestic violence scene for the level of danger, the patrol officer should consider whether or not to call out an on-scene crisis intervention specialist.

Officers should consider calling a specialist when any of the following situations arise:

- There is serious physical injury to the victim.
- There are children at the scene that have witnessed the events and may be traumatized.
- Shelter is needed for the victim and/or the children.
- The suspect has made threats or used weapons.
- The suspect has not been taken into custody.
- There are basic unmet needs.
- The victim is emotionally distraught and/or needs a support person.
- When it is in accordance with departmental policy.

2. The on-scene crisis intervention specialist will assess the needs of the victim and may:
 - De-escalate the situation.
 - Assess immediate needs of both the victim and family members.
 - Locate any on-scene children and assess immediate needs including additional personnel to assist with childcare.

- Provide an emotional support person for the victim.
 - Facilitate transportation to a shelter or other destination.
 - Obtain minimal emergency supplies.
 - Coordinate, with the officer, a brief history of the occurrence and the background of the couple.
 - Develop a plan of action with the victim, including immediate and short-term goals entailing safety planning, lethality assessment, emergency orders of protection, shelter information and other referrals as necessary.
 - Explain victims' rights and how to activate those rights.
 - Provide referrals to agencies that can provide long-term assistance.
 - Close out the scene with the victim and offer ongoing support.
 - Follow-up with the victim in 24-48 hours as possible.
3. If the scene is not safe or if the suspect is not arrested, the crisis intervention specialist should meet the victim at a neutral location.

Prosecution-Based Victim Advocates

The advocates that work within the prosecutors' offices have more structured duties than the on-scene responders.

1. A victim services specialist will offer assistance and information throughout the prosecution of a case and information on the next step in the criminal justice process if the defendant is convicted.

Advocates may provide the following:

- An initial contact either by telephone or letter asking the victim to contact the office. The purpose of this contact is to acquaint the victim with the services available from the prosecutors' office and provide an overview of the criminal justice system. The advocate will work to establish a rapport with the victim.
 - An assessment of victim needs and referrals to resources in the community.
 - Assistance in securing direct services such as temporary shelter, childcare, parking, and transportation.
2. The advocate will work to assist the victim in meeting needs and providing resources. The advocate will also educate the victim on the criminal justice system, victim rights, and what to expect from the process.

The services offered through the victim services offices may include:

- An explanation of the criminal justice system as it pertains to the case.
- Written information regarding domestic violence and/or the criminal justice system.
- An explanation of victims' rights and the notification process.
- A review of safety issues and concerns with the victim.

- Information regarding office policy on domestic violence, including the “no drop” policy.
 - If applicable, the prosecutor’s name and telephone number.
 - Referrals to victim compensation and community resources as needed.
 - An explanation of the dynamics and cycle of violence.
 - An inquiry of what the victim would like to see occur in the case and a transmission of that information to the prosecutor.
 - Financial assistance with child care, food and other needs, if funds are available.
 - Court escorts and personal meetings if desired.
 - Arrangements for follow-up contact.
3. Many of the municipal victim services agencies have advocates who can offer assistance when a victim applies for an Order of Protection through municipal courts. This affords an opportunity to intervene prior to an actual criminal case being filed and to disseminate information to the victim, thereby possibly interrupting the cycle of violence.
4. Most offices have advocates available to accompany a victim to various hearings to offer support and a measure of reassurance.

When the victim requests a court escort, the following will be provided:

- Arrangements for a safe environment for the victim to wait.
- Education about the upcoming proceeding.
- A familiarization with the physical layout of the courtroom.
- Introduction to the prosecutor or court coverage attorney.
- Assistance with the victim’s trial preparation as appropriate.

Community-Based Organizations

Organizations not affiliated with the criminal justice system can often assist in meeting the needs of a victim that the criminal justice system cannot. Some of the assistance offered by the community-based organizations includes housing, support groups, outpatient counseling, and advocacy.

See the Local Resources section of the Protocol for additional information.

Safety Planning

Advocates should work with victims in developing a safety plan. The following information should be discussed with and disseminated to the victim in an effort to educate them on ways to ensure their safety before, during and after an incident, and to maintain their emotional well being.

A. Suggestions for victims regarding their emotional health:

- Plan to attend a support group for at least two weeks to gain support from others and learn more about yourself and the relationship.
- Read books and articles to help you feel stronger.
- Decide whom to call to talk freely and openly and to give you the support you need.
- Think positively about yourself.
- Be assertive with others about your needs.
- If you have to communicate with the abuser, determine the safest way to do so.
- If you are thinking of returning to a potentially abusive situation, discuss an alternative plan with someone you trust.

B. Ways victims can keep safe:

1. With an Order of Protection:

- Keep order with them at ALL times, and give copies to family, friends, school personnel, employers and babysitters.
- Call the police if partner violates the Order of Protection.
- Think of alternative ways to keep safe if the police do not respond right away.

2. At Home:

- Change door locks.
- Buy additional locks and safety devices to secure windows.
- Identify a neighbor who can be told about the violence and asked to call the police if they hear a disturbance coming from the home.

3. With Children:

- Plan and rehearse an escape route out of the home.
- Teach children a code word that tells them to call 911 and instruct them on how to use a public telephone.
- Inform children's school, day care, etc. about who has permission to pick up children.
- Give school personnel a photo of the abuser.
- Ask school personnel not to divulge victim address and phone number.

4. During an Incident:

- Stay out of rooms with no exit.

- Avoid rooms that may have weapons such as the kitchen.
- Select and use a code word that alerts friends, family, neighbors and children to call the police.
- Practice how to get out of the home safely. Identify which doors, windows, stairwells, etc., could be best.
- Decide and plan where to go to if it is necessary to leave home quickly.
- Leave, with a friend, a suitcase and items on the checklist of things needed when leaving.
- Use instincts and good judgement. If the situation is very dangerous, have the victim consider giving the abuser what he/she wants to calm him/her down. Victims have a right to protect themselves until they are out of danger.

5. When the victim is preparing to leave:

- Open a savings account in their own name and a post office box so they can receive mail and checks
- Leave money, an extra set of keys, copies of important documents and a change of clothes, with someone they trust, so they can leave quickly
- Keep shelter phone numbers nearby and keep some change or a calling card on them at all times
- Review their safety plan as often as possible
- Go over “Checklist of things needed when leaving”

NOTE: Remember that leaving the abuser is the most dangerous time for the victim.

6. At Work and In Public: Employers should provide all employees easy access to domestic violence information and resources while keeping the matter somewhat confidential.

- Tell a trusted co-worker, supervisor, or manager, and ask for help
- Give security a photo of the abuser and a copy of the Order of Protection
- Arrange to have someone screen their calls
- Contact Human Resource Department and/or Employee Assistance Program (EAP) personnel for assistance as soon as possible
- Notify their supervisor of the possible need to be absent and find out the leave options (sick, annual, shared leave, compensatory time, or leave without pay). Have them be clear about the plan to return to work and maintain communications

with their supervisor during their absence. If necessary, have them make alternative arrangements for receiving their paycheck.

- Take advantage of flextime if possible, to take care of court appearances, shelter and child care issues.
- Always carry a copy of the Order of Protection and Affidavit of Service.
- Devise a safety plan for leaving work – have an escort to their car or bus, vary route home, think about what to do if something happens on the way home.
- Consider getting a cell phone.
- Carry a noisemaker or personal alarm.
- Report all incidences of abuse, harassment and violations of the Order of Protection to the police. Always request a report be made by law enforcement when a violation occurs.

C. Checklist of things needed when leaving

- Personal identification
- Divorce, paternity, custody papers
- Birth certificates for victim and their children
- Lease/rental agreements/house deed
- Social Security cards for victim and their children
- Mortgage payment book, current unpaid bills
- School and medical records
- Insurance papers and cards
- Money, bankbooks, credit cards
- Address book
- Keys to the house, car and/or office
- Pictures, jewelry, items of sentimental value
- Driver's license and registration and insurance papers for car
- Children's favorite toys, blankets, etc.
- Medications
- Personal protection order
- Change of clothes
- Small objects that can be sold
- Welfare identification
- Toiletries/diapers
- Passport(s), green card(s), work permit

Note: Explain to the victim that many of the above items can be replaced at a later date if they are unable to obtain them prior to leaving.

PROBATION

PROBATION

Presentence Report

Domestic violence cases present an immediate threat to the physical safety of the community and to the victim. Therefore, sentencing reports in these cases are should be prepared by presentence investigators, probation officers trained in the particulars of domestic abuse. Reports consist of criminal history of defendant, synopsis of the violation, statement from the victim or other interested parties, defendant's social history, sentencing recommendations, and reasoning for recommendation. In some class 6 felonies, including domestic violence related cases, pre-sentence reports are not created. If resources are available, domestic violence cases warrant a full investigation and a complete presentence report. If a report is created, presentence investigators should include special domestic violence probation terms (term 25), when the offender and victim meet the relationship test in a one-page format are never acceptable; all domestic violence cases warrant a full investigation and long-form report. Therefore, whenever possible, domestic violence reports should be prepared by presentence investigators trained in the particulars of domestic abuse.

Combo Reports

Combination Reports are created by the supervising probation officer. If a defendant was placed on probation for a previous case and commits a new offense, the supervising probation officer combines the old case with the new case, thus the term `combo report. Combo reports are similar to presentence reports, but include the reason for revocation and what the new charge entails. It is important to note that not all domestic violence cases or charges having domestic violence terms are supervised by a domestic violence officer. If the defendant is not assigned to DV officer, probation violations will be seen at revocation court. If the defendant is assigned to a DV officer, it is highly probable that most probation violations and all review hearings will be seen in domestic violence court. Therefore, whenever possible, domestic violence combo reports should be prepared by probation officers trained in the particulars of domestic abuse.

Presentence Interviewing

1. Require the defendant to be specific about instances of physical violence.

- See that all behaviors involved are enumerated (e.g., slapping, hitting, choking, restraining, vandalism, threatening, use of weapons, etc.) and specified (e.g., Hand open or closed? Struck how many times? Which cheek? For how long? What was destroyed? What specific words were used? What kind of knife? etc.).
2. Inform the defendant that the victim will be contacted.
 3. Make every effort to contact the victim.
 - It is impossible to adequately assess the risk or danger posed by a batterer without information from the victim. Frequently, this will require more than one contact. In many cases, victims will recant or offer a different version of events than was previously related. Officers should understand this to be a result of systematic abuse and not allow it to alter their recommendations for a violent individual.
 - If the defendant was not charged with a domestic violence offense, the victim should still be sent the domestic violence form letter.
 - In cases where attempts to reach the victim are unsuccessful, the assigned County Attorney Victim Services Advocate should be consulted for further assistance.

Preparing a Report

1. Obtain a complete criminal history.
 - Ninety percent of domestic violence charges are misdemeanors; therefore, previous offenses will often have no disposition noted. It is necessary to contact the agency indicated to obtain all available information on the defendant. Because issues of community safety may be involved, the court must be able to make a fully informed decision regarding the risk posed to the victim and community by a violent offender.
2. The report should describe patterns of abusive behavior.
 - Illuminate the extent of an individual's behavior as well as any apparent trends. These patterns may have been exhibited in this relationship or with multiple partners in past relationships.
 - Identifying patterns and trends will allow the court to see the defendant in the most accurate light. It will also enable the probation officer who ultimately supervises the case to implement an appropriate supervision plan.

3. The report should contain the victim's statement, if possible. It is highly recommended that a victim's safety be considered and advise the victim that a pre sentence or combo report will be made available to defense. Prior to using any information a victim provides in a court proceeding, the officer should obtain permission from the victim. In addition, it needs to be noted the victim is not required to make a statement; it is only a victims' right.

Recommendations

1. Always recommend specialized domestic violence terms when the offender and victim meet the relationship test.
2. Recommend domestic violence counseling.
 - DO NOT recommend anger management, couples counseling or marriage/family therapy. The courts do not have jurisdiction over victims. Thus, victims are not subject to court orders or orders from probation officers.
3. In cases where victim contact is permitted, recommend contact only when authorized by the supervising probation officer.
4. On most domestic violence cases, officers should not recommend domestic violence offenders be considered for early termination. Supervision and monitoring are the most effective tools to reduce violence. If early termination is being considered, the officer should screen the case with a domestic violence probation officer supervisor, check local police jurisdiction to insure there have been no police call outs to the residence, and discuss early termination with the victim (regardless if victim is opted in or not) prior to making the recommendation.

Post-Conviction Supervision

Domestic violence offenders are the most lethal population on probation. They often have easy access to the person to whom they are the greatest threat. Because domestic violence homicides are so common, these offenders require consistent, vigilant supervision.

New Cases

1. Officers need to thoroughly familiarize themselves with the case file (e.g., PSI, criminal history, victim statements, available DR's).

2. If the defendant was recently in custody, check criminal justice system records for a record of who visited the defendant while in jail.
3. Check with police records bureaus to determine if the victim's or defendant's residence has had recent police visits.
4. At the first meeting, advise the defendant that they will be supervised actively and to expect frequent contacts. Emphasize the Probation Department's zero-tolerance for violence; the defendant will be held accountable for any violent behavior.
5. Establish communication with the victim (refer to the Victim Services section of the Protocol).

When supervising cases, the following standards should be met:

- Frequent field and office visits; frequent, irregular night visits.
- Frequent, unannounced urine and breath analysis in field and office if substance abuse issues are apparent.
- Pay particular attention to defendants' access to weapons and to those who have weapons.
- Use collateral contacts: victims, children, neighbors, co-workers, etc.
- Document specifically after every contact.

Treatment Referrals

1. Always treat violence and substance abuse separately. If significant substance abuse issues are present, they should be addressed prior to the probationer participating in a domestic violence treatment program.
2. Never direct an offender to anger classes, couples or marriage counseling, support groups, or individual psychotherapy.

Probation Violations

Neither the victims of violence, the community, or the defendant are well-served by a tolerant approach to violent crime. In order to successfully reduce aggressive behavior, the targeted individual must perceive the consequences of violence to be swift, severe, and certain. Probation officers supervising these cases must not be reluctant to use the power of arrest to protect public safety.

In particular, new incidents of physical violence or violations of Orders of Protection should result in the defendant's arrest. In those rare cases where an arrest has not been made, then the court should be notified by memorandum.

For cases being supervised in the domestic violence unit, technical violations may be addressed through increased sanctions and the probationer will be required to participate in Review hearings in Domestic Violence Court.

Violation Guidelines

The following violation guidelines have been set by the Maricopa County Adult Probation Department.

1. All allegations of violence should be investigated immediately and documented in the case file. In cases where independent verification is available (i.e., a departmental report, tape recordings of phone calls, etc.), an arrest or memorandum to the court should follow.
2. New incidents of physical violence or violations of Orders of Protection should result in the defendant's arrest or at the very minimum, the filing of a memorandum with the court.
3. Technical violations involving behaviors that are typically precursors to violence should be promptly addressed. These behaviors include substance abuse, possession of weapons, and unauthorized victim contact. In these types of technical violations, arrest or increased sanctions should be seen as a means to prevent new violence.
4. Warrants for violent offenders are to be given priority. This requires immediate delivery to the court and the warrants unit, contact with a warrant's office to expedite apprehension and contact with the Maricopa County Attorney's Office.

If a victim has opted in for post conviction Victims' Rights, they should always be notified of the violation, arrest, termination, revocation, modification, and any court hearings if they have requested their victim's rights if restitution has been ordered and is delinquent by 60 days or more, a copy of the memorandum sent to the court concerning restitution delinquency.

Victim Issues

Victims of domestic violence often have had negative experiences with the criminal justice system. Probation officers must be cognizant of this and devote the time necessary to attempt to establish rapport and open dialogue with a victim.

If a victim's whereabouts are known, the supervising probation officer must contact the victim within thirty days of receiving the defendant's case. If the whereabouts remain known and they want to be contacted by the officer, follow-up contact should take place at least every six months. If the officer is unable to contact the victim, the attempts should be noted.

Victim Guidelines

The following guidelines are to be used when dealing with victims of partner abuse:

1. Never talk with the victim in the presence of the defendant. When calling by phone, always ask if it is a good time to talk.
2. Emphasize that the defendant is responsible for his/her own behavior. Stress to the victim that there is no justification for violence and that the victim's safety, and that of any children, are the officer's top priorities.
3. Assure the victim that the officer is always accessible and available.
4. Fully explain the role and limitations of the probation officer. While supervised probation may provide options and responses that might reduce danger to a victim, it does not guarantee safety.
5. Alert victims to available community resources. Local battered women's shelters offer expert safety planning, emergency shelter, legal advocacy, counseling, and support groups.
6. Avoid victim-blaming. Never ask a victim why she or he remains in a relationship. An officer should always convey understanding, support, and belief. Avoid trying to "rescue" a victim because the victim is the only person who may decide when to change the status of the relationship.
7. Obtain a history of violence in the relationship.
8. Be extremely cautious in handling information from a victim. Never disclose something stated by a victim without first considering what effect such disclosure might have. Never reveal to a defendant what a victim has said, even with permission, unless there is a compelling reason to do so.
 - Information from victims must be treated with strict confidentiality. Probation officers must understand that inappropriate disclosure of information may result in injury or death to a victim.

ORDERS OF PROTECTION

ORDERS OF PROTECTION

An Order of Protection may be applied for in any court unless there is an action for annulment, dissolution of marriage, maternity or paternity action, or legal separation action pending. In those situations, the order must be applied for in the Superior Court. If an order is applied for in a lower court and written notification of a pending Superior Court action is received by the lower court, the case must be immediately transferred to the Superior Court, except as explained below.

A scheduled lower court hearing may be held if the hearing was requested prior to the receipt of notice from the Superior Court action. If transferred prior to a hearing, the Superior Court hearing should be scheduled close to the original lower court hearing date.

An Order of Protection is valid for 12 months from the date of service.

Note: The Order of Protection should be enforced whether the plaintiff initiated contact or not. The plaintiff should not be charged with violating the Order of Protection

It is important to recognize that although the defendant is invited by the plaintiff to enter the residence or the plaintiff initiated the contact, the defendant has violated the order. The order is not quashed by the plaintiff allowing contact. The order can only be quashed by a judicial officer. It is still a violation of the order, even if the plaintiff has initiated contact. The officer should follow through and treat this as an Order of Protection violation.

However, it is possible that if the plaintiff/victim initiates contact and NO injury/violence occurs during the contact, the Maricopa County Attorney's Office may not file charges.

When requesting an Order of Protection, the plaintiff has the option of requesting the defendant's guns be seized when the order is served.

Emergency Orders of Protection

Emergency Orders of Protection are available to victims through law enforcement. It is imperative the victim be reminded that the emergency order is only valid until the close of the next business day.

Quashing an Order of Protection

When a request to quash an order of protection is received, a judicial officer should request identification to determine that the person requesting the order be quashed is indeed the plaintiff. When a plaintiff and defendant appear together to request that an Order of Protection be quashed, the judicial officer should separate the parties to determine whether the plaintiff is appearing under duress or coercion.

Additional information on Orders of Protection can be found in the “Bench Book for Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases,” which was prepared by the Committee on the Impact of Domestic Violence in the Courts and its Advisory Committee. It can be obtained by calling the Administrative Offices of the Court at 602-542-9250.

When Children Are Involved

The Order of Protection may not address the issue of the children. The best alternative for the parties is to request a custody hearing through the Superior Court. If the children are listed on the Order as protected parties, the defendant should not be at the residence for any reason. If there is a visitation schedule, the transfer of the children should be in a neutral location with a third party present.

These issues should be addressed at the time the plaintiff applies for the Order of Protection. A statement could be added to the Order that any exchange of the children be handled in an expedient manner and no interaction except on issues related to the children should take place.

FULL FAITH AND CREDIT PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT

Domestic violence crosses many boundaries including socioeconomic, ethnic and geographic. A difficult situation occurs when a victim must leave a home state or tribal location where an order of protection has already been issued. Further attacks by a batterer may necessitate moving to a new state or tribal location.

Note: Under the Violence Against Women Act of 1994 (18 U.S.C. § 2265), it is now a federal offense to cross state or tribal lines when violating an Order of Protection.

1. Federal 18 U.S.C. § 2265 and Arizona Revised Statute §13-3602 (R) provides, “A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction.”

A protective order is to be granted full faith and credit if:

- The court had jurisdiction over the parties and the matter under the law of such state or tribe, and
 - Reasonable notice and opportunity to be heard were given to the person against whom the order was sought sufficient to protect that person’s right of due process.
 - In the case of ex parte orders, notice and opportunity to be heard must be provided within the time frames required by state or tribal law and in any event within a reasonable time after the order is issued to protect the respondent’s right to due process.
2. **Registration** in the new jurisdiction is not required for the order to be valid. Often the registration process for the new jurisdiction is very different from the jurisdiction left behind and the victim who has fled a prior jurisdiction cannot be expected to navigate the criminal justice system in such a time of crisis.
 3. **Enforcement** is required even if:
 - The victim would not be eligible for an order of protection in Arizona.
 - The out-of-state or tribal order provides greater relief than would have been received under Arizona law.

Domestic violence orders may be titled:

- Restraining orders
- Orders of protection
- Abuse prevention orders
- Stay away orders.

Not only will the names of domestic violence orders from other states or tribes be different, but the forms may be as well. Additionally, the duration of the effectiveness of the order will vary from six months to permanent.

It is the intention of the Full Faith and Credit Provision in Arizona that the victim's safety be of primary consideration. Immunity from civil liability, when enforcing an out of state or tribal protection order may be provided under 42 U.S.C.A. 1983. Additionally, A.R.S. § 13-3602 (R) 4 provides:

A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that an order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

The National Crime Information Center is the national repository of orders of protection. In Arizona, this also includes Injunctions Against Harassment but not Emergency Orders of Protection. This data can be accessed through the established criminal justice systems. An officer should not solely rely on this data or lack thereof, in determining the validity of an order.

LOCAL RESOURCES

LOCAL RESOURCES

DOMESTIC VIOLENCE SHELTERS

SHELTER HOTLINE

(602) 263-8900

1(800) 799-7739

Lists available beds in Maricopa County for all shelters.

Autumn House
Prehab of Arizona
P.O. Drawer 5860
Mesa, AZ 85211-5860
(480) 835-5555
www.prehab.org

www.sojournercenter.org

Cassie's House
8914 West Vernon
Phoenix, AZ 85037
(623) 936-7446

Chrysalis
P.O. Box 9956
Phoenix, AZ 85068
(602) 944-4999
www.chrysalis-shelter.org

Chrysalis
P.O. Box 1551
Scottsdale, AZ 85252
(480) 481-0402
www.chrysalis-shelter.org

De Colores
Chicanos por la Causa
P.O. Box 6553
Phoenix, AZ 85005-6553
(602) 269-1515
(Spanish Speaking Services Available)
Prehab Faith House
P.O. Box 5860
Mesa, AZ 85211-5860
(623) 939-6798
www.prehab.org

My Sister's Place
610 North Alma School Road, #18
Mesa, AZ 85224
(480) 821-1024

New Life Shelter
P.O. Box 5005
Goodyear, AZ 85338
(623) 932-4404
www.newlifectr.org

Sojourner Center
P.O. Box 20156
Phoenix, AZ 85036
(602) 244-0089 ext. 1

ADVOCACY CENTERS

West Valley Advocacy Center
6829 N. 57th Avenue
Glendale, AZ 85301
(623) 930-3720
(602) 254-9000 – crisis line
www.ci.glendale.az.us

Phoenix Family Advocacy Center
2120 North Central Avenue
Suite 250
Phoenix, AZ 85004
(602) 534-2120
1(888) 246-0303
www.phoenix.gov

Mesa Center Against Family Violence
225 East First Street, Suite 102
Mesa, AZ 85201
(480) 644-2188
(480) 644-4075
www.ci.mesa.az.us/police/cafv

Scottsdale Advocacy Center
3700 N 75th Street
Scottsdale, AZ 85251
(480) 312-6306
www.scottsdaleaz.gov

LEGAL SERVICES

Arizona Coalition Against
Domestic Violence
100 West Camelback Road, Ste 109
Phoenix, AZ 85013
Legal Advocacy Hotline
(602) 279-2900
(800) 782-6400
www.azcadv.org

Community Legal Services – Central
(602) 258-3434

Community Legal Services – East
(480) 833-1442

Crime Victims Legal Assistance Project
Arizona Voice for Crime Victims
(480) 600-2661
(480) 965-5640
www.voiceforvictims.org

Family Lawyers Assistance Project
201 West Jefferson, 6th Floor
Phoenix, AZ 85003
(602) 506-7948

Maricopa County Lawyer Referral
(602) 257-4434

Maricopa County Superior Court
SELF-HELP Center
(602) 506-7353

SUPERIOR COURT SELF-HELP CENTER

Forms available for pick up at the following locations:

Downtown--Phoenix (East Court Building)
101 West Jefferson, 1st Floor
In the Law Library
(602) 506-SELF (7353)

Southeast--Mesa (Southeast Court Complex)
222 East Javelina, 1st Floor
In the Law Library
(602) 506-SELF (7353)

Northwest--Surprise (Northwest Regional Center)
14264 West Tierra Buena Lane
(602) 372-9400

Forms can also be downloaded at: www.superiorcourt.maricopa.gov

Filing forms for a family law cases:

Downtown--Phoenix
201 West Jefferson
Phoenix, AZ
(South side between 1st and 3rd Ave)

Southeast--Mesa
222 East Javelina, 1st Floor
Mesa, AZ
In the Law Library

Northwest--Surprise
14264 West Tierra Buena Lane
Surprise, AZ

VICTIM SERVICES

Arizona Coalition Against Domestic Violence
100 W. Camelback Rd. Ste 109
Phoenix, AZ 85013
(602) 279-2900
www.azcadv.org

Arizona Attorney General's Office
Victim Services
1275 W. Washington
Phoenix, Arizona 85007
(602) 542-4911
www.ag.state.az.us/victims_rights

Avondale City Police Department
11485 W. Civic Center Drive
Avondale, AZ 85323
(623) 932-3660
www.avondale.org

Chandler Police Department
Victim Assistance
Mail Stop 303 PO Box 4008
Chandler, AZ 85244
(480) 782-4130
www.ci.chandler.az.us

City of El Mirage
12145 NW Grand Avenue
El Mirage, AZ 85335
(623) 815-2186
www.cityofelmirage.org

Gilbert Police Department
75 E. Civic Center Drive
Gilbert, AZ 85296
(480) 635-7701
www.ci.gilbert.az.us

Glendale Police Department
Victim Assistance Services
6835 North 57th Drive
Glendale, AZ 85301
(623) 930-3030
www.ci.glendale.az.us/police

Goodyear Police Department
Crisis Services Unit
119 N. Litchfield Road
Goodyear, AZ 85338
(623) 882-7677
www.ci.goodyear.az.us

Town of Guadalupe
9241 S. Avenida Del Yaqui
Guadalupe, AZ 85283
(480) 730-3080
www.guadalupeaz.org

Maricopa County Adult Probation
Victim Services
111 S. 3rd Avenue
Phoenix, AZ 85003
(602) 372-8286
www.superiorcourt.maricopa.gov

Maricopa County Attorney
Victim Services Division
301 West Jefferson
Ninth Floor
Phoenix, AZ 85003
(602) 506-8522
www.maricopacountyattorney.org

Maricopa County Attorney
Victim Services Division
222 E. Javelina, Suite 2400
Mesa, Arizona 85210
(602) 506-2488
www.maricopacountyattorney.org

Mesa Police Department
Victim Services Unit
130 North Robson
Mesa, AZ 85201
(480) 644-4075
(480) 644-2211 after hours
www.ci.mesa.az.us/police

Mesa City Prosecutor's Office
Victim Services
245 West 2nd Street, Ste 201
Mesa, AZ 85201
(480) 644-2188
www.ci.mesa.az.us

Peoria Police Department
Victim Assistance
8343 W. Monroe St.
Peoria, AZ 85345
(623) 773-7019
(623) 773-8311 after hours
www.peoriaaz.com/policedept

Peoria Prosecutor's Office
Victim Assistance
8401 W. Monroe St, Court Bldg
Peoria, AZ 85345
(623) 773-7330
www.peoriaaz.com

Phoenix Police Department
Victim Services
2120 N. Central Ste 250
Phoenix, AZ 85004
(602) 524-1440
www.phoenix.gov/police

Phoenix City Prosecutor's Office
Victim Services Unit
300 W. Washington
PO Box 4600
Phoenix, AZ 85003
(602) 261-8192
www.phoenix.gov

Scottsdale City Attorney's
Victim Assistance Program
3700 North 75th Street
Scottsdale, AZ 85251
(480) 312-4226
www.scottsdaleaz.gov

Scottsdale Police Department
Crisis Intervention Unit
3700 N. 75th Street
Scottsdale, AZ 85251
(480) 312-5055
www.scottsdaleaz.gov/police

Tempe City Prosecutor's Office
140 E. 5th Street, Ste 303
Tempe, AZ 85281
(480) 350-8227
www.tempe.gov

City of Tempe
CARE 7 Response Team
1000 E. University
Tempe, AZ 85281
(480) 350-8004
www.tempe.gov

U.S. Attorney's Office
Victim Services
Two Renaissance Square
40 N. Central, Ste 1200
Phoenix, AZ 85004
(602) 514-7568
www.usdoj.gov

COURT LOCATIONS & PHONE NUMBERS

Avondale Magistrate Court
521 East Western Avenue
Avondale, AZ 85323
623-932-3860

Buckeye Justice Court
100 North Apache, Suite C
Buckeye, AZ 85326
623-386-4822

Buckeye Magistrate Court
100 North Apache, Suite C-1
Buckeye, AZ 853236
623-386-5908

Carefree Municipal Court
100 Easy St.
Carefree, AZ 85377
480-488-1689

Cave Creek Municipal Court
37622 North Cave Creek
Cave Creek, AZ 85331
480-488-1409

Central Phoenix Justice Court
One West Madison
Phoenix, AZ 85003
602-506-1168

Chandler Justice Court
2051 West Warner Road, Suite 20
Chandler, AZ 85224
480-963-6691

Chandler Municipal Court
200 East Chicago Street
Chandler, AZ 85225
480-782-4700

East Mesa Justice Court
4811 East Julep, Suite 128
Mesa, AZ 85205
480-985-0188

East Phoenix Justice Court #1
One West Madison, Suite 1
Phoenix, AZ 85003
602-506-3577

East Phoenix Justice Court #2
4109 North Twelfth Street
Phoenix, AZ 85014
602-266-3741

El Mirage City Court
14405 N. Palm Street
El Mirage, AZ 85335
623-815-2186

Fountain Hills Magistrate Court
16836 East Palisades Blvd., Bldg. B
Fountain Hills, AZ 85268
480-816-5144

Gila Bend Justice Court
209 East Pima Street
Gila Bend, AZ 85337
520-683-2651

Gilbert Municipal Court
55 E. Civic Center Drive
Gilbert, AZ 85296
480-635-7800

Glendale City Court
5711 West Glendale Avenue
Glendale, AZ 85301
623-930-2400

Glendale Justice Court
5222 W. Glendale Ave.
Glendale, AZ 85301
623-939-9477

Goodyear Magistrate Court
120 E. Western Ave.
Goodyear, AZ 85338
623-932-3013

Guadalupe Municipal Court
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
480-730-3085

Litchfield Park Magistrate Court
214 West Wigwam Boulevard
Litchfield Park, AZ 85340
623-935-7091

Maryvale Justice Court
4622 West Indian School Road, Suite D-10
Phoenix, AZ 85031
623-245-0432

Mesa City Court
245 West Second Street
Mesa, AZ 85201
480-644-2255

North Mesa Justice Court
1837 South Mesa Drive, Suite A201
Mesa, AZ 85210
480-926-9731

Northeast Phoenix Justice Court
10255 North 32nd Street
Phoenix, AZ 85028
602-506-3731

Northwest Phoenix Justice Court
11601 North 19th Avenue
Phoenix, AZ 85029
602-395-0293

North Valley Justice Court
5222 W. Glendale
Glendale, AZ 85301
623-915-2877

Paradise Valley Municipal Court
6401 East Lincoln Drive
Paradise Valley, Az. 85253
480-948-7620

Peoria Municipal Court
10100 N. 83rd Ave.
Peoria, AZ 85345
623-773-7400

Peoria Justice Court
7420 West Cactus Road
Peoria, AZ 85381
623-979-3234

Phoenix City Court
300 W. Washington
Phoenix, AZ 85003
602-262-6421

Scottsdale City Court
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7975

Scottsdale Justice Court
8230 E. Butherus Drive
Scottsdale, AZ 85260
480-443-6600

South Mesa/Gilbert Justice Court
1837 South Mesa Drive, B -103
Mesa, AZ 85210
480-926-3051

South Phoenix Justice Court
217 East Olympic Drive
Phoenix, AZ 85040
602-243-0318

Surprise City Court
12604 Santa Fe Drive
Surprise, AZ 85374
623-583-1082

Tempe City Court
140 East Fifth Street, Suite 200
Tempe, AZ 85281
480-350-8271

Tempe East Justice Court
1845 East Broadway, Ste. 8
Tempe, AZ 85282
480-967-8856

Tempe West Justice Court
1845 East Broadway, Ste. 8
Tempe, AZ 85282
480-350-9442

Tolleson Justice Court
9550 West Van Buren, Suite 6
Tolleson, AZ 85353
623-936-1449

West Mesa Justice Court
2050 West University Dr.
Mesa, AZ 85201
480-964-2958

West Phoenix Justice Court
1 West Madison
Phoenix, AZ 85003
602-256-0292

Wickenburg Justice Court
155 North Tegner St., Suite D
Wickenburg, AZ 85390
520-684-2401

Youngtown Municipal Court
12033 Clubhouse Square
Youngtown, AZ 85363
623-972-8226

ARIZONA REVISED STATUTES ON DOMESTIC VIOLENCE

ARIZONA REVISED STATUTES

§ 13-1201 – Endangerment; classification

- A. A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury.
- B. Endangerment involving a substantial risk of imminent death is a class 6 felony. In all other cases, it is a class 1 misdemeanor.

§ 13-1202 – Threatening or intimidating; classification

- A. A person commits threatening or intimidating if such person threatens or intimidates by word or conduct:
 - 1. To cause physical injury to another person or serious damage to the property of another; or
 - 2. To cause, or in reckless disregard to causing, serious public inconvenience including, but not limited to, evacuation of a building, place of assembly, or transportation facility; or
 - 3. To cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang, a criminal syndicate or a racketeering enterprise.
- B. Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class 1 misdemeanor. Threatening or intimidating pursuant to subsection A, paragraph 3 is a class 4 felony.

§ 13-1203 – Assault; classification

- A. A person commits assault by:
 - 1. Intentionally, knowingly or recklessly causing any physical injury to another person; or
 - 2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or
 - 3. Knowingly touching another person with the intent to injure, insult or provoke such person.

- B. Assault committed intentionally or knowingly pursuant to subsection A, paragraph 1 is a class 1 misdemeanor. Assault committed recklessly pursuant to subsection A, paragraph 1 or assault pursuant to subsection A, paragraph 2 is a class 2 misdemeanor. Assault committed pursuant to subsection A, paragraph 3 is a class 3 misdemeanor.

§ 13-1204 – Aggravated assault; classification

- A. A person commits aggravated assault if the person commits assault as defined in section 13-1203 under any of the following circumstances:
1. If the person causes serious physical injury to another.
 2. If the person uses a deadly weapon or dangerous instrument.
 3. If the person commits the assault after entering the private home of another with the intent to commit the assault.
 4. If the person is eighteen years of age or more and commits the assault upon a child the age of fifteen years or under.
 5. If the person commits the assault knowing or having reason to know that the victim is a peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.
 6. If the person commits the assault knowing or having reason to know the victim is a teacher or other person employed by any school and the teacher or other employee is upon the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, or any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties, or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
 7. If the person meets both of the following conditions:
 - (a) Is imprisoned or otherwise subject to the custody of any of the following:
 - (i) The state department of corrections.
 - (ii) The department of juvenile corrections.
 - (iii) A law enforcement agency.
 - (iv) A county or city jail or an adult or juvenile detention facility of a city or county.
 - (v) Any other entity that is contracting with the state department of

corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

- (b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities prescribed by subdivision (a) of this paragraph.
8. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
 9. If the person commits the assault knowing or having reason to know that the victim is a fire fighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.
 10. If the person commits the assault knowing or having reason to know that the victim is a licensed health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. The provisions of this paragraph do not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550 or is afflicted with Alzheimer's disease or related dementia.
 11. If the person commits assault by any means of force which causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of any body part.
 12. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.
 13. If the person commits the assault knowing or having reason to know that the victim is a prosecutor.
- B. Except pursuant to subsection C and D of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to section 13-604.01. Aggravated assault pursuant to subsection A, paragraph 11 of this section is a class 4

felony. Aggravated assault pursuant to subsection A, paragraph 7 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 3, 4, 5, 6, 8, 9, 10, 12 or 13 of this section is a class 6 felony.

- C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 11 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 5 of this section resulting in any physical injury to a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony.
- D. Aggravated Assault pursuant to:
 - 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.
 - 2. Subsection A, paragraph 11 of this section is a class 3 felony if committed on a prosecutor.
 - 3. Subsection A, paragraph 13 of this section is a class 5 felony if the assault results in physical injury to a prosecutor.
- E. For the purposes of this section, “prosecutor” means county attorney, municipal prosecutor or attorney general and an assistant or deputy county attorney, municipal prosecutor or attorney general.

§ 13-1302 – Custodial interference; child born out of wedlock; defenses; classification

- A. A person commits custodial interference if, knowing or having reason to know that the person has no legal right to do so, the person does one of the following:
 - 1. Takes, entices or keeps from lawful custody any child, or any person who is incompetent, and who is entrusted by authority of law to the custody of another person or institution.
 - 2. Before the entry of a court order determining custodial rights, takes, entices or withholds any child from the other parent denying that parent access to any child.
 - 3. If the person is one of two persons who have joint legal custody of a child takes, entices or withholds from physical custody the child from the other custodian.

4. At the expiration of access rights outside this state, intentionally fails or refuses to return or impedes the return of a child to the lawful custodian.
- B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and custody or access is determined by a court.
- C. It is a defense to a prosecution pursuant to subsection A, paragraph 2 if both of the following apply:
1. The defendant has begun the process to obtain an order of protection or files a petition for custody within a reasonable period of time and the order of protection or petition states the defendant's belief that the child was at risk if left with the other parent.
 2. The defendant is the child's parent and has the right of custody and the defendant either:
 - (a) Has a good faith and reasonable belief that the taking, enticing or withholding is necessary to protect the child from immediate danger.
 - (b) Is a victim of domestic violence by the other parent and has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.
- D. A violation of this section is:
1. A class 3 felony if committed by a person other than the parent or agent of the parent or custodian or agent of the custodian.
 2. Notwithstanding paragraph 3 of this subsection, a class 4 felony if the child or incompetent person is taken, enticed or kept from lawful custody out of this state by the parent or agent of the parent or custodian or the agent of the custodian.
 3. A class 6 felony if committed by a parent or agent of the parent or custodian or agent of the custodian.
 4. A class 1 misdemeanor if the child or incompetent person is voluntarily returned without physical injury prior to arrest or the issuance of an arrest warrant.

§ 13-1303 – Unlawful imprisonment; classification

- A. A person commits unlawful imprisonment by knowingly restraining another person.
- B. In any prosecution for unlawful imprisonment, it is a defense that:
 - 1. The restraint was accomplished by a peace officer acting in good faith in the lawful performance of his duty; or
 - 2. The defendant is a relative of the person restrained and the defendant's sole intent is to assume lawful custody of that person and the restraint was accomplished without physical injury.
- C. Unlawful imprisonment is a class 6 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place prior to arrest in which case it is a class 1 misdemeanor.

§ 13-1304 – Kidnapping; classification; consecutive sentence

- A. A person commits kidnapping by knowingly restraining another person with the intent to:
 - 1. Hold the victim for ransom, as a shield or hostage; or
 - 2. Hold the victim for involuntary servitude; or
 - 3. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony; or
 - 4. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person.
 - 5. Interfere with the performance of a governmental or political function.
 - 6. Seize or exercise control over any airplane, train, bus, ship or other vehicle.
- B. Kidnapping is a class 2 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place prior to arrest and prior to accomplishing any of the further enumerated offenses in subsection A of this section in which case it is a class 4 felony. If the victim is released pursuant to an agreement with the state and without any physical injury, it is a class 3 felony. If the victim is under fifteen years of age kidnapping is a class 2 felony punishable pursuant to section 13-604.01. The sentence for kidnapping of a victim under fifteen years of age shall run consecutively to any other sentence imposed on the defendant and to any undischarged term of imprisonment of the defendant.

§ 13-1502 – Criminal trespass in the third degree; classification

- A. A person commits criminal trespass in the third degree by:
 - 1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.
 - 2. Knowingly entering or remaining unlawfully on the right-of-way for tracks, or the storage or switching yards or rolling stock of a railroad company.
- B. Criminal trespass in the third degree is a class 3 misdemeanor.

§ 13-1503 – Criminal trespass in the second degree; classification

- A. A person commits criminal trespass in the second degree by knowingly entering or remaining unlawfully in or on any nonresidential structure or in any fenced commercial yard.
- B. Criminal trespass in the second degree is a class 2 misdemeanor.

§ 13-1504 – Criminal trespass in the first degree; classification

- A. A person commits criminal trespass in the first degree by knowingly:
 - 1. Entering or remaining unlawfully in or on a residential structure or in a fenced residential yard; or
 - 2. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
 - 3. Entering unlawfully on real property subject to a valid mineral claim or lease with the intent to hold, work, take or explore for minerals on such claim or lease.
 - 4. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.
- B. Criminal trespass in the first degree is a class 6 felony if it is committed by entering or remaining unlawfully in or on a residential structure or committed pursuant to subsection A, paragraph 4. Criminal trespass in the first degree is a class 1 misdemeanor if it is committed by entering or

remaining unlawfully in a fenced residential yard or committed pursuant to

subsection A, paragraph 2 or 3.

§ 13-2904 – Disorderly conduct; classification

- A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:
1. Engages in fighting, violent or seriously disruptive behavior; or
 2. Makes unreasonable noise; or
 3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
 4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
 5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or
 6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.
- B. Disorderly conduct under subsection A, paragraph 6 is a class 6 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3, 4 or 5 is a class 1 misdemeanor.

§ 13-2921 – Harassment; classification; definition

- A. A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:
1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.
 2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.
 3. Repeatedly commits an act or acts that harass another person.
 4. Surveils or causes another person to surveil a person for no legitimate purpose.
 5. On more than one occasion makes a false report to a law

enforcement, credit or social service agency.

6. Interferes with the delivery of any public or regulated utility to a person.
- B. A person commits harassment against a public officer or employee if the person, with intent to harass, files a nonconsensual lien against any public officer or employee that is not accompanied by an order or a judgment from a court of competent jurisdiction authorizing the filing of the lien or is not issued by a governmental entity or political subdivision or agency pursuant to its statutory authority, a validly licensed utility or water delivery company, a mechanics' lien claimant or an entity created under covenants, conditions, restrictions or declarations affecting real property.
- C. Harassment under subsection A is a class 1 misdemeanor. Harassment under subsection B is a class 5 felony.
- D. This section does not apply to an otherwise lawful demonstration, assembly or picketing.
- E. For purposes of this section, "harassment" means conduct directed at a specific person which would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person.

§ 13-2921.01 – "Aggravated harassment; classification; definition

- A. A person commits aggravated harassment if the person commits harassment as provided in section 13-2921 and any of the following applies:
 1. A court has issued an order of protection or an injunction against harassment against the person and in favor of the victim of harassment and the order or injunction has been served and is still valid.
 2. The person has previously been convicted of an offense included in section 13-3601.
- B. The victim of any previous offense shall be the same as in the present offense.
- C. A person who violates subsection A, paragraph 1 of this section is guilty of a class 6 felony. A person who commits a second or subsequent violation of subsection A, paragraph 1 of this section is guilty of a class 5 felony. A person who violates subsection A, paragraph 2 of this section is guilty of a class 5 felony.
- D. For the purposes of this section, "convicted" means a person who was

convicted of an offense included in section 13-3601, who had judgment deferred pursuant to section 13-3601, subsection M or who was adjudicated delinquent for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult for an offense included in section 13-3601.

§ 13-2923 – Stalking; classification; definitions

- A. A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:
 - 1. Would cause a reasonable person to fear for the person’s safety or the safety of that person’s immediate family member and that person in fact fears for their safety or the safety of that person’s immediate family member.
 - 2. Would cause a reasonable person to fear death of that person or that person’s immediate family member.
- B. Stalking under subsection A, paragraph 1 of this section is a class 5 felony. Stalking under subsection A, paragraph 2 is a class 3 felony.
- C. For the purposes of this section:
 - 1. “Course of conduct” means maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity.
 - 2. “Immediate family member” means a spouse, parent, child or sibling or any other person who regularly resides in a person’s household or resided in a person’s household within the past six months.

§ 13-3601 – Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report; diversion;

- A. “Domestic violence” means any act which is a dangerous crime against children as defined in section 13-604.01 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3, or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following apply:
 - 1. The relationship between the victim and the defendant is one of

marriage or former marriage or of persons residing or having resided in the same household.

2. The victim and the defendant have a child in common.
 3. The victim or the defendant is pregnant by the other party.
 4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
 5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
- B. A peace officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether such offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.
- C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to

search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

- D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.
- E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.
- F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor
- G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.
- H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.
- I. A person arrested pursuant to subsection B of this section may be released

from custody in accordance with the Arizona rules of criminal procedure or other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

- J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of such victim including:
 - 1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.
 - 2. The emergency telephone number for the local police agency.
 - 3. Telephone numbers for emergency services in the local community
- K. A peace officer is not civilly liable for noncompliance with subsection J of this section.
- L. An offense included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified.
- M. If the defendant is found guilty of a first offense included in domestic violence, the court shall provide the following written notice to the defendant:

You have been convicted of an offense included in domestic violence. You are now on notice that:

- 1. If you are convicted of a second offense included in domestic violence, you may be placed on supervised probation and may be incarcerated as a condition of probation.
- 2. A third or subsequent charge may be filed as a felony and a conviction for that offense shall result in a term of incarceration.

13-3601.01 – Domestic violence; treatment; definition

- A. The judge shall order a person who is convicted of a misdemeanor domestic violence offense to complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department. If a person has previously been ordered to complete a domestic violence offender treatment program

pursuant to this section, the judge shall order the person to complete a domestic violence offender treatment program unless the judge deems that alternative sanctions are more appropriate. The department of health services shall adopt and enforce guidelines that establish standards for domestic violence offender treatment program approval.

- B. On conviction of a misdemeanor domestic violence offense, if a person within a period of sixty months has been previously convicted of a violation of a domestic violence offense or is convicted of a misdemeanor domestic violence offense and has previously been convicted of an act in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense, the judge may order the person to be placed on supervised probation and the person may be incarcerated as a condition of probation. If the court orders supervised probation, the court may conduct an intake assessment when the person begins the term of probation and may conduct a discharge summary when the person is released from probation. If the person is incarcerated and the court receives confirmation that the person is employed or is a student, the court, on pronouncement of any jail sentence, may provide in the sentence that the person, if the person is employed or is a student and can continue the person's employment or studies, may continue the employment or studies for not more than twelve hours a day nor more than five days a week. The person shall spend the remaining day, days or parts of days in jail until the sentence is served and shall be allowed out of jail only long enough to complete the actual hours of employment or studies.
- C. The person shall pay the cost of the domestic violence offender treatment program.
- D. If a person is ordered to attend a domestic violence offender treatment program pursuant to this section, the program shall report to the court whether the person has attended the program and has successfully completed the program.
- E. For the purposes of this section, prior convictions for misdemeanor domestic violence offenses apply to convictions for offenses that were committed on or after January 1, 1999.
- F. For the purposes of this section, "domestic violence offense"; means an offense involving domestic violence as defined in section 13-3601.

13-3601.02 – Aggravated domestic violence; classification; definition

- A. A person is guilty of aggravated domestic violence if the person within a period of sixty months commits a third or subsequent violation of a domestic violence offense or is convicted of a violation of a domestic

violence offense and has previously been convicted of any combination of convictions of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a violation of a domestic violence offense.

- B. A person who is convicted under this section and who within a period of sixty months has been convicted of two prior violations of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than four months in jail.
- C. A person convicted under this section who within a period of sixty months has been convicted of three or more prior violations of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight months in jail.
- D. The dates of the commission of the offenses are the determining factor in applying the sixty month provision in subsection A of this section regardless of the sequence in which the offenses were committed. For purposes of this section, a third or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts.
- E. For the purposes of this section, prior convictions for misdemeanor domestic violence offenses apply only to convictions for offenses that were committed on or after January 1, 1999.
- F. Aggravated domestic violence is a class 5 felony.
- G. For the purposes of this section, "domestic violence offense" means an offense involving domestic violence as defined in section 13-3601.

§ 13-3602 – Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction

- A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or

custodian as the plaintiff and the minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or defendant, any court in this state may issue or enforce an order of protection.

B. An order of protection shall not be granted:

1. Unless the party who requests the order files a written verified petition for an order.
2. Against a person who is less than twelve years of age unless the order is granted by the juvenile division of the superior court.
3. Against more than one defendant.

C. The petition shall state the:

1. Name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an order of protection, the protected address shall be maintained in a separate document or automated data base and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.
2. Name and address, if known, of the defendant.
3. Specific statement, including dates, of the domestic violence alleged.
4. Relationship between the parties pursuant to § 13-3601, subsection A and whether there is pending between the parties an action for annulment, legal separation or dissolution of marriage.
5. Name of the court in which any prior or pending proceeding or order was sought or issued concerning the conduct which is sought to be restrained.
6. Desired relief.

- D. A fee shall not be charged for filing a petition filed under this section. Fees for service of process may be deferred or waived under any rule, statute or other law applicable to civil actions. The court shall advise a plaintiff that the plaintiff may be eligible for the deferral or waiver of these fees at the time the plaintiff files the petition. The court shall not require the petitioner to perform community service as a condition of the waiver or deferral of filing fees and fees for service of process. A law enforcement agency or constable shall not require the advance payment of fees for service of process of orders of protection. If the court does not waive the fees, the serving agency may assess the actual fees against the plaintiff. On request of the plaintiff, each order of protection issued by a municipal court shall be served by the police agency for that city if the defendant can be served within the city. If the defendant cannot be served within the city, the police agency in the city in which the defendant can be served shall serve the order. If the order cannot be served within a city, the sheriff shall serve the order. On request of the plaintiff, each order of protection issued by a justice of the peace shall be served by the constable or sheriff for that jurisdiction if the defendant can be served within the jurisdiction. If the defendant cannot be served within that jurisdiction, the constable or sheriff in the jurisdiction in which the defendant can be served shall serve the order. On request of the plaintiff, each order of protection issued by a superior court judge shall or commissioner shall be served by the sheriff of the county. If the defendant cannot be served within that jurisdiction, the sheriff in the jurisdiction in which the defendant can be served shall serve the order. Each court shall provide, without charge, forms for purposes of this section for assisting parties without counsel. The court shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and counseling services that are available in the local area.
- E. The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the orders requested should issue without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:
1. The defendant may commit an act of domestic violence.
 2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.
- F. For purposes of determining the period of time under subsection E, paragraph 2 of this section, any time that the defendant has been

incarcerated or out of this state shall not be counted. If the court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.

- G. If a court issues an order of protection the court may do any of the following:
1. Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.
 2. Grant one party the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result. If the other party is accompanied by a law enforcement officer, the other party may return to the residence on one occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this paragraph.
 3. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.
 4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order.
 5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, require the defendant to complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department or any other program deemed appropriate by the court.

6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.
- H. The court shall not grant a mutual order of protection. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection.
- I. At any time during the period during which the order is in effect, a party under an order of protection or restrained from contacting the other party is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing requested by a party under an order of protection or restrained from contacting the other party shall be held within ten days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order.
- J. The order shall include the following statement:

Warning

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

- K. A copy of the petition and the order shall be served on the defendant within one year from the date the order is signed. An order of protection that is not served on the defendant within one year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one year after service on the defendant. A modified order is effective upon service and expires one year after service of the initial order and petition.
- L. Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four hours after the affidavit,

acceptance or return of service has been filed, excluding weekends and holidays, the court from which the order was issued shall forward to the sheriff of the county in which the court is located a copy of the order of protection and a copy of the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the sheriff shall register the order. Registration of an order means that a copy of the order of protection and a copy of the affidavit or acceptance of service have been received by the sheriff's office. The sheriff shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the order on the defendant. Any changes or modifications of the order are effective upon entry of an order of the court and shall be registered with the sheriff within twenty-four hours of the entry of the order, excluding weekends and holidays.

- M. A peace officer may, with or without a warrant, arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an order issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to an appropriate law enforcement agency. The law enforcement agency shall request that a prosecutorial agency file the appropriate charges. A violation of an order of protection shall not be adjudicated by a municipal or justice court unless a complaint has been filed or other legal process has been requested by the prosecuting agency. The provisions for release under section 13-3883, subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made pursuant to this section. For purposes of this section, any court in this state has jurisdiction to enforce a valid order of protection that is issued in this state and that has been violated in any jurisdiction in this state.
- N. A person arrested pursuant to subsection M of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.
- O. The remedies provided in this section for enforcement of the orders of the

court are in addition to any other civil and criminal remedies available. The superior court shall have exclusive jurisdiction to issue orders of protection in all cases if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. A municipal court or justice court shall not issue an order of protection if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. After issuance of an order of protection, if the municipal court or justice court determines that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties, the municipal court or justice court shall stop further proceedings in the action and forward all papers, together with a certified copy of docket entries or any other record in the action, to the superior court where they shall be docketed in the pending superior court action and shall proceed as though the petition for an order of protection had been originally brought in the superior court. Notwithstanding any other law and unless prohibited by an order of the superior court, a municipal court or justice court may hold a hearing on all matters relating to its ex parte order of protection if the hearing was requested before receiving written notice of the pending superior court action. No order of protection shall be invalid or determined to be ineffective merely because it was issued by a lower court at a time when an action for maternity or paternity, annulment, legal separation or dissolution of marriage was pending in a higher court. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order entered by a justice court or municipal court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, § 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy. No fees may be charged to either party for filing an appeal. For the purposes of this subsection, "pending" means, with respect to an action for annulment, legal separation or dissolution of marriage or for maternity or paternity, either that:

1. An action has been commenced but a final judgment, decree or order has not been entered.
2. A post-decree proceeding has been commenced but a judgment, decree or order finally determining the proceeding has not been entered.

P. A peace officer making an arrest pursuant to this section or section 13-

3601 is not civilly or criminally liable for such arrest if the officer acts upon probable cause and without malice.

- Q. In addition to persons authorized to serve process pursuant to rule 4(d) of the Arizona rules of civil procedure, a peace officer or a correctional officer as defined in section 41-1661 who is acting in the officer's official capacity may serve an order of protection issued pursuant to this section. Service of the order of protection has priority over other service of process that does not involve an immediate threat to the safety of a person.
- R. A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction. For the purposes of this subsection:
1. A protection order includes any injunction or other order that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to, another person. A protection order includes temporary and final orders other than support or child custody orders that are issued by civil and criminal courts if the order is obtained by the filing of an independent action or is a pendente lite order in another proceeding. The civil order shall be issued in response to a complaint, petition or motion that was filed by or on behalf of a person seeking protection.
 2. A protection order is valid if the issuing court had jurisdiction over the parties and the matter under the laws of the issuing state, a United States territory or an Indian tribe and the person against whom the order was issued had reasonable notice and an opportunity to be heard. If the order is issued ex parte, the notice and opportunity to be heard shall be provided within the time required by the laws of the issuing state, a United States territory or an Indian tribe and within a reasonable time after the order was issued.
 3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:

- (a) The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.
 - (b) The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.
- 4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

§ 13-411 – Justification; use of force in crime prevention

- A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under section 13-1704, burglary in the second or first degree under section 13-1507 or 13-1508, kidnapping under section 13-1304, manslaughter under section 13-1103, second or first degree murder under section 13-1104 or 13-1105, sexual conduct with a minor under section 13-1405, sexual assault under section 13-1406, child molestation under section 13-1410, armed robbery under section 13-1904, or aggravated assault under section 13-1204, subsection A, paragraphs 1 and 2.
- B. There is no duty to retreat before threatening or using deadly physical force justified by subsection A of this section.
- C. A person is presumed to be acting reasonably for the purposes of this section if he is acting to prevent the commission of any of the offenses listed in subsection A of this section.

§ 13-419 – Victim conference with prosecuting attorney

- A. On request of the victim, the prosecuting attorney shall confer with the victim about the disposition of a criminal offense, including the victim's views about a decision not to proceed with a criminal prosecution, dismissal, plea or sentence negotiations and pretrial diversion programs.

- B. On request of the victim, the prosecuting attorney shall confer with the victim before the commencement of the trial.
- C. The right of the victim to confer with the prosecuting attorney does not include the authority to direct the prosecution of the case.

§ 13-602 – Designation of offenses

- A. The particular classification of each felony defined in this title is expressly designated in the section or chapter defining it. Any offense defined outside this title which is declared by law to be a felony without either specification of the classification or of the penalty is a class 5 felony.
- B. The particular classification of each misdemeanor defined in this title is expressly designated in the section or chapter defining it. Any offense defined outside this title which is declared by law to be a misdemeanor without either specification of the classification or of the penalty is a class 2 misdemeanor.
- C. Every petty offense in this title is expressly designated as such. Any offense defined outside this title without either designation as a felony or misdemeanor or specification of the classification or the penalty is a petty offense.
- D. Any offense which is declared by law to be a felony, misdemeanor or petty offense without specification of the classification of such offense is punishable according to the penalty prescribed for such offense.
- E. Any offense defined within or outside this title without designation as a felony, misdemeanor or petty offense is punishable according to the penalty prescribed for such offense.
- F. Any offense defined outside this title with a specification of the classification of such offense is punishable according to the provisions of this title.
- G. Any petty offense, class 3 misdemeanor or class 2 misdemeanor, except a violation of title 28, is deemed a minor nontraffic offense for the limited purpose of armed forces recruitment.

§ 13-604 – Dangerous and repetitive offenders; definitions

- A. Except as provided in subsection F, G or H of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 4, 5 or 6 felony, whether a completed or preparatory offense, and who has a historical prior felony conviction shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation,

pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

- B. Except as provided in subsection I, J or K of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 2 or 3 felony, whether a completed or preparatory offense, and who has a historical prior felony conviction shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

- C. Except as provided in subsection F, G, H or S of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 4, 5 or 6 felony, whether a completed or preparatory offense, and who has two or more historical prior felony convictions shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range

prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

- D. Except as provided in subsection I, J, K or S of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 2 or 3 felony, and who has two or more historical prior felony convictions, shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

- E. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which such person currently stands convicted.
- F. Except as provided in section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument without having previously been convicted of any felony shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence,

probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

- G. Except as provided in section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has a historical prior felony conviction involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

- H. Except as provided in subsection S of this section or section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has two or more historical prior felony convictions involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced

to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	12 years	14 years	16 years
Class 5	6 years	7 years	8 years
Class 6	4.5 years	5.25 years	6 years

- I. Except as provided in section 13-604.01, upon a first conviction of a class 2 or 3 felony involving discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or upon conviction of a class 2 or 3 felony when the intentional or knowing infliction of serious physical injury upon another has occurred, the defendant shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years

- J. Except as provided in section 13-604.01, upon conviction of a class 2 or 3 felony involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, a person who has a historical prior felony conviction that is a class 1, 2 or 3 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible

for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

- K. Except as provided in subsection S of this section or section 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, a person who has two or more historical prior felony convictions that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	21 years	28 years	35 years
Class 3	15 years	20 years	25 years

- L. For the purposes of subsections I, J and K of this section in determining the applicability of the penalties provided in this section for second or subsequent class 2 or 3 felonies, the conviction for any felony committed prior to October 1, 1978 which, if committed after October 1, 1978, could be a dangerous felony under this section may be designated by the state as a prior felony.

- M. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for purposes of this section.
- N. A person who has been convicted in any court outside the jurisdiction of this state of an offense which if committed within this state would be punishable as a felony or misdemeanor is subject to the provisions of this section. A person who has been convicted as an adult of an offense punishable as a felony or a misdemeanor under the provisions of any prior code in this state shall be subject to the provisions of this section.
- O. Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced under subsection E of this section shall not be included in the two years required to be free of convictions for purposes of that subsection.
- P. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if the previous conviction or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody as provided in subsection R of this section is charged in the indictment or information and admitted or found by the court or if the dangerous nature of the felony is charged in the indictment or information and admitted or found by the trier of fact. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed prior to release. The court shall allow the allegation of a prior conviction, the dangerous nature of the felony or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody at any time prior to the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the defendant was in fact prejudiced by the untimely filing and states the reasons for these findings, provided that when the allegation of a prior conviction is filed, the state must make available to the defendant a copy of any material or information obtained concerning the prior conviction. The charge of previous conviction or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody shall not be read to the jury. For the purposes of this subsection, "dangerous nature of the felony" means a felony involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another.

- Q. Intentional failure by the court to impose the mandatory sentences or probation conditions provided in this title shall be deemed to be malfeasance.
- R. A person who is convicted of committing any felony offense, which felony offense is committed while the person is released on bail or on the defendant's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense, shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense committed while released on bond or on the defendant's own recognizance or while escaped from preconviction custody. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under any of the other subsections of this section. The defendant is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the two years are served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.
- S. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a serious offense except a drug offense, first degree murder or any dangerous crime against children, whether a completed or preparatory offense, and who has previously been convicted of two or more serious offenses not committed on the same occasion shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served not less than twenty-five years or the sentence is commuted.
- T. A person who is convicted of committing any felony offense with the intent to promote, further or assist any criminal conduct by a criminal street gang shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional

sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable.

- U. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to section 13-1204, subsection A, paragraph 1 or 2 shall be sentenced to imprisonment for not less than the presumptive sentence authorized under this chapter and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.
- V. As used in this section:
1. "Absconder" means a probationer who has moved from the probationer's primary place of residence without permission of the probation officer and cannot be located within ninety days of the previous contact, and a petition to revoke has been filed in the superior court alleging that the probationer's whereabouts are unknown. A probationer is no longer deemed to be an absconder when voluntarily or involuntarily returned to probation service.
 2. "Historical prior felony conviction" means:
 - (a) Any prior felony conviction for which the offense of conviction:
 - (i) Mandated a term of imprisonment except for a violation of chapter 34 of this title involving a drug below the threshold amount; or
 - (ii) Involved the intentional or knowing infliction of serious physical injury; or
 - (iii) Involved the use or exhibition of a deadly weapon or dangerous instrument; or
 - (iv) Involved the illegal control of a criminal enterprise; or
 - (v) Involved aggravated driving under the influence of intoxicating liquor or drugs, driving while under the influence of intoxicating liquor or drugs with a suspended, canceled, revoked or refused driver license or driving under the influence of intoxicating liquor or drugs with two or more driving under the influence of intoxicating liquor or drug convictions within a period of sixty months; or
 - (vi) Involved any dangerous crime against children as defined in section 13-604.01.

(b) Any class 2 or 3 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the ten years immediately preceding the date of the present offense. Any time spent incarcerated is excluded in calculating if the offense was committed within the preceding ten years.

(c) Any class 4, 5 or 6 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the five years immediately preceding the date of the present offense. Any time spent incarcerated is excluded in calculating if the offense was committed within the preceding five years.

(d) Any felony conviction that is a third or more prior felony conviction.

3. "Preconviction custody" means the confinement of a person in a jail in this state or another state after the person is arrested for or charged with a felony offense.
4. "Serious offense" means any of the following offenses if committed in this state or any offense committed outside this state which if committed in this state would constitute one of the following offenses:
 - (a) First degree murder.
 - (b) Second degree murder.
 - (c) Manslaughter.
 - (d) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
 - (e) Sexual assault.
 - (f) Any dangerous crime against children.
 - (g) Arson of an occupied structure.
 - (h) Armed robbery.
 - (i) Burglary in the first degree.
 - (j) Kidnapping.
 - (k) Sexual conduct with a minor under fifteen years of age.

5. "Substantive offense" means the felony, misdemeanor or petty offense that the trier of fact found beyond a reasonable doubt the defendant committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the defendant otherwise would be subject.

§ 13-604.01 – Dangerous crimes against children; sentences; definitions

- A. A person who is at least eighteen years of age and who stands convicted of a dangerous crime against children in the first degree involving sexual assault of a minor who is twelve years of age or younger or sexual conduct with a minor who is twelve years of age or younger shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. This subsection does not apply to masturbatory contact.
- B. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is under twelve years of age or second degree murder of a minor who is under twelve years of age or sexual assault of a minor who is under twelve years of age or sexual conduct with a minor who is under twelve years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a presumptive term of imprisonment for twenty years.
- C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is twelve, thirteen or fourteen years of age, second degree murder of a minor who is twelve, thirteen or fourteen years of age, sexual assault of a minor who is twelve, thirteen or fourteen years of age, taking a child for the purpose of prostitution, child prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen years of age or continuous sexual abuse of a child or involving or using minors in drug offenses shall be sentenced to a presumptive term of imprisonment for twenty years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a

presumptive term of imprisonment for thirty years.

- D. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, child abuse or kidnapping shall be sentenced to a presumptive term of imprisonment for seventeen years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for twenty-eight years.
- E. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children involving sexual abuse under section 13-1404 is guilty of a class 3 felony and shall be sentenced to a presumptive term of imprisonment for five years, and unless the person has previously been convicted of a predicate felony, the presumptive term may be increased or decreased by up to two and one-half years pursuant to section 13-702, subsections C, D and E. If the person is sentenced to a term of imprisonment the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for fifteen years and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.
- F. The presumptive sentences prescribed in subsections B, C and D of this section or subsection E of this section if the person has previously been convicted of a predicate felony may be increased or decreased by up to seven years pursuant to the provisions of section 13-702, subsections B, C and D.
- G. Except as provided in subsection E of this section, a person sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension of sentence, probation, pardon, or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court

has been served or commuted.

- H. A person who stands convicted of any dangerous crime against children in the first degree pursuant to subsection C or D of this section having been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served not fewer than thirty-five years or the sentence is commuted.
- I. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the second degree pursuant to subsection C or D of this section or luring a minor for sexual exploitation pursuant to section 13-3554 is guilty of a class 3 felony and shall be sentenced to a presumptive term of imprisonment for ten years. The presumptive term may be increased or decreased by up to five years pursuant to section 13-702, subsections B, C and D. If the person is sentenced to a term of imprisonment the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. A person who is convicted of any dangerous crime against children in the second degree having been previously convicted of one or more predicate felonies is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.
- J. Section 13-604, subsections M and O apply to the determination of prior convictions.
- K. The sentence imposed on a person by the court for a dangerous crime against children under subsection D of this section involving child molestation or sexual abuse pursuant to subsection E of this section may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including child molestation and sexual abuse of the same victim.
- L. In this section:

1. “Dangerous crime against children” means any of the following committed against a minor under fifteen years of age:
 - (a) Second degree murder.
 - (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
 - (c) Sexual assault.
 - (d) Molestation of a child.
 - (e) Sexual conduct with a minor.
 - (f) Commercial sexual exploitation of a minor.
 - (g) Sexual exploitation of a minor.
 - (h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.
 - (i) Kidnapping.
 - (j) Sexual abuse.
 - (k) Taking a child for the purpose of prostitution as defined in section 13-3206.
 - (l) Child prostitution as defined in section 13-3212.
 - (m) Involving or using minors in drug offenses.
 - (n) Continuous sexual abuse of a child.
 - (o) Attempted first degree murder.

A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

2. “Predicate felony” means any felony involving child abuse pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

§ 13-701 – Sentence of imprisonment for felony; presentence report

- A. A sentence of imprisonment for a felony shall be a definite term of years and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the state department of corrections.
- B. No prisoner may be transferred to the custody of the state department of corrections without a certified copy of the judgment and sentence, signed by the sentencing judge, and a copy of a recent presentence investigation report unless the court has waived preparation of the report
- C. Except as provided in section 13-604 the term of imprisonment for a felony shall be determined as follows for a first offense:
 - 1. For a class 2 felony, five years.
 - 2. For a class 3 felony, three and one-half years.
 - 3. For a class 4 felony, two and one-half years.
 - 4. For a class 5 felony, one and one-half years.
 - 5. For a class 6 felony, one year.

§ 13-702 – Sentencing

- A. Sentences provided in section 13-701 for a first conviction of a felony, except those felonies involving a discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another or if a specific sentence is otherwise provided, may be increased or reduced by the court within the ranges set by this subsection. Such reduction or increase shall be based on the aggravating and mitigating circumstances contained in subsections C and D of this section and shall be within the following ranges:

	Mimimum	Maximum
1. For a class 2 felony	4 years	10 years
2. For a class 3 felony	2.5 years	7 years
3. For a class 4 felony	1.5 years	3 years
4. For a class 5 felony	9 months	2 years
5. For a class 6 felony	6 months	1.5 years

- B. The upper or lower term imposed pursuant to section 13-604, 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may be imposed only if the circumstances alleged to be in aggravation or mitigation of the crime are found to be true by the trial judge upon any evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge at the trial, and factual findings and

reasons in support of such findings are set forth on the record at the time of sentencing.

- C. For the purpose of determining the sentence pursuant to section 13-710 and subsection A of this section, the court shall consider the following aggravating circumstances:
1. Infliction or threatened infliction of serious physical injury, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-604.
 2. Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-604.
 3. If the offense involves the taking of or damage to property, the value of the property so taken or damaged.
 4. Presence of an accomplice.
 5. Especially heinous, cruel or depraved manner in which the offense was committed.
 6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.
 7. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.
 8. At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to his office or employment.
 9. The physical, emotional and financial harm caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family.
 10. During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.
 11. The defendant was previously convicted of a felony within the ten years immediately preceding the date of the offense. A conviction outside the jurisdiction of this state for an offense which if committed in this state would be punishable as a felony is a felony conviction for the purposes of this paragraph.

12. The defendant was wearing body armor as defined in section 13-3116.
 13. If the victim of the offense is sixty-five or more years of age or is a disabled person as defined by section 38-492.
 14. The defendant was appointed pursuant to title 14 as a fiduciary and the offense involved conduct directly related to the defendant's duties to the victim as fiduciary.
 15. Evidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3 or because of the defendant's perception of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3.
 16. The defendant was convicted of a violation of section 13-1102, section 13-1103, section 13-1104, subsection A, paragraph 3 or section 13-1204, subsection A, paragraph 1 or 2 arising from an act that was committed while driving a motor vehicle and the defendant's alcohol concentration at the time of committing the offense was 0.15 or more. For the purposes of this paragraph, "alcohol concentration" has the same meaning prescribed in section 28-101.
 17. Lying in wait for the victim or ambushing the victim during the commission of any felony.
 18. The offense was committed in the presence of a child and any of the circumstances exist that are set forth in section 13-3601, subsection A.
 19. Any other factors that the court deems appropriate to the ends of justice.
- D. For the purpose of determining the sentence pursuant to section 13-710 and subsection A of this section, the court shall consider the following mitigating circumstances:
1. The age of the defendant.
 2. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.
 3. The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution.
 4. The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.

5. Any other factor that the court deems appropriate to the ends of justice.

In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to call for the lesser term. If the court finds aggravating circumstances and does not find any mitigating circumstances, the court shall impose an aggravated sentence.

- E. The court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.
- F. Nothing in this section affects any provision of law that imposes the death penalty, that expressly provides for imprisonment for life or that authorizes or restricts the granting of probation and suspending the execution of sentence.
- G. Notwithstanding any other provision of this title, if a person is convicted of any class 6 felony not involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a class 6 felony and who has previously been convicted of two or more felonies. If a crime or public offense is punishable in the discretion of the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney:
 1. Files an information in superior court designating the offense as a misdemeanor.
 2. Files a complaint in justice court or municipal court designating the offense as a misdemeanor within the jurisdiction of the respective court.
 3. Files a complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a

misdemeanor.

§ 13-702.01 – Exceptional circumstances; aggravation; mitigation

A. Notwithstanding section 13-702, subsection A, if a person is convicted of a felony without having previously been convicted of any felony and if the court finds that at least two substantial aggravating factors listed in section 13-702, subsection C apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense up to the following maximum terms:

- | | |
|-------------------------|------------|
| 1. For a class 2 felony | 12.5 years |
| 2. For a class 3 felony | 8.75 years |
| 3. For a class 4 felony | 3.75 years |
| 4. For a class 5 felony | 2.5 years |
| 5. For a class 6 felony | 2 years |

B. Notwithstanding section 13-702, subsection A, if a person is convicted of a felony without having previously been convicted of any felony and if the court finds that at least two substantial mitigating factors listed in section 13-702, subsection D apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense down to the following minimum terms:

- | | |
|-------------------------|----------|
| 1. For a class 2 felony | 3 years |
| 2. For a class 3 felony | 2 years |
| 3. For a class 4 felony | 1 year |
| 4. For a class 5 felony | 6 months |
| 5. For a class 6 felony | 4 months |

C. Notwithstanding section 13-604, subsection A or B, if a person is convicted of a felony offense and has one historical prior felony conviction and if the court finds that at least two substantial aggravating factors listed in section 13-702, subsection C apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense up to the following maximum terms:

- | | |
|-------------------|-------------|
| 1. Class 2 felony | 23.25 years |
| 2. Class 3 felony | 16.25 years |
| 3. Class 4 felony | 7.5 years |
| 4. Class 5 felony | 3.75 years |

only if the circumstances alleged to be in aggravation or mitigation of the crime are found to be true by the trial judge on any evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge at the trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.

- H. The court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim’s immediate family at any aggravation or mitigation proceeding or in the presentence report.
- I. The court shall inform all of the parties before sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

§ 13-702.02 – Multiple offenses not committed on the same occasion; sentencing

- A. A person who is convicted of two or more felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions as defined in section 13-604 shall be sentenced, for the second or subsequent offense, pursuant to this section.
- B. A person sentenced pursuant to this section shall not be eligible for suspension of sentence, probation, pardon, or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term for paragraphs 1 through 4 of this subsection may be aggravated within the range under this section pursuant to section 13-702, subsections B, C and D. The presumptive term for paragraph 3 or 4 of this subsection may be mitigated within the range under this section pursuant to section 13-702, subsections B, C and D. The terms are as follows:

1. For the second dangerous felony offense:

Felony	Minimum	Maximum
Class 2	10.5 years	21 years
Class 3	7.5 years	15 years
Class 4	6 years	8 years
Class 5	3 years	4 years

Class 6 2.25 years 3 years

2. For any dangerous felony offense subsequent to the second dangerous felony offense:

Felony	Minimum	Maximum
Class 2	15.75 years	28 years
Class 3	11.25 years	20 years
Class 4	10 years	12 years
Class 5	5 years	6 years
Class 6	3.75 years	4.5 years

3. For the second nondangerous felony offense:

Felony	Minimum	Presumptive	Maximum
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	75 years	1.5 years	2 years
Class 6	5 years	1 year	1.5 years

4. For any nondangerous felony offense subsequent to the second felony offense:

Felony	Minimum	Presumptive	Maximum
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

- C. For a person sentenced pursuant to subsection B, paragraph 1 or 2 of this section, the minimum term prescribed shall be the presumptive term.
- D. For a person sentenced pursuant to subsection B, paragraph 1, 2, 3 or 4 of this section, the court may increase the maximum sentence otherwise authorized by up to twenty-five per cent.
- E. For a person sentenced pursuant to subsection B, paragraph 3 or 4 of this section the court may decrease the minimum sentence otherwise authorized by up to twenty-five per cent.

- F. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.
- G. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

§ 13-707 – Sentence of imprisonment for misdemeanor

- A. A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:
 - 1. For a class 1 misdemeanor, six months.
 - 2. For a class 2 misdemeanor, four months.
 - 3. For a class 3 misdemeanor, thirty days.
- B. The court may, pursuant to this section, direct that the person sentenced shall not be released on any basis until the sentence imposed by the court has been served.

§ 13-801 – Fines for felonies

- A. A sentence to pay a fine for a felony shall be a sentence to pay an amount fixed by the court not more than one hundred fifty thousand dollars.
- B. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.
- C. This section does not apply to an enterprise.

§ 13-802 – Fines for misdemeanors

- A. A sentence to pay a fine for a class 1 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than two thousand five hundred dollars.
- B. A sentence to pay a fine for a class 2 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than seven hundred fifty dollars.
- C. A sentence to pay a fine for a class 3 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than five hundred dollars.

- D. A sentence to pay a fine for a petty offense shall be a sentence to pay an amount, fixed by the court, of not more than three hundred dollars.
- E. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.
- F. This section does not apply to an enterprise.

§ 13-902 – Periods of probation

- A. Unless terminated sooner, probation may continue for the following periods:
 - 1. For a class 2 felony, seven years.
 - 2. For a class 3 felony, five years.
 - 3. For a class 4 felony, four years.
 - 4. For a class 5 or 6 felony, three years.
 - 5. For a class 1 misdemeanor, three years.
 - 6. For a class 2 misdemeanor, two years.
 - 7. For a class 3 misdemeanor, one year.
- B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:
 - 1. For a violation of section 28-1381 or 28-1382, five years.
 - 2. For a violation of section 28-1383, ten years.
- C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:
 - 1. For a felony, not more than three years.
 - 2. For a misdemeanor, not more than one year.
- D. Notwithstanding any other provision of law, justice courts and municipal courts may impose the probation periods specified in subsection A, paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

- E. After conviction of a felony offense or an attempt to commit any offense that is included in chapter 14 or 35.1 of this title or section 13-2923 or 13-3623, if probation is available, probation may continue for a term not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.