

# **New York State Policy Guidance for Domestic Violence**

## **Probation Officer Domestic Violence**

### **A Procedural Package For use by Probation In a Coordinated Criminal Justice Response to Domestic Violence**

**NYS Office of Probation and Correctional Alternatives (OPCA)  
NYS Office for the Prevention of Domestic Violence (OPDV)  
NYS Coalition Against Domestic Violence (NYSCADV)**

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NYS Office for the Prevention of Domestic Violence

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This document is based primarily on the *Domestic Violence by Police Officers Model Policy* originally developed by the International Association of Chiefs of Police (IACP) in 2001 and further enhanced for implementation in New York State by the NYS Office for the Prevention of Domestic Violence, Officer-Involved Domestic Violence Model Policy Workgroup. The guidelines in this document are also informed by the important work of the American Probation and Parole Association (APPA) in their *Position Statement and Model Policy on Employee-Involved Domestic Violence*.

## TABLE OF CONTENTS

SECTION 1.0 INTRODUCTION AND PURPOSE .....	1
A. Introduction .....	1
B. Purpose of the Policy .....	1
SECTION 2.0 POLICY STATEMENT .....	3
A. Basic Principles of the Policy .....	3
B. Holding Probation Officer Offenders Accountable .....	3
SECTION 3.0 ARMED OFFICER RECORDS REVIEW .....	5
A. Initial and Ongoing Records Review of Current Officers .....	5
B. Results of Records Review on Current Officers .....	5
C. Qualified Retired Law Enforcement Officers .....	7
SECTION 4.0 PREVENTION AND TRAINING PROCEDURES.....	8
A. In Service Training .....	8
B. Indicators of Probation Officer Domestic Violence.....	8
SECTION 5.0 EARLY IDENTIFICATION AND INTERVENTION PROCEDURES .....	10
A. Pre-hire Screening and Investigation .....	10
B. Post-Conditional Offer of Employment .....	11
C. Departmental Responsibilities .....	11
D. Supervisor Responsibilities.....	12
E. Probation Officer Responsibilities .....	13
SECTION 6.0 INCIDENT RESPONSE PROTOCOLS .....	15
A. Departmental Response.....	15
B. Additional Critical Considerations.....	15
SECTION 7.0 POST-INCIDENT INVESTIGATION DECISIONS.....	16
A. Investigations .....	16
B. Administrative Investigations and Decisions.....	16
C. Job Termination Procedure .....	18
APPENDIX A .....	19
APPENDIX B .....	21
APPENDIX C .....	23
ENDNOTES AND COMMENTARY .....	27



## SECTION 1.0 INTRODUCTION AND PURPOSE

### A. Introduction

Probation and community corrections' professionals may commit acts of **domestic violence**<sup>1</sup> or be victims of domestic violence. Domestic violence is inflicted or sustained regardless of the age, race, sex, religion, education, socioeconomic class or professional affiliation of either the perpetrator or victim. Domestic violence is a pattern of coercive tactics that include, but are not limited to economic, emotional, physical and sexual abuse perpetrated by one adult person against an **intimate partner**<sup>2</sup> with the goal of establishing and maintaining power and control over the victim. Probation departments and law enforcement agencies must demonstrate zero tolerance for domestic violence, whether it is perpetrated by offenders under supervision or probation professionals. An officer involved domestic violence policy must be consistent in its demand for offender accountability, as well as its demonstration of support for victims of domestic violence who are employees of probation departments.

This document addresses the problem of officer involved domestic violence in a proactive, multifaceted way that reflects a continuum of action. Key definitions can be found in the endnotes and commentary and are bolded and numerically identified throughout this document.

### B. Purpose of the Policy

The purpose of this document is to guide local probation departments in the development of departmental procedures for handling **domestic incidents**<sup>3</sup> where one or more parties is a probation officer. Although this policy addresses probation officers who commit acts of domestic violence or are victims of domestic violence, it is recommended that departments apply these principles to all employees including probation assistants.

The personnel responsible for the knowledge and implementation of an officer involved domestic violence policy include:

- **Probation Officer**

The term **probation officer** is any person employed by the probation department as a probation officer, including probation officer trainee, senior probation officer, probation supervisor or administrator. Accordingly, the term probation officer shall refer to any person designated as a peace officer pursuant to CPL Section 2.10(24).

- **Supervisor**

The term **supervisor** is any person within the organizational structure of the probation department that directly manages the activities of a probation officer. Unless otherwise noted, the supervisor shall be the immediate higher level in authority of the department or any other designee of the probation director.

- **Probation Director**

The term **probation director** is the legally appointed head of a probation department. In the absence of the departmental probation director, the term shall mean the deputy director, if any, a designee or any person legally acting in such capacity.

- **Supervisor of Probation Director**

The term **supervisor of probation director** shall mean the appointing authority.

## SECTION 2.0 POLICY STATEMENT

### A. Basic Principles of the Policy

Zero tolerance for domestic violence recognizes that the offender is solely responsible for his/her abusive behavior. A firm and consistent stand against abusive behavior, and prioritizing victim safety in all cases of domestic violence, regardless of the identity of the abuser, is paramount. The department should collaborate with local domestic violence advocates for the development of policy and training. Departmental domestic violence policies should be reviewed annually and officers provided with updated material and training.

Where it is alleged that a probation officer has committed domestic violence, the department shall act quickly to:

- Treat any such allegation seriously and sensitively, with the safety and confidentiality of the victim foremost in all decisions, while operating within the guidelines of any collective bargaining agreement;
- Consider the needs of victims, and take action to provide and/or refer to community resources as needed;
- Treat all abusive behavior as unacceptable and thoroughly investigate any such allegation to determine the existence of domestic violence;
- Hold the offender accountable, including notifying police, district attorney or other law enforcement agency; and
- Conduct a parallel administrative investigation, where appropriate, keeping in mind the evidentiary issues in the *Garrity* ruling<sup>1</sup> and the recommendation to involve the district attorney's office early on in the process.

### B. Holding Probation Officer Offenders Accountable

Probation officers must be held accountable for any acts of domestic violence through procedures that involve:

- Conducting pre-hire screening, investigation, and interviewing; reviewing local law enforcement databases and records of any current probation officer involved in domestic violence
- Responding to warning signs and/or indications of probation officer domestic violence;
- Providing directions to supervisors for intervention when probation officers commit domestic violence or are believed to have committed domestic violence, whether such knowledge is gained through direct observation, arrest of such officer, probation or police department report naming such officer as an abuser or suspected abuser, officer self-report, victim disclosure, or report by another officer or any other person;

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<sup>1</sup> *Garrity v. New Jersey*, 385 U.S. 493 (1967). If an officer is compelled to give a statement, oral or written, as a condition of employment and under threat of discipline, up to and including termination, for failure to provide such a statement, any statement that the officer provides may not be used in a subsequent criminal prosecution of the individual officer, but may be used against the officer in subsequent disciplinary proceedings and civil lawsuits.

New York State Policy Guidance  
Probation Officer Domestic Violence  
Section 2.0 Policy Statement

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- Institutionalizing a structured response to domestic incidents involving probation officers;
- Working with licensed and/or approved domestic violence programs and other community groups to enhance victim safety;
- Offering direction for conducting subsequent administrative and criminal investigations; and
- Issuing an **administrative order**<sup>4</sup> as appropriate.

## SECTION 3.0 ARMED OFFICER RECORDS REVIEW

### A. Initial and Ongoing Records Review of Current Officers

- The probation director shall authorize a regular review of local law enforcement databases and employment records of all probation officers to determine the existence of any of the following.

*Note: Access to the Computerized Criminal History record of current employees is not authorized.*

1. Whether any officer has been criminally convicted of **any qualifying misdemeanor crime**<sup>5</sup> of domestic violence;
2. Whether it has been determined through a Family Court proceeding and/or an administrative hearing, that an officer has ever committed a qualifying misdemeanor crime of domestic violence;
3. Whether any officer is currently identified as the defendant or respondent on a **qualifying order of protection**<sup>6</sup> or any **order of protection**<sup>7</sup> and;
4. Whether any officer has been convicted of any act committed within the context of a **domestic relationship**<sup>8</sup> or any other such crimes of domestic violence that are not considered qualifying pursuant to 18 U.S.C. §922(g)(9) and;
5. Whether the officer has been named as a suspect in any Domestic Incident Report(s)

### B. Results of Records Review on Current Officers

If a review of current officer employment records and other inquiries reveals domestic violence, the probation director should consult with the department's legal representative with respect to issues identified below:

- **Convictions of Qualifying Misdemeanor Crimes of Domestic Violence**  
Immediately upon receiving notice that an officer has been convicted of a qualifying misdemeanor crime of domestic violence the probation director shall:

1. Work with law enforcement to locate such officer, notify him/her of statute provisions pursuant to 18 U.S.C. §922(g)(9), seize the officer's duty firearm and any and all other firearms (handguns and long guns) and ammunition in the officer's possession, and secure and retain such items in accordance with departmental policy. (For further information and the federal definition of firearm –see Appendix A)
2. Order the officer to return all departmental photographic identification cards to prevent the purchase of any firearm without the department's knowledge.
3. Where appropriate, ensure that the officer is reassigned to a departmental position (if one exists) that does not require the use of a firearm.

*Note: For convictions of qualifying misdemeanor crimes of domestic*

*violence there is no “official use” exemption to the federal ban<sup>2</sup>, so officers are prohibited from carrying a weapon at all times, even while on duty*

4. To the extent possible, ensure that arrest and booking procedures completed by law enforcement are consistent with those used for all suspects.

- **Civil Finding of Misdemeanor Crime of Domestic Violence**

If an officer has been determined to have committed a misdemeanor crime of domestic violence through a Family Court proceeding, the probation director shall proceed as detailed above.

- **Defendant/Respondent of Qualifying Order of Protection**

1. Immediately upon receiving notice that an officer is subject to a qualifying order of protection, the probation director shall:
  - a. Check the order of protection to determine if there is any additional provision prohibiting the probation officer from possessing any firearm at any time.

*Note: For law enforcement, 18 U.S.C. §925 (a)(1) provides an “official use” exemption to this federal ban that allows officers who are subject to orders of protection to possess their duty firearms while on duty. However, New York State law provides for the imposition of firearms restrictions that go beyond the federal law and may prohibit a probation officer from carrying any firearm at any time, depending on the individual crime.*

- b. Work with law enforcement to locate such officer, notify him/her of statute provisions pursuant to 18 U.S.C. §922(g)(9), seize the officer’s duty firearm and any and all other firearms (handguns and long guns) and ammunition in the officer’s possession, and secure and retain such items in accordance with departmental policy. (For further information and the federal definition of firearm –see Appendix A)
    - c. Order such officer to return all departmental photographic identification cards to prevent the purchase of any firearm without the department’s knowledge.
    - d. Where the “official use” exemption applies with respect to a qualifying order of protection, implement a procedure in which the department provides a service firearm to the officer for on-duty hours and retains the firearm when the officer is off-duty. The probation director shall issue a photographic identification card that indicates the officer is not allowed to purchase a firearm.

- **Convictions for “Non-Qualifying” Crimes of Domestic Violence**

1. Persons who commit domestic violence may be criminally charged with and/or

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<sup>2</sup> 18 U.S.C. §925(A)(1)

convicted of crimes that are not considered “qualifying misdemeanor crimes of domestic violence” including but not limited to criminal contempt, coercion, criminal mischief, criminal trespass, and certain other crimes.

2. If an officer is convicted of any crime related to the commission of domestic violence, the provisions in this section shall be followed.

### **C. Qualified Retired Law Enforcement Officers**

At the present time, there are a limited number of probation departments that issue credentials to retired probation officers, allowing them to carry concealed firearms under the provisions of federal law. See Appendix B, United States Code Annotated Title 18, Crimes and Criminal Procedure, for a definition and additional information. Probation departments that choose to certify retired law enforcement officers to carry a firearm should consider these individuals as included in this section of the guidelines and specific procedures should be established as set forth above.

*Note: Departments are strongly encouraged to work closely with legal and human resource representatives, as well as the NYS Division of Criminal Justice Services in the development and implementation of policies related to the certification of qualified retired law enforcement officers to carry firearms and the accompanying annual review process, annual training requirements, record maintenance and reporting requirements.*

## **SECTION 4.0 PREVENTION AND TRAINING PROCEDURES**

### **A. In Service Training**

Domestic Violence training shall be provided annually for new and experienced officers on topics including:

- Understanding the nature and dynamics of domestic violence;
- Departmental domestic violence response protocol;
- Victim safety issues;
- Working collaboratively with local victim resources, including knowledge of contact numbers and available services;
- Stalking in the context of domestic violence;
- Federal domestic violence laws; and
- Probation officer domestic violence, including:
  1. Warning signs of abusive officers and/or indications of domestic violence;
  2. Potentially manipulative behavior by suspected abusive officers toward supervisors, and/or other staff; and
  3. Intervention policies, procedures, and protocols for probation personnel.

*Note: See Appendix C for additional details.*

### **B. Indicators of Probation Officer Domestic Violence**

To implement a zero-tolerance policy, probation officers should be aware of signs that may be indicative of probation officer domestic violence. Where an officer exhibits any of the following behaviors, it should prompt an inquiry into the circumstances surrounding the behavior to determine if it is indicative of domestic violence and if further action is required.

- **Signs of aggressive behavior include:**
  1. Excessive and/or increased use of force on the job during arrests or otherwise;
  2. Incidents of on/off duty physical altercations and verbal disputes;
  3. Citizen and fellow officer complaints of aggression and verbal abuse;
  4. Aggressive behavior toward or disparaging remarks about any diverse group or any person identified within a diverse group;
  5. On/off-duty injuries; and
  6. Mistreatment of or cruelty toward animals.
- **Deteriorating work performance such as:**
  1. Insubordination toward a superior officer;
  2. Frequent tardiness or excessive absences; and
  3. Alcohol and drug abuse.

- **Domestic violence related behaviors:**
  1. Entitlement, controlling/abusive behavior within a marriage or intimate relationship.
    - a. This refers to the officer's personal relationship(s) as well as comments about any other relationship.
    - b. Such language may also be present in departmental reports.
  2. Inappropriate/demeaning behavior toward or comments about current or former spouses and/or intimate partners, whether personally witnessed/heard or reported by others.
    - a. Consistent "talking down" to current/former spouse/intimate partner, especially in the presence of others.
    - b. Comments witnessed at off-duty social functions as well as on-duty telephone conversations with current/former spouse/intimate partner at workplace.
  3. Use of official probation position and/or departmental equipment such as vehicles, weapons, computers, phones, and radios for stalking, gathering information, and/or unauthorized surveillance activities of officer's current/former spouse/intimate partner or any acquaintance of officer's current/former spouse/intimate partner.
  4. Monitoring and controlling any family member or intimate partner through phone calling or other means.
  5. Stalking any intimate partner or family member by any means.

## **SECTION 5.0 EARLY IDENTIFICATION AND INTERVENTION PROCEDURES**

### **A. Pre-hire Screening**

In general, it is recommended that the department utilize OPCA's Probation Professional Recruitment and Pre-Employment Screening Practices: Practitioner's Guidance for Probation Departments (see State Director's Memorandum #2009-7 dated 10/23/09) as a resource guide. Conduct thorough background screenings of potential new employees to determine if there is any history of domestic violence, including any previous arrests and/or orders of protection against the potential employee. Candidates shall be informed of the department's position of zero tolerance for domestic violence perpetrated by probation officers and the repercussions for such actions.

- **General Questions for Probation Officer Candidates**

Interviewers should ask all candidates a variety of questions to determine whether candidates have ever engaged in, been investigated or had police contact, or been named as a defendant/respondent for the following:

1. Criminal or family offense<sup>3</sup> related to domestic violence, elder abuse, child abuse, sexual assault, or stalking;
2. Hate crime<sup>4</sup> or acts that violate the civil rights of a person;
3. Mistreatment or cruelty to animals or any other animal abuse;
4. Domestic Incident Report (DIR);
5. Order of protection;
6. Whether they have ever been terminated from a job or otherwise disciplined by an employer for domestic violence, elder abuse, child abuse, sexual assault, stalking, or other similar behavior;
7. Whether they have ever been ordered by a judge or employer to attend a batterers' education class or any other diversion program in response to perpetrating domestic violence, elder abuse, child abuse, sexual assault, stalking, or any other oppressive act.

- **Screening Out Those With History of Perpetrating Domestic Violence or Other Oppressive Acts**

The department should not hire any candidate with a history of perpetrating domestic violence or oppressive behavior toward others, including any: intimate partner abuse, elder abuse, child abuse, sexual assault, stalking, and/or any hate crime or any other crime in which the victim was targeted solely on the basis of being in a diverse group.

- **Candidates Indicating Possible Domestic Violence Victimization**

1. The department should provide information on victim services in the community, including the phone number and location, of local licensed and/or approved domestic violence programs to any candidates who self-disclose or are otherwise believed to be victims of domestic violence.
2. The department should provide referrals and never mandate, coerce, intimidate, or

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<sup>3</sup> See FCA §812(1), and CPL §530.11(1) for details.

<sup>4</sup> See PL §485 for details.

- otherwise force a candidate who is being victimized to use any such services.
3. Self-disclosure or the interviewer's belief that the candidate is a victim of domestic violence, in and of itself, absent other relevant job-related factors, shall not provide justification for screening out that person from employment.

## **B. Post-Conditional Offer of Employment**

- **Psychological Screening**

Any psychological screening of viable candidates should include indicators of abusive tendencies in their background and a propensity toward violence.

## **C. Departmental Responsibilities**

- **Assistance Prior to Domestic Violence Acts**

The department shall, either in response to observed warning signs or at the request of an officer, intimate partner, or other family member, provide employee assistance services.

- **Perpetrators of Domestic Violence-Not Entitled to Confidentiality**

1. Officers who disclose to the department that they have personally committed domestic violence are not entitled to confidentiality. The department shall treat any such self-disclosure as a potential admission to a crime and shall initiate an administrative investigation of the disclosure and refer to a law enforcement agency for potential criminal investigation.
2. Any disclosure by an intimate partner, family member, other probation officer, or any other person that alleges that an officer has engaged in domestic violence shall not be kept confidential. The department shall treat any such disclosure as a potential report of a crime and shall initiate an administrative investigation of the disclosure and refer to a law enforcement agency for potential criminal investigation.

*Note: Although reports by others that allege an officer has committed domestic violence cannot be kept confidential, the criminal and administrative investigations shall prioritize evidence collection to build cases that do not rely solely on victim testimony, in order to enhance victim safety.*

3. Officers who have received any disclosure about a fellow probation officer committing domestic violence must immediately report all information relating to such disclosure.

- **Probation Officer-Involved DIRs Forwarded to District Attorney**

Any DIR provided to the department indicating as the suspect any probation officer or department staff member including the probation director, shall be forwarded to the appropriate district attorney. This shall apply regardless of the jurisdiction, in which the domestic incident occurred, and whether or not a crime was alleged or committed or an arrest was made. This shall not apply where the probation officer is

identified as the “Victim”.

#### **D. Supervisor Responsibilities**

- **Probation Officer Suspected Perpetrators of Domestic Violence**

1. Early intervention in all cases where probation officers are suspected of perpetrating domestic violence is critical.
2. Supervisors shall be cognizant of, document, and immediately make their supervisors aware of any officer’s behaviors that are potentially indicative of committing domestic violence, regardless of the title of the suspected perpetrator.
3. In the event that the **suspected officer is the same or lesser title or status than the supervisor reporting the behavior**, the reporting supervisor shall timely prepare and forward any and all documentation about the allegation to the probation director, in accordance with existing departmental procedure or in a timely manner through the department’s chain of command.
4. In the event that the **suspected officer is the immediate supervisor of the supervisor reporting the behavior**, the reporting supervisor shall prepare and forward all documentation of the allegation to another supervisor of the same title or status as the suspected perpetrator, or to the person in direct charge of the suspected supervisor, who shall then proceed according to subdivision 3 above.
5. In the event that the **suspected officer is the probation director**, the reporting supervisor shall prepare and forward all documentation of the allegation to the next-in-command directly under the probation director who shall notify the director’s appointing authority. If there is no known next in command to the probation director, the reporting supervisor shall directly notify the director’s appointing authority.

- **Probation Officers Indicating Possible Domestic Violence Victimization**

1. Supervisors should try to be aware of and document all on/off-duty behaviors of an officer that lead the supervisor to suspect that the officer is a victim of domestic violence. These signs may include: injuries, frequent tardiness, and increased use of unplanned leave.
2. Supervisors should proactively inquire about such behavior, but shall not intimidate nor force suspected probation officer victims to reveal details against their wishes.
3. Supervisors shall keep a listing of local domestic violence advocacy organizations to provide as referrals to officers who are suspected to be victims of domestic violence. The supervisor shall not mandate, coerce, intimidate, or otherwise force an intimate partner/family member to call any such number or participate in any such services.
4. Supervisors shall encourage probation officer victims to work with local domestic violence advocacy organizations to develop safety plans and to share relevant information with appropriate probation employees.
5. Supervisors shall make reasonable efforts to consider all aspects of the officer’s situation and, to the extent possible, utilize all reasonable options to resolve any

performance or behavioral problem(s) present that are linked to domestic violence intimidation.

6. Supervisors should encourage an officer who is a protected party under an order of protection to provide a copy of that order to her/his supervisor to enhance personal safety.

#### **E. Probation Officer Responsibilities**

- **Personal Responsibility in Prevention**

Probation officers, regardless of title or status, are encouraged and entitled to seek confidential, non-punitive assistance from the department to prevent a problem from escalating to the level of abusive and/or criminal conduct against an intimate partner or family/household member. Appropriate staff/personnel will be designated for this purpose.

- **Requirement to Self-Report**

Any probation officer, including the probation director, who is the subject of a domestic violence criminal investigation, a suspect in a domestic incident report (DIR) or is arrested for domestic violence by a law enforcement agency shall immediately make a report to his/her supervisor, or the person acting in that capacity as soon as possible, and no later than twenty-four (24) hours after law enforcement intervention, detailing the pertinent facts including all of the following:

1. Name and location of the investigating or arresting agency;
2. Date and time of the arrest or awareness of the investigation;
3. Criminal charge(s) alleged;
4. Terms of release from custody, if applicable;
5. Knowledge of an arrest warrant or return court location, date, and time; and
6. Whether subject to an order of protection.

Any probation officer, including the probation director, who learns that he/she is a respondent in any Family Court proceedings involving domestic violence or who is the defendant or respondent in any order of protection, whether or not the order has been formally served and regardless of jurisdiction, shall immediately notify his/her supervisor and provide a copy of the order, if issued, no later than twenty-four (24) hours after being served or made aware of the order. Failure to self-report involvement in committing domestic violence may be subject to disciplinary action.

- **Requirement to Report Witnessed Probation Officer Domestic Violence and Follow Up Involvement**

1. All probation officers shall immediately report to their supervisor all known information about any witnessed or firsthand knowledge of domestic violence being committed by a fellow probation officer the next business day or no later than twenty-four (24) hours after witnessing or knowing of such domestic violence. Officers should be aware of the potential for increased stalking, unlawful surveillance, witness

New York State Policy Guidance  
Probation Officer Domestic Violence  
Section 5.0 Early Identification and Intervention Procedures

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- or victim intimidation, coercion, and other tactics of abuse in cases where probation officer domestic violence has been alleged.
2. All witnessing officers shall fully cooperate in all phases of probation officer domestic violence cases, including providing sworn testimony in a criminal trial and/or administrative hearing, if needed.
  3. **This section shall not apply to a probation officer who is a victim of domestic violence being perpetrated by another probation officer. Any such officer is not required to report the domestic violence to her/his supervisor.** There shall be no sanctions or discipline, administratively or criminally, against any officer reporting or failing to report domestic violence being perpetrated against herself/himself or choosing not to participate in the investigation of the probation officer accused of the abuse.

## **SECTION 6.0 INCIDENT RESPONSE PROTOCOLS**

### **A. Departmental Response**

The department shall accept and document all calls and/or reports, including those made anonymously, alleging probation officer domestic violence. The probation director or designee shall respond to, fully document, and thoroughly investigate with the assistance of law enforcement, all domestic incidents involving probation officers in order to determine the existence of domestic violence. The probation director shall ensure prompt completion and submission to OPCA of a Critical Incident Report OPCA-670 as well as completion of any other reports required by departmental policy for any such domestic incident.

### **B. Additional Critical Considerations**

- **Response Where Accused Officer is From Another Agency**  
When responding to a domestic violence complaint involving a probation officer from another jurisdiction, all probation personnel shall follow the same procedures as those for responding to a domestic violence complaint involving an officer from their department. When possible, the probation director or designee notified of the incident shall, as soon as possible, verbally inform the accused officer's probation director, and if not available the highest in the chain of command working at that time. Any available reports, including DIRs, implicating an officer from any other probation department in domestic violence shall be sent to the attention of the probation director of that department.
- **Serving Orders of Protection Involving Probation Officers**  
Whenever practicable, the service of orders of protection upon probation officers identified as defendants or respondents shall be completed by a member of the office of the county sheriff or other law enforcement agency.

## **SECTION 7.0 POST-INCIDENT INVESTIGATION DECISIONS**

### **A. Investigations**

- The department shall conduct administrative investigations of alleged probation officer domestic violence in a manner that maintains the integrity of any accompanying criminal investigations and promotes zero tolerance.
- The department shall follow applicable departmental policy when both criminal and administrative investigations are warranted. In the absence of departmental policy, the criminal investigation should be completed by a law enforcement agency before department personnel interview the accused officer for any administrative investigation associated with the incident.
- Independent of the outcome of any related criminal case, the department shall adhere to all policies and procedures relating to the incident and uphold all administrative decisions.
- The department will abide by all collective bargaining agreement protocol to ensure an accused officer's rights are upheld during administrative and criminal investigations.

### **B. Administrative Investigations and Decisions**

- Conducting the Administrative Investigation
  1. Regardless of whether an arrest is made, the department shall conduct an administrative investigation of the alleged offender's behavior.
  2. Where sufficient evidence exists, the department shall take immediate administrative action against the accused officer which can include:
    - a. Duty reassignment;
    - b. Administrative order;
    - c. Departmental sanctions, including administrative leave with or without pay;
    - d. Suspension from duty with or without pay;
    - e. Removal of duty firearm; and/or
    - f. Termination of the accused officer's employment.
  3. If the department determines through an administrative investigation that the officer violated department policy, regardless of whether the officer entered a plea of *nolo contendere* or made an Alford plea<sup>5</sup> to the criminal charges, the department shall consider utilizing the full range of administrative sanctions.
  4. In determining the proper course of administrative action, the department shall consider factors such as:
    - a. The danger the accused officer poses to the victim, including the use or threat of physical and/or sexual violence, and the use or threat of use of a firearm or other weapon;
    - b. The accused officer's history of compliance with departmental rules;

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<sup>5</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970) was a case in which the Supreme Court of the United States affirmed that there are no constitutional barriers in place to prevent a judge from accepting a guilty plea from a defendant who wants to plead guilty while still protesting his innocence.

- c. The existence of a substance abuse problem on the part of the accused officer; and/or
- d. Any warning signs and other indicators of probation officer domestic violence.

*Note: The absence of indicators does not mean that there is little or no risk of continued or escalating domestic violence.*

- e. Pending the completion of administrative and criminal investigations for alleged acts of domestic violence and/or violation of departmental policies where the officer was not suspended from duty or placed on administrative leave, the department shall assign the accused officer to duties that do not require involvement with domestic violence cases.
- f. Where no court order of protection exists, the probation director shall determine whether to issue an administrative order while the investigation is being conducted.

- **Administrative Orders**

- 1. The probation director shall determine whether and when the accused officer should be issued an administrative order.
- 2. The use of administrative orders can be beneficial to a probation department and:
  - a. Enhance victim safety;
  - b. Take into consideration the wishes of the victim and/or domestic violence advocate working with the victim;
  - c. Cover a wide range of behaviors by the officer that can be regulated by supervisors;
  - d. Involve failure to obey direct supervisory orders, making it easier to prove than the alleged domestic violence;
  - e. Provide for immediate discipline for violation of the administrative order without having to jeopardize any subsequent criminal or administrative investigations into the domestic violence;
  - f. Provide for swift hearings and punishment against violators, thus reducing department liability and reducing or eliminating the time that a department may need to continue to pay an officer on administrative leave or suspension for the duration of a lengthy criminal case.

- **Implementing and Enforcing Administrative Orders**

- 1. Officers shall be bound by the conditions of any administrative order.
- 2. Supervisors shall consider placing provisions in an administrative order that prohibit the officer who is subject to an ongoing administrative or criminal investigation from interfering with any such investigation, including intimidating the victim or tampering with any witness to the alleged domestic violence.
- 3. If an administrative order is violated or sufficient concern exists regarding a violation, the department shall immediately:
  - a. Initiate an independent administrative investigation;

- b. Involve law enforcement if the violation of the administrative order also involves criminal behavior (e.g., stalking, menacing);
- c. Order the return of department-issued firearms as allowed under departmental policy; and
- d. Take appropriate disciplinary action, up to and including dismissal.

### **C. Job Termination Procedure**

Upon termination of an officer's employment with the department, the probation director shall act in accordance with state law, department policy, and collective bargaining agreements, where applicable, including but not limited to:

- Notifying the officer, in writing, of the effective date of termination;
- Informing the officer of available support services concerning the termination, including counseling;
- Ensuring that the victim is notified in a timely manner and offered available assistance, domestic violence program referrals, preliminary safety planning information, and any other support services; and
- Notifying the Division of Criminal Justice Services Peace Officer Registry within 30 days of the reason for termination from the department's employ.

## APPENDIX A

### Federal Definitions for “Firearm” and related terms

(as of March 23, 2005)

A **firearm**, as defined in 18 U.S.C. §921(a)(3), means:

1. any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
2. the frame or receiver of any such weapon;
3. any firearm muffler or firearm silencer; or
4. any destructive device (defined below)

Note: Such term does **not** include an “antique firearm,” as such is defined in 18 U.S.C. §921(a)(16) below.

A **destructive device**, as defined in 18 U.S.C. §921(a)(4), means:

1. any explosive, incendiary, or poison gas:
  - a. bomb,
  - b. grenade,
  - c. rocket having a propellant charge of more than four ounces,
  - d. missile having an explosive or incendiary charge of more than one-quarter ounce,
  - e. mine, or
  - f. device similar to any of the devices described in the preceding clauses;
2. any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
3. any combination of parts either designed or intended for use in converting any device into any destructive device described in the preceding subdivisions 1 or 2 and from which a destructive device may be readily assembled.

An **antique firearm**, as defined in 18 U.S.C. §921(a)(16), means:

1. any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
2. any replica of any firearm described in subdivision 1 if such replica:
  - a. is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
  - b. uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
3. any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition.
4. Note: For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is

converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

## PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment, 18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. **Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.**

### I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

### II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)) that is:

- ❖ a **spouse** of Defendant/Respondent;
- ❖ a **former spouse** of Defendant/Respondent;
- ❖ an individual who is a **parent** of a child of Defendant/Respondent; **or**
- ❖ an individual who **cohabitates or has cohabited** with Defendant/Respondent.

### III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; **or**
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

### IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; **or**
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

ATF I 3310.2 (03-01)

## MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

### ***A qualifying MCDV is an offense that:***

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV was committed, the defendant was:
  - ◆ A current or former spouse, parent, or guardian of the victim;
  - ◆ A person with whom the victim shared a child in common;
  - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
  - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

### ***EXCEPTIONS: A person has not been convicted of a qualifying MCDV:***

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights — the right to vote, sit on a jury, and hold elected office — were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

***BUT:*** This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.

ATF I 3310.3 (09-01)

## **APPENDIX B**

Effective: July 22, 2004

UNITED STATES CODE ANNOTATED

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 44--FIREARMS

§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

- (a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).
- (b) This section shall not be construed to supersede or limit the laws of any State that--
  - (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
  - (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.
- (c) As used in this section, the term "qualified retired law enforcement officer" means an individual who--
  - (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
  - (2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
  - (3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or
  - (B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
  - (4) has a nonforfeitable right to benefits under the retirement plan of the agency;
  - (5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;
  - (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
  - (7) is not prohibited by Federal law from receiving a firearm.
- (d) The identification required by this subsection is--
  - (1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards

- established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or
- (2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and
- (B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.
- (e) As used in this section, the term "firearm" does not include--
- (1) any machinegun (as defined in section 5845 of the National Firearms Act);
- (2) any firearm silencer (as defined in section 921 of this title); and
- (3) a destructive device (as defined in section 921 of this title).

**Current through P.L. 109-218 (excluding P.L. 109-171) approved 04-20-06**

## **APPENDIX C**

### **Suggested Topics for Comprehensive Training**

#### **1. Understanding the Nature and Dynamics of Domestic Violence**

- a. General domestic violence training
- b. Domestic violence and stalking dynamics, tactics, and behavior patterns
- c. Common victim strategies to domestic violence
- d. Common offender strategies, including denial, minimizing, blaming, justifying
- e. Understanding oppression and cultural issues, including racial, gender, and same-sex issues
- f. Legal rights of victims
- g. Role of local victim advocates and available services

#### **2. Departmental Domestic Violence Protocol**

- a. Notification and reporting procedures
- b. Cross-jurisdictional policies and protocol
- c. General domestic violence investigation and evidence collection
- d. Stalking and other appropriate criminal charges
- e. Working with victim advocates
- f. Primary aggressor determination and recognition of defensive injuries
- g. Dangers and limitations with using risk assessment tools
- h. Officer safety
  - i. Confidentiality issues
  - j. Ethical considerations
- k. Criminal and civil liability
  - l. Firearms removal and seizure
- m. Risks posed to children by domestic violence offenders

#### **3. Warning Signs and Indications of Probation Officer Domestic Violence**

- a. Orientation to department policy
- b. Responsibilities of all personnel

#### **4. Victim Safety**

- a. Preliminary safety planning
- b. Knowledge of local domestic violence programs and available services
- c. Potential barriers to assistance/intervention

#### **5. Federal Domestic Violence Laws**

- a. Intrastate and Interstate enforcement of protective orders
- b. Federal stalking, domestic violence, immigration, and firearms laws

**6. Administrative and supervisor domestic violence training should also include:**

- a. Department legal considerations and criminal and civil liability
- b. Media and public relations
- c. Criminal versus administrative investigations, including the Garrity ruling

## ENDNOTES AND COMMENTARY

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### <sup>1</sup> Domestic Violence

There is no New York State legal statutory definition for domestic violence. Generally, *domestic violence* is described as a pattern of coercive tactics, which can include physical, psychological, sexual, economic, and emotional abuse, perpetrated within the context of a domestic relationship, with the goal of establishing and maintaining power and control over the victim. This description provides the basis for the wide range of domestic violence behaviors and associated criminal offenses identified in this section and throughout this policy.

***Domestic violence***, as defined here, occurs within the context of a domestic relationship where an intimate partner or family or household member commits or attempts to commit any of the following:

1. Any of the following designated Family Offenses included in the Family Court Act §812(1) and CPL §530.11(1):
  - a. Harassment 1<sup>st</sup> and 2<sup>nd</sup> degrees,
  - b. Aggravated Harassment 2<sup>nd</sup> degree,
  - c. Disorderly Conduct, including not in a public place,
  - d. Sexual Misconduct
  - e. Forcible Touching
  - f. Sexual Abuse 3<sup>rd</sup> degree
  - g. Sexual Abuse 2<sup>nd</sup> degree as set forth in PL§130.60 (1)
  - h. Criminal Mischief
  - i. Assault 2<sup>nd</sup> and 3<sup>rd</sup> degrees,
  - j. Attempted Assault 2<sup>nd</sup> and 3<sup>rd</sup> degrees,
  - k. Reckless Endangerment 1<sup>st</sup> and 2<sup>nd</sup> degrees,
  - l. Menacing 2<sup>nd</sup> and 3<sup>rd</sup> degrees,
  - m. Stalking 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> degrees.
2. **Acts that violate the terms of a valid order of protection issued by the family, criminal, or supreme courts of New York State, or any valid order of protection or restraining order issued by a court in any other state, commonwealth, territory, or possession of the United States, or by any tribal governments located within the United States.** Any such violation shall be the basis for criminal charges for the appropriate degree of criminal contempt or aggravated criminal contempt and for any underlying crime(s) associated with the violation of the order.
3. **Acts that violate the terms of a valid special order of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of Section 330.20 of the Criminal Procedure Law following a verdict or plea of not responsible by reason of mental disease or defect.** Any such violation shall be the basis for criminal charges for the appropriate degree of criminal contempt or aggravated criminal contempt and for any underlying crime(s) associated with the violation of the special order of conditions.
4. **Repeated pattern of coercive acts or petty offenses which, taken singly, may be non-criminal in nature, but create a course of conduct that instills reasonable**

**fear of physical injury or harm.** Such a pattern may involve abusive language, physical or verbal threats, or damage to jointly held property. The purpose of these acts is for the abuser to manipulate and control an intimate partner or another member of the family/household. Such repeated acts may warrant criminal charges that include:

- a. Menacing 2nd or 3rd degrees (PL §120.14 or 15),
- b. Stalking 3rd or 4th degrees (PL §120.45 or 50),
- c. Harassment 1st degree (PL §240.25), and/or
- d. Coercion 1st degree (PL §135.65).

**5. Threats or acts of violence against the victim or others, or damaged property or harm to pets.** Such acts may in some circumstances form the basis for larceny, criminal mischief, aggravated cruelty to animals, and other offenses involving damage to and intrusion upon property. These acts may also be part of a course of conduct that instills reasonable fear of physical injury or harm to the victim, as identified in subdivision 4 of this section, and/or intended to intimidate the victim and children, thus supporting criminal charges that may include:

- a. Tampering with a witness (PL §§215.10-215.13),
- b. Intimidating a witness (PL §§215.15-215.17),
- c. Coercion (PL §135.60),
- d. Endangering the welfare of a child (PL §260.10),
- e. Endangering the welfare of an incompetent or physically disabled person (PL §260.25), and/or
- f. Endangering the welfare of a vulnerable elderly person (PL §260.32, §260.34).

**6. Any other offense or criminal act against an intimate partner or family or household member,** including, but not limited to, homicide, attempted murder, rape, any sex offense, kidnapping, unlawful imprisonment, or arson.

<sup>2</sup> **Intimate partners** refer to:

1. Those people who have or have had a dating or sexual relationship, regardless of cohabitation.
2. Where federal law is cited in this document, the term “intimate partner” shall be as defined in Section 921(32) of Title 18 of the United States Code. This means, with respect to a person:
  - a. Spouse or former spouse of the person, or
  - b. Parent of a common child of the person, or
  - c. An individual who cohabitates or who has cohabitated with the person.

<sup>3</sup> **A Domestic Incident is any disturbance, dispute, violence (threatened or actual), or report of a crime or an offense between individuals within a domestic relationship where police intervention occurs.**

1. A domestic incident is not always a violation of the law.
2. A domestic incident involving a probation officer must be thoroughly investigated to determine if there is reasonable cause to believe that such probation officer committed acts of domestic violence.

3. In accordance with Criminal Procedure Law §140.10(5), a Domestic Incident Report (DIR) must be prepared and filed by responding law enforcement on any domestic incident, regardless of whether or not there is an arrest or there is reasonable cause to believe that domestic violence occurred and/or criminal act(s) committed. This also applies to any domestic incident involving a probation officer.
4. The completion of a DIR shall be in addition to any other report(s) required under departmental policies and regulations.
5. Any DIR involving a **probation officer as an alleged perpetrator** shall be forwarded by responding law enforcement or receiving probation department to the district attorney's office.
6. Where the DIR involved an offense committed against a person sixty-five (65) years of age or older, a copy of the DIR shall be sent by the responding law enforcement agency to the NYS Committee for the Coordination of Police Services to Elderly Persons established pursuant to Executive Law §844-b.

#### <sup>4</sup> **Administrative Order**

1. An ***administrative order*** is a directive from a supervisor ordering an officer to refrain from particular conduct toward a particular person as a condition of continued employment. It is recommended that any such order be in writing and documented as to when furnished to the officer.
2. Though these are not considered qualifying orders of protection for the federal firearm ban the supervisor issuing the administrative order may seize the officer's duty firearm for the duration of the order.
3. Since these are administrative orders, rather than judicial mandates, and there are no requirements to provide the accused officer with due process requirements of reasonable notice and a hearing before issuance, the Full Faith and Credit provisions of the Violence Against Women Act do not apply.
4. The probation director should discuss parameters of such an order with the department's legal and/or personnel/human resources representative and where utilized, specify who within the department can issue such an order.

#### <sup>5</sup> **Qualifying Misdemeanor Crime of Domestic Violence 18 U.S.C. §921(a)(33)**

A **qualifying misdemeanor** crime of domestic violence shall be defined as below:

##### 1. Requirements

Pursuant to 18 U.S.C. §921(a)(33), a ***qualifying misdemeanor crime***

***of domestic violence*** is an offense that meets all of the following conditions:

- a. Is a misdemeanor under federal or any state law; AND
- b. Has as an element of the use or attempted use of physical force, or the threatened use of a deadly weapon; AND
- c. At the time that the misdemeanor crime of domestic violence was committed, the defendant was:
  - i. A current or former spouse, parent, or guardian of the victim; OR
  - ii. A person with whom the victim had a child in common; OR
  - iii. A person who was cohabitating with or had cohabitated with the victim as

spouse, parent, or guardian; OR

iv. A person who was or had been similarly situated to a spouse, parent, or guardian of the victim; AND

d. The defendant has not had the conviction set aside, or has not received any other relief from the conviction as shown in the exceptions in subdivision 3 of this section

## **2. Federal Firearms Prohibition for Qualifying Misdemeanor Crimes of Domestic Violence**

a. Any person, including a probation officer, who has ever been convicted in any criminal court of a qualifying misdemeanor crime of domestic violence, regardless of the jurisdiction of any such conviction, is prohibited under federal law from ever possessing, shipping, transporting, or receiving any firearm or ammunition. See 18 U.S.C. §922(g)(9).

b. This is considered a **lifetime ban with no “official use” exemption** for anyone. This means that law enforcement officers, military personnel, and other individuals are subject to this lifetime federal weapons ban, even while on duty.

c. The federal definition of firearm includes handguns, rifles, and shotguns. See Appendix A for the federal definition for firearm and related terms pursuant to 18 U.S.C. §921(a)(3).

d. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment.

## **3. Exceptions**

The requirements for a qualifying misdemeanor crime of domestic violence, as defined in subdivision 1 above, shall not be considered to have been met if:

a. The person was not represented by counsel in the case – unless the person knowingly and intelligently waived the right to counsel;

b. The person was entitled to a jury trial AND a jury did not try the case – unless the person knowingly and intelligently waived the right to jury trial by guilty plea or otherwise;

c. The conviction has been expunged or set aside; or

d. The conviction is for an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

## <sup>6</sup> **Qualifying Order of Protection pursuant to 18 U.S.C. §922 (g)(8)**

A qualifying order of protection shall be defined as below:

### **1. Requirements**

A *qualifying order of protection* must meet all of the following conditions:

a. The protected party (plaintiff/petitioner) is an intimate partner of the `

defendant/respondent according to 18 U.S.C. §921(a)(32), defined as:

- i. A spouse or former spouse of defendant/respondent, or
- ii. A parent of a child of defendant/respondent, or
- iii. A present or former cohabitant with the defendant/respondent; AND
- b. The defendant/respondent must have received actual notice of the order and had an opportunity to appear and be heard; AND
- c. The order restrains the defendant/respondent from harassing, stalking, or threatening the intimate partner, child of the defendant/respondent, or child of the defendant/respondent's intimate partner, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child, AND
- d. The order includes a finding that the defendant/respondent is a credible threat to the physical safety of the intimate partner or child OR must include terms that explicitly prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

#### <sup>7</sup> Order of Protection

1. The term ***order of protection*** (absent any modifying words such as “administrative” or “qualifying”) simply refers to an order issued by a judge that specifically forbids a person from doing something or requires a person to do something in an effort to provide safety and security to another person, that person's children, and/or that person's companion animals or pets. Such order of protection shall include:
  - a. Any order of protection from the family, criminal or supreme courts of New York State;
  - b. Any *foreign order of protection*, as such is defined in subdivision 2 below; and/or
  - c. Any order defined within the federal term *protection order*, (contingent upon the determination of a pending lawsuit) as such is defined in subdivision 3 of this section.
2. A ***foreign order of protection*** is a court order that is issued by a court other than a court located within New York State, including:
  - a. Any state, county, or local court of other states;
  - b. Any Indian tribal court located within the United States;
  - c. Any court within the District of Columbia; and
  - d. Any court of a commonwealth, territory, or possession of the United States (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands).

*Note: The full faith and credit provisions of Article IV of the United States Constitution and the federal Violence Against Women Act (VAWA) shall be the basis for the enforcement of any foreign order of protection in New York State. According to 18 U.S.C. §2265(a), full faith and credit means that probation officers must enforce orders of protection issued by another jurisdiction as though they were issued by their own jurisdictions. (Exceptions:*

*Administrative Orders issued by probation supervisors and Military Protective Orders do not qualify for enforcement under full faith and credit.)*

3. The federal term **protection order**, as defined in 18 U.S.C. §2266(5), includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under Federal law) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding as long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
4. Orders of protection vary in length, content, and name. Some other names include: restraining order, no contact order, injunction for protection, protection from abuse order, harassment order, and stalking protection order.
5. An order of protection is a court order, not an order between the people involved in the case. Consequently, only the judge can change the order of protection. Neither the person protected by the order nor the person enjoined by the order can invalidate the order or change it in any way.

#### <sup>8</sup> **Domestic Relationship**

A **domestic relationship** shall include persons who:

1. Are members of the same family or household, as defined as such in New York State Family Court Act §812(1) and Criminal Procedure Law §530.11(1) in that they are:
  - a. persons related by consanguinity or affinity;
  - b. persons legally married to one another;
  - c. persons formerly married to one another regardless of whether they still reside in the same household with such persons;
  - d. persons who have a child in common, regardless of whether such persons have been married or lived together at any time; and
  - e. persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".
2. Assert they are intimate partners, as defined, including same gender couples.