



NORTH DAKOTA

Domestic & Sexual Violence Court Resource Guide

2026 Edition

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Purpose of the North Dakota Domestic & Sexual Violence Court Resource Guide

The North Dakota Domestic & Sexual Violence Court Resource Guide is a product of the North Dakota Court System. This guide is a revised version of the 2013 edition of North Dakota Domestic Violence Bench Book. The purpose of the Court Resource Guide is to serve as a practical reference guide for judges and other court personnel as well as an educational document for judges, attorneys, and court personnel on domestic and sexual violence related topics.

For purposes of this guide, the terms “domestic violence” and “sexual violence” are used in two ways: (1) broadly to describe a pattern of assaultive or abusive behavior exercised by one person within an intimate relationship against another; and (2) more narrowly, as defined by North Dakota Century Code. The authors have attempted to clarify which definition they are using throughout the guide.

Effective Date

The statutes, rules, and case law in this edition of the North Dakota Domestic & Sexual Violence Court Resource Guide were updated by various chapter authors in 2026. We recommend that the reader check for amendments or relevant case law after January 2026.

Usage

This guide is intended primarily as a resource for North Dakota District Court Judges and others who may find the information useful in the processing and disposition of proceedings addressed in this guide. The discussions of legal issues, recommended procedures and dialogues, or other guidance provided in this document reflect the judgment of the author(s) and do not represent authoritative statements, interpretations of law, or other opinions of the North Dakota Supreme Court.

Chapter One: Framework for Understanding Domestic and Sexual Violence

1.1 Language Used in this Guide

In this guide, the terms "victim(s)" and "survivor(s)" will be used interchangeably. This is to honor the choice of those who experience domestic and sexual violence.

1.2 What is Domestic and Sexual Violence?

1.2.1 Domestic Violence

Domestic violence is a pattern of behavior where one person in an intimate relationship coerces, dominates, and isolates another person in the relationship to maintain power and control over that person and over the relationship. An abuser will often manipulate, humiliate, intimidate, isolate, frighten, or injure the victim. Domestic violence is learned behavior. It is the perpetrator—**not** substance abuse, **not** the victim, and **not** the relationship—that causes domestic violence.

Domestic violence is an epidemic affecting individuals in every community.¹ It is often accompanied by emotionally abusive and controlling behavior that is only a fraction of a systematic pattern of dominance and control. Domestic violence can result in physical injury, psychological trauma, and in severe cases, even death. The devastating physical,

1 North Dakota Domestic & Sexual Violence Coalition, Get Information- Statistics (2025), [Statistics - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#)

emotional, and psychological consequences of domestic violence can cross generations and last a lifetime.²

Over the years, several other terms have been used interchangeably with “domestic violence” in an attempt to be more inclusive of the forms of relationships in which it may occur and its impacts.³ For example, “intimate partner violence” is a term sometimes used to be inclusive of violence that occurs between intimate partners who are not married, have a child in common, or live together, such as dating relationships. Similarly, the term “family violence” has been used to describe the violence that impacts not just the primary target of the abuse, but also the children or other family members who witness or experience the abuse as members of the household. For the purposes of this resource guide, we use the term “domestic violence” as it is defined in this chapter and in the North Dakota Century Code.

1.2.2 Sexual Violence

Sexual violence is defined as a sexual act that is committed or attempted by another person without freely given consent of the victim or against someone who is unable to consent or refuse.⁴ It includes:

- Forced or alcohol/drug-facilitated penetration of a victim;
- Forced or alcohol/drug-facilitated incidents in which the victim was made to penetrate a perpetrator or someone else;
- Non-physically pressured unwanted penetration;
- Intentional sexual touching; or
- Non-contact acts of a sexual nature.

2 (citation Nat’l Domestic Violence Hotline, *Learn More About Abuse*, <https://www.thehotline.org/resources/learn-more-about-abuse/> (last visited Apr. 23, 2026).)

3 Johns Hopkins Med., *Domestic Violence*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/domestic-violence> (last visited Apr. 23, 2026)

4 (Nat’l Sexual Violence Res. Ctr., *Let’s Talk: Definitions of Terms*, <https://www.nsvrc.org/lets-talk-campus/definitions-of-terms/> (last visited Apr. 23, 2026)

Sexual violence can also occur when a perpetrator forces or coerces a victim to engage in sexual acts with a third party.

1.2.3 Power and Control

In relationships involving domestic violence, abusive partners may use physical and sexual violence as a means of asserting power and control over the other person. The Power and Control Wheel—developed from the lived experiences of survivors—provides an evidence-informed framework for understanding these dynamics.⁵

The wheel illustrates the range of tactics an abusive partner may use to maintain the relationship and reinforce control. The inner sections represent ongoing, often less visible patterns of behavior that occur over time, while the outer ring highlights more overt forms of violence, such as physical and sexual abuse. These acts of violence often serve to reinforce and sustain the continued use of more subtle tactics.⁶

At its core, the model emphasizes that the central purpose of these behaviors is the establishment and maintenance of power and control by one partner over the other. Each segment of the wheel identifies specific strategies commonly observed in abusive relationships, offering a structured way to recognize and understand these patterns.⁷

5 Domestic Abuse Intervention Programs Home of The Duluth Model, Wheel Gallery (2025) [Wheel Gallery - Domestic Abuse Intervention Programs](#)

6 Domestic Abuse Intervention Programs, *Understanding the Power & Control Wheel*, <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/> (last visited Apr. 23, 2026).

7 Nat'l Domestic Violence Hotline, *Power and Control*, <https://www.thehotline.org/identify-abuse/power-and-control/> (last visited Apr. 23, 2026)



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1.3 Overview of Domestic Violence

Domestic violence can be identified by an imbalance of power and control.⁸ The victim may feel as if they have no control over their life and are unable to make decisions for themselves. The victim's life may revolve entirely around the abuser's life, without support or resources outside of that person. When first responders arrive on scene, the person who used violence first is not necessarily the abusive person. Domestic violence can be identified by the continual pattern of abusive behavior rather than just one physical incident.

1.3.1 Physical Violence

Physical violence is a form of abuse in which the abuser threatens or uses physical force to exert control over the victim.⁹ This form of abuse often escalates over time and is an important indicator of increasing danger, requiring ongoing assessment of the survivor's safety and risk.

Earlier approaches to domestic violence sometimes relied on the concept of “gender symmetry,” which suggests that men and women engage in intimate partner violence at similar rates. This perspective was influenced in part by the Conflict Tactics Scale (CTS), developed in 1979 as a tool to measure acts of violence within relationships.

However, the CTS has been widely critiqued for its methodological limitations. Specifically, it measures discrete acts of violence without accounting for the context in which the violence occurs, including patterns of coercive control, intent, impact, or history of abuse. It also does not adequately capture sexual assault or violence occurring after

8 North Dakota Domestic & Sexual Violence Coalition, Get Information-Domestic Violence (2025), [Domestic Violence - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#)

9 North Dakota Domestic & Sexual Violence Coalition, Get Information-Domestic Violence (2025), [Domestic Violence - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#)

separation. As a result, reliance on act-based measures alone may obscure important distinctions between different types of intimate partner violence.¹⁰

Research has since identified multiple types of violence in intimate partner relationships, underscoring that not all acts of violence serve the same function or occur within the same context.

Types of Physical Violence¹¹

Violence Used to Exercise Coercive Control

This form of violence is characterized by a pattern of behaviors used to dominate, intimidate, or control another person. It often includes a combination of physical violence, threats, intimidation, and other coercive tactics. The violence is typically part of an ongoing pattern that escalates in frequency and severity over time and is often triggered by a victim's attempts to assert independence or resist control. Research frequently identifies this pattern in cases involving male perpetrators in heterosexual relationships.

Resistive/Reactive Violence

This form of violence occurs in response to violence, coercion, or intimidation. It is generally characterized by efforts to defend oneself, protect others, or respond to ongoing abuse. The use of force may be defensive, reactive, or, in some cases, retaliatory. Resistive violence may be used by individuals of any gender; however, research indicates it is more commonly identified among women in the context of ongoing coercive control.

Situational Violence

Situational violence refers to isolated or episodic incidents of violence that arise from specific conflicts or stressors, rather than from a broader pattern of control. It is not typically accompanied by ongoing coercive behaviors and may occur in response to

10 Michael S. Kimmel, "Gender Symmetry" in *Domestic Violence: A Substantive and Methodological Research Review* (State Univ. of N.Y. at Stony Brook, 2022).

11 Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 Geo. L.J. 835 (2022)

circumstances such as financial stress, conflict escalation, or life events. The violence is generally less severe and not part of a pattern of intimidation or domination.

Pathological Violence

This form of violence may be associated with underlying mental health conditions, substance use, or other psychological factors. Individuals using this type of violence may exhibit behaviors consistent with coercive control; however, the violence may also be influenced by impaired functioning, emotional dysregulation, or other clinical concerns. These cases often require careful, individualized assessment and may involve coordinated responses addressing both safety and treatment needs.

Anti-Social Violence

Anti-social violence is characterized by a broader pattern of disregard for social norms and the rights of others. Individuals engaging in this type of violence may use aggression across multiple relationships and contexts, not limited to an intimate partner. This form of violence is often associated with poor impulse control, limited problem-solving skills, and a pattern of behavior that places others at risk.

1.3.2 Emotional Abuse

Emotional abuse is when an abusive partner uses non-physical behaviors to control, isolate, or frighten their victim/partner.¹² Emotional abuse can be more subtle or harder to identify in a relationship, but it's just as serious as other types of abuse. Emotional abuse is often happening every day in an abusive relationship, and it can make the victim feel crazy, worthless, or hopeless. It includes behaviors such as:

- Using harmful language such as name calling or insults,
- Verbally attacking the victim in private or public,
- Humiliating the victim in front of others,

12 North Dakota Domestic & Sexual Violence Coalition, Get Information-Domestic Violence (2025), [Domestic Violence - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#)

- Ignoring the victim's feelings,
- Withholding approval or affection to punish the victim,
- Using intimidation, or causing the victim fear through the using looks, actions, gestures, or a loud voice,
- Threatening to hurt the victim, people the victim cares about, or the victim's pets,
- Isolating the victim by controlling what they do, who they see or talk to, or where they go,
- Minimizing, denying, or blaming the victim for the abusive behaviors
- Gaslighting the victim, or making them question their own memory, sanity, or perception of events,
- Threatening to take the children from the victim,
- Threatening to hurt or kill the victim or their children, or the abuser threatening to take their own life,
- Threatening to expose personal details about the victim such as their sexual orientation or immigration status.

1.3.3 Coercive Control

Coercive control is a pattern of behaviors used by one person to establish and maintain power and control over an intimate partner. Rather than consisting of isolated incidents, coercive control is characterized by ongoing intimidation, isolation, manipulation, monitoring, threats, and other tactics that restrict a person's freedom, independence, and ability to make decisions.¹³ Physical violence may be one tactic used to reinforce control, but coercive control can exist with little or no physical violence.

13 Domestic Shelters, *A Guide to Coercive Control* (2021), [A Guide to Coercive Control](#); Melissa E. Dichter et al., *Coercive Control in Intimate Partner Violence: Relationship with Women's Experience of Violence, Use of Violence, and Danger*, 8 *Psychology of Violence* 596 (2018); Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007).

Individuals experiencing coercive control are often isolated from family, friends, employment, financial resources, or other sources of support. They may feel trapped in the relationship because of financial dependence, fear for their own safety or the safety of children and loved ones, immigration concerns, housing instability, or other barriers to leaving. Importantly, coercive control frequently continues after separation through tactics such as harassment, stalking, litigation abuse, threats involving children, financial abuse, or technology-facilitated abuse.

Understanding coercive control shifts the focus from isolated incidents of violence to the overall pattern of behavior and its impact on the survivor's autonomy, safety, and well-being.

1.3.4 Stalking

Stalking is a pattern of behavior directed at a specific person that would cause a reasonable person to feel fear and/or emotional distress. Stalking is unique because the context of the situation may only be understood by the victim, often requiring them to explain why something is scary, upsetting, or worrying.¹⁴ Tactics can vary, and stalking often escalates over time.

Stalkers often combine criminal acts (e.g. property damage, trespassing) with legal behaviors (e.g. sending gifts or text messages). Anyone can be a victim of stalking, and perpetrators are often known to the victim, including current or former partners, family members, or acquaintances. Most stalking behaviors can be grouped into four categories: surveillance, life invasion, intimidation, and interference.

Surveillance is the most common stalking tactic. This includes gathering information through following or watching the victim, monitoring online activity, accessing accounts,

14 North Dakota Domestic & Sexual Violence Coalition (2025), [Stalking - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#); SPARC, What is Stalking? Definition and Facts (2025), [Definition & FAQ | Stalking Awareness & Prevention | SPARC](#)

obsessive communication, seeking information from others, and showing up unexpectedly.

Life invasion is another stalking tactic. The intrusion may occur through in-person contact, electronic communication, or other forms of surveillance, and it can affect victims in both private and public settings. This includes excessive contact, showing up places unexpectedly, spreading rumors, and sending unwanted gifts. Life invasion extends beyond isolated acts and intrudes upon the victim's daily routines, relationships, and sense of security.

Intimidation is a stalking tactic that uses looks, actions, or gestures to cause fear or alarm. This may involve threatening the victim or their loved ones, blackmail, symbolic violence (e.g. a crushed soda can or a burnt doll), or the offender threatening self-harm or participating in actual self-harm.

Interference is a stalking tactic that disrupts the victim's reputation, safety, employment, online accounts, finances, or freedom, often causing a loss of resources that can quickly spiral. This includes damaging property, causing the victim to have a serious accident, meddling in online accounts, and sharing private photos or information about the victim with others.

Victims' reactions to stalking vary based on their experience. While stalking is defined by fear, this fear may be masked by other emotions such as hopelessness, frustration, despair, or anger. This is why it's important to understand the victim's experience and the context of the stalking behaviors.

1.4 Overview of Sexual Violence

Sexual violence is an all-encompassing term used to describe any type of unwanted, forced, or coerced sexual contact or behavior that happens without consent.¹⁵

15 North Dakota Domestic & Sexual Violence Coalition, Sexual Violence (2025), [Sexual Violence - North Dakota Domestic & Sexual Violence Coalition](#)

Sexual violence may include:

- Forcing, manipulating, pressuring, or coercing the victim to participate in unwanted or nonconsensual sexual activity
- Constantly accusing the victim of cheating or engaging in sexual activity with others,
- Insulting the victim in sexual ways, such as calling them a “whore” or a “slut,”
- Making the victim fearful of saying no to sexual activities,
- Denying contraception or protection from sexually transmitted infections,
- Intentionally exposing the victim to sexually transmitted infections and/or the risk of pregnancy or miscarriage,
- Making unwanted sexual comments about the victim’s body or appearance,
- Hurting the victim with weapons or objects during sex, or
- Creating or sharing intimate images or videos of the victim without their consent.

1.4.1 Nonconsensual Intimate Image Sharing

Nonconsensual intimate image (NCII) refers to the distribution or threatened distribution of sexual, intimate, nude, or partially nude images or videos of a person without their consent. The term “revenge porn” is sometimes used in public discourse; however, it is ideal to avoid this language because it can inaccurately suggest the behavior is motivated by revenge, when in practice it is more often used as a tactic of power, coercion, and control.¹⁶

16 WomensLaw.org, *Abuse Using Technology: Nonconsensual Intimate Images*, <https://www.womenslaw.org/about-abuse/abuse-using-technology/ways-survivors-use-and-abusers-misuse-technology/abuse-8>.

Perpetrators may share or threaten to share intimate images for a range of abusive purposes, including exerting control over the victim, intimidating or harassing them, causing emotional distress or humiliation, damaging their reputation, interfering with employment or housing opportunities, or influencing legal proceedings such as custody or protection order cases.

NCII may involve images that were initially created or shared with consent within a relationship. It may also involve images obtained without consent, including those captured through hidden recording devices, hacked accounts, or other forms of unauthorized access.¹⁷

1.4.2 Nonconsensual Manipulated Intimate Material (NCMIM)

Nonconsensual manipulated intimate material (NCMIM) is digitally altered or synthetic images, video, audio, or other content created using artificial intelligence or other technologies to portray an individual in a sexually explicit or intimate manner, without that individual's knowledge or consent.¹⁸¹⁹

17 WomensLaw, *Ways Survivors Use and Abusers Misuse Technology: Abuse Using Technology*, <https://www.womenslaw.org/about-abuse/abuse-using-technology/ways-survivors-use-and-abusers-misuse-technology/abuse-8> (last visited June 26, 2026).

18 The Conversation, *AI-Generated Pornography Will Disrupt the Adult Content Industry and Raise New Ethical Concerns* (2024), [AI-generated pornography will disrupt the adult content industry and raise new ethical concerns](#) U.S. Senate Committee on Commerce, Science & Transportation, Cruz-Klobuchar Bill to Protect Teenagers from Deepfake 'Revenge Porn' Unanimously Passes the Senate (2025), [Cruz-Klobuchar Bill to Protect Teenagers from Deepfake 'Revenge Porn' Unanimousl...](#)

19 N.D.C.C § 12.1-31-07.1 & N.D.C.C. § 12.1-27.1-03.4

1.5 Financial Abuse

Financial abuse is when an abuser exerts control over the victim's financial independence to assert power and control over the victim.²⁰ This is one of the most powerful methods of keeping a victim trapped in an abusive relationship and occurs in 99% of domestic violence cases.²¹

Financial abuse tactics include:

- Forbidding or preventing the victim from working or limiting work hours
- Sabotaging employment by stalking, harassing, or interfering at the workplace
- Causing job loss by disrupting attendance, performance, or important meetings/interviews (including physical violence before key events)
- Preventing access to job training, education, or advancement opportunities
- Refusing to work or contribute to household income
- Controlling all financial decisions without input from the victim
- Excluding the victim from banking, investment, or financial account decisions
- Denying access to bank accounts, checkbooks, or financial records
- Withholding money or providing an “allowance” while tightly controlling spending
- Making the victim ask, beg, or justify access to money
- Monitoring or restricting how money is spent
- Running up debt on joint accounts or misusing shared credit

20 North Dakota Domestic & Sexual Violence Coalition, Get Information-Domestic Violence (2025), [Domestic Violence - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#)

21 National Network to End Domestic Violence (NNEDV), *About Financial Abuse*, <https://nnedv.org/content/about-financial-abuse/> (last visited June 27, 2026). (nnedv.org)

- Opening credit cards or taking out loans in the victim's name without consent (identity theft)
- Damaging the victim's credit or financial standing
- Hiding, stealing, or withholding money, assets, property, inheritance, or personal belongings
- Forcing the victim to work in a family business without pay
- Refusing to pay household bills or intentionally creating financial instability
- Withholding basic necessities (food, medication, transportation, etc.) by restricting funds
- Preventing the victim from working by taking transportation (car keys, vehicle, etc.)
- Using money, gifts, or payments as leverage or to create obligation or control
- Filing false financial or insurance claims
- Misusing public benefits, or threatening to report or interfere with the victim's benefits
- Refusing to pay child support or deliberately evading child support obligations
- Manipulating divorce or legal proceedings by hiding assets or prolonging financial litigation

1.6 Abusive Litigation

Abusive litigation can be used as a form of intimidation and coercive control to pressure a victim to comply with the abuser's demands.²² This tactic often involves repeated or unnecessary legal filings that create ongoing financial strain through attorney fees, court

22 WomensLaw.org, *Litigation Abuse*, <https://www.womenslaw.org/about-abuse/forms-abuse/litigation-abuse> (last visited June 27, 2026)

costs, and related expenses.²³ In some cases, the court system becomes a continued point of contact between the parties, and litigation may be used strategically to maintain contact, exert control, or increase stress and burden on the victim rather than to resolve legitimate legal issues. In protection order cases, an abuser may attempt to position themselves as the victim by seeking counter-petitions or filing claims against the survivor, their friends, or family members. In family court matters, abusive litigation may include using custody proceedings as a form of retaliation or control, including efforts to leverage child custody or visitation to influence the survivor's behavior. Abusive litigation may also be used as a coercive threat, such as warning a survivor that legal action or custody disputes will continue if they leave the relationship or do not comply with demands.²⁴

1.7 Barriers to Victims Leaving a Violent Relationship

- **Safety/Fear of Abuser**—The perpetrator will often escalate the violence when the victim is leaving the relationship due to a loss of control.
- **Perpetrator Violence**—The perpetrator's escalating violence and control.
- **Economic Barriers**—Lack of housing, loss of income for self and children, loss of health, transportation, or other resources. An inability to afford legal assistance for divorce, custody, or protection order proceedings.
- **Loss of Housing**—When leaving a domestic violence relationship, often the survivor will become homeless in the process due to being unable to find housing in an adequate time for their safety either due to lack of support systems as a result of abuser, isolating from family and/or friends or unsafe options, limited resources in their community, or generational poverty.

23 Washington State Administrative Office of the Courts, Abusive Litigation and Domestic Violence Survivors (2015), [appendixH.pdf](#)

24 Legal Voice, Abusive Litigation: When Your Abuser Exploits the Legal System (Washington State) (2021), [Abusive Litigation: When Your Abuser Exploits the Legal System \(Washington State\) | Legal Voice](#),

- **Important Documents**—Due to the dangerousness of leaving a domestic violence relationship, often important documents like a birth certificate, social security card, ID card, or a tribal ID card can be left behind in the rush of leaving. Abusers can intentionally take these or restrict access to these documents to have control over what the victim is able to do. This can prevent the victim from being able to access housing, create bank accounts, loss of economic independence through finding and securing financial employment, receiving governmental support, court orders, transportation, or even enrolling their children into school.
- **Protecting Children**—Maintaining contact with the perpetrator through their access to the children, and fear of custody loss or reduced parental rights.
- **Lack of Support**—Religious, cultural, or family values that the family unit must be preserved at all costs; or victim blaming by service providers, law enforcement, or the courts. [See Rural Victims section for more.](#)
- **Effects of Trauma**—Immobilization by psychological and physical trauma.
- **Court Response**—Actual or perceived failure of court to hold perpetrators accountable or protect victims. Fearing intervention of the court system or not believing it will help.
- **Isolation**—Being cut off from social and family connections that could otherwise provide support. For example, living in a rural setting away from familial connections could isolate a victim.
- **Self-Blame**—Feeling at fault for the abuse and personally responsible for changing so that the violence will stop.

1.8 Resistive Violence

Resistive violence refers to the use of force—sometimes legal, sometimes illegal—by a person responding to an abuser’s ongoing coercive control and violence. In this context, the use of force occurs as a reaction to harm, threat, or domination, rather than as an

effort to establish power or control over another person.²⁵ In other words, the individual is experiencing coercive control or violence and is fighting back.

Resistive violence is often one component of a survivor's broader set of strategies to stop, reduce, or survive the abuse. Prior to the use of violence, survivors may attempt a range of non-violent or less confrontational tactics, including negotiation, appeals to family or friends, appeasement, expressions of anger or hostility, separation, and withdrawal or avoidance. When these strategies fail to stop the abuse, a survivor may resort to the use of force as a situational or defensive response.

Research consistently indicates that women's use of violence in intimate partner relationships is more likely to be self-defensive, resistive, or reactive in nature.²⁶ Studies further show that women report using violence primarily out of fear and in efforts to protect themselves or their children, rather than to exert control over a partner.²⁷ This use of force is often intended to secure short-term safety or regain immediate control over a threatening situation.²⁸ Research also suggests that women are more likely to disclose their own use of violence, while individuals who use coercive control are more likely to minimize, deny, or shift blame for their behavior.²⁹

25 Ellen Pence & Shamita Das Dasgupta, Re-examining Battering: Are All Acts of Violence Against Intimate Partners the Same? (Praxis International, June 20, 2006)

26 R. Emerson Dobash & Russell P. Dobash, Women's Violence to Men in Intimate Relationships: Working on a Puzzle, 44 *Brit. J. Criminology* 324 (2004).

27 Shamita Das Dasgupta, Just Like Men? A Critical View of Violence by Women, in *Women's Violence Against Men: Working on a Puzzle* 195 (John Hamel et al. eds., 1999); Susan L. Miller, *Victims as Offenders: The Paradox of Women's Violence in Relationships* (2005); Susan L. Miller & Lisa Y. Larance, *Women Who Use Force: Voices of Resistance* (2017); Suzanne C. Swan & David L. Snow, Behavioral and Psychological Differences Among Abused Women Who Use Violence in Intimate Relationships, 23 *Violence Against Women* 75 (2003).

28 Shamita Das Dasgupta, A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships, 8 *Violence Against Women* 1364 (2002); Lisa Y. Larance & Allison Rousson, Facilitating Change: A Process of Renewal for Women Who Have Used Force, 31 *J. Fam. Violence* 27 (2016).

29 Lisa Y. Larance & Susan L. Miller, In Her Own Words: Women's Use of Force and Resistance in Context, 23 *Psych. Violence* 412 (2017).

Resistive violence is not the same as violence used to dominate, control, or instill fear in another person. To distinguish resistive violence from other forms of violence, it is essential to examine context and motivation.

Relevant considerations include:

- **Intent:** What was the individual attempting to accomplish by using force?
- **Effect:** What was the immediate impact of the incident, and how does it compare to the effects of prior incidents of violence?
- **Meaning within the relationship:** How does this incident fit within the broader pattern of behavior, power, and control in the relationship?³⁰

1.9 Victim Recantation

Victims of domestic violence sometimes recant or retrack their statements. In cases of domestic violence, a victim may deny they were ever abused, claim they lied and made up the abuse, allege misunderstanding or that the abuse was an “accident,” or reattribute the violence (saying someone else or something else is responsible).³¹ Victims may also minimize the impact of the abuse, identifying that the incident or impact of the violence was not as bad as it seems.

Victims may choose not to participate in the prosecution process due to financial dependence or cohabitation with the abuser, self-blame or embarrassment, substance use, the victim’s perspective of poor criminal justice response, or poor access to social support systems.

30 *Resistive Violence – One of three types of domestic violence* (YouTube video, Domestic Abuse Project 2021), <https://www.youtube.com/watch?v=bCTkcMBiSmw>.)

31 Amy Bonomi & David Martin, *Recantation and Domestic Violence: The Untold Story* (2024).

1.10 Impacts of Advocacy

Domestic and sexual violence advocates provide crucial, confidential support that increases survivor safety, improves legal outcomes, and aids recovery.³² Advocates help create customized safety plans to manage risks from abusers, which can significantly increase feelings of safety and stability for both the victim and their children, if children are involved. Advocates provide information on rights, navigate the criminal justice system, assist with obtaining civil protective orders, and accompany victims to court. Advocates provide support during hospital visits, ensuring survivors receive information on STI prophylactic treatment, HIV prevention, pregnancy testing, and support for additional options. Advocates offer non-judgmental support, reducing feelings of isolation and distress, and helping survivors regain control over their lives. Advocates link survivors to emergency shelter, financial assistance, housing, and counseling services to foster independence and long-term stability and safety.

Advocates work with victims to understand their unique situations and prioritize their goals, rather than prescribing one-size-fits-all solutions. Victims have better outcomes, receive more services, and they are less likely to blame themselves for the violence when they work with an advocate.

1.11 Lethality of Domestic Violence

1.11.1 Lethality Screening

Lethality screening helps law enforcement assess risk, support victims in recognizing the severity of the abuse, and connect them to appropriate domestic violence services. Courts should also consider these questions to identify potential lethality risks the victim faces.³³

32 EVAWI, Victim Advocacy Toolkit (2025), [Advocacy-Action-Kit.pdf](#)

33 Md. Network Against Domestic Violence, *Lethality Assessment Program*, <https://www.mnadv.org/lethalityassessmentprogram/>

Domestic Violence Lethality Assessment

The suspect's arrest or the victim's "Yes" response to any of Questions #1-4 automatically triggers an on-scene victim referral call to the domestic violence program crisis hotline.

1. Have they ever used a weapon against you or threatened you with a weapon?
2. Have they threatened to kill you or your children?
3. Do you think that they might try to kill you?
4. Have they ever tried to strangle/ "choke" you?

The victim's negative responses to Questions #1-4 but "Yes" responses to at least four of Questions #5-11 triggers a referral call.

5. Do they have a gun or can they get one easily?
6. Are they violently or constantly jealous, or do they control most of your daily activities?
7. Have you ever left them or separated after living together or being married?
8. Are they unemployed?
9. Have they ever tried to kill themselves?
10. Do you have a child that they know is not theirs?
11. Do they follow or spy on you or leave threatening messages?

An officer may also trigger the referral call whenever they believe the victim is in a highly dangerous/potentially lethal situation, or as a result of the victim's response(s) to the following questions:

How frequently and seriously do they intimidate, threaten, or assault you? Is it changing? Getting worse?

1.11.2 Strangulation

What is Strangulation?

Strangulation is external pressure placed on a person's neck resulting in cutting off blood flow to the victim's brain and/or obstructing the victim's airway, which impacts their ability to breathe.³⁴ Strangulation is becoming increasingly common, with 68 to 80% of abused women experiencing strangulation.³⁵ Victims of domestic violence that have experienced strangulation by an abusive partner, are **750% more likely to be killed by that partner**.³⁶

North Dakota Century Code defines “**serious bodily injury**” as “bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or **impediment of air flow or blood flow to the brain or lungs**.”³⁷ Increasingly, individuals are engaging in strangulation during “consensual” sexual intercourse. However, consent to strangulation cannot be used as a defense in a criminal proceeding because strangulation has the potential to jeopardize life or seriously impair health.³⁸

Signs of Strangulation

Although 50% of victims do not exhibit physical signs of strangulation, common signs include³⁹:

34 Kathleen Monahan, Neurological Implications of Nonfatal Strangulation and Intimate Partner Violence (2019), [Full article: Neurological Implications of Nonfatal Strangulation and Intimate Partner Violence](#)

35 Alliance for HOPE International, Training Institute on Strangulation Prevention (2025) [Training Institute on Strangulation Prevention](#)

36 Jacquelyn Campbell, Daniel Webster, Nancy Glass, The Danger Assessment (2021), [The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide - PMC](#)

37 N.D.C.C. § 12-1.01-04(30), <https://ndlegis.gov/cencode/t12-1c01.pdf>

38 N.D.C.C. § 12.1-17-08(1)(a)

39 Kathleen Monahan, Neurological Implications of Nonfatal Strangulation and Intimate Partner Violence (2019), [Full article: Neurological Implications of Nonfatal Strangulation and Intimate Partner Violence](#)

- Trouble speaking
- Trouble swallowing
- Blood in the eyeballs
- Orbital and/or nasal fractures
- Small red spots (petechia) anywhere—eyeballs, eyelids, inside throat, scalp, behind ears
- Bleeding from ears
- Scratches or abrasions on chest, shoulders, or under chin
- Hair missing/pulled
- Redness or flushed face
- Swollen Lips, ears and/or tongue⁴⁰

1.12 Special Populations

1.12.1 Rural Victims

Women experiencing domestic violence living in rural communities are more likely to be murdered by their partner than those living in urban areas.⁴¹ Several factors can greatly impact a rural victim's isolation, safety, and chances of receiving services, outside of the other forms of abuse previously discussed.

A rural victim may not have access to a phone, internet services, or reliable public transportation. Additionally, hunting weapons are common in rural homes, and everyday tools like axes, chains, and pitchforks are potential weapons. A victim's bruises may fade

40 Alliance for Hope Strangulation Training Institute, Strangulation/Suffocation Investigative Worksheet, (2016), [StrangulationSuffocation-Investigative-Sheet-v6.pdf](#)

41 Nat'l Advisory Comm. on Rural Health & Hum. Servs., *Intimate Partner Violence in Rural America* (Mar. 2015), <https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/rural/2015-partner-violence.pdf>.

or heal before the victim sees neighbors, and working with farm tools and equipment can provide an easy explanation for injuries. A farm family's finances are often tied to the land and equipment, making it difficult for a victim to leave without risking the loss of the family farm or the family's livelihood. Rural victims may have strong emotional ties to the land and farm animals and fear the animals will be neglected or harmed if they leave. Lastly, community norms and societal stereotypes may discourage victims from seeking help or recognizing they need it.

1.12.2 LGBTQIA+ Victims

LGBTQIA+ victims are at an increased risk of experiencing domestic or sexual violence.⁴² An LGBTQIA+ victim may have a fear of coming out to their peers, family, or other support systems, which could deter them from seeking services. Furthermore, fear of judgment, stigma, or discriminatory treatment from law enforcement, medical providers, shelters, or other support services may prevent victims from seeking help.

1.12.3 Foreign-Born Victims

Foreign-born people are at significant statistical risk of experiencing domestic violence.⁴³ Victims who are foreign-born to the United States will face additional stress or fear when reaching out for help. Victims who are recent immigrants or have uncertain immigration status may be reluctant to report abuse due to fear of deportation.⁴⁴ Prior experiences with law enforcement, either in their home country or in the U.S., may create distrust and deter victims from seeking help, leaving them feeling they must choose between reporting abuse and risking deportation or staying in the relationship. Cultural norms that normalize

42 LGBT Life Center, The Realities of Intimate Partner Violence for LGBTQIA+ People – and How We Can Help (2025), [The Realities of Intimate Partner Violence for LGBTQIA+ People](#)

43 INTIMATE PARTNER VIOLENCE UNDOCUMENTED & IMMIGRANT WOMEN (2017), [Learn More: Intimate Partner Violence and Immigrant Women!](#)

44 NIWAP, Supporting Immigrant Women and Children Through Education and Policy Advocacy (2025), [NIWAP Web Library](#)

violence, combined with isolation in the U.S., may prevent victims from recognizing abuse as unacceptable or knowing that support services exist.

1.12.4 Limited English Proficiency

Victims who have limited English proficiency may experience difficulties accessing and participating in the court system.⁴⁵ Access to interpreters and language services remains limited due to increased demand for interpretation.⁴⁶ Interpreter availability may be especially limited in rural areas. Friends or family members may be used to translate court-related information or documents, raising confidentiality concerns and the risk of incomplete or inaccurate understanding of proceedings. Additionally, victims with limited English proficiency may not be aware of their rights or how to access court services.⁴⁷

1.12.5 People with Disabilities

Victims who are living with a disability are more vulnerable to domestic violence. In fact, people living with disabilities experience violence at four times the rate of individuals living without disabilities.⁴⁸ Individuals with disabilities often have reduced access to resources, which can increase economic vulnerability. Court access may be challenging when disabilities impact a person's ability to process information, understand their rights, or fully participate in their case; equitable and accessible court processes are essential to

45 NIWAP, Working With Interpreters and Translators Training Materials (2024), [Language-Access-Training-Materials-12.20.24.pdf](#)

46 NIWAP, State Justice Institute, Washington College of Law, Fact Sheet: Language Access in the U.S. Court System (2021), [13A-Fact-Sheet-Language-Access-in-Courts-4.1.19-PRINTED.pdf](#)

47 Pew, How to Make Courts Accessible to Users With Disabilities and Limited English Proficiency (2024), [How to Make Courts Accessible to Users With Disabilities and Limited English Proficiency | The Pew Charitable Trusts](#)

48 Department of Justice, Fact Sheet Access to Justice is Disability Access (N.D.), [Fact Sheet | Access to Justice is Disability Access](#)

ensure participation in the justice system.⁴⁹ Court documents may not always be available in accessible formats such as braille or large print.⁵⁰

1.12.6 Deaf and Hard of Hearing

Deaf individuals in the United States experience higher rates of domestic and sexual violence compared to hearing individuals. Despite this increased prevalence, Deaf survivors often face significant structural, communication, and cultural barriers that limit access to safety, support, and reporting options.⁵¹ A major contributing factor is the lack of consistent access to qualified ASL interpreters when interacting with professionals, which often results in reliance on ineffective ad hoc communication methods such as written notes, lip reading, or use of untrained family members as interpreters. These approaches can lead to miscommunication, loss of critical information, confidentiality concerns, and potential emotional harm or re-traumatization, particularly in domestic and sexual violence situations where survivors may be in crisis and accurate communication is essential for safety and legal response.

1.12.7 Elderly Victims

Elder abuse refers to any knowing, intentional, or negligent act by a caregiver or other person that causes harm or creates a risk of harm to an older adult, typically within an ongoing relationship where there is an expectation of trust.⁵² This abuse may occur by an

49 Department of Justice, Fact Sheet Access to Justice is Disability Access (N.D.), [Fact Sheet | Access to Justice is Disability Access](#)

50 Disability Rights North Dakota, Accommodations in the Courtroom (N.D.), [Accommodations in the Courtroom](#)

51 End Abuse of People with Disabilities, *Developing a Language Access Plan to Serve Deaf Survivors* (June 2024), <https://www.endabusepwd.org/wp-content/uploads/2024/06/Developing-A-Language-Access-Plan-to-Serve-Deaf-Survivors.pdf> (last visited June 26, 2026).

52 Minn. Elder Just. Ctr., *General Brochure*, <https://elderjusticemn.org/wp-content/uploads/2025/11/Elder-Justice-General-Brochure.pdf> (last visited June 26, 2026).

intimate partner or by a caregiver, including an adult child. Approximately one in ten older adults living in their home experience elder abuse each year.⁵³

1.12.8 Men

While women are disproportionately impacted, domestic and sexual violence can affect anyone, including men. 17% of men in the United States experienced sexual violence, physical, violence, or stalking by an intimate partner during their lifetime, compared to 34% of women. In North Dakota, women continue to represent the majority of those seeking services, with 80% of individuals served by domestic and sexual violence agencies in 2025 identifying as women.⁵⁴

1.13 Courtroom Safety

1.13.1 Purpose

A court appearance may be one of the first times the victim and offender have been in the same physical space since a domestic violence incident. Proactive safety planning by judges and courthouse staff can significantly reduce the risk of intimidation, re-traumatization, or harm.

1.13.2 Physical Placement & Separation

- Provide separate entrances/exits for victims and offenders when possible.
- Arrange parking so parties are not forced to park in close proximity (if possible).
- Offer private waiting rooms for victims and support persons.

53 National Library of Medicine, Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study (2010), [Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: the National Elder Mistreatment Study - PubMed](#)

54 North Dakota Domestic & Sexual Violence Coalition, Statistics (2025), [Statistics - North Dakota Domestic & Sexual Violence Coalition - North Dakota Domestic & Sexual Violence Coalition](#)

- Implement staggered scheduling to prevent parties from being in hallways or waiting areas at the same time.
- Seat parties on opposite sides of the courtroom; ensure direct physical separation.
- Consider allowing the victim to testify by reliable electronic means in high-risk cases.

1.13.3 Security Measures

- Ensure the courthouse has operational metal detectors at entrances.
- Maintain visible security presence in hallways, waiting spaces, and inside the courtroom before, during, and after hearings.
- Brief security personnel on Civil Protection Orders, Orders Prohibiting Contact, and any documented safety concerns in advance.
- Offer escort services to and from vehicles or public transportation.
- Have a clear emergency response plan for threats, harassment, or intimidation.

1.13.4 Risk Factors

- Confirm whether weapons were involved in the underlying incident.
- Note any history of threats, stalking, or ongoing harassment.
- Monitor for nonverbal intimidation (staring, gestures, following).

1.13.5 Information & Confidentiality

- Avoid calling parties together in public spaces.
- Avoid sharing victim's contact details or address in open court.

1.13.6 Emotional & Psychological Safety

- Allow victims to have support persons or advocates present in the courtroom.
- Position the victim where they have a clear sightline to exits (if possible).
- Reduce opportunities for direct confrontation before and after the hearing.

1.13.7 Post-Hearing Safety

- Dismiss parties at different times, and allow the victim to leave first.
- Provide a safe waiting or pickup area for victims using public transport or rideshare.
- Be alert to third-party intimidation by friends or relatives of the offender.

1.13.8 Steps a Court Can Take

- Provide regular domestic violence training for court personnel.
- Treat cases involving domestic violence as seriously as offenses involving stranger violence.
- Communicate from the bench that the court takes domestic violence seriously.
- Provide clear information about court proceedings to unrepresented parties in their preferred language.
- Require the perpetrator to remain in the courtroom for service of the order and until the victim has left the building.
- Know who's in your courtroom.
- Be alert for multiple court actions or orders concerning the same parties in civil, family, and criminal court.
- Maintain confidentiality of court documents that could identify the victim's location.

- In criminal court, call domestic violence cases early on the docket or create a dedicated domestic violence docket.
- Develop a safe waiting area for victims; if unavailable, provide safeguards such as a guard nearby or a screen/visual barrier.
- Take safety precautions for all court personnel, parties, witnesses, and attorneys in domestic violence matters, including adding law enforcement or security.
- Participate in coordinated community response meetings and develop policy for domestic violence offenders.

1.14 Children in Domestic Violence Households

1.14.1 Trial Issues

The determination of whether to allow a child to testify should be made with great care and only after the court has conducted an assessment of the danger to the child if the child testifies. Included in this assessment is determining whether to issue court orders to protect the child from undue influence. In place of a No Contact Order, the court can order the influencer not to discuss the case with the child. The court should ask the child questions to determine if there has been any attempt to influence the child.

When determining a child's competency, a court should inquire on the following subjects:

- Sufficient intelligence;
- Capacity to observe;
- Adequate memory;
- Ability to communicate;
- Awareness of the difference between truth and lie; and
- Appreciation of the obligation to tell the truth

1.14.2 Impact of Mediation on Children

Often, children are used as a form of power and control by the perpetrator to coerce the victim into submission. They may be injured accidentally, or they may be injured trying to defend the non-abusive parent. Children may also be abducted or used as pawns in a custody proceeding, interrogated by the abusive parent about the non-abusive parent's behavior, or blamed by the perpetrator for the abuse.

Mediation is generally NOT appropriate in cases involving domestic violence.⁵⁵ For mediation to be successful, both parties must have substantially equal bargaining power within the relationship. Victims of domestic violence may not feel as if they have the ability to stand up to the perpetrator or challenge the perpetrator's wishes for resolving the issues involved in the divorce. Abusive partners may take advantage of the power and control they exert over the abused partner and compel that person to agree to terms that are not equitable and/or not in the child(ren)'s best interests. In any case involving an order for parenting time, residential responsibility, or support (including proceedings to modify or enforce the order), a judge **MAY NOT** order mediation if the issue involves or may involve physical or sexual abuse of any party or the child of any party.⁵⁶

55 N.D. Admin Order 17 § 6(A)(3),(B)

56 N.D.C.C. § 14-09.1-02.

Chapter Two: Civil Protection Orders

2.1 Overview of Civil Protection Orders

North Dakota has three types of civil protection orders: Domestic Violence Protection Orders, Disorderly Conduct Restraining Orders, and Sexual Assault Restraining Orders.

2.1.1 General Provisions

An individual may seek a temporary civil protection order before receiving a “permanent” civil protection order. A temporary civil protection order is ex parte and may be granted under specific circumstances depending on the type of civil protection order. Due to the potential danger involved, a court will typically decide on a petition for a temporary civil protection order on the same date it was filed.

If a temporary civil protection order is granted, a hearing must be held within 14 days, or later if good cause is shown, to determine whether to issue a “permanent” civil protection order. A civil protection order may be issued after notice and a full hearing. A temporary civil protection order remains in effect until a “permanent” order is filed and served.

There is no filing fee for petitioners seeking a civil protection order. Service must be made on the respondent at least five days before the hearing. If service cannot be made, the court may set a new hearing date. A petitioner may seek to serve the respondent by publication if personal service is unsuccessful.

Typically, a civil protection order is filed and heard in the county where the petitioner resides. However, proper venue in a civil protection order proceeding is the county in which the respondent resides.⁵⁷

⁵⁷ Selland v. Selland, 494 N.W.2d 367 (ND 1992); N.D.C.C. § 28-04-05.

A petition may be against only one respondent, and dual protection orders in a single action are prohibited.

The right to relief is not affected if the person leaves the residence to avoid domestic violence.⁵⁸ Additionally, a petition for a civil protection order may be brought without commencing an action for divorce, legal separation, annulment, or parenting rights and responsibilities.⁵⁹

2.1.2 Penalties for Violations

When a civil protection order is granted and the respondent or individual to be restrained is served a copy of the order, the first violation of an order is a class A misdemeanor. A violation of a civil protection order also constitutes contempt of court. Following a conviction, a second or subsequent violation under this chapter is a class C felony.⁶⁰

2.1.3 Minors

If the individual to be protected is a minor, the parent, guardian, or attorney guardian ad litem shall file a petition on behalf of the minor. The parent, guardian, or attorney guardian ad litem of the minor is the petitioner, and the minor is the protected individual. A minor of sufficient and competent age may petition for a civil protection order on their own behalf. If the respondent is a minor, the parent or guardian must be notified of the petition and any subsequent order.

The court, upon the request of either party or upon its own motion, may appoint an attorney guardian ad litem in an action for a civil protection order to represent a minor if either party or the court has reason for special concern for the immediate future of the minor. A guardian ad litem may be appointed at the time of a temporary civil protection order or any time before the full hearing. The role of the guardian ad litem consists of investigation and making a recommendation and report to the court. At no time may the

58 N.D.C.C. § 14-07.7-13

59 N.D.D.C. § 14-07.7-02(8)

60 N.D.C.C. § 14-07.7-17

involvement of the guardian ad litem alter the requirements outlined in section 14-07.7-02.

Appointment of the guardian ad litem expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to represent a minor in matters concerning parenting time. The guardian ad litem shall have access to records before the court, except as otherwise provided by law.

The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party can pay the fees, the court, after notice to the state's attorney of the county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.⁶¹

2.2 Domestic Violence Protection Order

2.2.1 Definitions

"Domestic violence" includes physical harm, bodily injury, stalking, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household member.⁶²

"Family or household member" means a spouse, family member, former spouse, parent, child, individual related by blood or marriage, individuals who are or were in a dating relationship, individuals residing together or who have resided together in the past, individuals with a child in common regardless of relationship status and, for the purpose of

⁶¹ N.D.C.C. § 14-07.7-14

⁶² N.D.C.C. § 14-07.7-1

the issuance of a civil protection order, any other individual with a sufficient relationship to the abusing individual as determined by the court under section 14-07.7- 07.

“Stalking” means: (1) To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or (2) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.

"Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.

"Protected individual" means the individual identified in a civil protection order issued under this chapter as the individual for whose benefit the civil protection order was issued.

2.2.2 Temporary Domestic Violence Protection Order

If a petition for relief alleges reasonable grounds to believe a respondent engaged in domestic violence, the court, pending a full hearing, may grant a temporary domestic violence protection order without providing notice to the respondent. The relief allowed for a temporary domestic violence protection order is more restrictive than a domestic violence protection order.

2.2.3 Domestic Violence Protection Order

The court may enter a “permanent” domestic violence protection order if:

1. The petitioner files a petition under section 14-07.7-02;

2. The sheriff serves the respondent with a copy of the temporary domestic violence protection order issued under section 14-07.7-06 and with notice of the time and place of the hearing;
3. The court sets a hearing for no later than fourteen days after issuance of the temporary domestic violence protection order or at a later date if good cause is shown; and
4. The court finds after the hearing that:
 - a. The relationship between the respondent and protected individual is sufficient to warrant protection; and
 - b. There was a showing of actual or imminent domestic violence.

There is no limit on the length of time for a domestic violence protection order, but it must be reasonable under the facts of each particular case.⁶³

The party seeking the domestic violence protection order must prove actual or imminent domestic violence by a preponderance of the evidence.⁶⁴ The North Dakota Supreme Court has construed imminent to mean "near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening; threatening; menacing; perilous."⁶⁵ If the type of domestic violence justifying a protection order is based upon fear, the harm feared by the petitioner may be "actual or imminent."⁶⁶ A district court's finding of domestic violence is a question of fact that will not be overturned on appeal unless clearly erroneous.⁶⁷ However, "a court has a duty to make accurate and adequate

63 Rinas v. Engelhardt, 2012 ND 146, 818 N.W.2d 767 (N.D. 2012), 774

64 Lindstaedt v. George, 952 N.W.2d 102 (N.D. 2020), 104

65 State v. Kurle, 390 N.W.2d 48, 49 (N.D.1986)

66 Legacie-Lowe v. Lowe, 994 N.W.2d 177 (N.D. 2023), 179

67 Wolt, 2010 ND 33, ¶ 17, 778 N.W.2d 802;

findings to support the issuance of an order and to allow for an intelligible review of a case on appeal.”⁶⁸

Findings in a civil protection order should include jurisdictional facts, the relationship of the parties, and a description of the acts deemed to be domestic violence. The conclusions of law should include subject matter jurisdiction, jurisdiction over the parties, that notice of the hearing was given, and that the petitioner has demonstrated acts of actual or imminent domestic violence by a preponderance of the evidence. Evidence of previous abuse may be considered in determining whether abuse is likely to continue.⁶⁹

2.2.4 Relief

Relief Type	Temporary DVPO Relief ⁷⁰	Permanent DVPO Relief ⁷¹
Restraint	Restraining the respondent from having contact with a protected individual.	Restraining the respondent from having contact with a protected individual.
Location Exclusion	Excluding the respondent from the residence or from a place necessary to ensure the safety of the protected individual.	Excluding the respondent from the residence or from a place necessary to ensure the safety of the protected individual.
Primary Residential Responsibility	Awarding temporary primary residential responsibility or	Awarding temporary primary residential responsibility or

⁶⁸ Ficklin v. Ficklin, 710 N.W.2d 387, 2006 ND 40 (N.D. 2006), 391

⁶⁹ Steckler v. Steckler, 492 N.W.2d 76, 81 (N.D. 1987); Krank v. Krank, 541 N.W.2d 714, 716 (N.D. 1996)(stating that finding of fact are especially important in domestic violence cases because the presence of finding on the issue shows that the trial court did not ignore the issue in reaching its conclusion).

⁷⁰ N.D.C.C. § 14-07.7-06

⁷¹ N.D.C.C. § 14-07.7-07

	establishing temporary parenting time.	establishing temporary parenting time.
Firearm Surrender	Requiring the respondent to surrender any firearm or other dangerous weapon in the respondent's possession, custody, or control, if the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in further acts of violence.	Requiring the respondent to surrender any firearm or other dangerous weapon in the respondent's possession, custody, or control, if the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in further acts of violence.
Financial Support		Requiring a party to pay any support necessary for the support of a party and any minor children of the parties and reasonable attorney fees and costs.
Use of Property		Awarding temporary use of personal property, including motor vehicles, to either party.
Domestic Violence Offender Intervention Program		Recommending or requiring that the respondent complete a domestic violence offender assessment and attend a domestic violence offender intervention program. ⁷²

72 N.D.C.C § 12.1-17-13

2.3 Disorderly Conduct Restraining Order

2.3.1 Definitions

“Disorderly conduct” means intrusive or unwanted acts, words, or gestures intended to adversely affect the safety, security, or privacy of another individual. Disorderly conduct includes human trafficking and attempted human trafficking as defined in title 12.1.

Disorderly conduct does not include constitutionally protected activity.

“Stalking” has the meaning as in section 12.1-17-07.1. Domestic violence and disorderly conduct include stalking.⁷³

"Stalk" means:

1. To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
2. The unauthorized tracking of the person's movements or location through the use of a global positioning system, robot, or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.

“Course of Conduct” means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term includes an act conducted with a robot in the direct control of the person. The term does not include constitutionally protected activity.

73 N.D.C.C. § 14-07.7-1; N.D.C.C § 12.1-17-07.1

"Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.

"Robot" means an artificial object or system that senses, processes, and acts using technology, including the associated elements, communication links, and artificial intelligence. The term includes remotely piloted aircraft.

2.3.2 General Provisions

Some domestic violence victims may petition for a disorderly conduct restraining order instead of a domestic violence protection order. A disorderly conduct restraining order does not require a relationship between the parties and the conduct is generally seen as easier to prove. However, a disorderly conduct restraining order does not offer the same relief as a domestic violence protection order as its only relief is a restraint provision and may only last up to two years.

2.3.3 Temporary Disorderly Conduct Restraining Order

If the petition for relief alleges reasonable grounds that a respondent engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the respondent to cease the disorderly conduct or contact with the protected individual.⁷⁴ A temporary restraining order may be entered against the respondent named in the petition and without notice to the respondent.

2.3.4 Disorderly Conduct Restraining Order

The court may grant a disorderly conduct restraining order ordering the respondent to cease the disorderly conduct or contact with the protected individual if⁷⁵:

⁷⁴ N.D.C.C. § 14-07.7-04

⁷⁵ N.D.C.C. § 14-07.7-05

- a. The petitioner files a petition under section 14-07.7-02;
- b. The sheriff serves the respondent with a copy of the temporary restraining order issued under section 14-07.7-04 and with notice of the time and place of the hearing;
- c. The court sets a hearing for no later than fourteen days after issuance of the temporary restraining order, or a later date if good cause is shown; and
- d. After the hearing, the court finds reasonable grounds exist to believe the respondent engaged in disorderly conduct.

If a respondent claims to have engaged in constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity. Relief granted by the restraining order may not exceed two years.

2.4 Sexual Assault Restraining Order

2.4.1 Definitions

"Sexual assault" means any nonconsensual offense in chapter 12.1-20 for which sexual act or sexual conduct, as defined in section 12.1-20-02 is an element.

"Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

"Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or

ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.⁷⁶

2.4.2 General Provisions

Some victims may petition for a sexual assault restraining order instead of a domestic violence protection order. A sexual assault restraining order is similar to a disorderly conduct restraining order in which it does not require a relationship between the parties. A sexual assault restraining order offers more relief than a disorderly conduct restraining order but not as much as a domestic violence protection order.

2.4.3 Temporary Sexual Assault Restraining Order

If the petition for relief alleges reasonable grounds to believe an individual has committed sexual assault, the court, pending a full hearing, may grant a temporary sexual assault restraining order.⁷⁷

A temporary restraining order may be entered only against the individual named in the petition. The order must include provisions prohibiting the individual from:

- a. Harassing, stalking, or threatening the protected individual;
- b. Appearing at the residence, school, and place of employment of the protected individual; and
- c. Contacting the protected individual.

2.4.4 Sexual Assault Restraining Order

The court may grant a sexual assault restraining order if⁷⁸:

76 N.D.C.C. § 14-07.7-1; N.D.C.C. § 12.1-20-02

77 N.D.C.C. § 14-07.7-08

78 N.D.C.C. § 14-07.7-09

- a. The petitioner files a petition under section 14-07.7-02;
- b. The sheriff serves the respondent with a copy of the temporary sexual assault restraining order issued under section 14-07.7-08 and with notice of the time and place of the hearing;
- c. The court sets a hearing for no later than fourteen days after issuance of the temporary sexual assault restraining order or a later date if good cause is shown; and
- d. The court finds after the hearing that there are reasonable grounds to believe the respondent committed sexual assault.

The order must include provisions prohibiting the respondent from:

- a. Harassing, stalking, or threatening the protected individual;
- b. Appearing at the residence, school, and place of employment of the protected individual; and
- c. Contacting the protected individual.

The relief granted by the sexual assault restraining order may not exceed two years.

2.5 Federal Firearms Prohibitions

Federal law identifies two instances when a firearms prohibition is triggered due to domestic violence: (1) when a person is convicted of a qualifying misdemeanor crime of domestic violence and (2) when a person is subject to a qualifying protection order.⁷⁹ In this chapter of the Court Resource Guide, the qualifying protection order-related firearms prohibition is described. The prohibition that is triggered by a misdemeanor crime of domestic violence is addressed [in the criminal law chapter](#). Although the firearm prohibition is controversial, the U.S. Supreme Court has held that “an individual found by a

⁷⁹ 18 U.S.C. § 922(g)

court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.”⁸⁰

If the court issues a qualifying protection order, the judge should notify the respondent that they will be required to submit to the firearms prohibition and ensure that steps are taken to enforce the prohibition including ordering law enforcement to collect the firearms of the respondent.

A person subject to a qualifying protection order is prohibited from shipping, transporting, possessing, or purchasing any firearm if the protected party is the person’s intimate partner or child of such intimate partner or person.⁸¹ This prohibition remains in place for the duration of the qualifying protection order.

A qualifying protection order for the purposes of triggering this prohibition is a civil protection order that:

- Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate;
- Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child: or
- By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.⁸²

80 United States v. Rahimi, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024), 370.

81 18 U.S.C. § 922(g)(8)

82 18 U.S.C. § 922(g)(8)

The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who is cohabitating or has cohabitated with that person.⁸³

When issuing domestic violence civil protection orders that meet the federal definition, judges should explain these firearms prohibitions to the petitioner and respondent and ensure enforcement of these provisions.⁸⁴

2.6 Full Faith and Credit

A civil protection order issued that is consistent with certain federal requirements by the court of a different State, Indian tribe, or territory shall be accorded full faith and credit in North Dakota. The civil protection order must be enforced by the court and law enforcement personnel of North Dakota as if it were the order of the enforcing state or tribe.⁸⁵

A civil protection order is entitled to full faith and credit if:

1. The issuing court has personal jurisdiction over the parties and subject matter jurisdiction under the law of such State, Indian tribe, or territory; and
2. Reasonable notice and opportunity to be heard are given to the person against whom the order is sought sufficient to protect that person’s right to due process.

In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.⁸⁶

83 18 U.S.C. § 922(g)(8)

84 The Violence Against Women Act of 2022 requires that states certify their laws encourage arrest of offenders who violate the terms of a valid and outstanding protection. See 34 U.S.C § 10461(c)(1)(A)(ii)

85 18 U.S. Code § 2265(b)

86 18 U.S. Code § 2265(b)

2.7 Amendments, Dismissals, and Extensions of Civil Protection Orders

2.7.1 Amendments

A court may amend a civil protection order following a motion by either party.⁸⁷ Typical reasons for amendments include modifying the relief or restraint provisions based on a change in circumstances.

2.7.2 Dismissals

There are differing options courts utilize for dismissal requests. Courts may require the petitioner to file a notarized letter or a formal motion. A notarized letter is utilized to ensure it is truly the petitioner requesting the dismissal instead of the respondent impersonating the petitioner. Courts may also require a hearing before dismissing a civil protection order due to the concern that a respondent might be coercing the petitioner to dismiss the civil protection order.

2.7.3 Extensions

A court may extend a civil protection order if the petitioner requests the extension before the original civil protection order expires.⁸⁸ The court does not need to have ruled on the extension before the expiration of the civil protection order, the petitioner simply needs to file the extension request prior to the expiration of the civil protection order.⁸⁹

Typically, if the civil protection order is set to expire prior to a hearing on the extension, a court will issue a temporary civil protection order until the hearing. A petitioner does not need to establish a second instance of actual or imminent domestic violence occurred for

⁸⁷ N.D.C.C. § 14-07-7.-3(2)

⁸⁸ Frisk v. Frisk, 206 ND 165, ¶ 8, 719 N.W.2d 332 (N.D. 2006).

⁸⁹ Gaab v. Ochsner, 2001 ND 195, ¶ 5, 636 N.W.2d 669.

a court to extend the civil protection order.⁹⁰ A court considers the factual situation surrounding the extension request.⁹¹ A court may consider threats of violence and civil protection order violations by the respondent, petitioner's fear of the respondent, and the history of the parties' relationship.⁹²

2.8 Certified Domestic Violence Sexual Assault Advocates in Civil Protection Order Proceedings

A certified domestic violence sexual assault advocate provides direct support services to alleged victims of domestic violence or sexual assault. North Dakota Administrative Rule 34 allows a certified domestic violence sexual assault advocate to assist the petitioner in completing forms for a civil protection order and sit with the petitioner during court proceedings.⁹³ An individual must complete 42 hours of initial training provided by the North Dakota Domestic & Sexual Violence Coalition, followed by 12 hours of continuing education each year to be certified. Certified domestic violence sexual assault advocates are not attorneys and are not intended nor should be viewed by the court as attorneys.⁹⁴ A list of domestic violence sexual assault organizations can be found [here](#).

2.9 Enforcement of Civil Protection Orders

When a protection order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the protection order is issued.

90 Odden v. Rath, 730 N.W.2d 590, 2007 ND 51 (N.D. 2007) ;Gaab v. Ochsner, 2001 ND 195, ¶ 5, 636 N.W.2d 669.

91 Saville v. Ude, 776 N.W.2d 31, 2009 ND 211 (N.D. 2009).

92 Saville v. Ude, 776 N.W.2d 31, 2009 ND 211 (N.D. 2009).

93 N.D. Admin. Rule 34 (2021)

94 See Francis v. Francis, 2014 ND 111

A law enforcement officer shall arrest an individual without a warrant if the individual has committed the offense of violating a civil protection order regardless of whether the violation was committed in the presence of the officer.⁹⁵

When an order is issued upon request of the petitioner, the court shall order the sheriff or other appropriate law enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution of the protection order.⁹⁶

95 N.D.C.C. § 14-07.7-18

96 N.D.C.C. § 14-07.7-19

Chapter Three: Domestic Violence and Family Law

3.1 Overview of Domestic Violence and Family Law

Contested family law proceedings often include allegations of domestic violence. In North Dakota family law, there are several places in which findings of domestic violence have an impact on the outcome of family law decisions:

- Divorce
- Division of property
- Spousal support
- Residential responsibility
- Parenting time

It is important to remember in these cases that the rulings of the North Dakota Supreme Court include precedents that stress that the fault of domestic violence is upon the perpetrator. In *Heck*, the Court recognized that “[d]omestic violence is not caused by stress in the perpetrator’s life, alcohol consumption, or a particular victim’s propensity to push a perpetrator’s buttons. Rather, domestic violence is a learned pattern of behavior aimed at gaining a victim’s compliance.”⁹⁷

In *Krank*, the Court stated that domestic violence is a learned behavioral pattern, and, in some cases, a single act may constitute domestic violence.⁹⁸

⁹⁷ *Heck v. Reed*, 529 N.W.2d 155, 164 (N.D. 1995).

⁹⁸ *Krank v. Krank*, 529 N.W.2d 844, 850 (N.D. 1995).

3.1.1 Finding of Domestic Violence

North Dakota Century Code establishes that “domestic violence” includes “physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, not committed in self-defense, on the complaining family or household members.”⁹⁹

A district court’s finding of domestic violence is a finding of fact that will not be overturned unless it is clearly erroneous.¹⁰⁰ A finding of fact is clearly erroneous if “it is induced by an erroneous view of the law, if no evidence supports it, or if, on the entire record, [the justices of the North Dakota Supreme Court] are left with a definite and firm conviction a mistake has been made.”¹⁰¹

3.2 Domestic Violence and Divorce

When a divorce is granted, the court is required to make such equitable distribution of the real and personal property of the parties as may seem just and proper.¹⁰² The distribution to be made depends upon the facts and circumstances of each particular case.¹⁰³ There is no rigid rule for the division of property but the ultimate object to be sought is an equitable distribution.¹⁰⁴

3.2.1 Division of Marital Property

On appeal, a district court’s distribution of marital property is treated as a finding of fact and is reviewed under the clearly erroneous standard of review.¹⁰⁵ A finding of fact is

99 N.D.C.C. § 14-07.1-01(2).

100 *Legacie-Lowe v. Lowe*, 2023 ND 140, ¶ 4, 994 N.W.2d 177.

101 *Id.*

102 N.D.C.C. § 14-05-24.

103 *Agrest v. Agrest*, 75 N.D. 318, 319, 27 N.W.2d 697 (N.D. 1947).

104 *Ruff v. Ruff*, 78 ND 775, 52 N.W.2d 107 (ND 1952)

105 *McCarthy v. McCarthy*, 2014 ND 234, ¶ 8, 856 N.W.2d 762.

clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, the North Dakota Supreme Court is left with a definite and firm conviction a mistake has been made.¹⁰⁶ The ND Supreme Court views the evidence in the light most favorable to the findings, and the district court's factual findings are presumptively correct.¹⁰⁷

Valuations of marital property within the range of the evidence presented are not clearly erroneous.¹⁰⁸ An owner of real property may testify as to the value of the land without any further qualification or special knowledge.¹⁰⁹ A choice between two permissible views of the evidence is not clearly erroneous if the district court's findings are based either on physical or documentary evidence, or inferences from other facts, or on credibility determinations.¹¹⁰

"Spousal support and property distribution are interrelated and intertwined and must be considered together." The district court must apply the *Ruff-Fischer* guidelines when distributing property, including the conduct of the parties during the marriage.¹¹¹

According to the *Ruff-Fischer* guidelines, both economic and noneconomic fault are proper factors for the trial court to consider in dividing marital property.¹¹²

The *Ruff-Fischer* guidelines include:

- The respective ages of the parties;
- Their earning ability;
- The duration of the marriage and conduct of the parties during the marriage;
- Their station in life;

106 Id.

107 Id.

108 *Berdahl v. Berdahl*, 2022 ND 136, ¶ 6, 977 N.W.2d 294.

109 *Kosobud v. Kosobud*, 2012 ND 122, ¶ 13, 817 N.W.2d 384.

110 *Berdahl v. Berdahl*, 2022 ND 136, ¶ 6, 977 N.W.2d 294.

111 *Swanson v. Swanson*, 2019 ND 25, ¶ 12, 921 N.W.2d 666.

112 *McDowell v. McDowell*, 2001 ND 176, ¶ 6, 635 N.W.2d 139.

- The circumstances and necessities of each;
- Their health and physical condition;
- Their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage; and
- Such other matters as may be material.

The court must also consider the needs of the spouse seeking support and the ability of the other spouse to pay.¹¹³ The court does not need to make a finding on each factor, but it must explain the rationale for its decision.

The North Dakota Supreme Court has not mandated district courts to weigh domestic violence more heavily than other factors under the *Ruff-Fischer* guidelines.¹¹⁴ However, failure to properly weigh domestic violence into a court decision may result in the ND Supreme Court reversing upon “a definite and firm conviction a mistake has been made.”¹¹⁵

In *Wisnewski*, the district court included the husband’s \$8,000 of legal debt and \$5,000 of psychiatric care, which was ordered as relief in a domestic violence protection order the wife had against her husband. Because the court did not address why the wife should be responsible for those debts, and because the debts stemmed from the husband’s domestic violence, the ND Supreme Court was left with a “definite and firm conviction” that the district court had made a mistake. The ND Supreme Court reversed and remanded, with instructions for the district court to allocate those debts to the husband.

Assets accumulated after separation but prior to divorce are included in the marital estate.¹¹⁶ However, a district court may properly order that a party to a

113 *Becker v. Becker*, 2011 ND 107, ¶ 28, 799 N.W.2d 53.

114 *Swanson v. Swanson*, 2019 ND 25, ¶ 14, 921 N.W.2d 666.

115 *Wisnewski v. Wisnewski*, 945 N.W.2d 331 (ND 2020).

116 *Kosobud v. Kosobud*, 2012 ND 122, ¶ 13, 817 N.W.2d 384; *Boeckel v. Boeckel*, 2010 ND 130, ¶ 24, 785 N.W.2d 213; *Lynnes v. Lynnes*, 2008 ND 71, ¶ 14, 747 N.W.2d 93.

divorce assume separate indebtedness incurred since the separation.¹¹⁷ In cases with allegations of domestic violence or financial abuse, the Court should consider examining post-separation financial decisions for abusive or controlling behaviors, such as removing a party's access or money from shared accounts.

3.2.2 Spousal Support

A divorce court “may compel either of the parties... to make such suitable allowances to the other party for support during life or for a shorter period as to the court may seem just, having regard to the circumstances of the parties respectively.”¹¹⁸ Spousal support decisions are findings of fact that will not be reversed on appeal unless clearly erroneous.¹¹⁹

A clear description of the financial situation of each party is helpful for understanding the court's rational in awarding spousal support on appeal, but the district court is not required to provide a complete calculation of each parties' assets, debts, and expenses.¹²⁰ “The district court must adequately explain the basis for its decision, but [the North Dakota Supreme Court] will not reverse a district court's decision when valid reasons are fairly discernable, either by deduction or inference.”¹²¹ A spousal support award based on need will be upheld when it falls within the range of the evidence presented.¹²²

Trial courts must consider the Ruff-Fischer guidelines in deciding spousal support, both as to amount and duration.¹²³ A district court must consider the Ruff-Fischer guidelines in determining whether spousal support is appropriate, including:

117 *Kosobud v. Kosobud*, 2012 ND 122, ¶ 14, 817 N.W.2d 384.

118 N.D.C.C. § 14-05-24.

119 *Wald v. Wald*, 556 N.W.2d 291, 296 (ND 1996), and *Wiese v. Wiese*, 518 N.W.2d 708, 710 (ND 1994).

120 *Ritter v. Ritter*, 2024 ND 147, ¶ 24, 10 N.W.2d 75.

121 *Id.* At ¶ 24.

122 *Kaspari v. Kaspari*, 2022 ND 204, ¶ 11, 982 N.W.2d 291.

123 *Ruff v. Ruff*, 78 N.D. 775 52 N.W.2d 107 (1952); *Fischer v. Fischer*, 139 N.W.2d 845 (N.D. 1966).

[T]he respective ages of the parties, their earning ability, the duration of the marriage and conduct of the parties during the marriage, their station in life, the circumstances and necessities of each, their health and physical condition, their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and such other matters as may be material.¹²⁴

“The district court must make spousal support awards in consideration of the needs of the spouse seeking support and of the supporting spouse’s needs and ability to pay. Additionally, the district court must consider the relevant factors under the *Ruff-Fischer* guidelines in determining an award of spousal support.”¹²⁵

3.2.3 Duration of Spousal Support

After considering the *Ruff-Fischer* factors, the court may award one of three kinds of spousal support, according to the statute:

- a. **Rehabilitative spousal support** when it is possible to restore a spouse to independent economic status or to equitably divide the burden of the divorce by increasing that spouse’s earning capacity.
- b. **General term spousal support** when a spouse is not capable of rehabilitation or self-support, or to minimize the burden of the divorce.
- c. **Lump sum spousal support** as additional marital property to a spouse or the court may otherwise adjust the distribution of the marital property and debt to eliminate the need for spousal support or to reduce the amount or the duration of the spousal support.

Except upon written findings by the court which require deviation beyond the time limits of this section is necessary, spousal support terminates according to the following statutory guidelines:

124 *Schmuck v. Schmuck*, 2016 ND 87, ¶ 6, 882 N.W.2d 918.

125 *Thompson v. Thompson*, 2018 ND 21, ¶ 30, 905 N.W.2d 772.

Length of Marriage	Duration of Spousal Support Award as Percentage of the Number of Months
Less than 5 years	Up to 50%
Between 5 and 10 years	Up to 60%
Between 10 and 15 years	Up to 70%
Between 15 and 20 years	Up to 80%
20 years or more	Duration agreed upon by parties for a limited time as determined by the court

Under the current version of N.D.C.C. § 14-05-24.1, spousal support is limited in duration to certain percentages based on the number of years the parties were married, **unless** the court makes written findings why a deviation in the length of the term of support is necessary. The North Dakota Supreme Court has upheld spousal support that deviates from these guidelines based on the presence of and consequences from domestic violence in *Walden v. Walden*.

In *Walden v. Walden*, the parties were married in April of 2016, separated in June 2020, and divorce was initiated in September 2022. The marriage was “marred by a series of domestic violence incidents” that were perpetrated by the husband. In one such incident of domestic violence, the husband struck his wife, resulting in a permanent injury to her left eye which could not be corrected with lenses, which made it difficult for her to see and impacted her employability. The wife also developed multiple sclerosis during the marriage, which also impacted her ability to work. The court granted an award of spousal support for \$1,000 to be paid monthly for seven years. The district court made specific findings on the expenses of the parties and entered evidence of monthly incomes and expenditures of both parties before making this decision, justifying it by saying that after

“making reasonable adjustments to his purchases and lifestyle, the spousal support award would not cause [the husband] undue financial hardship.” The North Dakota Supreme Court upheld the spousal support award, finding that the court made adequate findings on the record as to their reasoning for deviating from the statutory support limitations. The North Dakota Supreme Court also held that the district court’s reasoning for the ability of the husband to pay spousal support was not improper; because the husband failed to provide evidence of net income, he waived any argument that he did not have the ability to pay spousal support without undue hardship.¹²⁶

3.2.4 Attorney’s Fees

“Under N.D.C.C. § 14-05-23, a district court has broad discretion to award attorney’s fees in a divorce action.”¹²⁷ In exercising its discretion whether to award attorney’s fees under N.D.C.C. § 14-05-23, “the court must balance one party’s needs against the other party’s ability to pay.”¹²⁸

When balancing the parties’ needs and ability to pay, the district court should consider:

- The property owned by each party,
- Their relative incomes,
- Whether property is liquid or fixed assets, and
- Whether the action of either party unreasonably increased the time spent on the case.¹²⁹

126 *Walden v. Walden*, 2025 ND 32.

127 *Friesner v. Friesner*, 2019 ND 30, ¶ 20, 921 N.W.2d 898.

128 *Harvey v. Harvey*, 2016 ND 251, ¶ 7, 888 N.W.2d 543.

129 *Id.*

An award of attorney's fees requires specific findings supported by evidence of the parties' financial conditions and needs.¹³⁰ "Implied findings are insufficient for an award of attorney's fees."¹³¹

When the district court does not provide sufficient findings, the ND Supreme Court is "left to speculate whether factors were properly considered and the law was properly applied, leaving [them] unable to perform [their] appellate function."¹³² An award will not be reversed on appeal unless the court abuses its discretion.

3.3 Domestic Violence in Residential Responsibility and Parenting Time Determinations

North Dakota law requires courts to consider the best interests of the child when determining residential responsibility and parenting time. This standard ensures that the physical and emotional safety of the child is at the forefront of these cases.

3.3.1 Residential Responsibility (Custody)

According to N.D.C.C. § 14-09-06.1, a district court must award custody of a child to the person who will promote the best interests and welfare of the child.¹³³ Although the court has substantial discretion in a custody decision, the court must consider the relevant factors in N.D.C.C. § 14-09-06.2(1)(a)-(m).¹³⁴ A separate finding is not required for each statutory factor, but the court's findings must be stated with sufficient particularity, so this Court can understand the factual basis for the district court's decision.¹³⁵ When there

130 *Id.*

131 *Nieuwenhuis v. Nieuwenhuis*, 2014 ND 145, ¶ 22, 948 N.W.2d 848.

132 *Deyle v. Deyle*, 2012

133 *Gietzen v. Gabel*, 2006 ND 153, ¶ 7, 718 N.W.2d 552.

134 *Cox v. Cox*, 2000 ND 144, ¶ 10, 613 N.W.2d 516.

135 *Cox v. Cox*, 2000 ND 144, ¶ 10, 613 N.W.2d 516.

is credible evidence of domestic violence... it dominates the hierarchy of factors to be considered.¹³⁶

Section 14-09-06.2(1)(j) provides in relevant part:

In awarding custody or granting rights of visitation, the court **shall consider evidence of domestic violence**. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence... The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

How much weight should be given to factor j?

The rebuttable presumption in factor j, if triggered, outweighs other factors and prevents the abusive parent from obtaining custody of the child, unless the perpetrator parent proves "by clear and convincing evidence that the best interests of the child require" that the perpetrator of the domestic violence receive residential responsibility.¹³⁷ "The practical effect of the court's interpretation of the statute is that the perpetrator of

136 *Thompson v. Olson*, 2006 ND 54, ¶ 10, 711 N.W.2d 226.

137 N.D.C.C. § 14-09-06.2(1)(j). *Helbling v. Helbling*, 532 N.W.2d 650 (ND 1995); *Heck v. Reed*, 529 N.W.2d 155 (ND 1995).

domestic violence cannot be awarded custody of a child unless the other parent is found to be an unfit parent.”¹³⁸

A trial court cannot treat the rebuttable presumption as simply another factor to be weighed with the remaining best-interest factors. It takes “compelling or exceptional circumstances under N.D.C.C. § 14-09-06.2(1)(j) to award custody to a perpetrator of domestic violence, and certainly something more than the customary weighing and reciting of the factors found in N.D.C.C. § 14-09-06.2(1)a through (i), (k), (l).”¹³⁹

How is factor j properly applied?

For a district court to properly apply N.D.C.C. § 14-09-06.2(1)(j), the court must explicitly address the evidence of domestic violence in its findings.¹⁴⁰ “When a district court addresses whether evidence of domestic violence triggers the presumption under that statute, we require specific findings and conclusions regarding the presumption so we are not left guessing as to the court’s rationale regarding the application of the presumption.”¹⁴¹

What if there is violence, but it does not trigger factor j?

Even if the presumption is not triggered by the facts in evidence, it is appropriate for a district court to consider evidence of domestic violence in a custody determination.¹⁴² Although specific factual findings are not required when evidence of domestic violence does not rise to the level to trigger the presumption against the perpetrator receiving residential responsibility, that evidence can still be considered by the court as one of the best interest factors.¹⁴³

138 *Krank v. Krank*, 529 N.W.2d 844, 848 (ND 1995) [citing *Heck*, 529 N.W.2d at 166 (VandeWalle, C.J., concurring in result)].

139 *Zuger v. Zuger*, 563 N.W.2d 804, ¶ 28 (ND 1997).

140 *Krank v. Krank*, 529 N.W. 2d 844, 850 (1995).

141 *Geitzen*, 2006 ND 153, ¶ 9, 718 N.W.2d 552 (citing *Gonzalez*, 2005 ND 131, ¶ 6, 700 N.W.2d 711).

142 *Ramstad v. Biewer*, 589 N.W.2d 905, ¶ 21 (N.D. 1999).

143 *Cox v. Cox*, 2000 ND 144, ¶ 17, 613 N.W.2d 516 (N.D. 2000).

What if there is no violence directed at the children?

Section 14-09-06.2(1)(j) precludes a court from weighing an absence of domestic violence against the children as one of the factors which may rebut the presumption since the presumption arises “whenever violence is directed at any member of a household or family, not only when a child is the direct victim on the violence.”¹⁴⁴ Under the presumption, “[t]he legislature intended that courts presume that any domestic violence negatively impacts the best interests of the children.”¹⁴⁵ This statutory presumption established by factor j “rests on the premise that children are harmed emotionally and too often physically when they are around perpetrators of domestic violence.”¹⁴⁶ The fact that a parent has not abused the child, only the child’s other parent, does not avoid the effect of the presumption.¹⁴⁷

How can the factor j presumption be rebutted?

The rebuttable presumption outweighs other factors and prevents the abusive parent from obtaining custody of the child, unless the violent parent proves “by clear and convincing evidence that the best interests of the child require” that the perpetrator receive custody.¹⁴⁸ The burden of proof is on the perpetrator of domestic violence to prove that the best interests of the child **require** that the perpetrator be a custodial parent.¹⁴⁹

“The practical effect of the court’s interpretation of the statute is that the perpetrator of domestic violence cannot be awarded custody of a child unless the other parent is found to be an unfit parent.”¹⁵⁰ To reach the “clear and convincing” evidence threshold, it often

144 *Heck v. Reed*, 529 N.W.2d 155, 163 (ND 1995).

145 *Id.* at 164; *Bruner v. Hager*, 534 N.W.2d 825, 828 (ND 1995).

146 *Wisnewski v. Wisnewski*, 945 N.W.2d 331, ¶ 27, (N.D. 2020).

147 *Id.*

148 N.D.C.C. § 14-09-06.2(1)(j). *Helbling v. Helbling*, 532 N.W.2d 650 (ND 1995); *Heck v. Reed*, 529 N.W.2d 155 (ND 1995).

149 N.D.C.C. § 14-09-06.2(1)(j).

150 *Krank v. Krank*, 529 N.W.2d 844, 848 (ND 1995) [citing *Heck*, 529 N.W.2d at 166 (VandeWalle, C.J., concurring in result)].

“will be necessary to detail the failings of the abused rather than the virtues, if they exist, of the abuser.”¹⁵¹ It takes “compelling or exceptional circumstances under N.D.C.C. § 14-09-06.2(1)(j) to award custody to a perpetrator of domestic violence, and certainly something more than the customary weighing and reciting” of the best-interests factors.¹⁵²

The statute provides that “[t]he fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility.”¹⁵³ As such, when determining whether the abused parent is “fit,” ensure that factors involving housing, health, and stability are not negatively influenced by the perpetrator’s domestic violence. Because the violence is not the fault of the abused parent, it is unfair to attribute the consequences of the violence to the fitness of the abused parent. Examples of consequences of violence can include having unstable housing after a victim flees to a domestic violence shelter, a victim not attending medical appointments or school events out of fear of interacting with the abuser, or ongoing complex mental and physical health needs that resulted from or were worsened by the violence.

In the case of two fit parents, the statutory presumption against awarding custody to a perpetrator of domestic violence may be rebutted only by compelling circumstances demonstrating that the best interests of the children **require** that custody be placed with the perpetrator.

151 *Heck*, 529 N.W.2d at 166 (VandeWalle, C.J., concurring in result)].

152 *Zuger v. Zuger*, 563 N.W.2d 804, ¶ 28 (ND 1997).

153 N.D.C.C. § 14-09-06.2(1)(j)

Factors that are proper and relevant to rebutting factor j presumption	Factors that are irrelevant, insufficient, or precluded from consideration in rebutting factor j presumption
• Unfitness of victim parent¹⁵⁴ • Perpetrator's enrollment and completion of a domestic violence offender intervention program, under certain circumstances¹⁵⁵	• Absence of violence against child¹⁵⁶ • Perpetrator's enrollment or completion of anger management or substance use programming¹⁵⁷ • Perpetrator's sobriety or discontinued use of substances¹⁵⁸ • Testimony that violence will not continue because marriage/parental relationship/cohabitation has ended¹⁵⁹ • Passage of time since the last act of violence¹⁶⁰ • Whether the child was born yet at the time of violence¹⁶¹

154 Heck, 529 N.W.2d at 166 (VandeWalle, C.J., concurring in result)].

155 Krank v. Krank, 529 N.W.2d 844 (N.D. 1995)

156 Heck v. Reed, 529 N.W.2d 155 (N.D. 1995)

157 Wisnewski v. Wisnewski, 945 N.W.2d 331 (N.D. 2020)

158 Wisnewski v. Wisnewski, 945 N.W.2d 331 (N.D. 2020)

159 Zuger v. Zuger, 563 N.W.2d 804 (N.D. 1997); Engh v. Jensen, 547 N.W.2d 922 (N.D. 1996).

160 Krank v. Krank, 541 N.W.2d 714 (N.D. 1996)

161 Krank v. Krank, 529 N.W.2d 844 (N.D. 1995)

	• Whether child witnessed violence¹⁶² • Negative traits or actions of the abused parent, if they are effects of the abuse¹⁶³
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The table on the previous page summarizes case law on factors that should and should not be considered in arguments to rebut factor j. While the factors in the right column may be irrelevant, insufficient, or precluded from consideration in rebutting factor j, they may be relevant to other best interest factors. These factors do not, on their own, rebut the presumption against residential responsibility for a perpetrator of domestic violence.

What if there is credible evidence of both parents committing domestic violence?

First, the trial court must measure the amount and extent of the domestic violence inflicted by each parent.¹⁶⁴ There must be specific findings as to whether the evidence of domestic violence is credible. If that evidence is found to be credible, the district court must determine whether the domestic violence of either party is significantly greater than that inflicted by the other, and how that weighs on the district court's decision in awarding custody.¹⁶⁵

If the amount and extent of domestic violence inflicted by one parent is significantly greater than that inflicted by the other, the statutory presumption applies only to the parent who has inflicted greater domestic violence, and not to the parent who inflicted less violence.¹⁶⁶

162 Krank v. Krank, 529 N.W.2d 844 (N.D. 1995)

163 N.D.C.C. § 14-09-06.2(1)(j).

164 Krank v. Krank, 529 N.W.2d 844, 850 (ND 1995).

165 Owan v. Owan, 541 N.W.2d 719, 722 (1996).

166 Krank v. Krank, 529 N.W.2d 844, 850 (ND 1995).

If the amount and extent of the domestic violence inflicted by one parent is roughly proportional to the violence inflicted by the other parent, and both parents are found to be otherwise fit parents, the presumption ceases to exist, and neither party is discounted or benefitted by the statutory presumption. In such a case, the court may base its decision on the other best interests factors when making its custody decision.¹⁶⁷ The trial court should consider, with the best interests factors, which parent is least likely to expose the child to additional violence.¹⁶⁸

When there is credible evidence of domestic violence on the part of both parents, findings that ambiguously allude to the issue are insufficient to support a custody award. Instead, the trial court must make detailed, explicit findings on the domestic violence issue.¹⁶⁹ This includes addressing evidence of domestic violence even if the district court finds it is not credible, or finds it is significantly less than the amount inflicted by the other parent. Specific findings are essential to properly show that the custody or visitation arrangement best protects the child and the abused parent.

3.3.2 Parenting Time (Visitation)

Parenting time with a parent without residential responsibility is presumed to be in the child's best interests, and "a court should only withhold visitation when it is likely to endanger the child's physical or emotional health."¹⁷⁰ The act of "denying a parent without [primary] residential responsibility parenting time with a child is 'an onerous restriction,' such that 'physical or emotional harm resulting from the visitation must be demonstrated in detail' before it is imposed."¹⁷¹

A parent who is found to have perpetrated domestic violence is presumed to be allowed supervised parenting time only "unless there is a showing by clear and convincing

167 *Krank v. Krank*, 529 N.W.2d 844, 850 (ND 1995).

168 *Owan v. Owan*, 541 N.W.2d 719, 722 (1996).

169 *Owan v. Owan*, 541 N.W.2d 719, 722 (1996).

170 *Curtiss v. Curtiss*, 2016 ND 197, 886 N.W.2d 565 (N.D. 2016).

171 *Id.*

evidence that unsupervised parenting time would not endanger the child's physical or emotional health."¹⁷² A conviction for a statutory offense which requires willfully causing bodily injury, such as aggravated assault, is sufficient reason to trigger the statutory presumption for only supervised parenting time between the abusive parent and the child(ren).¹⁷³ According to N.D.C.C. § 14-09-29(2):

If the court finds that a parent has perpetrated domestic violence and that parent does not have residential responsibility, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised parenting time with that parent unless there is a showing by clear and convincing evidence that unsupervised parenting time would not endanger the child's physical or emotional health.¹⁷⁴

Once the presumption is raised, the violent parent must present clear and convincing evidence to rebut the presumption.¹⁷⁵ Regardless of whether the presumption "is raised or rebutted, the presence of domestic violence remains a factor that must be considered in the balance."¹⁷⁶ A list of supervised parenting time and exchange centers can be found [here](#).

What if there is no evidence of violence towards the child(ren)?

It is improper for a district court to justify unsupervised parenting time on the basis that there is no documented evidence of violence towards the children, as this "disregards the

172 N.D.C.C. § 14-09-29(2).

173 *Wisnewski v. Wisnewski*, 945 N.W.2d 331, ¶ 23 (ND 2020).

174 N.D.C.C. § 14-09-29(2).

175 N.D.C.C. § 14-09-29(2).

176 *O'Hara v. Schneider*, 890 N.W.2d 831 (N.D. 2017) (citing *Mowan v. Berg*, 2015 ND 95, ¶ 11, 862 N.W.2d 523.)

many cases in which this Court has stressed that ‘the lack of violence toward the children does not rebut the presumption’ under ... § 14-09-29(2).”¹⁷⁷

Children in homes where domestic violence is perpetrated are “victimized by the climate of violence created by domestic violence between their parents, even if they are not direct targets of the abuse.”¹⁷⁸

How can the supervised parenting time presumption be rebutted?

Evidence of a strong relationship or love between parent and child is not enough to overcome the presumption. A perpetrator of domestic violence might love his or her children, but this is not clear and convincing evidence the perpetrator will not endanger the children.¹⁷⁹ To rebut the presumption, there must be a showing by clear and convincing evidence that unsupervised parenting time would not endanger the child’s physical or emotional health.¹⁸⁰

If the supervised parenting time presumption is triggered, it can still be rebutted by clear and convincing evidence that unsupervised parenting time would not endanger the child’s physical or emotional health.¹⁸¹

In *Schneider v. O’Hara*, the district court found that evidence triggered the presumption for the father to have supervised parenting time only; however, the district court also found the father had successfully rebutted the presumption with clear and convincing evidence, which included an accumulation of notes from multiple supervised visits, affidavits from several individuals who had knowledge of the father’s interactions with the child, and evidence that such visits and interactions did not result in physical or emotional harm toward the child. Because the father presented evidence gathered over time which

177 *O’Hara v. Schneider*, 2017 ND 53, ¶ 27, 890 N.W.2d 831. See also *Zuger v. Zuger*, 1197 ND 97, ¶ 30, 563 N.W.2d 804; *Engel v. Jensen*, 547 N.W.2d 922, 925 (ND 1996); *Bruner v. Hager*, 534 nwd 825, 828 (ND 1995).

178 *Heck v. Reed*, 529 N.W.2d 155 (ND 1995).

179 *Wisniewski v. Wisniewski*, 945 N.W.2d 331, ¶ 34 (ND 2020).

180 N.D.C.C. § 14-09-29(2).

181 N.D.C.C. § 14-09-29(2).

showed a strong relationship and no recent harm, the district court held that this evidence constituted clear and convincing evidence that unsupervised parenting time would not endanger the child’s physical or emotional health. The North Dakota Supreme Court affirmed, noting that each piece of accumulated evidence made the fact at issue incrementally more probable.¹⁸²

Like the presumption against residential responsibility, the presumption of supervised parenting time only for a perpetrator of domestic violence can be also be rebutted with evidence of enrollment and completion in a domestic violence offender intervention program, but it cannot be rebutted by enrollment in a substance abuse or mental health program, as these programs do not address the violent behavior specifically.¹⁸³ It is possible for perpetrators to “unlearn the pattern of domestic violence; however, this requires sufficient motivation for changing their violent behavior.”¹⁸⁴

3.3.3 Child Sexual Abuse—Residential Responsibility and Parenting Time for a Parent Perpetrator

The North Dakota Century Code provides clear guidance on custody and visitation in cases with credible evidence of sexual abuse of a child perpetrated by a parent. Section 14-09-29(3) provides:

If any court finds that a parent has sexually abused the parent’s child, the court shall prohibit contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers and that supervised parenting time is in the child’s best interests. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of the sexual abuse treatment program, and only when the abusive parent and the therapist for the

182 O’Hara v. Schneider, 897 N.W.2d 326 (N.D. 2017).

183 Wisniewski v. Wisniewski, 945 N.W.2d 331, ¶ 34 (ND 2020).

184 Heck v. Reed, 529 N.W.2d 155, 165 (ND 1995).

abused child agree that contact serves a therapeutic purpose and is in the best interests of the child.

3.3.4 Shared Decision-Making Authority

Decision-making responsibility can be particularly difficult to determine in a case with domestic violence because the power to make decisions could be used to manipulate and continue to inflict harm on the abused victim and the parties' child(ren). Decision-making authority includes both "[r]outine or day-to-day decisions" as well as "[m]ajor decisions such as education, health care, and spiritual development."¹⁸⁵ A parenting plan must include a provision relating to decision-making responsibility; that responsibility must be allocated in the best interests of the child.¹⁸⁶ There are special considerations when establishing parental decision-making authority in cases with domestic violence, established in N.D.C.C. § 14-09-31(4):

If the court finds that domestic violence as defined in § 14-07.1-01 has occurred, the court shall consider such domestic violence in determining whether joint decision-making responsibility is in the best interests of the child. In such cases, the court shall make orders for the allocation of parental rights and responsibilities that best protect the child, the parent, or both. If joint decision-making responsibility is granted, even though there is evidence of domestic violence, the court shall provide written findings to support the order.¹⁸⁷

Shared decision-making authority can be successful only where the parties have demonstrated an ability and willingness to cooperate in the children's best interests.¹⁸⁸ The presence of domestic violence is evidence that the abusive partner does not have the ability or willingness to cooperate with the abused parent. Because of this, a district court must make additional written findings to support an order of joint decision-

185 N.D.C.C. § 14-09-30(2)(a)(1)-(2)

186 N.D.C.C. § 14-09-30. See *Horsted v. Horsted*, 812 N.W.2d 448, ¶ 5, 2012 ND 24 (N.D. 2012).

187 N.D.C.C. § 14-09-31(4).

188 *Olson v. Olson*, 361 N.W.2d 249, 251 (ND 1985).

making if the court finds that domestic violence has occurred, according to N.D.C.C. § 14-09-31.¹⁸⁹

A district court's ruling on decision-making is a finding of fact, subject to the clearly erroneous standard.¹⁹⁰ A court need not make separate findings for each best interest factor, but the trial court's findings must provide sufficient detail to show the factual basis for the decision.¹⁹¹ If the district court finds domestic violence occurred, it must make written findings to support an order of joint decision-making.¹⁹² "When a trial court does not make required findings, it errs as a matter of law, and it is necessary to remand for 'additional findings.'" ¹⁹³

If the district court does establish shared decision-making authority in a parenting plan, it is only considered "in the best interests of the child" if the order includes a method of resolving disputes when the parents cannot agree.¹⁹⁴ In domestic violence and abuse cases, a perpetrator of domestic violence may try to use decision-making authority to exert power over the abused parent. Modifying an entire parenting plan can be a daunting and expensive task, and important decisions may need to be made quickly. Because of this, perpetrators of domestic violence may try to manipulate the abused parent by withholding (or granting then revoking) consent for medical treatment, educational changes, or travel plans, for example. In an abusive dynamic, "resolving disputes" can often become "placating the abuser." The children can end up in the middle of this power struggle. For the long-term safety of the children and abused parent, and for the best interests of the children, this dynamic should be considered when ruling on shared decision-making authority.

189 *Wisnewski v. Wisnewski*, 945 N.W.2d 331, ¶ 42 (ND 2020).

190 *Dick v. Erman*, 2019 ND 54, ¶ 14, 923 N.W.2d 137.

191 *Horsted v. Horsted*, 812 N.W.2d 448, ¶ 5, 2012 ND 24 (N.D. 2012).

192 N.D.C.C. § 14-09-31(4).

193 *Horsted v. Horsted*, 2012 ND 24, ¶ 5, 812 N.W.2d 448 (quoting *Sailer v. Sailer*, 2009 ND 73, ¶ 28, 764 N.W.2d 445).

194 N.D.C.C. § 14-09-31(3).

3.3.5 Parental Rights and Responsibilities

Parents have statutory rights and responsibilities, under N.D.C.C. § 14-09-32, which include:

- a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
- b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.
- c. Right to reasonable access to the child by written, telephonic, and electronic means.
- d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
- e. Duty to immediately inform the other parent of residential telephone numbers and address, and any changes to the same.
- f. Duty to keep the other parent informed of the name and address of the school the child attends.

These rights and responsibilities are not absolute. The statute provides that “the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion.”¹⁹⁵ Further, a trial court “shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.”¹⁹⁶

When determining the allocation of parenting rights and responsibilities, consider how the rights and responsibilities may impact the safety of the child and the abused parent.

195 N.D.C.C. § 14-09-32(2).

196 N.D.C.C. § 14-09-32(2).

An abused parent can be put at risk of further harm when the abused parent is accessible to the abusive parent, such as by sending new addresses and contact information or allowing the abusive parent to attend educational conferences.

3.3.6 Modifying Residential Responsibility

When can primary residential responsibility be modified?

Two years after the date of entry of an order establishing primary residential responsibility, the court may modify primary residential responsibility if it finds: (1) a material change has occurred in the child's or parties' circumstances, and (2) the change of circumstances effect the child in such an adverse way that it compels or requires a change in the existing custody arrangement to further the best interests of the child.¹⁹⁷ A "material change in circumstances" is "an important new fact that was not known at the time of the prior custody decree."¹⁹⁸ The party seeking to modify primary residential responsibility bears the burden of proof.¹⁹⁹ Not every change in circumstances will amount to a "significant change" warranting a change or modification of custody.²⁰⁰

Situations in which a material change of circumstances may be present:

- A child's present environment may endanger the child's physical or emotional health or impair the child's emotional development²⁰¹
- Relocation of a parent²⁰²
- Change in a mature child's preference, if there are reasons for that preference which are persuasive enough to result in a change in custody²⁰³

197 N.D.C.C. § 14-09-06.6(6).

198 *Lechler v. Lechler*, 2010 ND 158, ¶ 9, 786 N.W.2d 733.

199 N.D.C.C. § 14-09-06.6(8)

200 *Mosbrucker v. Mosbrucker*, 562 N.W.2d 390, ¶ 6, 1997 ND 72 (N.D. 1997)

201 *Selzer v. Selzer*, 2001 ND 138, ¶ 21, 631 N.W.2d 564.

202 *Gietzen v. Gietzen*, 1998 ND 70, ¶ 10, 575 N.W.2d 924.

203 *Mosbrucker v. Mosbrucker*, 1997 ND 72, ¶ 10, 562 N.W.2d 390.

- Remarriage of a parent²⁰⁴
- Attempts by one parent to alienate a child's affection for the other parent²⁰⁵
- Frustration of visitation²⁰⁶
- Open hostility between the child's parents which negatively affects the child²⁰⁷
- Improvements in a non-custodial parent's situation accompanied by a general decline in the condition of the children with the custodial parent over the same period²⁰⁸
- The parties' current custodial arrangements are substantially different than contemplated in the divorce decree²⁰⁹

Residential responsibility should not be changed in alienation and frustration of visitation cases until other remedies have been attempted.²¹⁰

How does factor j impact modifications to primary residential responsibility?

If the rebuttable presumption in N.D.C.C. § 14-09-06.2(1)(j) was triggered against a parent in the original custody proceeding, and that parent failed to rebut the presumption, custody may not be changed to that parent unless the court finds by clear and convincing evidence that the presumption has been rebutted.²¹¹

204 Johnson v. Schlotman, 502 N.W.2d 831 (N.D. 1993)

205 Dufner v. Trottier, 2010 ND 31, ¶ 16, 778 N.W.2d 586.

206 Bladow v. Bladow, 2005 ND 142, ¶ 10, 701 N.W.2d 903.

207 Dufner v. Trottier, 2010 ND 31, ¶ 16, 778 N.W.2d 586.

208 Hagel v. Hagel, 512 N.W.2d 465, 468 (N.D. 1994)

209 Ehli v. Joyce, 789 N.W.2d 560, 2010 ND 199 (N.D. 2010)

210 Mayo v. Mayo, 2000 ND 204, 619 N.W.2d 631 (N.D. 2000).

211 Laib v. Laib, 751 N.W.2d 228, 2008 ND 129 (N.D. 2008)

How can primary residential responsibility be modified before the two-year requirement?

No motion for a modification of primary residential responsibility may be made earlier than two years after entry of an order establishing residential responsibility unless:

- Both parties agree, in writing, that a motion to modify primary residential responsibility may be made before the two-year period is over;²¹²
- The parenting plan allows for the parties to make a motion to modify primary residential responsibility before the two-year period is over;²¹³ or
- The conditions of 14-09-06.6(5) have been met.

What evidence may a trial court consider when modifying residential responsibility?

In a modification proceeding, the best interests of the child must be gauged against the backdrop of the stability of the child's relationship with the custodial parent.²¹⁴ However, if a previous custody placement was established based upon the parties' stipulation and not by consideration of the evidence and court-made findings, the trial court must consider all relevant evidence, including pre-divorce conduct and activities, in making a considered and appropriate custody decision in the best interests of the children.²¹⁵

Improvements in the life of a noncustodial parent seeking to modify a child custody order do not, by themselves, constitute a significant change in circumstances.²¹⁶

Attorney's Fees

"In any proceeding dealing with parental rights and responsibilities in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic

212 N.D.C.C. § 14-09-06.6(1).

213 N.D.C.C. § 14-09-06.6(1).

214 Blotske v. Leidholm, 487 N.W.2d 607 (N.D. 1992)

215 *Wetch v. Wetch*, 539 N.W.2d 309, 312-13 (N.D. 1995).

216 Kelly v. Kelly, 2002 ND 37, ¶ 20, 640 N.W.2d 38.

violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent."²¹⁷

3.4 False Allegations of Domestic Violence or Child Abuse

If the district court determines that a parent has made a false allegation of harm to a child that was not made in good faith, the court must order that parent to pay costs and attorney's fees incurred by the other party in the following proceedings:

- Civil protection orders
- Divorce
- Parenting responsibility
- Parenting time
- Separation
- Termination of parenting rights.²¹⁸

In N.D.C.C. Chapter 14-09, "harm" means "negative changes in a child's health which occur when an individual responsible for the child's welfare:

- a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
- b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20."²¹⁹

217 N.D.C.C. § 14-09-29(4).

218 N.D.C.C. § 14-09-06.5

219 N.D.C.C. § 14-09-00.1(2).

This provision is intended to deter bad-faith litigation tactics, but it does not apply to allegations made in good faith, even if ultimately unproven. Courts must therefore carefully distinguish between unsupported allegations and intentionally false claims in cases where domestic violence allegations exist.

Quick Reference Table

Statute	Topic	DV Relevance
14-09-06.2(1)(j)	Domestic violence	Presumption against perpetrator
14-09-00.1(2)	Harm definition	Defines abuse
14-09-06.2(b),(c),(f),(g),(k)	Best interests	Safety + violence factors
14-09-06.6	Endangerment	Modification based on harm
14-09-06.5	False allegations	Limits misuse claims
14-09-08	Duty to support	Neglect baseline
14-07-15	Child neglect	Criminal abuse
14-07-16	Spousal neglect	Economic abuse
14-07-17	Abandonment presumption	Supports neglect findings

Chapter Four: Criminal Proceedings and Domestic Violence

4.1 Pre-Trial Issues

4.1.1 Arrest Procedures

In addition to situations where a law enforcement officer may arrest without a warrant as outlined in N.D.C.C. § 29-06-15 (1)(a-h), several North Dakota statutes specifically address warrantless arrest procedures involving domestic violence related offenses.

Provision	Description	Citation
Mandatory Warrantless Arrest – Violation of a Civil Protection Order	A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violation of a protection order. This arrest can be made regardless of whether the violation was committed in the presence of the officer.	N.D.C.C. § 14-07.7-18(1)
Permissive Warrantless Arrest – Evidence of Injury or Impairment	A law enforcement officer may make an arrest without a warrant if the officer makes that arrest within twelve hours of developing probable cause	N.D.C.C. § 14-07.1-11(2)

	that the person assaulted a family or household member and the victim suffered recent physical injury or impairment of physical condition. This arrest may take place regardless of whether the assault occurred within the presence of an officer.	
Permissive Warrantless Arrest – Violation of an Order Prohibiting Contact	A law enforcement officer may make a warrantless arrest for violation of an order prohibiting contact under N.D.C.C. § 12.1-31.2-02.	N.D.C.C. § 29-06-15(1)(g)

4.1.2 Pre-Trial Release

According to Rule 5 of the North Dakota Rules of Criminal Procedure and N.D.C.C. § 14-07.1-10(3), a person arrested for a crime involving domestic violence **may not** be released on bail or on personal recognizance unless the individual has made a personal appearance before a magistrate.

4.1.3 Factors to Consider When Setting Bond

North Dakota's Rules of Criminal Procedure require a magistrate to order the release of a person pending trial unless the magistrate determines using their discretion that release will not reasonably assure the appearance of the person.

In determining conditions of release that will reasonably assure appearance of a person, the court must consider the following factors:

Factor	Citation
The nature and circumstances of the offense charged	N.D.R.Crim.P 46(a)(3)(A)
The weight of the evidence against the person	N.D.R.Crim.P 46(a)(3)(B)
The person's family ties, employment, financial resources, character and mental condition	N.D.R.Crim.P 46(a)(3)(C)
The length of the person's residence in the community	N.D.R.Crim.P 46(a)(3)(D)
The person's record of convictions	N.D.R.Crim.P 46(a)(3)(E)
the person's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear voluntarily at court proceedings	N.D.R.Crim.P 46(a)(3)(F)
The nature and seriousness of the danger to any person or the community posed by the person's release	N.D.R.Crim.P 46(a)(3)(G)

In domestic violence cases, the court should consider factors involving the safety of the victim and children:

- Lethality of the alleged offense
- Access to weapons
- History of domestic violence or violence against animals
- History of violating or current violation of orders for protection/restraining orders or orders prohibiting contact, witness tampering, or stalking

- Offender's behavior in court; blaming the victim for an arrest, threatening the victim, or other red flags
- Offender's history of drug and alcohol abuse
- Offender's history of threatening or attempting suicide
- Any escalation of violence either in frequency or severity

Conditions to Consider Imposing to Address Lethality Concerns

Condition	Requirements	Citation
Order Prohibiting Contact	If an individual is charged with, arrested for, or subject to a sentence or order deferring imposition of sentence for a crime of violence or threat of violence, stalking, harassment, or a sex offense, the court authorizing the release of the individual, imposing a sentence, or issuing an order deferring imposition of sentence, shall consider and may issue an order prohibiting the individual from having contact with the victim.	N.D.C.C. § 12.1-31.2-02

Surrender of Weapons	If conditions of order prohibiting contact are met, the court must require surrender of weapons. Alternatively, the court may order surrender of weapons based on the North Dakota Rules of Criminal Procedure.	N.D.C.C. § 12.1-32.1-02(2) N.D.R.Crim.P 46 (2)(H)
Twenty-Four Seven Sobriety Program	May be ordered on defendant charged with a crime involving domestic violence or whose crime involved alcohol or controlled substances, abuse or neglect of a child, or driving under the influence.	N.D.C.C. § 54-12-31
Electronic Monitoring	If an individual charged with or arrested for a crime involving domestic violence, is released from custody, a court may require that electronic home detention or global positioning system monitoring be used.	N.D.C.C. § 14-07.1-19

4.2 Orders Prohibiting Contact

4.2.1 Overview

If an individual is charged with, arrested for, or subject to a sentence or order deferring imposition of sentence for a crime of violence or threat of violence, stalking, harassment, or a sex offense, the court authorizing the release of the individual, imposing a sentence, or issuing an order deferring imposition of sentence, shall consider and may issue an order prohibiting the individual from having contact with the victim.

The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense.

The state's attorney shall provide a copy of the order to the victim.

4.2.2 Modification and Termination of Order

A party or victim may file a written request with the court to modify or terminate an order issued under this section. If requested, the court may hold a hearing to determine whether to grant or deny the request to modify or terminate an order. The court shall determine at the time of the individual's arraignment whether an order issued pursuant to this section will be extended.

Start of Order	Expiration of Order	Citation
Before Charge	At arraignment or within 72 hours of issuance if charges are not filed	12.1-31.2-02(1)(a)
Charge or Arrest	Dismissal, acquittal, sentence, or order deferring imposition of sentence	12.1-31.2-02(1)(c)
Sentence or Deferred Imposition of Sentence		12.1-31.2-02(1)(c)

4.2.3 Provisions

If the court has probable cause to believe the individual subject to an order is likely to use, display, or threaten to use a firearm or dangerous weapon in any further act of violence, the court shall require the individual surrender for safekeeping any firearm or specified dangerous weapon in or subject to the individual's immediate possession or control, to law enforcement.

An individual who violates an order prohibiting contact is guilty of a class A misdemeanor.

A law enforcement officer shall arrest an individual without a warrant if the officer determines there is probable cause that the individual has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer.

4.3 Rights of Victims

4.3.1 Fair Treatment Standards for Victims

North Dakota's Fair Treatment Standards for Victims and Witnesses require that the victim be informed by the prosecuting attorney of the pre-trial status of the person arrested, including bail and pre-trial release conditions.²²⁰ In any case involving violence, the victim must be notified of the defendant's release from custody by law enforcement. Victims also have the right to be informed of all court proceedings.

In addition, the prosecuting attorney or law enforcement must inform the victim of any services available such as the following: programs that provide counseling, treatment or support for victims, including rape crisis centers; victim and witness assistance programs; elderly victim services; victim assistance hot lines; social service agencies; and domestic violence programs.

4.3.2 Marsy's Law

Marsy's Law provides certain rights to victims of crime to ensure they are treated with fairness and respect. These rights include the right to:

- To prevent disclosure of information or records that reasonably could be used to locate or harass the victim or the victim's family, or which disclose confidential information about the victim, and to be notified of any request for such information.
- To receive reasonable notice of, and to be present at, all court proceedings.
- To refuse an interview or discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of defendant, and the right to set reasonable conditions if the victim does consent, all consistent with constitutional requirements.

220 N.D.C.C. § 12.1-34-02

- To be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding where the victim's rights are implicated.
- To provide information regarding the impact of the defendant's conduct in any pre-sentence investigation, to have that information considered in sentencing or disposition recommendations, and to receive a copy of a pre-sentence report or plan of disposition, when available.
- To receive a copy of any non-confidential record relevant to the exercise of the victim's rights.
- To the prompt return of their property when it is no longer needed as evidence.
- To restitution for all losses suffered as a result of the criminal or delinquent conduct.
- To be informed of the defendant's conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition, any release date, or the defendant's escape from custody or commitment.

4.4 SAVIN and VINE

The North Dakota Statewide Automated Victim Notification (SAVIN) provides crime victims and other concerned citizens free, prompt, and confidential notification and information regarding important offender status information, such as release of an inmate, scheduled court event, issuance of a protection order, or sex offender status.

Also known as VINE (Victim Information and Notification Everyday), the project encompasses six modules including: VINE Court, VINE Probation and Parole, VINE Data Feed, VINE Sex Offender, VINE Protection Order, and VINE Custody (which covers DOCR and Jails). N.D.C.C § 12.1-34 outlines the responsibilities for providing victim information and notification, and SAVIN allows victims to fully access their rights.

The registration process can be initiated by calling the toll-free number (1-866-ND1-VINE) or by accessing the vinelink.com website.

The SAVIN system interfaces with and gathers information from the courts, county jails, the Department of Corrections and Rehabilitation, law enforcement, the Office of the Attorney General, and the CJIS Portal. User agencies are equipped with VINEWatch, which is a web-based tool used to register victims, obtain statistics, and audit reports.

The system is designed to be a benefit for all concerned citizens and can be used by anyone who chooses to register. One does not have to be directly involved with an offender in order to register and receive updates.

4.5 Firearms Prohibitions for Qualifying Misdemeanors Crime of Domestic Violence

Federal law identifies two instances when a firearms prohibition is triggered due to domestic violence: (1) when a person is convicted of a qualifying misdemeanor crime of domestic violence and (2) when a person is subject to a qualifying protection order.²²¹ The qualifying domestic violence misdemeanor firearms prohibition is described here, and the qualifying protection order firearms prohibition is described in Chapter 4.

Persons who have been convicted **in any court** (including Tribal) of a qualifying misdemeanor crime of domestic violence generally are prohibited under federal law from shipping, transporting, possessing or purchasing any firearm or ammunition for life. This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities.²²²

A qualifying misdemeanor of domestic violence is an offense that:

- is a misdemeanor under Federal, State, Tribal, or local law; and,
- Has an element regarding the use or attempted use of physical force, or the threatened use of a deadly weapon.

221 18 U.S.C. § 922(g)

222 18 U.S.C. § 922(g)(9)

At the time the misdemeanor crime of domestic violence was committed, the defendant was:

- A current or former spouse, parent, or guardian of the victim;
- A person with whom the victim has shared a child in common;
- A person who was cohabiting with or had cohabited with the victim as a spouse, parent or guardian;
- A person who was or had been similarly situated to a spouse, parent, or guardian of the victim; or
- A person who has a current or recent former dating relationship with the victim.

There are exceptions. A person has not been convicted of a qualifying misdemeanor of domestic violence if:

- The person was not represented by counsel – unless he or she knowingly and intelligently waived the right to counsel;
- 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 a jury trial; or
- 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 an elective 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 prohibitions 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.

NOTE: The federal firearms prohibition does not apply if:

- The person only has one conviction of a misdemeanor crime of domestic violence against an individual in a dating relationship, the person shall not be disqualified from shipping, transport, possession, receipt, or purchase of a firearm if 5 years have elapsed from the later of the judgment of conviction or the completion of the person's custodial or supervisory sentence, if any, and the person has not subsequently been convicted of another similar offense.²²³

4.6 Sentencing Issues

4.6.1 Domestic Violence Specific Factors to Consider

To adequately assess the offender's situation for purposes of sentencing, a court should have information about the following subjects at the time of sentencing for a domestic violence crime:

- Facts of the case
- Offender's criminal history
- Offender's prior abusive behavior
- Offender's drug or alcohol use
- Offender's mental health
- Prior and pending court contacts with the offender and his family, particularly domestic relation and protection order cases
- Children living in the home of the victim or offender

223 18 U.S.C. § 921(a)(33)

4.6.2 Domestic Violence Offender Intervention Programming

N.D.C.C. § 12.1-17-13 requires sentences for certain criminal violations against an intimate partner include an order to complete domestic violence offender intervention programming, unless the court makes written findings for the record explaining why such a sentence would be inappropriate. Additionally, a court may not order a defendant to attend anger management classes or individual counseling unless a domestic violence offender intervention program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender intervention program would be inappropriate.²²⁴

Domestic violence offender intervention programs (DVOIP) focus on victim safety, ensure offender accountability, and encourage offenders to change their behavior. The North Dakota Alliance to End Partner Abuse provides minimum standards for DVOIP in North Dakota to ensure quality programming across the state.²²⁵ A list of programs that meet the minimum standards can be found [here](#).

224 N.D.C.C. 12-17-13(2)

225 See [North Dakota Alliance to End Partner Abuse](#)

Criminal Offense	Citation
Simple Assault	N.D.C.C. § 12.1-17-01
Assault	N.D.C.C. § 12.1-17-01.1
Domestic Violence	N.D.C.C. § 12.1-17-01.2
Aggravated Assault	N.D.C.C. § 12.1-17-02
Reckless Endangerment	N.D.C.C. § 12.1-17-03
Terrorizing	N.D.C.C. § 12.1-17-04
Menacing	N.D.C.C. § 12.1-17-05
Harassment	N.D.C.C. § 12.1-17-07
Stalking	N.D.C.C. § 12.1-17-07.1
Felonious Restraint	N.D.C.C. § 12.1-18-02
Unlawful Imprisonment	N.D.C.C. § 12.1-18-03
Criminal Mischief	N.D.C.C. § 12.1-21-05
Interference with Telephone During Emergency Call	N.D.C.C. § 12.1-21-06.1
Civil Protection Order Violation	N.D.C.C. § 14-07.7-17
Order Prohibiting Contact Violation	N.D.C.C. § 12.1-31.2-02

Chapter Five: Domestic & Sexual Violence Against Native Americans and Tribal Court Considerations

5.1 Native American Populations in North Dakota

There are five (5) federally recognized tribes with lands that are wholly, or in part, within the state of North Dakota. The Tribes in North Dakota include Mandan, Hidatsa and Arikara Nations (Three Affiliated Tribes); The Standing Rock Sioux Tribe; the Spirit Lake Tribe; Turtle Mountain Band of Chippewa; and the Sisseton-Wahpeton Band of Oyate. Additionally, the Trenton Indian Service Area (a political subdivision of the Turtle Mountain Band of Chippewa) exists within the state.

In 2020, Native Americans were 7.2% of North Dakota's population, making it the largest minority population in the state. The Native American population has increased 29.7% from 2010 to 2020.²²⁶

5.2 Jurisdictional Issues

With five (5) federally recognized Tribes located in whole or in part within the state of North Dakota, these jurisdictional issues impact many counties across the state. Jurisdictional issues often arise in both criminal and civil cases, and examples of such issues will be provided in the following sections of this chapter.

226 U.S. Census Bureau. North Dakota 2020 Census, <https://www.census.gov/library/stories/state-by-state/north-dakota.html>.

5.2.1 Basics of Civil Jurisdiction in Indian Country

Civil jurisdiction has become an equal, if not more complex, issue to resolve than criminal jurisdiction. Civil jurisdiction is going to depend in part on whether the parties involved are Indian, the Tribe of which the individuals are enrolled, the location of the incident underlying the cause of action, and the substantive law applicable to the cause of action. In some circumstances, Tribes will have “exclusive jurisdiction” such as over Tribal membership decisions or child custody matters where the child is a member of the adjudicating Tribe and is domiciled on the reservation.²²⁷ Ultimately, the question of whether a Tribal court can exercise civil jurisdiction is one of Tribal and federal law.²²⁸

To determine whether a Tribal court has civil jurisdiction, considerations include: 1) whether federal law delegates or divests Tribes of jurisdiction; 2) whether the dispute arose within the territorial jurisdiction of the Tribe; 3) whether the Tribe has subject matter jurisdiction under federal law²²⁹; 4) whether the Tribe has subject matter and personal jurisdiction under Tribal law.²³⁰ It is important to note that the question of whether a Tribe has jurisdiction is one that should first be answered by the Tribal court.²³¹

227 Indian Child Welfare Act, 25 U.S.C.A. §§ 1901-1963 (1978).

228 B.J. Jones, *A Primer on Tribal Court Civil Court Practice*, <https://www.ndcourts.gov/legal-resources/legal-research/a-primer-on-tribal-court-civil-practice>

229 See *Montana v. U.S.*, 450 U.S. 544 (1981) (stating that Tribes generally lack jurisdiction to regulate the conduct of nonmembers on fee lands however “the tribe may regulate . . . the activities of nonmembers who enter consensual relationships with the tribe or its members...” and tribes may regulate “the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.”); See also 18 U.S.C. §2265(e) which renders the test announced by the Court in *Montana* inapplicable to Tribal civil orders of protection.

230 *Supra* note 9.

231 *Id.*; See also *National Farmers Union Insurance v. Crow*, 468 U.S. 1315 (1984) (finding that Tribal remedies are to be exhausted before federal review may be sought for disputes arising in Indian country thereby allowing the Tribe an opportunity to provide a basis for the exercise of jurisdictional authority).

5.2.2 Basics of Criminal Jurisdiction in Indian Country

Criminal jurisdiction is generally determined by the location of the action constituting a crime. For crimes occurring in Indian Country (including lands within established reservations, allotted lands held in trust, rights of way and dependent Indian communities),²³² criminal jurisdiction is far more complex. This is due in large part to a series of United States Supreme Court cases, which have found Tribes to be quasi-sovereign political entities with limited authorities over the conduct of non-Indians.²³³

Determining whether criminal jurisdiction can be exercised by federal, Tribal, or state authorities requires consideration be given to not only the location of a crime but also to the nature of the criminal action, the political identity of the offender, and the political identity of the victim. Hence after finding that a crime has occurred within Indian country, the next step in a jurisdictional analysis will be to determine whether an Indian person is involved as either an accused or a victim. Indian status is a political classification and not a racial one as it is intended to promote Tribal self-governance.²³⁴ For this reason, a general rule in determining Indian status is whether an individual is enrolled or eligible for enrollment in a federally recognized Tribe.²³⁵

Once the identity of the offender and victim has been confirmed, it is also necessary to consider applicable laws that may impact the exercise of jurisdictional authority. For crimes arising in Indian country, there are two primary federal laws that implicate the exercise of federal jurisdiction, namely the Major Crimes Act²³⁶ and the General Crimes

232 18 U.S.C. § 1151

233 See *Johnson v. McIntosh*, 23 U.S. 543 (1823), *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), *Worcester v. Georgia*, 31 U.S. 515 (1832).

234 *Morton v. Mancari*, 417 U.S. 535 (1974).

235 In *St. Cloud v. United States*, 702 F. Supp. 1456, 1461 (D.S.D. 1988), the Eighth Circuit presented the following list of accepted evidence to show membership or affiliation with a Tribe: “1) enrollment in a Tribe; 2) government recognition formally and informally through providing the person assistance reserved only to Indians; 3) enjoying benefits of Tribal affiliation; and 4) social recognition as an Indian through living on a reservation and participating in an Indian social life. Other circuits have accepted similar evidence.

236 18 U.S.C. § 1153 (applying when applies when an Indian commits a specifically enumerated crime in Indian Country. The three requirements of the Major Crimes Act are (1) the crime is one of the

Act.²³⁷ Other federal laws such as the Assimilative Crimes Act²³⁸ and crimes of general federal applicability may also implicate federal jurisdiction. Finally, Public Law 83-280 (also known as “PL280”), confers additional criminal jurisdiction to specified states or select jurisdictions (Note that North Dakota IS NOT one of the select PL-280 jurisdictions. However, as an enforcing jurisdiction, it is important to be aware of PL-280 jurisdictions). Even if there is a legal basis for the exercise of federal or state jurisdiction, it generally runs concurrent to Tribal jurisdiction.

Only after considering the identity of the offender, identity of the victim, the nature of the crime, and applicable law can jurisdictional authority be determined for investigative and adjudicatory purposes. The charts below are a helpful tool in making such determinations.

statutorily enumerated offenses; (2) the perpetrator is Indian; and (3) the crime occurred in Indian Country).

237 18 U.S.C. § 1152 (providing “Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian Country who has been punished by the local law of the Tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian Tribes respectively.”).

238 18 U.S.C. § 13.

Tribal, Federal and State Criminal Jurisdiction (Non-PL-280)²³⁹

Identity of Offender	Identity of Victim	Applicable Law	Jurisdiction
Indian	Indian Victim	Major Crimes Act Tribal Code	Federal Jurisdiction Tribal Jurisdiction
Indian	Non-Indian Victim	Major Crimes Act General Crimes Act	Federal Jurisdiction Tribal Jurisdiction
Non-Indian	Indian Victim	Major Crimes Act General Crimes Act Non-Major Crime	Federal Jurisdiction State jurisdiction (<i>Oklahoma v. Castro-Heurta</i> , 142 S.Ct. 2486 (2022))
Non-Indian	Non-Indian Victim	State law	State Jurisdiction (<i>U.S. v. McBratney</i> , 104 U.S. 621 (1881))

²³⁹ This chart does not reference or include the application of the Assimilative Crimes Act.

Tribal, Federal and State Criminal Jurisdiction (PL–280)²⁴⁰

Identity of Offender	Identity of Victim	Applicable Law	Jurisdiction
Indian	Indian Victim	Tribal Code State Law	Tribal Jurisdiction State Jurisdiction
Indian	Non-Indian Victim	Tribal Code State Law	Tribal Jurisdiction State Jurisdiction
Non-Indian	Indian Victim	Tribal Code State Law	Tribal Jurisdiction for crimes under VAWA Title IX when Tribes has implemented STCJ (25 U.S.C. § 1302) State Jurisdiction
Non-Indian	Non-Indian Victim	State law	State Jurisdiction (U.S. v. McBratney, 104 U.S. 621 (1881))

Note: The Tribal Law and Order Act of 2010²⁴¹ provides a means for enhanced criminal authority within the “mandatory” P.L. 280 states [Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin].

240 This chart does not reference or include the application of the General Crimes Act nor the Assimilative Crimes Act.

241 124 Stat. 2258 (2010).

Jurisdictional confusion can be minimized when Tribal, federal, and state jurisdictions have established lines of communication and where feasible have formalized cross-jurisdictional collaborations through memorandums of agreement²⁴² or other formal collaborative documents. Cross-jurisdictional communication and/or collaboration can help to improve first response measures and adjudications improving overall victim and community safety.

5.2.3 Tribal Criminal and Civil Jurisdiction Over Domestic Violence Perpetrated Against Native Women

Domestic violence and dating violence are perpetrated against Native Women both in and outside of Indian country. Criminal responses to these incidents may vary depending on where the violence occurs. When the violence occurs within Indian country, determining jurisdictional authority requires additional factors to be considered and the identity of both the victim and the offender impacts Tribal, state, and federal jurisdiction.

Generally, when the alleged perpetrator of domestic violence is an Indian and the crime occurs within Indian country, the Tribe will exercise criminal jurisdiction. When the alleged offender is non-Indian, the Tribe typically lacks criminal jurisdiction as a matter of federal law, and the crime can only be prosecuted by the United States or in some circumstances by the state in which the Tribe's Indian country is located, unless the Tribe has implemented special jurisdictional authority under the Violence Against Women Act (VAWA).²⁴³

VAWA was first passed in 1994. The reauthorization of VAWA in 2013 and 2022 included provisions that recognized inherent rights of Tribes to exercise criminal jurisdiction over non-Indians for specified crimes occurring in Indian country, in cases in which certain conditions are met.

242 Collaborative agreements commonly exist between law enforcement or other agencies tasked with community safety, victim services or other service providers involved in responses to domestic violence and sexual assault crimes.

243 *Oliphant v. Suquamish*, 435 U.S. 191 (1978).

The VAWA 2013 reauthorization provided for the exercise of special domestic violence criminal jurisdiction (SDVCJ).²⁴⁴ The VAWA 2013 reauthorization amended the Indian Civil Rights Act²⁴⁵ to include SDVCJ over non-Indians for:

- Acts of domestic violence in Indian country
- Acts of dating violence in Indian country
- Protection order violations occurring in Indian country²⁴⁶

The exercise of SDVCJ requires the case to involve a crime occurring within Indian country that involves an Indian victim and non-Indian defendant who has significant ties to the Tribal community. Additionally, the Tribe must afford specific due process rights to non-Indian defendants when exercising SDVCJ.²⁴⁷ For implementing Tribes, these due process rights include, but are not limited to, the right to effective assistance of counsel and the right to indigent defense.²⁴⁸

Tribes have full authority to both issue and enforce qualifying orders of protection.²⁴⁹ The Tribal specific provisions of the VAWA reauthorization of 2013 were intended to strengthen the capacity of Indian tribes to exercise their inherent sovereign power to

244 See Pub.L.No. 113-4; 127 Stat. 54 (2013); VAWA 2013 remains of relevance as of the date of this chapter as various Tribes that implemented SDVCJ are still in the process of updating or amending their Tribal Codes to support the exercise of STCJ as authorized by VAWA 2022.

245 See 25 U.S.C. § 1304(c).

246 Violence Against Women Reauthorization Act of 2013, Title IX, Section 904.

247 25 U.S.C. §§ 1302-1304

248 Additional requirements are included within the ICRA for Tribes implementing SDVCJ including requirements that the judge must have sufficient legal training and be licensed by any jurisdiction; criminal laws, rules of evidence and rules of procedure must be publicly available; a record of proceedings must be maintained (audio or other); and trial by impartial jury (jury to be drawn from sources to reflect fair cross section of community and does not systemically exclude a distinctive group).

249 Violence Against Women Reauthorization Act of 2013, Title IX, Section 904.

administer justice and control crime, and to ensure that perpetrators of domestic violence are held accountable for their criminal behavior.²⁵⁰

The VAWA 2022²⁵¹ reauthorization replaced the SDVCJ term with the term “special Tribal criminal jurisdiction” (STCJ). In doing so, Congress introduced a series of covered crimes thereby expanding upon the types of crimes implementing Tribes can address when an offender is a non-Indian. The Tribal provisions were amended in part to address concerns that Tribal courts still had no criminal jurisdiction to:

- Protect children who were also being victimized in the home
- Prosecute offenders who assaulted Tribal law enforcement or other justice officials
- Prosecute crimes of sexual violence, stalking, or sex trafficking committed by non-Indians.

As part of the VAWA 2022 reauthorization, Congress removed requirements that non-Indian offenders have sufficient ties to the Tribal community, and the types of crimes that a Tribe can charge was expanded beyond domestic violence, dating violence, and violations of orders of protection. Tribes that implement STCJ can charge non-Indians who commit the following covered crimes:

- Domestic violence
- Dating violence
- Protection order violations
- Sexual violence
- Stalking
- Sex trafficking

250 See S. Rep. No. 112–153, at 8–11, 32 (2012); *see also* S. 1763, 112th Cong., at 1–2 (as reported by the S. Comm. on Indian Affairs, Dec. 27, 2012) (long title listing bill’s purposes); H.R. 757, 113th Cong., at 1 (2013) (same).

251 See Pub.L.No. 117-103; 136 Stat. 49 (2022)

- Child violence
- Obstruction of justice
- Assaults against justice personnel

When exercising STCJ, the following factors must be present:

- The crime must occur within the Tribe's Indian country;
- The victim must be an Indian for most but not all crimes²⁵²;
- The defendant's ties to the community are no longer a condition of Tribal jurisdiction; and
- Tribes must provide notice in writing of certain federal rights.

Some Tribes have not implemented SDVCJ or STCJ, while others have implemented SDVCJ and have yet to implement STCJ. It is important for legal practitioners to look to Tribal codes to better understand whether a Tribe is exercising criminal jurisdictional authority over non-Indians and to what degree. Even for those Tribes that are not exercising criminal jurisdiction over non-Indians, it is important to understand that Tribal law enforcement officers do have the authority to arrest and detain both Indians and non-Indians for crimes occurring in Indian Country.²⁵³

A Tribal police officer has authority to detain temporarily and to search a non-Indian on a public right-of-way that runs through the reservation even when Tribal law does not apply and the law enforcement action relates to potential violations of state or federal law.²⁵⁴ For Tribes implementing SDVCJ or STCJ, Tribal law enforcement authority to stop, detain, search, and arrest non-Indian offenders for covered crimes is supported by Tribal law and federal law.²⁵⁵

252 The crimes of obstruction of justice and assault of Tribal justice personnel do not require an Indian victim.

253 *U.S. v Cooley*, 593 U.S. 107 (2021).

254 *U.S. v Cooley*, 593 U.S. 107 (2021).

255 *Id.*; See also 25 U.S.C. §§ 1302-1304

Additionally, Tribal law enforcement officers may detain both Indian and non-Indian suspects outside of Indian Country when they are in hot pursuit of the suspect and the observed offense originated in Indian country. Arrest authority pertaining to non-Indian suspects outside of Indian Country when Tribal law enforcement is in hot pursuit of the suspect is limited and may, in the absence of the Tribe having implemented SDVCJ or STCJ, require coordination with state or federal law enforcement agencies.

Tribal Orders of Protection will be the predominant exercise of civil jurisdiction in domestic violence cases (in some instances orders of protection may also be issued by Tribes in criminal proceedings). Tribal orders of protection may or may not be similar in format or in substance to those issued by state courts.

Qualifying orders of protection, including Tribal orders of protection, are entitled to full faith and credit under the provisions of the VAWA. In addition, qualifying Tribal convictions of domestic violence also implicate the firearms disqualification provisions of the VAWA.

5.2.4 State Criminal and Civil Jurisdiction Over Domestic Violence Perpetrated Against Native Women

All state courts have criminal jurisdiction over domestic violence crimes committed by non-Indians against non-Indian victims in Indian Country.²⁵⁶ State criminal jurisdiction is far more limited when crimes of domestic violence are perpetrated by Indians within Indian country but less limited when such crimes are perpetrated by non-Indians within Indian country.²⁵⁷ The exercise of state criminal jurisdiction over Indian country crimes

256 *U.S. v. McBratney*, 104 U.S. 621 (1881).

257 Under such circumstances jurisdiction is generally vested with federal or Tribal courts, however the United States Supreme Court addressed the exercise of jurisdiction by a state when the offender is non-Indian and the victim is Indian. See *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022) (finding that that Indian country “is part of the State, not separate from the State.” For this reason, the Court rationalized that the Constitution allows the exercise of State jurisdiction within Indian country but that under prior precedent the exercise of State jurisdiction may be preempted by federal law. Additionally, the Court found nothing to support the argument that the General Crimes Act preempts the application of state law when crimes occurring in Indian Country are perpetrated by a

will also be more limited if the crime occurs within a non-PL 280 jurisdiction rather than a PL 280 jurisdiction.²⁵⁸

PL 280 does not limit Tribal civil jurisdiction as Tribes retain broad civil jurisdiction within Tribal territories. There are some limitations to Tribal civil regulatory jurisdiction regarding the conduct of non-members on fee lands within the reservation, however such jurisdiction does exist where: 1) the non-member conduct has a consensual relationship with the Tribe or its members through commercial dealing, contracts, leases, or other arrangements; or 2) the non-member conduct threatens or has some direct effect on the political integrity, economic security or health and welfare of the Tribe.²⁵⁹ Orders of protection fall outside of this jurisdictional analysis as the VAWA 2022 has affirmed that Tribes have the full civil jurisdiction to both issue and enforce qualifying orders of protection regardless irrespective of the Indian status of the parties.²⁶⁰

In the context of civil jurisdiction in domestic violence cases, states oftentimes are in the position of an enforcing jurisdiction. As the enforcing jurisdiction, state courts may be asked to enforce provisions of a qualifying order of protection or perhaps assist in the effectuation of firearms provisions of the VAWA.²⁶¹ In accordance with the VAWA, qualifying Tribal court conviction and qualifying orders for protection are entitled to full faith and credit and do not require that such orders be formally registered with the

non-Indian against an Indian victim. The Court held that Indian country is part of a state and that states share concurrent jurisdiction with the federal government relative to crimes committed by non-Indians in Indian Country unless such jurisdiction is specifically preempted.)

258 Id; see Pub.L.No. 83-280, 67 Stat. 588 (1953). North Dakota is NOT one of the six mandatory PL-280 jurisdictions specifically identified within the law.

259 *Montana v. US*, 450 U.S. 544 (1981).

260 18 U.S.C. § 2265(e); See also the Tribal code for the issuing Tribal jurisdiction for more guidance on in person am jurisdiction. See also *National Farmer's Union Insurance Co. v. Crow Tribe*, 471 U.S. 845 (stating that the Tribal court must first determine the existence of personal and subject matter jurisdiction and Tribal remedies must be exhausted before federal review of such matters are appropriate).

261 18 U.S.C. § 2265.

enforcing jurisdiction.²⁶² It also follows that Tribal courts have full civil jurisdiction to enforce protection orders of other jurisdictions.²⁶³

5.2.5 Federal Criminal and Civil Jurisdiction over Domestic Violence Perpetrated Against Native Women

Crimes of domestic violence may potentially be prosecuted in both Tribal and federal courts without implicating double jeopardy.²⁶⁴ It is possible to prosecute and convict a perpetrator of domestic violence in two separate jurisdictions and to impose two separate criminal penalties for the crime. Coordination of the Tribal domestic violence investigation with federal authorities is important to ensure successful dual prosecution of a perpetrator in both Tribal and federal courts.²⁶⁵

Federal authorities play a limited role in terms of civil jurisdiction, however, there is very clear overlap between the exercise of Tribal civil jurisdiction and federal enforcement mechanisms available for qualifying order of protection.

5.2.6 Common Jurisdictional Issues Arising in Domestic Violence Cases Perpetrated Against Native Women

There are several ways in which jurisdictional issues might arise in domestic violence cases. Below is a list of some examples. (*Note: This is not an exhaustive list.*)

Criminal Jurisdiction:

- Offender is non-Indian and the Federal Government declines prosecution
- Offender is non-Indian, and the victim is non-Indian, but the domestic violence occurs in Indian country

262 *Id.*

263 18 U.S.C. § 2265(e).

264 *U.S. v Lara*, 541 U.S. 193 (2004).

265 18 U.S.C. § 2265.

- Victim is assaulted in Indian country but seeks medical attention in an off-reservation medical facility prior to filing a report with law enforcement
- Domestic violence occurs in Indian country, but offender resides outside of Indian country (investigation/arrest may be problematic)
- Domestic violence occurs outside of Indian country, but offender resides in Indian country (investigation/arrest may be problematic)

Civil Jurisdiction:

- A Tribal court issues an order of protection, and an alleged violation is reported outside of Indian country (contact with victim or firearms possession)
- A Tribal court issues an order of protection, and one or more of the parties resides outside of Indian country (service of process or enforcement may be an issue)
- A state court issues an order of protection, and one or more of the parties resides in Indian country (service of process or enforcement may be an issue)
- A state court issues an order of protection, and an alleged violation is reported in Indian country (contact with the victim or firearms possession)

North Dakota 
**Domestic & Sexual
Violence Coalition**

