



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER	
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SUBJECT: DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING INVOLVING DPS EMPLOYEES

1.0 PURPOSE

The Department of Public Safety (DPS) is committed to providing a workplace in which domestic violence, sexual assault, and stalking are not tolerated or excused. The workplace should be a safe environment. The purpose of this policy is to increase awareness of domestic violence, sexual assault and stalking, as well as educate employees on the help available to the victims of abuse.

2.0 POLICY

It is the policy of DPS to conduct administrative and/or criminal investigations into all allegations of domestic violence, sexual assault, or stalking made against commissioned and non-commissioned employees, as well as to comply with any court orders or mandates issued by the courts.

3.0 APPLICABILITY

This policy applies to all employees of the Department of Public Safety.

4.0 REFERENCE

- A. Family Violence Protection Act [40-13-1 to 40-8 NMSA 1978]**
- B. Victims of Crime Act- As defined in [31-26-1 to 31-26-14 NMSA 1978]**
- C. Governor’s Executive Order 2008-047**

5.0 DEFINITIONS

- A. Family Violence Protection Act –** As defined in 40-13-1 to 40-13-8 NMSA 1978 and any other definitions as indicated in the Family Violence Protection Act concerning Domestic Affairs.
- B. Court –** Any jurisdiction having the right or authority to interpret and apply the law.
- C. Domestic Violence –** A pattern of coercive behavior that is used by a person against a household member, as defined in NMSA 30-3-11(A), to gain power and control over the other household member in the relationship. This behavior may include any of the following: physical violence, sexual abuse, emotional and psychological intimidation, verbal abuse and threats, stalking, isolation from friends and family, economic control, and destruction of personal property.
- D. Sexual Assault –** An act of sexual violence whereby a party forces, coerces, or manipulates another to participate in sexual activity. This behavior may include rape, attempted rape, child sexual assault, attempted child sexual assault, criminal sexual contact, exposure, and voyeurism.
- E. Stalking –** Purposely pursuing a pattern of conduct directed at a specific person when the individual knows or should know that the pattern of conduct would cause a reasonable person to fear for his or her safety or the safety of a household member. The “pattern of conduct” means two or more acts, including, but not limited to, acts in

which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, threatens, or communicates to or about, a person, or interferes with a person's property.

F. Secretary - The Cabinet Secretary of the Department of Public Safety.

G. Order of Protection – A court order granted for the protection of victims of domestic abuse.

H. Designated Family Member – A victim who is the employee's minor child or an incapacitated adult where the employee is the guardian of the incapacitated adult.

6.0 PROCEDURE

A. Education and Support for Employees Who Are Victims of Domestic Violence, Sexual Assault or Stalking

1. DPS shall make available a list of resources for domestic violence victims and abusers. The list shall be posted in highly visible locations, such as bulletin boards, break rooms, rest rooms, company phone directories, and online/intranet information systems.
2. When DPS becomes aware that a DPS employee is a victim of domestic violence, sexual assault, or stalking, the department will offer resources and referrals for assistance to those employees who request help. All employees wishing to discuss domestic violence, sexual assault, or stalking issues are encouraged to speak with whomever they feel most comfortable. DPS will respect the confidentiality and autonomy of victims to the fullest extent permitted by law.
3. DPS shall make reasonable efforts to provide a safe environment for the victim-employee.
4. DPS shall not discriminate against a victim of domestic violence, sexual assault, or stalking in hiring, staffing, or other terms, conditions, or privileges of employment.
5. DPS shall provide education and training on domestic violence, sexual assault, or stalking to all employees.
6. DPS shall, upon request, assist employees in identifying available leave options, which allow the employee to deal with the abuse in their lives. Reasons for allowing time off may include:
 - a. To obtain or attempt to obtain any judicial relief, including, but not limited to an order of protection.
 - b. To meet with law enforcement officials, consult with attorneys, and/or victim advocates, and attend court proceedings related to the domestic abuse, sexual assault, or stalking.
 - c. To seek treatment by a health care provider for physical or mental injuries caused by domestic abuse, sexual assault, or stalking or to attend to such health care treatment for a victim who is a household member.
 - d. To obtain or assist a designated family member, in obtaining services from a domestic violence shelter, domestic violence program, rape crisis center, or other social services program for relief from domestic abuse, sexual assault, or stalking.

- e. To obtain or assist a designated family member, in obtaining mental health counseling related to an experience of domestic abuse, sexual assault, or stalking.
- f. To participate in safety planning, temporary or permanent relocation, or to take other actions to increase the safety of the employee or their designated family member from future domestic abuse, sexual assault, or stalking.

To this end, DPS shall make a reasonable attempt to grant leave with or without pay, or adjust work assignments and work schedules to allow victims to obtain the necessary assistance.

- 7. DPS will work with the victim employee to change benefit coverage in accordance with state law.
- 8. DPS shall process the victim employee's requests for making changes to their electronic payroll transfers and assist the abused person in making changes to work related benefits.
- 9. DPS employees who witness threats or instances of domestic violence, sexual assault, or stalking in the workplace shall immediately report these incidents to their supervisors and take any other action they deem necessary.

B. Performance Issues Related to Being a Victim of Domestic Violence, Sexual Assault, or Stalking

- 1. DPS is aware that victims may have performance problems such as chronic absenteeism or trouble concentrating as a result of domestic violence, sexual assault, or stalking.
- 2. DPS shall make reasonable efforts to consider all aspects of the employee's situation and, to the extent possible, utilize all reasonable options to attempt to resolve the performance or behavior problem, including providing them with access to an experienced counselor, advocate and/or the Employee Assistance Program (EAP).
- 3. If reasonable attempts to resolve the performance problems are unsuccessful, DPS may decide to take corrective/disciplinary action up to and including termination, unless the employee decides to resign.

C. Employees Who Commit Acts or Threats of Domestic Violence, Sexual Assault, or Stalking

- 1. Any employee, who threatens, harasses, or abuses any person at, or from, the workplace, during work hours, or at an agency-sponsored event shall be subject to disciplinary action up to and including termination. This includes employees who use workplace resources such as phones, fax machines, e-mail, text messaging, mail or other means to threaten, harass or abuse any person or asks other employees to, knowingly or unknowingly aid in the above activities.
- 2. Some job positions may give an employee access to information or resources. If he or she uses this access to abuse or enable an abuser to harm the victim, that employee shall be subject to corrective or disciplinary action up to and including termination.
- 3. Some job positions may place employees in a position of authority. If an employee uses their authority to abuse a person or asks other employees to, they shall be subject to corrective or disciplinary action up to and including termination.

4. Some employees may be licensed/certified or expected to possess firearms as a condition of employment. If such employee is arrested, convicted or the subject of a qualifying order of protection in a domestic violence related offense the employee's authority to possess a firearm may be unlawful under federal law 18 U.S.C. §922 (g)(8) and (9). The employee shall notify DPS of any arrests or convictions for domestic abuse, or orders of protection where they are the restrained party.
5. DPS encourages employees who are perpetrators to voluntarily seek assistance from any entity on the community service provider list.
6. If an employee discloses that they are or have been a perpetrator of domestic violence, the responder shall be given a supervisory referral (mandatory) to EAP. For further information on EAP refer to *PRS:35 Employee Assistance Program*.

D. Workplace safety

1. Access to facilities and public areas shall be evaluated and modified if necessary, to ensure that they reflect the particular security risks that arise in domestic violence, sexual assault or stalking situations. Supervisors should consult with the victimized employee to identify case-specific concerns and should develop individualized safety plans as appropriate.
2. In cases in which the abuser and the victim are employed at the same work site, supervision should give due consideration to relocating one or both employees to separate work sites and should, when appropriate, work with EAP or other service providers to facilitate such relocation. In all cases where separation is mandated by a court order, the employees shall be separated when practical. When separation is mandated by a court order and it is not practical to separate the employees, it will be the responsibility of the offender to use leave from the workplace to comply with the court order until such time that separation is no longer mandated. If separation is practical, the expectations of workplace behavior and the consequences for violating the restriction shall be explained to both the employees by their first line supervisors.

E. Training

1. Training will be conducted for all newly hired personnel and department-wide at least every two years. The training will follow the curriculum developed by the New Mexico Domestic Violence Leadership Commission.
2. Training shall focus on domestic violence, sexual assault, and stalking awareness. This will include workplace security and safety planning, the need for confidentiality and record keeping, conducting appropriate investigations, and appropriate referrals.
3. All managers and supervisors shall complete the Domestic Violence, Sexual Assault, and Stalking in the Workplace Prevention Training developed by the New Mexico Domestic Violence Leadership Commission. Training shall cover the issues stated above as well as include information on the ways in which domestic violence, sexual assault, and stalking impact the workplace, including the potential impact on worker productivity and the safety risks to on-site personnel and visitors.

F. Reporting

1. DPS shall document all incidents of domestic violence, sexual assault, and stalking that happen in the workplace. Such documents shall be kept confidential to the extent permitted by law and the provisions detailed below.
2. All DPS personnel providing domestic violence information and support services shall document, consistent with applicable law and DPS policy, the following information:

- a. The number of employees who report domestic violence, sexual assault, and stalking incidents.
- b. The number of employees that request information/services.
- c. The number of referrals made to service providers.

All information about employees who seek assistance shall be kept confidential to the extent permitted by law, DPS policy and the provisions detailed below. This documentation should not include any personally identifying information.

3. Aggregate data on the number of employees seeking assistance as outlined above shall be compiled by all district/bureau commanders and division directors on an annual basis. This data shall be reported to the Standards Bureau by January 15th of the following year. The Standards Bureau will be responsible for reporting the data from DPS to the State Personnel Office (SPO) on an annual basis.
4. DPS shall, consistent with applicable law and this policy, provide aggregate data about the number and general nature of domestic violence, sexual assault, and stalking incidents that happen in the workplace, the number of employees who report these incidents, the number of employees that request information/services, and the number of referrals made to service providers. This documentation should not include any personally identifying information, and be submitted to SPO upon request.
5. Information related to an employee being a victim shall be kept confidential, to the extent permitted by law and DPS policy, and shall not be divulged without the written consent of the victimized employee, except under the following circumstances:
 - a. DPS determines that maintaining confidentiality puts the victim or other employees at risk of physical harm.
 - b. Disclosure is required by law.
 - c. Disclosure is deemed necessary to enforce an order of protection.
6. In situations where a determination has been made that maintaining confidentiality puts the victim or other employees at risk of physical harm, only those individuals deemed necessary by DPS to protect the safety of the victim and/or other employees or to enforce an order of protection shall be given such information. DPS shall disclose only the minimum amount of information necessary to protect the safety of the victim and/or other employees or enforce an order of protection. When possible, DPS should provide the victim with notice of the intent to provide information to other employees and/or safety personnel.
7. DPS shall inform an employee victim of DPS policy regarding confidentiality of domestic violence, sexual assault, or stalking information and the limitations of that policy. Nothing herein shall prevent DPS from investigating an act or acts of domestic violence, sexual assault or stalking that happen within the workplace. DPS should provide examples of situations where confidentiality cannot be maintained such as the following:
 - a. Supervisors/managers may be informed about a domestic violence, sexual assault, or stalking incident that happens in the workplace, or a report of domestic violence, sexual assault, or stalking if it is necessary to protect the safety of the employee or the employee's co-workers.
 - b. First aid and safety personnel may be informed about a domestic violence, sexual assault, or stalking incident that happens in the workplace or a report of

domestic violence, sexual assault, or stalking if it is necessary to protect the safety of the employee or the employee's co-workers.

- c. Agency or law enforcement personnel investigating a domestic violence, sexual assault, or stalking incident that happens in the workplace shall be provided relevant information upon request.

G. Allegations of Domestic Violence against Commissioned Employees

1. Commissioned Employee Responsibilities:

- a. Any commissioned employee arrested, charged, or who has been informed by a law enforcement agency that they are the subject of an investigation of a crime related to domestic violence, or who should reasonably expect to be the subject of such an investigation for any crime related to domestic violence, shall immediately notify his/her immediate supervisor of the circumstances. If the immediate supervisor is unavailable, the chain of command will be followed until a supervisor is contacted.

2. Supervisory Responsibilities:

- a. Upon receiving information that a commissioned employee was arrested for, or may have violated the Family Violence Protection Act, the contacted supervisor shall ensure that a criminal investigation is conducted.
- b. If a criminal investigation has not been initiated, the supervisor shall notify an Investigations Bureau supervisor to initiate the investigation. The contacted supervisor shall also notify the commander of the respective district where the incident occurred. The district commander shall immediately, or as soon as practical, notify their respective zone commander/headquarters duty officer.
- c. If a criminal investigation was initiated by another agency, a supervisor shall be assigned to monitor the criminal investigation.
- d. If the commissioned employee was incarcerated, the chief shall be notified immediately. The chief will determine the status of the commissioned employee.
- e. Upon receiving information concerning an alleged violation, the Office of the Chief shall ensure, if required, an administrative investigation is initiated.
- f. The Standards Bureau commander shall ensure the investigation is conducted pursuant to department policy.

H. Orders of Protection

1. Any DPS employee that has been served an order of protection accusing the employee of domestic abuse shall immediately or as soon as possible notify their immediate supervisor so that a determination can be made as to whether such an order affects the employee's ability to perform their job functions. The employee shall provide the supervisor with a copy of the order or finding, and information relating to the specific terms and conditions of the order. If the immediate supervisor is not available, the chain of command will be followed until a supervisor is contacted.
2. All DPS employees and supervisors shall cooperate fully in the enforcement of all court orders, including orders of protection (particularly orders in which abusers have been ordered to stay away from the work site), conditions of release pending trial and orders for custody. With the permission of the victim, a copy of any existing

orders and/or a photograph of the abuser should be kept at main entry points to the worksite.

3. Supervisors should have a workplace protocol in place, and should ensure that all employees have clear instructions about what to do in certain situations. This includes instances where an abuser gains unauthorized access to the work site or when an abuser with authorized access refuses to leave the area of the victim employee and/or engages in acts that threaten the safety of others and/or violate an existing order of protection.
4. An employee requesting an order of protection may voluntarily inform the department, but is not required to do so.
5. When DPS has verification that an employee is adjudicated as guilty for a domestic violence offense, or is enjoined by an Order of Protection as a result of domestic violence, they shall take appropriate action. When said employee has job functions that include the authority to take actions that may negatively impact victims and/or actions that may protect abusers from appropriate consequences for their behavior, the employee shall be subject to corrective or disciplinary action up to and including termination.
6. The supervisor receiving the information shall immediately comply with all terms and conditions of the order or finding that directly affects the employee's duty status. The supervisor shall notify the Office of the Secretary, through the chain of command, of any and all conditions set forth by the order.
7. It is the responsibility of the employee to keep the Department aware of any changes in the status of the order or finding.

I. Commissioned Employees Subject to an Order of Protection

1. If the order does not allow the commissioned employee to possess firearms, the DPS Cabinet Secretary shall immediately place the commissioned employee on administrative leave or administrative duties, at his discretion, pending the disposition of the case.
2. The chief will review the employee's status every thirty (30) days while the case is pending.

J. Domestic Violence Conviction of Commissioned Employee - Notification

1. Any commissioned employee convicted of any crime related to domestic violence shall immediately notify his/her immediate supervisor of the conviction. If the immediate supervisor is unavailable, the chain of command will be followed until a supervisor is contacted.
2. The commissioned employee shall immediately surrender all relevant departmental equipment to the supervisor receiving the information concerning the employee's conviction. Should the supervisor receiving the information be unable to take possession of the equipment, arrangements will be made for another supervisor to take possession of the equipment.
3. The supervisor receiving the information shall immediately notify the Office of the Chief, via the chain of command.
4. Upon learning of the conviction, the DPS Cabinet Secretary shall immediately place the commissioned employee on administrative leave or administrative duties, at his discretion.

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5. Upon direction from the Office of the Chief, the supervisor shall notify the commissioned employee of the change in duty status.
6. The supervisor will immediately advise the commissioned employee that possessing any firearms or ammunition is a violation of federal law.
7. Any conviction for a domestic violence-related charge will result in the convicted employee being terminated from employment with the Department, pursuant to Title 18 U.S.C. 922.
8. Termination proceedings will be handled in accordance with 10.5.500 NMAC.

7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: s/ John Denko
DPS Cabinet Secretary

DATE: February 12, 2009