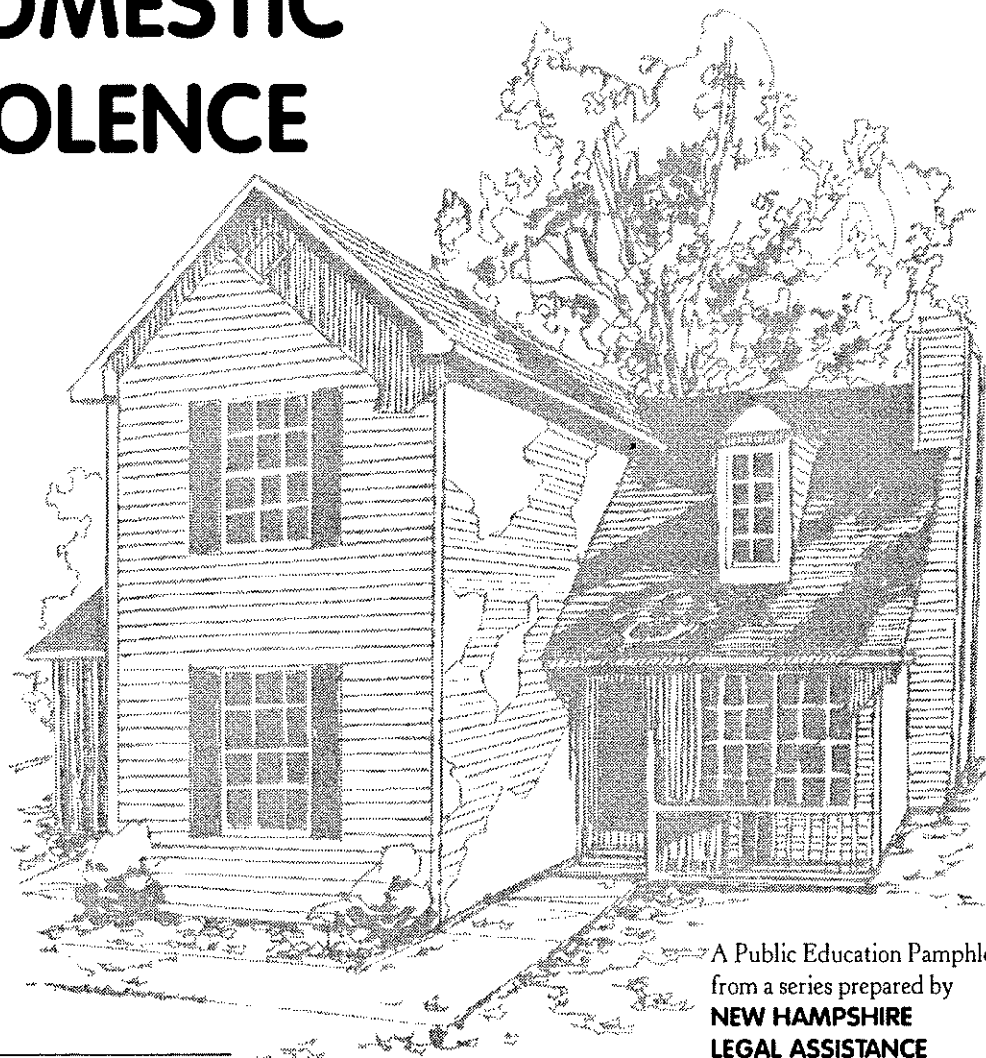


It Helps to Know the Law....

It is against the law
to abuse another

DOMESTIC VIOLENCE



A Public Education Pamphlet
from a series prepared by
**NEW HAMPSHIRE
LEGAL ASSISTANCE**

IT IS AGAINST THE LAW

for your spouse/partner, family or household member to:

- Assault or attempt to injure you (RSA 631:1 through 631:3);
- Threaten you so that you fear for your physical safety (RSA 631:4);
- Force sexual contact or relations on you against your will (RSA 632-A:2 through 632-A:5);
- Enter your residence or home against your will if you are living separately (RSA 635:2);
- Kidnap or interfere with your freedom (RSA 633:1 or 2);
- Destroy or threaten to destroy your property (RSA 634:1 or 2);
- Follow you around or act in a way that would make a reasonable person afraid (RSA 633:3-a);
- Harass you (RSA 644:4)

The law considers all these things to be abuse. If any member of your household or your spouse, ex-spouse, partner or ex-partner, or someone you have dated or are dating has done any of these things to you, you may seek the help and protection of the courts and police.

You may ask the courts to order the abuser (your attacker) to stay away from you and to stop abusing you. Separately, you may also ask the police to file criminal charges against this individual.



Protective Restraining Orders

There is a law in New Hampshire designed to protect any adult against domestic violence. That law is RSA 173-B. Minors can also petition the court for restraining orders against persons with whom they are currently or formerly involved (in a romantic relationship whether or not ever sexually consummated).

To use the law, you do not have to be married to or even have lived with the person who abused you. The law protects you from abuse by current or former sexual or intimate partners, as well as past or present household or family members. You do not have to file for a divorce; you do not need a lawyer; and you do not have to pay any court costs or sheriff's fees.

How To Get A Restraining Order

- 1) Go to a court that can properly help you. You may get restraining orders from the following courts:
 - The *district court* of the town in which either you or the abuser lives.
 - The *superior court* of the county in which either you or the abuser lives.
 - If you live in Rockingham County or Grafton County, you must go to the *Family Division Court*.

If you have left your home and are living in a place to escape abuse, you can go to the court closest to your temporary home. The court will not tell anyone your new address.

If you move while the case is pending, you may ask the court to transfer the case to the court most convenient to your new home. Be sure that the court knows how to contact you. The court will hold your whereabouts in complete confidence.

- 2) Ask the clerk of the court for a Domestic Violence Petition. Simply write down (as clearly and in as much detail as possible) what happened to you. You should include the date, the time, the location and the important facts about the abuse. You will have to swear that what you have written is true. Ask for additional pages to write down all the facts, present and past, of abuse that you can think of.

If you ask for emergency orders, the clerk will take the papers to a judge. If you see the judge, just tell him/her simply and honestly what happened to you and why you are in danger. If the judge finds that you are in danger, he/she may immediately issue temporary protective orders, directing the abuser not to abuse you and not to enter your residence, workplace or school. The court may also issue an emergency order granting you temporary custody of your children and ordering the abuser to turn over to a peace officer any guns or other deadly weapons he/she could use to harm you. You will get a copy of the order from the clerk of the court, which you should keep with you at all times.

- 3) A copy of your protective order will be transmitted to the Department of Safety by computer. The State Police must make information regarding the protective order available to your local police department and Sheriff. The local police must promptly serve your abuser with a copy of the temporary protective order. There is no charge for this service. These orders are in effect anywhere in New Hampshire.

If You Need A Protective Order and the Court is Closed

If you are in immediate danger of domestic abuse and no court is open, you may get an emergency protective order by contacting the nearest police department. A police officer can help you fill out the proper form and reach a judge by telephone.

Fill out the form using as much detail as possible, being specific about dates, times and incidences of abuse. The police officer will read the judge what you have written. If the judge believes you are in immediate danger, he/she can issue an emergency protective order over the phone.

This order will be served on your abuser. It will only be effective until the close of business on the next regular court business day. For the protection to remain in effect, you must go to the nearest district, family or superior court before the close of the next business day to ask for a new temporary order.

Hearing On Your Petition

A full hearing will be held on your petition within 30 days of when you file it or within 10 days of the date the petition is served on your abuser, whichever is later. The abuser may also ask for a hearing within 3 to 5 days, which you must attend.

You have the right to bring a lawyer to represent you at the hearing. It is a good idea to see a lawyer if you think custody or child support will be disputed, or if you have been severely injured or expect an injury to last a long time.

If you cannot afford a lawyer, a domestic violence program in your area may be able to refer you to a

lawyer who will do your case pro bono (for free). You can find out which domestic violence program is nearest to you by calling 1-800-852-3388.

At the hearing you will have to testify before the judge about what happened and why you want the final restraining order. If you have a history of being abused by your attacker, or if he or she has abused any other member of your family, tell the judge.

ALSO TELL THE JUDGE:

- If you have children, whether or not you wish to have them with you, and if you are not married to the abusive person, whether or not he/she is their parent.
- If you own joint property with the abusive person, including your residence, exactly what you want and need for the children and yourself.
- If you lost money because of the attack, how much and exactly for what.

You should know that your abuser will probably be at the hearing and he/she or his/her attorney will have an opportunity to ask you questions.

Bring witnesses, medical records, police records, and other official documents for the judge to see. The judge will base a decision on all the facts presented.

Final Orders

After the final hearing, the Court will issue final orders if there is a finding of abuse. If there is a finding of abuse, the court is required to order the relinquishment of firearms. In addition, you may ask the court to issue the following relief as part of the final order:

- Continue to restrain the abuser from abusing or contacting you;
- Grant you temporary custody of the children, ordering the abuser to pay you support for them and ordering the abuser to cover the children and you on his/her health insurance policy (if legally responsible to do so);
- Order visitation in such a way that will protect the safety of you and the children;
- Grant you use of any jointly-owned property including your residence, household furniture and your car;
- Order the abuser to pay you for out-of-pocket expenses resulting from the attack, such as hospital, doctor or dentist bills, lost wages, taxi fares or babysitting costs, moving or shelter expenses, and legal fees;
- Restrain the abuser from intimidating or threatening you, your relatives (whether or not they live with you) or your household members;
- Direct the abuser to attend counseling or batterers' intervention programs.

These orders are effective for one year unless otherwise stated. At the end of the year, you may go back to court and ask the judge to extend the protective orders if you still fear possible abuse.

Violation of Orders

Once a protective order is in effect against the abuser, it is a crime and contempt of court for the abuser to violate the order.

If the abuser knowingly violates a protective order in any way, it is a class A misdemeanor that the police may prosecute. If the abuser violates a temporary or final protective order, the police must arrest and prosecute him/her. In addition, you may take the abuser back to court on a charge of contempt. A contempt hearing must be held within 14 days, and if the abuser is found guilty, he/she may be fined or put in jail.



Emergency Shelter and Assistance

If you need to remove yourself and your children from danger, help is available.

There are domestic violence programs located throughout New Hampshire that provide shelter for abused persons and their families. To get in touch with these groups you can call, free of charge, 1-800-852-3388, 24 hours a day.

These programs are there to help you even if you have decided not to leave your relationship/abusive partner. They have advocates trained to aid you with shelter, counseling, to explain the legal procedures to you, and accompany you to court, the hospital or to get public assistance. Please note that these advocates are not lawyers. In certain circumstances they may be able to refer you to a lawyer through the Domestic Violence Emergency (DOVE) Project of the New Hampshire Bar Association or the Domestic Violence Advocacy Project of New Hampshire Legal Assistance. DOVE and NHLA provide free legal representation to low-income individuals at final domestic violence hearings and divorce and custody hearings.



Making Criminal Complaints

In addition to getting civil protective orders, you may also ask the police to help you and to charge your abuser with a crime(s).

If the police have good cause to believe that you have been abused as defined by RSA 173-B within the past six hours by a current or former spouse/partner/date or that a restraining order has been violated, they may immediately arrest the abuser and file criminal charges against him/her. If it has been more than six hours, they must get a warrant to be able to arrest the abuser.

If the police do not arrest your abuser right away, you may file a criminal complaint yourself. You can call your local police department or district court to obtain a complaint form.

Simply write down what happened to you and the number of the law that was broken. Once the form is filled out, you must swear to it before a Justice of the Peace.

Once the complaint is filed either at the court or the police department, your abuser will either be arrested or summoned to the court. Because most people are released from custody soon after their arrest, do not expect the abuser to be confined to jail before the trial. If you fear the abuser may retaliate upon his/her release, you may request a bail condition: for example, that the abuser stay away from you. If the condition is broken (e.g., the abuser does not stay away from you), the abuser may have to return to jail.

In order to prosecute the abuser, you may be required to testify under oath in open court about what happened during the incident you complained about. If you have been threatened or abused at other times by this individual, be sure to tell the police or the prosecutor before trial about those incidents.

Once a criminal complaint has been filed, the police or the county prosecutor brings the charges against the abuser. It is no longer your complaint and you cannot withdraw it. You may be subpoenaed to testify.



Stalking Someone Is Against the Law in New Hampshire

It is against the law for someone:

- To follow you around more than once, appear more than once at your home, work or other place where you are, intending to make you or a "reasonable person" afraid;
- To intimidate you by causing substantial emotional distress or threaten you with death or bodily injury; or
- To follow you around even once, or show up at your home, work or other place described in your order if you have a restraining order or bail order against him/her.

If you think someone is doing any of the above things to you, call the police right away. The police can arrest the person who is doing these things if the officer believes they happened within the past six hours. If there is a protective order in place, the police **must** arrest him/her. The police can make an arrest even if they did not see the person follow, threaten or intimidate you.

Effective January 1, 1998, a person who is being stalked can obtain a protective order under the same procedures and conditions as those issued for victims of domestic violence.

You may petition for such a protective order in the district, family or superior court where either you or the person who is stalking you reside.

New Hampshire Enforces Restraining Orders From Other States

If you have a restraining order from another state, you can protect yourself by going to any district court in New Hampshire to file a copy of this order with the New Hampshire courts. The clerk will then make a copy of the order available to the police.

Be sure to tell the police if you have a restraining order from another state if you call to report you have been abused, followed, threatened or intimidated.

Your New Hampshire order should be enforceable in other states as well.



Law Enforcement's Duties Toward Victims of Domestic Violence

Peace officers are obligated to use all means within reason to prevent further abuse of domestic violence victims. They are required by law to give the victim immediate and written notice of the rights of victims and of the remedies and services available to victims of domestic violence. The written notice shall include a statement substantially as follows:

If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety including asking for an emergency telephonic order for protection. You may also request that the officer assist you in obtaining from your premises and curtilage toiletries, medication, clothing, business equipment, and any other items as determined by the court, and in locating and taking you to a local safe place including, but not limited to, a designated meeting place to be used as a crisis center, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment you have the right to request that the officer assist you in obtaining an ambulance. You may request a copy of the report filed by the peace officer at no cost from the law enforcement department.

New Hampshire Legal Assistance BRANCH LAW OFFICES

1361 Elm Street
Suite 307
Manchester NH 03101
668-2900

58 Main Street
Littleton NH 03561
444-8000
1-800-548-1886

206 Moody Building
Tremont Square
Claremont NH 03743
542-8795
1-800-562-3994

154 High Street
PO Box 778
Portsmouth NH 03802-0778
431-7411
1-800-334-3135

1-800-562-3174
TTY-206-2299 or 1-800-634-8989

New Hampshire Legal Assistance (NHLA) provides free legal help to persons who cannot afford a private attorney. NHLA handles legal matters involving health care, public and private housing issues, food stamps, welfare, unemployment compensation, utility shut-offs, consumer problems, and domestic violence. Our offices are open Monday-Friday between 8:30 a.m. and 5:00 p.m.

This pamphlet was published by NHLA and the New Hampshire Bar Association DOVE Project to give you some idea of your rights. Since the law is always changing through actions of the courts and legislature, you should consult a lawyer if you have a problem that requires legal attention.

This project was supported by an award from the Violence Against Women Grants Office, Office of Justice programs and administered through the New Hampshire Department of Justice.

"It Helps to Know the Law" pamphlet series includes:

Unemployment Compensation
The Senior Citizens Law Project
Medicaid Income and Asset Rules for Nursing Home Residents
Property Tax Relief
Your Rights as a Tenant in a Manufactured Housing Park
Fair Housing Project