

CHAPTER 1 – GENERAL PROVISIONS

STATUTORY REFERENCES: N.H. CONST. pt I, art. 35
RSA 169-C (Child Protection Act)
RSA 173-B (Commencement of Proceedings; Hearing)
RSA 173:B:4 (Temporary Relief)
RSA 458 (Annulment, Divorce and Separation)
RSA 461-A (Parental Rights and Responsibilities)
RSA 595-A:4 (Affidavit in Support of Application for Warrant; Contents and Form)
RSA 633:3-a (Stalking)

A. STATEMENT OF PURPOSE

The purpose of the protocols is to provide guidance to judicial officers and court personnel regarding the processing of domestic violence cases. The protocols include “Comments” and “Notes,” which provide further explanation to judicial officers and court personnel to help them understand and apply the law or protocol.

B. IMPARTIALITY

It is the responsibility of every judge to remain unbiased and impartial in the determination of all issues put forth for decision. *See* N.H. CONST. pt. I, art. 35; *Sup. Ct. R.* 38. The assurance of due process is guaranteed by both the State and Federal Constitutions, and the judge's role as guarantor of those rights is steadfast. Furthermore, it is imperative that all court personnel (judges, staff, and security) treat all plaintiffs and defendants with respect and dignity.

C. NOTICE OF ALLEGATIONS

In domestic violence cases, the judge must be careful to ensure that the defendant receives adequate notice of the allegations upon which the plaintiff bases the domestic violence petition. Because the vast majority of these cases are brought and defended by self-represented litigants, this responsibility makes it incumbent upon the judge who issues *ex parte* temporary protection orders, pursuant to RSA 173-B:4, to make certain that the petition's written allegations reflect the facts upon which the *ex parte* order is issued. If, for example, the judge inquires of the plaintiff and receives facts that were not included in the original petition and that serves as the basis for the judge's preliminary finding, then the judge should be careful to ensure that those facts are reflected in the notice given to the defendant.

Although it is not the judge's role to fill in any gaps in the plaintiff's petition, it is an appropriate expectation that a judge will make inquiries to clarify facts, test credibility, and assist the plaintiff in understanding their burden of proof in an *ex parte* hearing. In conjunction with that expectation, because all courts are courts of record, it is the responsibility of the judge to make note of any additional facts upon which the decision to issue an *ex parte* order is made.

This responsibility is not unlike the addition of judge's notes to a search warrant application when the information originally included on the application is supplemented by oral testimony. RSA 595-A:4. Failure to make such a record and thereby notify the defendant of the new, more complete information relied upon by the judge could result in defective notice to the defendant and amount to a violation of due process.

D. DEFENDANT’S OPPORTUNITY TO BE HEARD

The defendant has a constitutional right to notice and an opportunity to be heard before a final protective order against them may be issued. The opportunity to be heard encompasses not only the timing of the hearing, but also the conduct of the hearing itself. By statute, domestic violence hearings must be scheduled within **30 days** of the filing of the petition, unless the defendant has submitted a written request for an expedited hearing. RSA 173-B:3. If a defendant has submitted such a written request, then the hearing must occur **no less than three (3) and no more than five (5) business days** from the request. RSA 173-B:4. These time frames may be extended for an additional 10 days upon motion by either party for good cause shown. RSA 173-B:3. It is court policy that domestic violence cases take priority over other cases without time requirements.

The time requirements for domestic violence cases are mandatory and must be strictly followed. *McCarthy v. Wheeler*, 152 N.H. 643 (2004). The time periods are “for the benefit of both parties.” *S.C. v. G.C.*, 175 N.H. 158, 166 (2022). They “protect the due process rights of the defendant,” and advance one of the stated purposes of RSA 173:B, which is to entitle survivors of domestic violence to “immediate and effective . . . and judicial relief.” *Laws 1979, 377:1*.

COMMENT

The expedited hearing may, but does not need to be, the final hearing. RSA 173-B:4.

E. FINAL HEARING

The other prong of the opportunity to be heard is the conduct of the final hearing. The parties may submit evidence to the court consisting of testimony and/or physical exhibits. Domestic violence cases are not bound by the technical rules of evidence; however, there are limits. The relaxation of the rules of evidence does not mean the parties may present any information they want the court to hear. The judge must carefully consider whether the information the parties seek to introduce is relevant and material to the allegations made in the petition and to the ultimate question before the court, which is whether the actions complained of took place and whether they constitute abuse within the meaning of the statute. RSA 173-B:3, VIII.

F. DISTINCTIONS BETWEEN ORDERS ISSUED UNDER RSA 173-B AND OTHER ORDERS OF PROTECTION OR RESTRAINING ORDERS

An order issued under RSA 173-B is called a domestic violence order of protection. The range of potential plaintiffs under RSA 173-B is broad (married, divorced, child-in-common, intimate partner, dating relationship, etc.). *See* Chapter 2, section B for “Who May File a Petition”. A domestic violence order of protection can be issued only after a finding of abuse and a finding of a credible present threat to the plaintiff’s safety are made. RSA 173-B:1, I; *see Walker v. Walker*, 158 N.H. 602, 608 (2009); *S.C. v. G.C.*, 175 N.H. 158 (2022). Issuance of such an order requires that the defendant be served, notified, and given the opportunity to be heard (due process). If a final order is granted, it remains in effect for up to one year, subject to an extension upon the granting of a written request filed by the plaintiff, before the order expires, which establishes good cause for such extension. The order is entered into a national database (the National Crime Information Center, or “NCIC”, Protection Order File) maintained by the FBI, and is enforceable by law enforcement and courts across the country. The order subjects a defendant, having been found to have committed one or more acts of abuse, to multiple restrictions, such as no contact with the protected parties and no access to, or possession of, firearms. Sanctions for violations can be significant, particularly if violations of federal law occur.

An order issued under RSA 633:3-a is called a stalking order of protection. Stalking occurs when: (1) a person engages in a course of conduct targeted at a specific person that makes the person afraid and would cause a reasonable person to fear for their personal safety or the safety of an immediate family member; (2) a person engages in a course of conduct targeted a specific person that the actor

knows will place the person in fear for their personal safety or that of an immediate family member; or (3) after the person has been served with a protective order that prohibits them from having contact with a specific individual, the person engages in a single act of conduct that violates the protective order and is one of the acts listed in RSA 633:3-a, II(a). RSA 633:3-a, I. A course of conduct means two or more acts over a period of time, which evidences a continuity of purpose and does not include constitutionally-protected activity or activity necessary to accomplish a legitimate purpose. Stalking need not involve any overt violence or threats of violence. Unlike domestic violence cases, a plaintiff does not need to prove the existence of any particular relationship or that the defendant poses a credible present threat to their safety. The types of relief available and the procedures involved in these proceedings are the same as those set forth in RSA 173-B, including entry into NCIC. RSA 633:3-a, III-a.

A person who qualifies for a domestic violence order of protection pursuant to RSA 173-B may also qualify for a stalking order of protection pursuant to RSA 633:3-a. Therefore, a plaintiff may file a petition pursuant to either statute or both simultaneously.

An order of protection may also be sought and obtained under RSA 169-C:7-a, commonly known as “Jade’s Law,” which allows a parent or guardian to file a petition for a protective order *on behalf of* a minor, alleging abuse of the minor by a member of the minor’s family or household (other than the minor’s other parent). Orders issued under RSA 169-C:7-a are entered into NCIC.

Other orders of protection may be issued against a parent, relative, guardian, custodian, or household member for the protection of a minor child as part of abuse and neglect proceedings under RSA 169-C:16 and RSA 169-C:19. Orders of protection within an abuse and neglect case may be requested by any party to the RSA 169-C case. These orders of protection are entered into NCIC.

An order issued under either RSA 458 or RSA 461-A is limited to parties involved in divorce or parenting proceedings. There is no requirement that the court make a finding of abuse. In fact, RSA 458 does not define abuse. A court may issue an order upon oral or written request. Such orders generally restrain parties from having further contact with one another or speaking to one another in inappropriate terms, hence it is called a restraining order, not an order of protection. Unlike a domestic violence order of protection issued under RSA 173-B, a restraining order issued under RSA 458 or RSA 461-A may last indefinitely and include mutual restraining orders. These orders are **not** entered into NCIC.

All of the above orders may be sought and obtained by filing a petition in the Circuit Court. Unlike the above types of protection orders that are filed in Circuit Court, civil restraining orders are available in Superior Court. The Superior Court is a court of general jurisdiction that possesses equitable powers including the ability to restrain unwanted contact. Specifically, a civil restraining order is an order which prohibits someone from doing something to someone (e.g., having any contact with the plaintiff or from doing something else that affects the plaintiff or the plaintiff’s property). In most cases, the people involved are not in relationships that qualify under the various orders described above. These orders may be sought and obtained by demonstrating that there is no adequate remedy at law and that there is risk of great and irreparable harm if the order is not granted. Finally, unlike all the orders described above at which there is no cost to apply, there is a cost associated and these orders are not entered into NCIC.