

CHAPTER 2 – DEFINITIONS OF DOMESTIC VIOLENCE AND PROTECTED PERSONS

STATUTORY REFERENCES: RSA 173-B:1 (Definitions)
RSA 173-B:5 (Relief)
RSA 173-B:7 (Minority not a Preclusion for Services)
RSA 625:11, V (Deadly Weapons)
RSA 631:1 through 3 (Assault or Reckless Conduct)
RSA 631:4 (Criminal Threatening)
RSA 632-A:2 through 5 (Sexual Assault)
RSA 633:1 through 3-a (Interference with Freedom)
RSA 633:4 (Interference with Custody)
RSA 634:1 and 2 (Destruction of Property)
RSA 635:1 and 2 (Unauthorized Entries)
RSA 644:4 (Harassment)
RSA 644:8 (Cruelty to Animals)

INTRODUCTION

RSA 173-B:1 provides that protection from domestic violence is afforded to a broad range of persons, including family or household members and current or former sexual or intimate partners of the defendant. Since the enactment of RSA 173-B in 1979, the legislature has three times amended the section defining who is covered by the statute. Each amendment has broadened the application of the statute, first to extend coverage to those who had formerly but no longer live with the defendant, and then to include those who may never have lived with the defendant, but have or have had in the past, a sexual or intimate relationship with the defendant. Effective in 2000, the legislature explicitly stated that the minority of any individual seeking assistance from any domestic violence program, as defined by RSA 173-B:1, shall not preclude provision of such requested services. Additionally, in 2014, the legislature expanded the definition of abuse to include cruelty to animals contrary to RSA 644:8.

A. DEFINITIONS OF DOMESTIC VIOLENCE

RSA 173-B:1 provides the definitions of abuse under this statute.

RSA 173-B:1 Definitions:

I. **Abuse** means the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible present threat to the plaintiff's safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably caused or has caused the petitioner to fear for their safety or well-being.

- a. Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3;
- b. Criminal threatening as defined in RSA 631:4;
- c. Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5;
- d. Interference with freedom as defined in RSA 633:1 through RSA 633:3-a;

COMMENT

Stalking is included under these definitions and may form the basis for a finding under RSA 173-B.

- e. Destruction of property as defined in RSA 634:1 and RSA 634:2;
- f. Unauthorized entry as defined in RSA 635:1 and RSA 635:2;
- g. Harassment as defined in RSA 644:4; and

COMMENT

RSA 644:4 (e) includes as part of its definition, reference to interference with custody and kidnapping of a child as described in RSA 633:4.

- h. Cruelty to animals as defined in RSA 644:8.

COMMENT

A plaintiff's contact with the defendant during the time frame of the alleged abuse does not preclude a finding that the defendant poses a credible present threat to the plaintiff's safety. *See S.C. v. G.C.*, 175 N.H. 158 (2022).

- II. **Contact** means any action to communicate with another either directly or indirectly, including, but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.
- III. **Cross orders for relief** refer to separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence. A cross order of protection may be issued when both parties have filed petitions against each other, and the court finds that each party has committed abuse against the other, but cannot determine who is the primary aggressor. RSA 173-B:5, V(b).
- IV. **Deadly weapon** means **deadly weapon** as defined in RSA 625:11, V.
- V. **Domestic violence** means abuse as defined in RSA 173-B:1, I.
- VI. **Family or household member** means:
 - a. Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the same residence.
 - b. Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.
- VII. **Firearm** means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.
- VIII. **Foreign protective order** means an order enforceable under RSA 173-B:13.
- IX. **Intimate partners** means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.
- X. **Mutual order for relief** refers to an order restraining both parties from abusing the other originating from a petition filed by one of the parties and arising from the same incident or incidents of domestic violence. Mutual orders of protection are prohibited in domestic violence cases. RSA 173-B:5, V(a).

B. WHO MAY FILE A PETITION

RSA 173-B:1, X sets forth the following classifications of people entitled to file petitions:

1. Spouses;

2. Ex-spouses;

COMMENT

There is no indication that the legislature intended to limit the time after a divorce in which an ex-spouse is offered the protection of RSA 173-B. It is the fact of the previous relationship that qualifies a person to protection and not how recent the relationship is.

3. Persons cohabiting with each other;

COMMENT

The definition of cohabitation suggests that the legislature intended to offer protection to those persons who are living together or have lived together as though they were married as distinguished from others who reside together as friends sharing an apartment or college roommates under a contractual arrangement.

4. Persons who cohabited with each other but who no longer share the same residence;

COMMENT

No time frame is established by the legislature within which cohabitation must have ended to qualify for the protection of RSA 173-B.

5. Parents of the defendant;

NOTE: Minor children of the defendant and stepchildren who reside with the defendant who are alleged to have been abused by the defendant cannot bring a petition against the defendant under RSA 173-B. The appropriate mechanism for protection of children related to the defendant who are alleged to have been abused is RSA 169-C. However, children, stepchildren, and children who are household members of any domestic violence plaintiff may be included as additional protected persons as described below in Section C, under an order of protection issued to that plaintiff by the court.

6. Persons related to the defendant by consanguinity;

COMMENT

Consanguinity refers to sharing a common ancestor. The relationship may be lineal, that is, one which subsists between two persons of whom one is descended in a direct line from the other, such as between the son, father, and the grandfather in the ascending line and between the father, son and grandson and so on downward in the descending line. Relationships of consanguinity may also be collateral, defined as the relationship between persons who descend from a common ancestor, but by different lines such as one's siblings and cousins. The statute does not make a distinction between lineal and collateral consanguinity.

7. Persons related to the defendant by affinity;

COMMENT

Affinity is “the relation that one spouse has to the blood relatives of the other spouse; relationship by marriage.” *Black’s Law Dictionary* 63 (8th ed. 2004). For instance, a person is related by affinity to his spouse’s brother (their brother-in-law), but that person is not related by affinity to their spouse’s brother’s spouse (their brother-in-law’s spouse). The statute is silent as to whether it covers former relationships of affinity. Whereas the statute does address former relationships between spouses as well as between intimate partners, it would seem that the omission from the statute of former relationships of affinity was purposeful and that coverage to those who enjoyed former relationships of affinity to the defendant would not be covered under RSA 173-B.

8. Current or former sexual partners;

COMMENT

The statute neither requires cohabitation between sexual partners nor implies that any more than a single act of sexual contact is required to entitle the plaintiff to the protection afforded by RSA 173-B. The statute applies regardless of gender identity or the sexual orientation of the parties. The statute, however, implies that the relationship was voluntary, regardless of the duration, as distinguished from a situation where someone is sexually assaulted outside an existing relationship.

COMMENT

The legislature has not limited the time frame in which former sexual partners may seek the protection of RSA 173-B after the end of their sexual relationship.

9. Current or former intimate partners.

COMMENT

RSA 173-B:1, XV defines "intimate partners" as persons involved in a "romantic relationship" and makes clear that sexual consummation of a relationship is not necessary for it to be deemed "romantic" within the meaning of the law. The legislative history reveals testimony indicating that the purpose of the amendment was to offer protection to those who had begun a "dating" relationship; there was no testimony, however, regarding how many dates are required in order to qualify as intimate partners. This suggests that a romantic, online dating relationship would qualify.

COMMENT

There is no legislative limitation on the time frame within which former intimate partners may seek the protection of RSA 173-B after the end of the relationship.

PROTOCOL 2-1

It is the responsibility of the judge and not the staff to determine whether a plaintiff qualifies as a protected person under RSA 173-B.

C. ADDITIONAL PROTECTED PERSONS

PROTOCOL 2-2

In the event that the court grants an order of protection to a plaintiff, RSA 173-B:5, I (a)(4) authorizes the court to enjoin the defendant from abusing the plaintiff's relatives, regardless of their place of residence, and the plaintiff's household members.

NOTE: The plaintiff filing the petition must be the abused party. RSA 173-B does not authorize third persons to file on behalf of others, such as where a parent may wish to file on behalf of their minor child against an individual the child is dating. The minor must file his or her own petition. An exception may exist where someone is acting under a power of attorney.