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empowering women

ywca

union county

**LEGAL OPTIONS
FOR VICTIMS
OF DOMESTIC
VIOLENCE**

YWCA UNION COUNTY

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Why Create this Handbook?

Domestic violence impacts 1 in every 4 women, and cuts across all racial, ethnic, religious, age, economic, and other categories – impacting people regardless of where they live or how they live their lives. Men can be victims as well, and domestic violence occurs in both same-sex and opposite sex relationships.

Unfortunately, because of the silence that so often surrounds this issue, many companies, social service providers, governmental agencies and more are unaware of the prevalence of domestic violence, how to recognize it, and how to help those impacted. Often victims are unaware of how to seek help, and in particular what legal remedies are available to them. While domestic violence professionals are familiar with the legal rights and options for domestic violence victims, the larger community does not have this knowledge. Thus, should a victim of domestic violence seek help or advice from her employer, her child's school, or a service agency in her community, she is unlikely to get the level of information and support needed during this critical time.

This handbook was created to provide basic information on the Legal Rights and Options for domestic violence victims in New Jersey. More extensive support, such as counseling, case management, housing, advocacy and other services for victims are available from YWCA Union County as well as from a network of domestic violence agencies throughout New Jersey. Since often the presenting issue for a victim of domestic violence is “what are my rights?” this handbook serves as a starting point for those individuals and agencies that can benefit from the ability to answer that first and basic question. Information about Safety Planning has also been included, as this is essential to anyone seeking to end an abusive situation.

This handbook was prepared by key staff of the YWCA Union County, which is the lead Domestic Violence Services Agency in Union County NJ. The handbook is intended as a first step or basic guide to the legal rights of victims of domestic violence, and is to be used primarily for social service practitioners and other service personnel who may, as part of their agency services, encounter victims of domestic violence who are unaware of their rights and options. More detailed information on domestic violence laws, additional details regarding restraining orders and other reliefs, safety planning and domestic violence services are available from the sources listed at the end of this handbook under resources section.

Introduction

Did you know?

- **One in every four** women will experience domestic violence in her lifetime (Center for Disease Control and Prevention).
- **Three women are murdered** each day in the US by their abuser (NNEDV) An estimated 1.3 million women are victims of physical assault by an intimate partner each year.
- The majority (85%) of domestic violence victims are **female** (Bureau of Justice Statistics Crime Data Brief, Intimate Partner Violence, 1993-2001, February 2003).
- The cost of intimate partner violence in the US exceeds **\$5.8 billion** each year, \$4.1 billion of which is for direct medical and mental health services (Cost of Intimate Partner Violence Against Women in the US, Dept. of Health and Human Services, March 2003).
- Domestic violence is a **primary cause of homelessness** among women and children in US cities (Domestic Violence and Homelessness, ACLU Women's Rights Project, 2006)

What is Domestic Violence?

Domestic violence is a pattern of abusive behavior in a relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, financial or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

- **Physical Abuse** includes hitting, slapping, shoving, grabbing, pinching, biting, hair-pulling, biting, and strangling. Physical abuse can also include denying a partner medical care or forcing alcohol and/or drug use.
- **Sexual Abuse** is coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is not limited to rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating one in sexually demeaning manner.
- **Emotional Abuse** undermining an individual's sense of self-worth and/or self-esteem. This may include, but is not limited to constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with his or her children.
- **Financial Abuse** consists of making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment.
- **Psychological Abuse** includes degrading and criticizing, causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.

Domestic violence impacts people across all racial, ethnic, religious, economic, age, gender and other groups. Domestic violence occurs in both opposite-sex and same-sex relationships. It can also include dating abuse, elder abuse, abuse within a family or a household, such as siblings or residents of a boarding home.

As the majority of victims of domestic violence are women, the female pronoun will be used to refer to victims.

The Power and Control Wheel

The Power and Control Wheel is used to demonstrate the strategies used by batterers to gain power and control over their victims.



Original Power and Control Wheel developed by:
Domestic Abuse Intervention Project
www.theduluthmodel.org

How Does The Law Recognizes Domestic Violence?

The New Jersey Prevention of Domestic Violence Act (N.J.S.A. 2C:25) (referred to here as the NJ Domestic Violence Act) defines domestic violence as occurrence of one or more of 17 acts committed against a victim who is:

1. 18 years of age or older
2. An emancipated minor
3. Is currently or formerly married to the offender
4. Is currently or formerly dated the offender
5. Is currently or formerly shared a household with the offender.

In New Jersey the law recognizes that domestic violence may occur within the dynamics of a heterosexual or homosexual relationship, as well as within the dynamics of a family where sibling abuse or elder abuse may occur.

An “emancipated minor” refers to a person who is under 18 years of age, but has been married, has entered military service, has a child, or is pregnant.

Seventeen Acts Constituting Domestic Violence:

- **Homicide:** Purposely, knowingly or recklessly causing or attempting to cause another’s death.
- **Assault:** Any physical attack that causes or attempts to cause another bodily injury or fear of harm, including beating (with or without a weapon), punching, slapping, kicking, choking or hair-pulling.
- **Terroristic Threats:** Threats to commit a crime of violence with the purpose to terrorize another; threats to kill another or someone else that reasonable puts one in fear of deadly harm.
- **Kidnapping:** Transporting or taking her against your will to a place where she did not want to go, or confining another for a substantial period of time for ransom, reward or as a hostage.
- **Criminal Restraint:** Holding in a condition of involuntary servitude or restraining in a way that exposes another to serious bodily injury.
- **False Imprisonment:** Confining, within one’s home, or at another location against another’s will.
- **Criminal Coercion:** Acts that threaten or are calculated to substantially harm another person with respect to health, safety, business, calling, career, financial condition, reputation or personal relationships.
- **Sexual Assault:** Using a weapon or threat of physical force or coercion to rape or to force unwanted sexual penetration.
- **Criminal Sexual Contact:** Using a weapon or threat of physical force or coercion to force unwanted sexual touching.
- **Lewdness:** Any flagrantly lewd or offensive act, such as exposing oneself, which would reasonably be expected to offend, embarrass or alarm.

- **Criminal Mischief:** Purposely damaging personal property including car, home, clothing, pets or any other possession.
- **Robbery:** In the course of a theft, the perpetrator inflicts bodily injury or uses force, or threatens another with or purposely puts the victim in fear of immediate bodily injury.
- **Burglary:** Entering the home or other structure without permission with the intention of committing a crime.
- **Criminal Trespass:** Entering or secretly remaining in the home or other structure such as the workplace, without permission; or peering into windows or openings or dwelling places for the purpose of invading privacy.
- **Harassment:** Communicating anonymously or at inconvenient times, or using offensive language; engaging in any conduct to alarm or annoy; or hitting, kicking or offensively touching or threatening to touch.
- **Stalking:** Repeatedly maintaining visual or physical proximity, directly or through others, by any action, method, device or means; following, monitoring, observing, surveilling, threatening or communicating or interfering with property; repeatedly harassing or conveying verbal or written threats by any means or communication. It is a crime for an abuser to engage in this behavior if it makes the victim reasonably fear for her safety or safety of another person or to suffer emotional distress.
- **Contempt of Domestic Violence:** Purposely or knowingly disobeys a judicial order or protective order, or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

Restraining Orders

Who Qualifies for a Restraining Order?

The victim's relationship with the abuser must be covered by the NJ Domestic Violence Act. The defendant is 18 years of age or older (or emancipated) and

- Victim is 18 years of age or older (or emancipated) and has been subjected to domestic violence by her present or former spouse or by any person who is her present or former household member;
- Victim is of any age and has been subjected to domestic violence by a person with whom she is pregnant;
- Victim is of any age and has been subjected to domestic violence by a person with whom has or had a dating relationship (including same sex relationships);
- Victims is an elderly or disabled person who is being subjected to domestic violence by a spouse, dating or live-in partner or by any other household member, including a caregiver.

The Restraining Order and the Domestic Violence Legal Process

Should an incident of domestic violence occur, the victim has a right to pursue a Restraining Order or criminal penalties, or both.

A Restraining Order is an official, legally enforceable document designed to prevent violence by one person against another. The NJ Domestic Violence Act sets the guidelines for restraining orders and related matters. It is a civil action, not a criminal action.

Should an incident of domestic violence occur, a victim may file a Domestic Violence Complaint in the County Court, Family Division during court hours (8:30 AM to 3:30 PM Monday through Friday). If complaint is filed at Superior Court, victim must testify in front of a hearing officer. The Temporary Restraining Order may be filed in the county where the domestic violence occurred, where the victim lives, or where victim is sheltered. If a victim is in need of a Temporary Restraining Order when the County Court is closed, she can go to her local police department and obtain the order through a municipal court judge.

It is important for the victim to be specific in her complaint and list all the facts. The victim may also include any history of abuse even if not reported to the authorities in the past. If the abuser has a criminal record, this should be listed as well. The victim will need to provide the name and address of the abuser, and a description of him along with his date of birth, social security number and the name and address of employer. This information is helpful so that the complaint may be served on the abuser.

Obtaining a Restraining Order is a two-step process. Restraining Orders are granted initially a temporary basis. After obtaining a Temporary Restraining Order, within approximately 10 days, parties will be scheduled to appear in Family Court for a Final Restraining Order hearing. At this hearing the victim will have the opportunity to testify as to the incidents of abuse that caused the victim to get a Restraining Order as well as any history of abuse that was listed on the complaint. The victim has the burden of proof; meaning she has to prove to the Court there was an incident of domestic violence. In addition to her testimony, the victim may present:

- Photos;
- Videos;
- Text messages and/or emails;
- Recordings;
- Witnesses to support her testimony.

The victim must tell the Court if she's fearful of the abuser. The judge must understand why the victim needs the protection. The abuser will be in court at this time, but there will be protection in the courtroom and in the courthouse.

The abuser will also be allowed to testify regarding the events and is allowed to ask the victim questions

In addition to protection, the victim may seek additional reliefs:

- Possession of the domicile and/or vehicle;
- Temporary custody of the minor children;
- Child support and spousal support (if applicable);
- Financial support for needs such as rent/mortgage, day care, etc.

After the hearing is complete, the Judge makes a decision whether the Temporary Restraining Order should be made final or dismissed. In order for the Judge to grant a Final Restraining Order (FRO), he or she must believe an incident of domestic violence has occurred and protection is needed in order to prevent the abuser from attacking the victim again.

If a victim is granted a FRO, it is important for victim to keep it with her at all times. Restraining Orders are enforceable throughout the United States.

Modification/Enforcement of a Final Restraining Order

A victim may modify and/or enforce her Restraining Order if circumstances have changed in any way. For example, if a victim needs to change and/or abuser does not follow:

- Custody and/or visitation arrangements;
- Financial needs and obligations
- Issues that were not addressed at the original FRO hearing.

A victim may modify a Restraining Order by filing a Motion for Modification at the Domestic Violence Unit in the Court that initially granted the FRO.

If the abuser does not follow the safety terms in the restraining order, the victim must contact the authorities immediately and have the restraining order enforced.

Dismissals of Restraining Orders

New Jersey Final Restraining Orders do not expire. They are permanent. If a victim wants to dismiss a Restraining Order, she must return to Court. In order to ensure that the victim is not being threatened or coerced by the abuser, the Court staff will set up a meeting with a legal advocate to determine if this is the course of action she wants to take. The victim will have to appear in front of a judge who will ask questions on the record to ensure that the victim has not been coerced to dismiss the Restraining Order.

Civil Restraints

A Civil Restraint is a civil agreement wherein the defendant agrees to stay away from the victim. The agreement can also settle issues of custody, child support, visitation, and housing if applicable. Civil Restraint can be agreed upon prior to or during a DV trial. They are prepared between parties and/or attorneys. A judge is not involved. If a Civil Restraint is completed, the victim must dismiss the TRO. A Civil Restraint is also known as a consent order and may be entered into the Court's record.

A Civil Restraint agreement is **not** enforceable by the police. Should the defendant violate the terms of this agreement, the plaintiff may contact the authorities to report the incident and file a new TRO.

Domestic Violence and the Criminal Court

When obtaining a TRO, the plaintiff or the police may file criminal charges against the defendant. If the police officer sees injuries on the victim, they must arrest and charge the abuser. If the police officer does not make an arrest or file charges, the victim is entitled to go to the Municipal Court and file a civilian complaint. These charges may be handled in Municipal or Superior Court depending on the degree of the charges. The victim will then receive a notice in the mail about the location, date and time she is to appear in court.

How is a Restraining Order different from a Criminal Complaint?

A **Restraining Order** is a civil action where the Court grants protection from the abuser. If the abuser violates the restraining order, the abuser may be arrested and brought to Court. However, a Restraining Order on its own does not give the abuser a criminal record or jail time unless he violates the restraining order.

A **Criminal Complaint** accuses the abuser of committing a crime. If he is convicted, the court may put him in jail, place him on probation, require him to attend a batterer's treatment program, impose a fine, or require community service.

Other Legal Provisions for Victims of Domestic Violence

Divorce

Any victim of DV may separate (moving out of home) from her perpetrator at any time. If married, she may file for divorce. Separating or divorcing does not negatively affect the victim in any way. It does not mean she is waiving any of her rights. There are no home-abandonment charges in New Jersey. New Jersey is a no-fault state. If there are minor children, the victim should stay within the state. Crossing border lines permanently with minor children may result in kidnapping charges. When filing for divorce, a victim may seek the following relief:

- Child Support
- Alimony
- Custody
- Visitation
- Equitable Distribution of assets
- Resumption of Maiden Name
- Other as appropriate

In New Jersey, there are various grounds for divorce, including extreme cruelty, desertion, separation, irreconcilable differences, adultery, voluntary addiction, mental illness, imprisonment, and deviant sexual conduct performed without a person's permission. The victim should consult an attorney to discuss her situation.

Undocumented Victims:

Undocumented victims have the same protections through the NJ Domestic Violence Act as those who are citizens.

VAWA (Violence Against Women Act): VAWA includes special provisions for immigrants victims that allow them to gain legal immigration status without relying on their abuser who is a US citizen or has legal permanent residency (LPR).

U-Visa: Victim is an undocumented victim of domestic violence and can obtain a 4 year visa and can apply for residency after 3 years.

T-Visa: Applies to victims of human trafficking and can obtain a 4 year visa and can apply for residency after 3 years.

Housing

Domestic violence victims residing in any federally funded, public or Section 8 housing cannot be evicted or denied housing because they were abused or due to damage to the home caused by a domestic violence incident. Undocumented victims have the same protections through the NJ Domestic Violence Act as those who are citizens.

Public Assistance

When applying for welfare benefits a victim can reveal to her social services worker that she's experiencing domestic violence. The worker may refer her to be assessed for domestic violence by a counselor, case manager, or other specialist in domestic violence. This can help her avoid restrictions when getting her benefits. The YWCA provides assessments to victims requesting this. Welfare workers are aware of this. This is known as a Family Violence Option Assessment (also known as "FVO").

Victims of Crime Compensation Benefits

The New Jersey Victims of Crime Compensation Office (VCCO) provides compensation to victims of violent crimes for some of the expenses they suffer as

a result of the crime. In carrying out its mission, the VCCO is mindful of the special needs of those victimized by crime and their right to be treated with fairness, compassion and respect.

Creating a Safety Plan

A Safety Plan is a tool used by domestic violence advocates with victims to plan for their safety before they leave, when they leave and after they have left an abusive partner. The most dangerous time for a victim is when she ends the relationship. Safety planning strategies will help victims identify possible ways to protect the victim, children and other family members from the abuse. It is challenging to make logical decisions about safety in a moment of crisis. Creating a safety plan in advance with a victim can help tremendously. Because no two situations are alike safety plans vary depending on the person and her circumstances. As a result, we create an individualized safety plan.

If the victim is planning on leaving the abusive relationship, these are safety strategies to consider in advance:

Notifying trusted individuals such as friends, family, neighbors and co-workers, and informing them and talking about ways they could help. For example, having neighbors call the police in the event that they hear a loud argument.

Creating an exit plan which includes planning where to go if the victim needs to leave in a hurry such as a domestic violence shelter, hotel or family/friend's home. Planning transportation routes that the victim usually would not take and keeping a spare copy of car keys. Being knowledgeable of exits and how to get to the nearest police station or any other public place in the area that is open 24 hours.

Keeping important phone numbers such as the domestic violence hotline number memorized. Keeping a charged cell phone close, at all times. If the victim does not have a cell phone, most domestic violence programs can provide a cell phone programmed for emergency calls free of charge.

Teaching children how to call 911 and how to access exit doors, windows and/or hallways. Talking with them about going to a neighbor's home or a place in the community that may be safe in an emergency.

Keep an emergency bag in a hidden location of the house, the car or trusted friend/family member's home with money, extra copies of keys, necessary medications, copies of important documents and phone charger. These are important documents/records to consider: birth certificates, prescriptions, school records, passports, social security cards, medical and vaccination records, immigration documents, court orders, health insurance and legal information (police reports, copy of restraining orders, marriage certificate, and divorce papers).

During an argument staying close to a door and out of the kitchen, where there are knives on hand, and away from confined spaces such as the bathroom.

If the victim has already left the abusive relationship safety planning strategies should include ways to ensure continued safety:

Change the locks on the doors and phone number.

Obtain Caller ID and an unlisted home phone number. Use call blocking so that neither your partner nor anyone else will be able to get your new, unlisted phone number.

Change transportation routes, work hours and/or consider changing the child's schools. Go to different stores or businesses.

Keep a copy of your restraining order with you at all times, and inform friends, neighbors and employers that you have a restraining order in effect. Alert schools and baby sitters of the situation.

Enroll in an Address Confidentiality program, rent a post office box or use the address of a friend for mail (be aware that addresses are on restraining orders and police reports, and be careful to whom you give your new address and phone number).

Obtain an alarm system or other security system, replace wooden doors with steel or metal doors and install a motion sensitive lighting system.

The YWCA Union County Can Help

YWCA Union County offers a Legal Department composed of Court Advocates, a Staff Attorney and a Legal Assistant. Our services assist clients in navigating the legal system, provide legal advice, offer court accompaniment and attorney representation for Domestic Violence trials. Our staff also provides referrals to other agencies that assist victims of domestic violence. In addition to our Legal Department the YWCA Union County provides counseling, case management, children's services, a 24/7 domestic violence hotline, emergency shelter, transitional/supportive housing, workforce development, domestic violence liaisons, crisis intervention specialists, and community and professional education.

Additional Resources

YWCA Union County	
Hotline:	(908) 355-4357 (HELP)
Administrative Office:	(908) 355-1995
Legal Department:	(908) 355-1995 x 115
Counseling:	(908) 355-1500 x 37
Central Jersey Legal Services	(908) 354-4340
Child Abuse Hotline	(877) NJ-ABUSE
Legal Services of New Jersey	(732) 572-9100
National Center for Victims of Crime	(800) 394-2255
National Coalition Against Domestic Violence	(800) 572-7233
National Dating Abuse Help Line	(866) 381-9474
New Jersey Coalition Against Sexual Assault	(800) 601-7200
New Jersey Coalition to End Domestic Violence	(609) 584-8107
New Jersey Domestic Violence Hotline	(800) 572-7233
Partners for Women and Justice	(973) 233-0111
Rachel Coalition	(973) 740-1233
Rutgers Center on Violence Against Women and Children	(848) 932-4397
State DV Hotline	(800) 572-7233
State Hotline	(800) 601-7200
Union County Prosecutor's Office:	
Office of Victim-Witness Advocacy	(908) 527-4596
Union County Department of Human Services	(908) 527-4822
Union County Rape Crisis Center	(908) 233-7273
Victims of Crime Compensation	(877) 658-2221

Helpful Websites

Break the Cycle-End Dating Abuse
Coalition Against Trafficking Women
Gay, Lesbian, Bisexual and Transgendered
Domestic Violence
Futures Without Violence
Federal Health Care Centers
Help Guide
Legal information for Victims of
Domestic Violence/Sexual Assault
National Network to End Violence
Against Immigrant Women
National Human Trafficking Resource Center
National Network to End Domestic Violence
National Sexual Violence Resource Center
Rape, Abuse Incest Network (RAINN)
Stalking Resource Center

www.breakthecycle.org
www.catwinternational.org

www.rainbowdomesticviolence.itgo.com
www.futureswithoutviolence.org
findahealthcenter.hrsa.gov
Helpguide.org

womenslaw.org

www.immigrantwomennetwork.org
www.polarisproject.org
www.nnedv.org
www.nsvrc.org
www.RAINN.org
www.victimsofcrime.org

About the YWCA Union County

The YWCA Union County is the lead domestic violence agency for Union County, New Jersey. In 1978, in response to the growing concern about domestic violence in Union County, the YWCA Union County established an emergency shelter for victims of domestic violence and their children. Our services have grown to include comprehensive services including:

- Emergency Shelter
- Transitional and Supportive Housing
- 24-Hour Hotline
- Individual and Group Counseling
- Case Management
- STEP (Skills Training and Empowerment Program)
- Crisis Response Teams (CRT)
- PALS (Peace: A Learned Solution) Program for children exposed to domestic violence
- Legal Representation and Court Advocacy
- DV Liaison Program
- Community and Professional Education

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