

CHAPTER 13 – OTHER CRIMINAL ISSUES

STATUTORY REFERENCES: **RSA 173-B:9, IV (Enhanced Penalties)**
 RSA 625:9 (Classification of Crimes)
 RSA 651 (Sentences)

A. CHARGING

PROTOCOL 13-1

State law allows for discretion in selecting class A or class B misdemeanors. If an A misdemeanor is selected, it may not be reduced to a B misdemeanor in cases where the offense alleged includes a threat of violence or an act of violence. (RSA 625:9, VII.)

PROTOCOL 13-2

The Court should be aware that under RSA 173-B:9, III, criminal charges resulting from a violation of a protective order are not to be reduced from a class A misdemeanor to a class B misdemeanor, as permitted in other instances under RSA 625:9.

B. SENTENCING

RSA 651 governs the sentencing authority of the courts. Upon a conviction for a domestic violence related crime, the court may consider a range of sentencing options.

PROTOCOL 13-3

Deferred or suspended sentences, with appropriate conditions, may be effective in promoting deterrence, rehabilitation and treatment. Incarceration, together with a period of probation, may also be effective, especially when the defendant presents a higher risk of re-offending. Batterer's intervention programs or personal counseling are statutorily permitted and are designed to hold batterers accountable.

PROTOCOL 13-4

Mediation and/or couples counseling are not appropriate conditions of criminal domestic violence sentences.

NOTE: RSA 173-B prohibits the court from ordering mediation and/or couples counseling when issuing a Domestic Violence Protective Order.

PROTOCOL 13-5

Any person convicted under RSA 173-B:9, IV, or who has been convicted in another jurisdiction of violating a protective order enforceable under the laws of this state, who, within six years of such conviction or the completion of the sentence imposed for such conviction, whichever is later, subsequently commits and is convicted of one or more offenses involving abuse may be charged with an enhanced penalty for each subsequent offense as follows:

- a. There is no enhanced charge under this section if the subsequent offense is a class A felony or an unclassified felony;
- b. If the subsequent offense would otherwise constitute a class B felony, it may be charged as an A felony;
- c. If the subsequent offense would otherwise constitute a class A misdemeanor, it may be charged as a class B felony;
- d. If the subsequent offense would otherwise constitute a class B misdemeanor, it may be charged as a class A misdemeanor; or
- e. If the subsequent offense would otherwise constitute a violation, it may be charged as a class B misdemeanor.

PROTOCOL 13-6

Under Federal Law [18 U.S.C. Section 922(g)(9)], an order for relinquishment of firearms is required when the conviction is for a qualifying misdemeanor crime of domestic violence. A qualifying misdemeanor crime of domestic violence is one which has, as an element, the use or attempted use of physical force, or the use of a deadly weapon, and is committed by:

- a. A current or former spouse, parent or guardian of the victim;
- b. A person with whom the victim shares a child in common;
- c. One who is or has cohabited with the victim as a spouse, parent or guardian; or
- d. Someone "similarly situated" to a spouse, parent or guardian of the victim.

NOTE: Under federal law, persons convicted of domestic violence related misdemeanors may be permanently prohibited from possessing a firearm. Under federal law the relationship standard is more limited than under state law. *See* Chapter 14 for more detail on firearms and deadly weapons relinquishment.

C. SCHEDULING

PROTOCOL 13-7

Complaints alleging assault, criminal trespass, criminal mischief, stalking and other crimes that are domestic violence related should be carefully monitored by the clerk's office to ensure that they are properly docketed and scheduled for trial. Consideration should be given to putting such cases on a priority schedule. Such an accelerated schedule should be coordinated by the clerk of court with the local prosecutor and defense counsel.

D. ACKNOWLEDGMENT OF RIGHTS/RECORDING

PROTOCOL 13-8

If a defendant is charged with a class A misdemeanor and chooses to enter a plea of guilty, a class A misdemeanor acknowledgment of rights form must be used irrespective of the nature of the sentence.

COMMENT

Judges should be aware that if the defendant is charged with a class A misdemeanor, but enters a plea which does not include any period of incarceration (including suspended or deferred sentence) or a fine which exceeds \$1,000, the conviction will be recorded as a B misdemeanor. RSA 625:9, VIII.