

## CHAPTER 2 – DEFINITIONS OF DOMESTIC VIOLENCE AND PROTECTED PERSONS

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

### 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 inception 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. Most recently, the legislature has 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.

### 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 threat to the plaintiff's safety:

- 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; and
- g. Harassment as defined in RSA 644:4.

*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.

*COMMENT*

RSA 644:4, I(a) and (f) have been determined to be unconstitutional. See State v. Brobst, 151 NH 420 (2004) and State v. Pierce, 152 NH 790 (2005).

IV. **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.

VI. **Cross orders for relief** means 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.

VII. **Deadly weapon** means **deadly weapon** as defined in RSA 625:11, V.

XI. **Domestic violence** means abuse as defined in RSA 173-B:1, I.

X. **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.

XI. **Firearm** means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by force of gunpowder.

XII. **Foreign protective order** means an order enforceable under RSA 173-B:13.

XV. **Intimate partners** means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.

XVI. **Mutual order for relief** means 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.

## **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 entitles the person to protection and not the recency of that relationship.

3. **persons cohabiting with each other;**

### *COMMENT*

The legal definition of cohabitation suggests that the legislature intended to offer protection to those persons who are living together or have lived together as though a conjugal relationship exists, 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 in order to qualify for the protection of RSA 173-B.

5. **parents of the defendant;**

**NOTE:** Minor children and step-children of the defendant who are alleged to have been abused by the defendant are not entitled to be party plaintiffs 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, step-children and children who are household members of any domestic violence plaintiff may be protected by a restraining order issued to that plaintiff by the court.

6. **persons related to the defendant by consanguinity;**

*COMMENT*

Consanguinity infers the having of blood of some 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 brothers and cousins. The statute makes no distinction between lineal and collateral consanguinity.

7. **persons related to the defendant by affinity;**

*COMMENT*

Affinity infers the connection or tie between one spouse and the blood relations of the other. Under the concept of affinity, a husband and wife are each related to the blood relations of the other spouse in the same degree as the latter, but the blood relations of one spouse are not regarded as related by reason of the marriage, to the blood relations of the other spouse. Also, the husband is not related by affinity to the wife. 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 former relationships 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 sexual partners;**

*COMMENT*

The statute does not require cohabitation between sexual partners nor imply that any more than a single act of sexual contact be required in order to entitle the partners to the protection afforded by RSA 173-B. The statute applies to gay, lesbian, bisexual and transgender relationships. The statute, however, infers that the relationship was voluntary, regardless of the duration, as distinguished from a situation where someone is sexually assaulted outside an existing relationship.

9. **former sexual partners;**

*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 partnership.

10. **current intimate partners; and**

*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 offered which indicated the purpose of the amendment was to offer protection to those who had begun a "dating" relationship. The question of how many dates must be had was not addressed.

11. **former intimate partners.**

*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 intimate partnership.

**PROTOCOL 2-1**

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

**C. ADDITIONAL PERSONS PROTECTED BY CERTAIN RESTRAINING ORDERS**

**PROTOCOL 2-2**

In the event that the court grants a civil protective order 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. The statute does not authorize third persons filing on behalf of others, such as where a parent may wish to file on behalf of their minor child against an

individual who 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.