

**TITLE 7: CIVIL PROCEDURE**  
**DIVISION 3: TRIAL**

**§ 3309. Compulsory Disclosure of Communications Prohibited.**

(a) Except as provided in 7 CMC § 3310 or 7 CMC § 3311 below, a victim or victim counselor may not be compelled, without appropriate consent, to give testimony or to produce records concerning confidential communications for any purpose in a criminal, civil, legislative, or administrative proceeding. In this subsection, “appropriate consent” means

(1) The consent of the victim with respect to the testimony of

(A) An adult victim, and

(B) A victim counselor when the victim is an adult;

(2) The consent of the victim’s parent, legal guardian, or guardian ad litem with respect to the testimony of a

(A) Victim who is a minor or incompetent to testify; and

(B) Victim counselor when the victim is a minor or incompetent to testify.

(b) Either party may apply for appointment of a guardian ad litem for purposes of (a)(2) of this section.

(c) A victim or victim counselor may not be compelled to provide testimony in a civil, criminal, or administrative proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding, or the name, address, or telephone number of a victim counselor, unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

(d) Notwithstanding (a) of this section,

(1) A minor may waive the privilege provided under (a) of this section and testify or give consent for a victim counselor to testify if the court determines that the minor is capable of knowingly waiving the privilege;

(2) A parent or legal guardian may not, on behalf of a minor, waive the privilege provided under (a) of this section with respect to the minor’s testimony or the testimony of a victim counselor if

(A) The parent or legal guardian has been charged with a crime against the minor,

(B) A protective order or restraining order has been entered against the parent or legal guardian on request of or on behalf of the minor; or

(C) The parent or legal guardian otherwise has an interest adverse to that of the minor with respect to the waiver of privilege.

**Source:** PL 14-9, § 6 (3309).

**Commission Comment:** PL 14-9 was enacted on May 28, 2004 and contained, in addition to other enactments, a short title, findings, severability, and savings clause provisions. PL 14-9, known as the “Domestic Violence Criminal Act of 2004,” stated in pertinent part:

Section 1. Findings. The Legislature finds that domestic violence is a serious problem within the Commonwealth, and that the current criminal laws are inadequate to protect the community, provide redress to the victims, and deter or rehabilitate offenders. The Legislature finds

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domestic violence is a serious problem for many reasons. Paramount among these is the effect of domestic violence on victims. Statistics show that domestic violence is the number one cause of injury to women. Nearly 4,000,000 women are beaten by their husbands or partners annually. Approximately 1,400 women are killed in the United States each year as a result of domestic violence.

According to data generated by the Criminal Justice Information System (CJIS), during the past six years, the CNMI Department of Public Safety has responded to over 300 cases, on average, classified as "domestic disturbance complaints." For example, of the 277 domestic disturbances responded to in calendar year 2001, the Criminal Division of the Attorney General's Office received 205 referred cases. Of the 205 cases referred, 164 resulted in criminal charges filed against a defendant. Of those 164 cases filed, 103 either pled guilty or were found guilty at trial, as of December 31, 2001. Of the 103 convictions, only 86 received any jail time.

The Department of Public Safety responded to 284 domestic disturbance complaints in calendar year 2002, with the Attorney General's Office reporting 135 reports received. Of the 135 reports received, 87 resulted in charges being filed. Of the 87 cases filed, there were 32 convictions, as of December 31, 2002. Only 22 of the convictions resulted in any jail time for the defendant.

There is no consistent mechanism in the current law for identifying a crime as one involving domestic violence. Therefore, the statistics cited above should not be considered definitive, but rather very conservative estimates. The Legislature notes that in many jurisdictions, domestic violence crimes are some of the most under-reported crimes on the books. In order to track the incidence of crimes involving domestic violence within the Commonwealth, the Courts are encouraged to amend the Rules of Practice to require a certification by the prosecutor filing the information, or the police officer filing a complaint, that the crime or crimes charged are, or are not, crimes involving domestic violence. A certification by the law enforcement officer or prosecutor that a criminal offense is a crime involving domestic violence will ensure that court personnel can readily identify those files subject to the special arrest, bail, sentencing and other provisions provided by this Act.

The Legislature also finds that domestic violence in a relationship tends to escalate over time, resulting in more frequent assaults and more serious injuries. Jurisdictions that have had some success in deterring crimes of domestic violence have done so, in part, by aggressively prosecuting misdemeanor assaults before they escalate to felony level crimes. Because domestic violence crimes tends to escalate over time, and because of the need to deter those crimes before serious injuries or fatality results, this Act provides for mandatory minimum penalties for crimes involving domestic violence, and for more severe penalties for repeat offenders.

The Legislature also finds that the direct and indirect effects of domestic violence on the children of the Commonwealth pose a serious risk to the continued health of our families. Children who live in homes where domestic violence occurs are more likely to be physically abused than children from homes where such violence does not occur. They may

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be severely traumatized by witnessing family violence directed at a parent or other loved one. They are more likely to suffer secondary effects from having witnessed or experienced abuse within the home, such as sleeplessness, nervous disorders, stomach ailments, poor grades, difficulty relating to their peers, fewer hobbies or outside interests, and more disciplinary problems.

However, the most ominous consequence of growing up in an abusive home is the effect that experience has on the child's future relationships with his or her loved ones. Parents are the ultimate role models for their children. When a child sees his fathers beat his mother, he learns that it may be acceptable behavior. Thus, boys who grow up in abusive homes are 10 times more likely to be prosecuted for committing crimes involving domestic violence than boys who do not experience such abuse in the home. Girls who grow up in abusive homes are significantly more likely to themselves be the victims of crimes involving domestic violence when they become adults. Our failure, as a society, to deal with the problem of domestic violence, means that many of our young men will go to jail, and many of our young women will wind up in the emergency room.

To effectively deter such crimes from being committed in the future, the Legislature finds that a multi-pronged approach is required, including new criminal offenses for addition to the Commonwealth Criminal Code; a mandatory arrest provision for those who commit such crimes, or violate pre-trial release conditions; enhanced penalties for those who commit such crimes, particularly for repeat offenders; and special conditions of release for those who have been charged with such crimes. In addition, statistics show that by the time an offender is first convicted of a crime involving domestic violence, he has engaged in many such acts that have either not been reported, or not resulted in conviction. Because of the compelling need to identify domestic violence abusers and deter them from repeat offenses before their crimes escalate, this Act requires that suspended imposition of sentence be denied those convicted of crimes involving domestic violence.

Among the new crimes authorized by this revision are Stalking in the First Degree and Stalking in the Second Degree. The Legislature finds that it is in the best interest of the Commonwealth to enact this protective legislation. Since the passage of the first anti-stalking measure in the United States, in 1991, all 50 states have enacted laws prohibiting the conduct known as stalking. The conduct is not only threatening to the victim and the victim's family, but also compromises the victims' right to a safe environment. This conduct results in decreased productivity in the public and private sectors, through increased absenteeism, and the threat of workplace violence. Although the crime of stalking is often identified as a crime involving domestic violence, the new crimes authorized by this legislation, stalking in the first degree and stalking the second degree, need not be crimes involving domestic violence. A person engaging in stalking conduct may be guilty of stalking whether or not the victim of the crime is a household member.

This is also generally true of all the crimes identified as crimes involving domestic violence in this Act. Rather than create a new category of entirely separate crimes, this Act makes clear that many

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existing crimes in the Commonwealth Code may also be crimes involving domestic violence if they are committed by one household member against another household member. It is this special relationship between the perpetrator and victim that gives rise to the special provisions of this Act, including additional conditions of pretrial release, mandatory arrest and enhanced penalties.

It is the intent of the Legislature that this Act be interpreted harmoniously, to the extent possible, with Public Law 12-19, the Domestic and Family Violence Prevention Act, given its remedial purposes. This Act is also intended to supplement, and not supercede, Public Law 9-21, the "Man-Amko" Physical Abuse and Mental Cruelty Act, and Public Law 3-18, the provisions of the Commonwealth Code dealing with the protection of abused and neglected children.