

MATRIMONIAL GUIDE TO DOMESTIC VIOLENCE RISK FACTORS

RISK FACTOR	WHAT TO LOOK FOR IN ALLEGATIONS OR TESTIMONY	RELEVANCE/ LEGAL CONTEXT
Context of Violence	<ul style="list-style-type: none"> Was this the first time that something like this is being alleged? If not, what happened before? How long ago? When was the first incident? What was the worst or most serious thing that happened? Has the physical violence increased in frequency or severity over the past year? Medical treatment needed? Is there a recent loss of employment? Is there a history of substance abuse or mental health concerns? 	Use of some illegal drugs (cocaine and derivatives, meth. amphetamines); increased severity and frequency of violence; and unemployment increase lethality and recidivism. DRL § 240 and DRL § 252.
Criminal and Family Court History	<ul style="list-style-type: none"> Pending or prior Orders for Protection Pending order of Support 	The existence of prior OPs and criminal history is an indicator for repeat offending. Check Criminal and Family Court, OP registry and SORA. DRL § 240 1(A-1).
Relationship Status	<ul style="list-style-type: none"> When did the relationship begin? What is the date of the marriage? Where does each party live? Did they live together, if so when? Are they recently separated? Is one party requesting exclusive occupancy? Is economic relief being requested? 	Separation within the past year increases lethality and recidivism. <i>Mitzner v. Mitzner</i> , 228 A.D.2d 483, 643 N.Y.S.2d 674 (2nd Dept., 1996); <i>Formato v. Formato</i> , 173 A.D.2d 274, 569 N.Y.S.2d 665 (1st Dept., 1991).
Firearms/ Weapons	<ul style="list-style-type: none"> Does responding party have access to a firearm or weapon or a license? Is there a firearm or weapon in the home? What types? How many? Has the responding party used or threatened to use a weapon against the moving party? 	Responding party access to firearm and use or threatened use of lethal weapon increases lethality. DRL § 240 (3) (h); DRL § 252 (a).
Strangulation	<ul style="list-style-type: none"> Has the responding party ever attempted to strangle or choke the moving party? 	Strangulation increases lethality. Obstruction of breathing. PL § 121.11/12/13. **
Threats to Kill/Suicide	<ul style="list-style-type: none"> Has responding party ever threatened to or tried to kill the moving party? Has responding party ever threatened or attempted suicide? 	Threat or attempt to kill/suicide increases lethality. Harassment and Aggravated Harassment PL § 240.20/25/30/30(1). **
Sexual Violence	<ul style="list-style-type: none"> Has responding party forced the moving party to have sex? 	Responding party forcing moving party to have sex is a lethality factor. Sexual misconduct, PL § 130.20/52/55/60. **
Controlling Behavior	<ul style="list-style-type: none"> Does responding party try to control most or all of moving party's daily activities? Is the responding party constantly or violently jealous? Does the responding party follow or spy on moving party, leave threatening notes or messages, destroy personal property or make unwanted calls? Does one party control the finances/marital assets? Does the responding party denigrate the moving party's parenting? 	Violent jealousy and stalking behaviors are lethality factors and constitute Stalking PL § 120.45-60. ** Controlling behaviors limit moving party's access to resources. Abusive party may use children to control non-abusive parent.
Stalking	<ul style="list-style-type: none"> Does the responding party repeatedly call, text, or email the moving party? Send unwanted gifts or other items? Monitor moving party's phone calls, computer use, or social media? Use technology, like internet, hidden cameras or global positioning systems (GPS), to track the moving party? Drive by or hang out at the moving party's home, school, or work? Follow or show up wherever the moving party is? 	Stalking increases risk of lethality. Stalking PL § 120.45-60. **
Petitioner Belief	<ul style="list-style-type: none"> Does the moving party believe that the responding party will re-assault or attempt to kill the moving party? 	Moving party belief of harm is a lethality factor. DRL § 240.3c, PL § 812(b). **
Children	<ul style="list-style-type: none"> What is the biological relationship of the responding party and children? Were children present during the incident? Have the children witnessed violence by a party? Has there been direct physical or sexual abuse of the children? Threats to harm children? Physical or sexual abuse of the children and threats to harm children are not risk factors but can indicate means by which a party can be controlled. 	Having a child who is not the responding party's biological child increases lethality and recidivism. Assault during pregnancy increases risk of lethality. Children present increases risk of recidivism.
Safety Planning	<ul style="list-style-type: none"> Are there safety measures in place? Moving party service referral? Is the moving party eligible for an attorney? 	DRL § 240 (3) (f) authorizes lease termination.

HOW TO USE–

THE JUDICIAL GUIDE TO DOMESTIC VIOLENCE RISK FACTORS

This Guide is to assist Supreme Court judges in identifying domestic violence risk factors and to offer legal remedies that respond to the correlating risk. This tool should not be used to determine whether there is a legal basis to issue an order of protection.

Both DRL § 240 and § 252 have provisions concerning issuance of Orders of Protection in matrimonial cases. DRL § 240 concerns the issues of custody and child support in matrimonial actions and under DRL § 240(3) the issuance of orders of protection. DRL § 252 provides for the issuance of Orders of Protection (OP) or Temporary OPs in Supreme Court. Initial applications or modifications can be entertained in both the Supreme and Family Courts. Applications for OPs or TOPs must be in writing in the form of an Order to Show Cause or Notice of Motion (see DRL § 252(4)(8)). Ex parte relief is available with an Order to Show Cause. The Court rule (22 NYCRR 202.7[f]) that governs notice on applications for temporary relief specifically provides that the rule does not apply to Orders to Show Cause or motions requesting an Order of Protection under DRL § 240—unless otherwise ordered by the Court.

Initial Order to Show Cause: This tool can assist in determining the terms and conditions on the temporary order, whether to issue a TOP, a warrant for arrest (depending on the severity of the abuse claimed, i.e., visible signs of abuse, types of abuse alleged, etc.), how quickly to calendar the return hearing, and whether temporary support should be ordered.

Pendente Lite Application: This tool can assist in determining the type and length of an order, whether aggravating circumstances apply and which conditions are appropriate, including firearms surrender, support, or children on the order.

Other Hearings or Disposition: This tool can assist in modification of the type and length of an order, conditions -- firearms surrender, support, children on the order, program mandates; or adding terms and conditions after a violation hearing. Supreme Court orders can extend until the youngest child is 18.

Limitations of eliciting safety or risk information from petitioners in open court:

- Safety concerns or trauma can affect the petitioner's ability to provide accurate information in open court.
- Soliciting information from petitioners in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the petitioner.

Provide moving parties information on risk factors and the option of consulting with confidential advocates

- Information and access to advocates improves litigant safety and the quality of the moving party's risk assessments and, as a result, the court's own assessment of risk.

Cultural factors may impact litigants' understanding

- Information and access to language services should be made available to litigants to ensure their understanding of the risk factors and the petition.
- Some of the terms on this tool may need to be explained in more detail.

Note that this list of risk factors is not exclusive

- The listed factors are the ones most commonly present when the risk of serious harm or death exists.
- Additional factors exist which assist in prediction of re-assault.
- Moving parties may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports.

Remember that the level and type of risk can change over time

- The most dangerous time period is the days to months after the responding party discovers that the moving party
 - might attempt to separate or terminate the relationship.
 - has disclosed or is attempting to disclose the abuse to others, especially violent behavior.

This is an educational tool used to contextualize certain behaviors within the NY State Penal Code.

These factors draw on the following evidence based risk and lethality assessment tools: Danger Assessment and DVSI-R.

** Penal Law statutes are for reference. DRL § 240 and § 252 govern judicial decisions in matrimonial proceedings.**

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