

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 6: CRIMINAL PROCEDURE

§ 6407. Bail and Conditions of Release in Domestic Violence Cases.

(a) In making a decision concerning the bail or conditions of release of a person who is arrested for or charged with a crime involving domestic violence or violating an order of protection, the court shall consider

(1) The nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) The weight of the evidence against the person;

(3) The person's family ties;

(4) The person's employment;

(5) The person's financial resources;

(6) The person's character and mental condition;

(7) The length of the person's residence in the community;

(8) The person's record of convictions;

(9) The person's record of appearance at court proceedings;

(10) The flight of the accused to avoid prosecution or the person's failure to appear at court proceedings;

(11) Threats the person has made, and the danger the person poses, to the alleged victim; and

(12) Whether the defendant has a history of domestic violence, as indicated by criminal informations or complaints filed, judgments of conviction, incident reports, victim statements, medical records, petitions for orders of protection, orders of protection issued, or other credible information, whether or not charges were filed, and irrespective of whether a conviction was obtained. In any case in which the court finds the defendant has a history of domestic violence with the alleged victim in the instant case, the court shall consider any available evidence concerning whether the frequency or severity of the abuse appears to be escalating.

(b) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the court shall consider the safety of the alleged victim or other household members. To protect the alleged victim, household members, and the public, and to reasonably assure the person's appearance, the court may impose bail and any of the conditions authorized under this chapter, any provision listed in section 205(c) or 206(b) or (c), as enacted by Public Law 12-19, codified in 8 CMC § 1915(c) and § 1916(b) and (c), respectively, and any other condition necessary to protect the alleged victim, household members, and the public, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

(c) A court may not order or permit a person released under (a) of this section to return to the residence of the alleged victim, or the residence of a petitioner who has an order of protection directed to the person and issued or filed under Title 8, Division 1, Chapter 9, Article 2, codified in 8 CMC § 1911 et seq.

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(d) If the court imposes conditions of release under (a) of this section, the court shall

- (1) Issue a written order specifying the conditions of release;
- (2) Provide a copy of the order to the person arrested or charged; and
- (3) Immediately distribute a copy of the order to the law enforcement agency that arrested the person, the Office of Adult Probation, and any other agency or individual responsible for supervision of the defendant.

(e) When a person is released from custody under (a) of this section,

(1) From a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release;

(2) From other than a correctional facility, the arresting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

(f) A person arrested for a crime involving domestic violence may not be released from custody until the person has appeared before a judge for determination of the person's release conditions under (a) of this section.

(g) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

(h) In this section, "crime involving domestic violence" has the meaning given in 6 CMC § 1462.

Source: PL 14-9, 4, modified.

Commission Comment: The Commission made some conforming changes to the above section pursuant to 1 CMC § 3806. PL 14-9, known as the Domestic Violence Criminal Act of 2004, became effective on May 28, 2004 and contained, among other enactments, findings, severability, and savings clause provisions. See the comment to 6 CMC § 1461 regarding PL 14-9.