



Town of Marlborough Police Department

GENERAL ORDER

SUBJECT: Domestic Violence

Order Number: 3.45

DATE ISSUED: 09/10/10 BY ORDER OF POLICE CHIEF: COCOZZA

DATE EFFECTIVE: 09/10/10 REPLACES ORDER #(S): APR

DOMESTIC VIOLENCE

PURPOSE: Crimes committed between family or household members are serious events. This is true regardless of the relationships or living arrangements of those involved. The purpose of this policy is to prescribe a course of action which members of this police department shall follow in response to domestic incidents that will enforce the law while also serving to intervene and prevent future incidents of violence.

I. POLICY

It shall be the policy of the Town of Marlborough Police Department to respond to every report of domestic violence and to consider domestic violence as conduct that shall be investigated as would any other offense. Dispute mediation will not be used as a substitute for appropriate criminal proceedings in domestic violence cases. Members shall protect victims of domestic violence and provide them with support through a combination of law enforcement and community services. The police department will further promote officer safety by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence calls for service.

II. DEFINITIONS

A. Domestic Incident - Means any dispute, violence, or report of an offense between individuals within a family or household where police intervention is requested. A domestic incident is not necessarily a violation of law.

B. Members of the Same Family or Household - Are defined as such by the Family court Act and the Criminal Procedure Law in that they:

1. Are legally married to one another.
2. Were formally married to one another.
3. Are related by blood.
4. Are related by marriage.
5. Have a child in common regardless of whether they

were ever married or lived together at any time.

6. Persons involved in intimate relationships, whether or not they lived together at any time. Casual acquaintances nor ordinary fraternization between two individuals in business or social contexts shall not be deemed to constitute an "intimate relationship."

NOTE: Persons who do not meet the definition of "same family or household" do not have the option of proceeding in Family court. Although the mandatory arrest provisions of CPL 140.10 (4) do not apply in cases such as assaults between boyfriend and girlfriend in other relationships, the Office strongly encourages arrest for all crimes for which there is probable cause, regardless of the nature of the relationship between the persons involved in the conflict.

C. Domestic Violence - Occurs when a family or household member commits or attempts to commit:

1. Any of the following which are designated as Family Offenses:
 - a) Attempted Assault.
 - b) Assault in the Second Degree.
 - c) Assault in the Third Degree.
 - d) Reckless Endangerment (1 & 2).
 - e) Menacing (2 & 3).
 - f) Disorderly Conduct (including, for Family court purposes only, Disorderly Conduct not in a public place).
 - g) Harassment (1 & 2).
 - h) Stalking (1,2,3 & 4).
2. Offenses such as Attempted Murder, Kidnapping, Rape, Unlawful Imprisonment, Coercion, Arson or Criminal Mischief against another household/family member. In addition, threats or acts of violence against the victim or others, or damaged property or harm to pets may in some circumstances form the basis of the offenses or Tampering with a Witness or Intimidating a Victim or Witness. The criminal courts have exclusive jurisdiction over these types of offenses.
3. Coercive acts or conduct which, though non-criminal in nature, serve to instill fear of physical harm or property damage. Such a pattern may involve abusive language, physical or verbal threats or damage to jointly held marital property, or

acts which violate the terms of an Order or Protection issued by the Family, Criminal or Supreme Courts.

D. Concurrent Jurisdiction - Exists when different courts have jurisdiction over the same matter. A victim of a Family Offense may elect to proceed in either a civil or criminal court or in both. Criminal courts and the Family Court have concurrent jurisdiction when:

1. A designated Family Offense (see C.1. a-g listed above) is alleged to have been committed, **and**
2. A family/household relations (see B. above) exists, **and**
3. The alleged offender is 16 years of age or older.

NOTE: If either of the first two conditions is not met, a victim may only proceed in a criminal court for legal relief.

III. PROCEDURE

A. Communications Member

1. A domestic incident call will be given the same priority and prompt response as any other call for service. Staff assigned to communications will, whenever practicable, dispatch at least two officers.
2. Upon receipt of a domestic incident call, members will, along with information normally gathered, make every effort to determine and relay the following information to the responding officers:
 - a) Whether the suspect is present and, if not, the suspect's description and possible whereabouts.
 - b) Whether weapons or dangerous instruments are involved or known to be at the location or if any other threats exist (e.g., dogs).
 - c) Whether medical assistance is needed at the scene.
 - d) Whether the suspect or victim is under the influence of drugs or alcohol.
 - e) Whether there are children present.
 - f) Whether the victim has a current protection or restraining order.
 - g) Complaint history at that location.

- h) Identity of caller (e.g., victim, neighbor, child).
- i) The computerized registry for Orders of Protection should be checked prior to the arrival of officers to inform them of any current Order of Protection and its term and conditions.

3. Police response to a domestic incident complaint shall not be cancelled based solely upon a follow-up call requesting such cancellation. However, the responding officers shall be advised of the request for informational purposes, and directed to continue their response.

4. All calls dispatched as domestic incidents shall require completion of the Standardized Domestic Incident Form, even if the investigation indicates that no domestic incident occurred.

B. Responding Officer

- 1. A domestic incident call signifies people are in need of help, and shall be responded to as quickly and safely as circumstances permit.
- 2. Upon arrival at the scene, officers should be alert to sounds coming from the location to identify what is transpiring, and wait for backup officers when appropriate.
- 3. The responding on-scene officer shall:
 - a) Restore order by gaining control of the situation and separating the involved parties.
 - b) Take control of all weapons used or threatened to be used in the incident.
 - c) Locate and visually check all occupants of the location to verify their safety and well-being.
 - d) Assess the need for medical attention and request that any required assistance be dispatched.
 - e) Interview all available parties and witnesses, separately if practicable.
 - f) After all interviews have been conducted, determine whether an offense has been committed; whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release

of the suspect can occur at any time so that the victim can take desired safety precautions.

- g) Advise the victim of the availability of shelter and other victim services in the community, and provide the victim with a copy of the Victim Rights Notice. If necessary, read the victim Rights Notice to the victim.
- h) Collect and record potential evidence, including spontaneous utterances by parties or witnesses. Where appropriate, canvas the area for witnesses, take photographs of injuries and/or property damage.
- i) Complete the Standard Domestic Incident Report Form and any other reports necessary to fully document the officer's response, whether or not an offense was committed or an arrest is made. Provide the victim with the victim's copy of the Standard Domestic Incident Report/Victim Rights Notice Form immediately upon its completion at the scene.
- j) If the officer has probable cause to believe a crime has been committed, the officer will attempt to locate and arrest a suspect who has left the scene without unnecessary delay by:
 - (1) A search of the immediate area.
 - (2) Obtaining information from the victim and witnesses that will aid in apprehending the suspect.
 - (3) Continue the investigation as necessary, or referring the matter to the proper unit for follow-up investigation and arrest or warrant application.
 - (4) If the search for the offender is unsuccessful and the victim has elected to remain at the scene, advise the victim to call the police department if the offender returns.
 - (5) Prior to leaving the scene, officers should attempt to obtain a signed deposition from the victim.

4. Responding officers at the scene of a domestic incident shall provide the following assistance to victims and, where appropriate, the children and family or household members:

- a) Advise all involved parties about the serious nature of domestic violence, its potential for escalation, and of legal and social assistance available.
- b) Assess the immediate safety and welfare of the children.

- c) Remain at the scene until satisfied that the immediate threat of violence has passed or all appropriate options to protect and assist the victim have been exhausted.
- d) Provide the victim with referral information regarding domestic violence shelters and services.
- e) Assist in arranging for transportation or take the victim and family or household members to a place of safety.

C. Arrest Procedures

1. All warrantless arrests shall be made in conformance with section 140.10 of the Criminal Procedure Law and applicable police department policy and procedure. A police officer may arrest a person for any offence when he has reasonable cause to believe that such person has committed such offense **in his presence**; and a crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.

In cases such as those, the officer should investigate the circumstances thoroughly and determine if there are criminal charges that could be filed appropriately such as Menacing in the third degree, Attempted Assault in the third degree or Endangering the Welfare of a Child. Officers should be encouraged to thoroughly interview the victim of the incident to determine whether the facts of the case merit a charge constituting a “crime” or “Violation” and proceed accordingly.

If the factual evaluation results in a determination that the only appropriate charge would be violations and the acts were not committed in the presence of the officer, if the complainant wishes to file charges, he or she should be transported to the appropriate location for the purpose of signing an accusatory instrument. The CPL does not permit an arrest for a violation based solely on the accusatory instrument. A valid accusatory instrument should be forwarded to the appropriate local court for a warrant to be issued by the Judge. After a warrant or criminal summons has been issued by the court, standard procedure for arrest or service of criminal summons should be followed.

2. In all domestic incidents where a law has been violated, in addition to enforcing the law, the objective is to protect the victim. The victim should not be informed about or requested to make a civilian arrest when the officer may make a lawful warrantless arrest. The purpose of this policy is to take the burden of an arrest decision away from the victim, who may be ill-prepared to undertake it due to social, economic, psychological, or other pressures and constraints. Even if the victim actively intercedes and requests that no arrest be made, a lawful

warrantless arrest based on probable cause may be made providing it is in accordance with CPL 140.10.

3. In the following specific circumstances, without attempting to reconcile the parties or mediate, an arrest shall be made when the officer has probable cause to believe that the following violations have occurred:
 - a) Any felony against a member of the same family or household (except certain forms of Grand Larceny 4 - Penal Law Section 155.30 (3), (4), (9), or (10)).
 - b) Any misdemeanor constituting a Family Offense (see III C. 1.) unless, without inquiry by the officer, the victim requests otherwise. When such a request is spontaneously made, the officer may, nevertheless, make an arrest.
 - c) A violation of an Order of Protection committed through the failure of the person to whom it was directed to comply with a "stay away" provision of such order, or through the commission of a Family Offense (see III C. 1.). The order must be one issued pursuant to sections 240 or 252 of the Domestic Relations Law;

Articles 4, 5, 6 or 8 of the Family Court Act; or section 530.12 of the Criminal Procedure Law, and it must have been duly served, or the person to whom it was directed has actual knowledge of it because he or she was present in court when the order was issued.
4. Officers are reminded that there is no requirement that a crime (felony or misdemeanor) must occur in the officer's presence to authorize an arrest. A lawful warrantless arrest may, and often is, founded upon factors other than the officer's direct observations. They include, but are not limited to, factors such as visible physical injury, property damage, signs of disruption at the scene, or statements made by the victim, children or other witnesses.
5. When an officer has probable cause and is required to affect an arrest under this policy, the following examples are not valid reasons for failing to adhere to such policy:
 - a) There may be financial consequences caused by an arrest.
 - b) The complainant has made prior frequent calls.
 - c) The involved parties appear to be impaired by alcohol or drugs.

- d) The offender gives verbal assurances that he or she will not harm the victim.

6. Cross Complaints

- a) Officers are not required to arrest both or all parties simply because physical force was used against each other. In cases where there are cross-complaints, the officer should attempt to identify the party who is the primary physical aggressor. When making this determination, the officer shall consider that the purpose of this policy is to protect victims of domestic violence. Officers are reminded that an aggressor may attempt to use a cross-complaint to discourage the victim from proceeding with an arrest.
- b) The "primary physical aggressor" is not necessarily the first person to use physical force during an incident. In determining who is the "primary physical aggressor," officers will consider the following:
 - (1) The comparative nature of the parties' injuries, or serious threats creating fear of physical injury;
 - (2) Prior history of violence between the involved persons when that history can be reasonably ascertained by the officer.
- c) A decision to arrest the primary physical aggressor does not foreclose the arrest of the other party at a later time. It also does not prevent an officer from arresting both parties, if the situation justifies it, upon supervisory approval.
- d) No arrest shall be made for acts that were committed in self-defense in accordance with Article 35.00 of the New York State Penal Law. If the defendant persists in a desire to file a complaint after a decision not to arrest is made, the officer should refer the defendant to the District Attorney's Office.
- e) The investigating officer shall not discourage requests for law enforcement intervention by threatening, suggesting or otherwise indicating that all parties may be arrested.

7. Civilian Arrests

When the officer lacks legal authority to make a warrantless arrest, the victim should be informed of the opportunity to make a civilian arrest. Such an arrest, however, shall not

be used as a substitute for an authorized arrest by the officer as provided for in this policy.

CPL 140.30 and 140.35 authorizing any person to affect a “citizen’s arrest” for any offense in the person’s presence. In order for that process to take place, the law requires that the complainant, him or herself, must inform the arrested person that he or she is placing them under arrest and the reason for the arrest unless he or she encounters physical resistance., fighting or other factors rendering that procedure impractical.

8. In all arrests, other than civilian arrests, the officer shall emphasize to the victim and the alleged offender that the criminal action is being initiated by the State and not the victim.

D. Family Offense Arrest Processing

1. Officers will provide victims of the Family Offense with the following information:
 - a) That there is concurrent jurisdiction with respect to family offenses in both Family Court and the criminal courts. Victims of family offenses may proceed in either or both the Family and criminal Courts.
 - b) That a Family Court proceeding is a civil proceeding for purposes of attempting to stop the violence, end the family disruption, and obtain protection.
 - c) That a proceeding in the criminal courts is for the purpose of prosecuting the alleged offender and can result in a criminal conviction of the offender.
 - d) That a proceeding subject to the provisions of section 812 of the Family Court Act is initiated at the time of the filing of a petition, not at the time of arrest or request for arrest

(When Family Court is not in session a criminal court may issue a Family Court Order of Protection).
 - e) That an arrest may precede the initiation of a Family Court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding. The arrest of an alleged offender shall be made under circumstances described in subdivision four of section 140.10 of the Criminal Procedure Law.
2. When a victim wishes to proceed in a criminal court, provide advice that the victim is not required to be present at arraignment. If an Order of Protection is desired, the court should be advised of such request.

3. Booking procedures, fingerprints and photographing shall conform to current Office procedures and section 160.10 of the Criminal Procedure Law.

E. Non-family Offenses Arrest Processing

1. Offenses that are not designated Family Offenses, but which occur in domestic incident situations cannot be handled in Family Court. Criminal courts have exclusive jurisdiction over these acts (e.g., Murder or Attempted Murder, Criminal Possession of a Weapon, Rape, Unlawful Imprisonment).
2. Booking procedures, fingerprinting and photographing shall conform to current police department procedures and section 160.10 of the Criminal Procedure Law.
3. Although the violation of an Order of Protection is not a designated Family Offense, the Family Court has concurrent jurisdiction to enforce such an order when issued by it.

F. Orders of Protection

1. Enforcement

- a) The on-scene officer shall make an evaluation of the facts and circumstances surrounding the incident.
- b) A lawful warrantless arrest may be made based on probable cause even though the protected person may be unable to present a valid copy of the order, but the officer shall attempt to verify the existence and terms of the order through police department records and NYSPIN. However, if the order is not produced or its existence cannot be verified, the officer should proceed as though an Order of Protection does not exist.
- c) Where an officer receives a complaint from a protected person or has an independent basis to believe that an Order of Protection has been violated, and has probable cause to believe that the terms of such order have been violated, an arrest shall be made for the appropriate degree of criminal contempt regardless of whether the prohibited conduct occurred in the officer's presence. A copy of the Order of Protection shall be attached to the court accusation instrument.
- d) If an arrest is made for violating an Order of Protection and the protected person does not verify (sign) the accusatory instrument, the officer should attempt to obtain a deposition, or prepare his or her own accusatory instrument which shall include a statement that the terms of the order were violated and a description of the behavior constituting the alleged offense.

- e) In instances where the conduct prohibited by the Order of Protection is also conduct constituting another offense, the offender shall be charged with violation of the Order or Protection (e.g., Criminal Contempt) and the independent offense.
- f) In any case where an arrest has been made for violation of a criminal court Order of Protection, it is advisable for the protected person to be present at the arraignment.

2. Out-of-State Orders

Order of Protection issued in another State shall be given full-faith and credit in New York. When an officer is presented with an Order of Protection issued in a state other than New York, or by a tribal court, the officer shall attempt to determine its validity, similar to assessment of a New York order. Unless clearly invalid, an out-of-state order will be presumed to be valid, and shall be enforced in the criminal court with jurisdiction over the acts constituting the offense. If the validity of the out-of-state order is in question, the officer should arrest for a substantive charge if warranted, rather than for a violation of the order.

3. Family Court Orders

- a) Pursuant to the Family Court Act and the Criminal Procedure Law, the local criminal courts have emergency powers to issue or modify Family Court orders of protection in family offense matters when Family Court is not in session (i.e., after business hours, on holidays, or week-ends). A domestic violence victim may seek immediate assistance from the criminal court in obtaining an order of protection. This procedure will be used when a victim wishes to proceed in Family Court, however desires a temporary order of protection be issued or an existing order modified prior to Family Court proceedings.
- b) Two form affidavits have been created to be used by a victim when Family Court is not in session - Family Court General Form 5b (issuance of court order); Family Court General Form 5c (modification of court order). These forms are to be used to initiate "a" above. Officers shall make these forms available to victims. Officers shall also assist the victim in completing these forms and in bringing the victim before a local magistrate for issuance or modification of a Family Court order of protection.

G. Firearms

1. When an alleged offender in a domestic incident uses or threatens the imminent use of firearms or other legally possessed weapons, confiscation is permitted. In other domestic incidents not involving the threat of weapons, consider affecting the voluntary surrender of firearms, rifles, shotguns, and other weapons.
2. Confiscate legally possessed weapons when the domestic incident involves violence with the weapon or its threatened use.
3. Seize and confiscate illegally possessed weapons as contraband. Arrest for appropriate weapons violations.
4. Accept legally possessed weapons which are voluntarily surrendered.
5. Upon arresting an individual who is licensed to carry, possess, repair, or dispose of firearms, the arresting officer should, whenever practicable, notify the arraignment court that the alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.

H. Appearance Ticket and Bail

1. Following an on-scene arrest for a crime arising from a domestic incident, an appearance ticket **may be issued, according to and following the most recent bail/arraignments procedures certified under the bail reform act.** The officer may remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with police department policy and section 160.10 of the Criminal Procedure Law. **An arraignment may be necessary for the purpose of getting and or modifying an order of protection on behalf of the victim.**
2. Any deviation from this procedure must be approved by the officer-in-charge, and the reasons for such deviation must be documented in the case file.
3. Officers shall not assure victims that an arrested individual will remain in custody overnight because of the provisions of this policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

IV. Additional Functions

A. Members will make a notification to the Central Registry for Child Abuse and Maltreatment following their investigation when children are present. This notification will be noted on the Domestic Incident Report (DIR) under the section titled Referrals.

B. Where victims of domestic violence are incapacitated by physical, mental or emotional impairments, officers will consult with Adult Protective Services and assist, where appropriate, in supportive interventions.

C. Police department members shall be trained on an ongoing basis in this policy, the problem of domestic violence, the applicable statutes concerning domestic violence, and the criminalization trend to reduce domestic violence.

D. A supervisor must respond to the scene of a domestic violence incident when the suspect is a police officer. When the suspect is a police officer from another agency, the investigating supervisor from our police department must notify a supervisor at the other agency as soon as possible.