



DOMESTIC VIOLENCE AND FAMILY OFFENSES	
✓ new: rescinds: amends: All previous	cross-reference: accreditation standards: NYSLEAP Standard(s): 44.1 & 51.6
effective date: February, 2020	amend date:

I. PURPOSE

The purpose of this General Order is to establish and describe policies and procedures for Department members in response to domestic violence and to offenses committed in domestic incidents, and to ensure compliance with the provisions of the Family Protection and Domestic Violence Intervention Act of 1994.

II. POLICY

- A. It is the policy of the Tompkins County Sheriff's Office to respond to every call involving a domestic dispute, and to handle domestic violence as criminal conduct, to be investigated and prosecuted as any other offense.
- B. It is the policy of the Tompkins County Sheriff's Office to affect an arrest whenever there is reasonable cause to believe that an offense has been committed or that an Order of Protection has been violated in accordance with applicable law.
- C. It is the policy of the Department for officers to utilize any resources that are appropriate when handling Domestic Violence/Family Offense situations.

III. DEFINITIONS

- A. *Aggravated Family Offense*: A person is guilty of an aggravated family offense when he or she commits a misdemeanor defined in subdivision two (2) of PL section 240.75 as a specified offense and he or she has been convicted of one or more specified offenses within the immediately preceding five years. For the purposes of this subdivision, in calculating the five year period, any period of time during which the defendant was incarcerated for any reason between the time of the commission of any of such previous offenses and the time of commission of the present crime shall be excluded and such five year period shall be extended by a period or periods equal to the time served under such incarceration.
- B. *Concurrent Jurisdiction*: Exists when different courts have jurisdiction over the same matter. A member of a domestic relationship who is the victim of a Family Offense may elect to proceed in

either civil or criminal court, or both. Criminal courts and Family Court have concurrent jurisdiction when:

1. A designated Family Offense (see C below) is alleged to have been committed; **AND**
2. A domestic relationship exists (see F below); **AND**
3. The alleged offender is 16 years of age or older.
 - If either of the first two conditions are met, the victim must proceed in criminal court for legal relief.
 - If the first two conditions are met, but the alleged offender is less than 16 years of age, the case must go to Family Court.

C. *Designated Family Offenses:* The following offenses, when they occur between spouses or former spouses, or between parent and child, or between members of the same family or household as defined in CPL § 530.11 and FCA § 812 are designated family offenses:

1. Aggravated Harassment in the 2nd Degree (240.30, A Misdemeanor);
2. Assault in the 2nd Degree (120.05, D Felony)
3. Assault in the 3rd Degree (120.00, A Misdemeanor)
4. Attempted Assault (110.00)
5. Coercion 2nd Degree (135.60 (1) (2) (3) Misdemeanor)
6. Criminal Mischief 1st Degree (145.12, B Felony)
7. Criminal Mischief 2nd Degree (145.10, D Felony)
8. Criminal Mischief 3rd Degree (145.05, E Felony)
9. Criminal Mischief 4th Degree (145.00, A Misdemeanor)
10. Criminal Obstruction of Breathing or Blood Circulation (121.11, A Misdemeanor)
11. Disorderly Conduct (for Family Court purposes only, Disorderly Conduct includes disorderly conduct not in a public place).
12. Forcible Touching (130.52, A Misdemeanor)
13. Grand Larceny in the 3rd Degree (155.35, D Felony)
14. Grand Larceny in the 4th Degree (155. 30, E Felony)
15. Harassment in the 1st Degree (240.25, B Misdemeanor)
16. Harassment in the 2nd Degree (240.26, Violation) If not in the officer's presence, the victim will sign the information and make a citizen's arrest. The officer then takes the person into custody).
17. Identity Theft in the 1st Degree (190.80, D Felony)
18. Identity Theft in the 2nd Degree (190.79, E Felony)
19. Identity Theft in the 3rd Degree (190.78, A Misdemeanor)
20. Menacing in the 2nd Degree (120.14, A Misdemeanor)
21. Menacing in the 3rd Degree (120.15, B Misdemeanor)
22. Reckless Endangerment in the 1st Degree (120.25, D Felony)
23. Reckless Endangerment in the 2nd Degree (120.20, A Misdemeanor)
24. Sexual Abuse in the 2nd Degree (130.60(1), A Misdemeanor)
25. Sexual Abuse in the 3rd Degree (130.55, B Misdemeanor)
26. Sexual Misconduct (130.20, A Misdemeanor)
27. Stalking in the 1st Degree (120.60, D Felony)

28. Stalking in the 2nd Degree (120.55, E Felony)
29. Stalking in the 3rd Degree (120.50, A Misdemeanor)
30. Stalking in the 4th Degree (120.45, B Misdemeanor)
31. Strangulation in the 1st Degree (121.13, C Felony)
32. Strangulation in the 2nd Degree (121.12, D Felony)

- D. *Domestic Incident*: Any dispute, violence or report of an offense between individuals within a “domestic relationship” where police intervention occurs. **A domestic incident may or may not involve a violation of law.**
- E. *Domestic Incident Report*: The state issued form described in Executive Law § 837 (15) and mandated by CPL 140.10 (5) for officers to complete for all calls for service where police intervention is requested for a domestic incident. *See Attachment A.*
- F. *Domestic Relationship*: For the purposes of this order, the term Domestic Relationship shall include person whom:
1. Are legally married to one another;
 2. Were formerly legally married to one another;
 3. Are related by consanguinity (blood relatives) or affinity (in-laws);
 4. Have a child in common, regardless of whether they were ever married or lived together at any time. Pregnancy with an unborn child is not considered a child in common; or
 5. Are “persons currently in an intimate relationship or have been in an intimate relationship” as defined in CPL Section 530.11-1(e) and FCA Section 812-1(e). This relationship is defined as including non-married, non-parent victims of domestic violence regardless of whether they are currently, formerly or have at one point lived together or engaged in sexual relations. This protection has also been extended to adolescents in dating relationships who may also be victims of domestic violence.
 - a. When responding to a domestic violence call, an officer should simply inquire whether the parties are involved in or believe they are in an “intimate relationship”. Officers should not attempt to make the determination of intimacy beyond the initial inquiry. Exactly what constitutes an “intimate relationship” may later be decided by each individual judge, but some factors the law lists specifically include:
 - The nature or type of relationship, regardless of whether the relationship is sexual in nature;
 - The frequency of interaction between the parties; and
 - The duration of the relationship.Note: Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”.

G. *Domestic Violence*: For the purposes of this policy, the term “domestic violence” shall include:

1. Any of the designated Family Offenses (See B above).
2. Acts which violate terms of a valid order of protection issued by the Family, Criminal, or Supreme Courts of New York, or any valid order of protection or restraining order issued by a court in any other state, commonwealth, territory, or possession of the United States, or by any tribal governments located within the United States.
3. Coercion 1st degree (PL 135.65), Coercion 2nd degree (PL 135.60), Tampering with a witness (PL 215.10, 11, 12, 13), Intimidating a witness (PL 215.15, 16, 17), Endangering the welfare of an incompetent or physically disabled person (PL 260.25), and/or Endangering the welfare of a vulnerable elderly person (PL 260.32, 34); or
4. Any conduct specifically intended to prevent or delay a person from communicating a request for emergency assistance by intentionally disabling or removing communication equipment, such as a telephone or teletypewriter service (TTY) (P.L. §145(4)).

H. *Mandatory Arrest*: Minimum standard under the Domestic Violence Act that mandates an arrest MUST be made when an officer had probable cause to believe that:

1. A felony has been committed.
2. An order of protection has been violated (stay-away order or by the commission of a subsequent family offense).
3. A family offense misdemeanor has been committed (see section VI(c)(2) of this general order for further clarification).

I. *Order of Protection*: A civil or criminal order that provides protections to a person from another person that they are married to, separated from, divorced from, have a child in common with, are/were in an intimate/dating relationship with (including same sex and teen couples) or are related to by blood or marriage.

An Order of Protection may only be issued by a court, and can likewise only be modified or terminated by that same court or a court of competent jurisdiction, and shall be considered valid under the following conditions:

1. Any order of protection, including an order on consent, from the Family, Criminal, or Supreme Courts of New York State, and/or
2. Any foreign order of protection, defined as a court order that is issued by a court other than a court located within New York State, including:
 - Any state, county, or local court of other states;
 - Any Indian tribal court located within the United States;
 - Any court within the District of Columbia; and

- Any court of a commonwealth, territory, or possession or the United States (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands).

J. *Primary Physical Aggressor*: The individual who poses the most serious, ongoing threat, who might not necessarily be the initial aggressor in a specific incident. The officer shall attempt to identify the primary physical aggressor by considering:

1. The comparative extent of any injuries inflicted by and between the parties;
2. Whether any such person is threatening or has threatened future harm against another party or another family or household member;
3. Whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and
4. Whether any such person acted defensively to protect himself or herself from injury.

IV. INTITIAL LAW ENFORCEMENT OFFICER RESPONSE

A. A minimum of two officers shall be dispatched to all in-progress/just occurred domestic violence complaints. Police response to a domestic incident complaint will not be canceled based solely upon a follow-up call requesting such cancellation. Officers dispatched to domestic violence complaints will:

1. Respond promptly to the call. If the following information is not provided by dispatch then the officer(s) responding should attempt to gather the following information:
 - Whether the suspect is present and, if not, the suspect's description and possible whereabouts;
 - Whether weapons or dangerous instruments are involved or known to be at the location and if any other threats exist (i.e. dogs, etc.)
 - Whether medical assistance is needed on the scene;
 - Whether the suspect or victim is under the influence of drugs or alcohol;
 - Whether there are children present;
 - Whether the victim has a current protective or restraining order;
 - Complaint history at the location; and
 - Identity of the caller (i.e. victim, neighbor, child).
2. Approach the scene in a manner that reduces the officers' exposure to hostile actions. Avoid parking law enforcement vehicles in front of the residence or other site of the disturbance when possible.
3. Make observations of the premises and attempt to determine what may be transpiring at the scene. Officers should be alert to sounds coming from the location to get an idea of what may be transpiring, and should wait for back-up officers, when appropriate.

4. When initially approaching the scene, indicate that they are responding to a call for service, without revealing the name of the caller or the caller's whereabouts.
5. Request entry in the event the incident is at a private residence. A warrantless entry is permissible if there is an objectively reasonable basis to believe that the safety of an occupant may be in jeopardy.
6. Upon entering the premises, the responding officer(s) will:
 - Take control of all weapons used or otherwise involved in the incident, or that are in plain sight.
 - Make contact with all individuals present, including potential witnesses, victims, or perpetrator(s); separate all parties, keeping all individuals out of sight and hearing range of one another as safety permits.
 - Restrain and remove the suspect if necessary.
 - Assess for physical injuries, including inquiry about strangulation (choking) or possible internal, nonvisible injuries, and sexual violence; administer first aid; and request medical services as necessary.
 - Summon emergency medical services at the request of the victim or suspect, or if it appears that strangulation has occurred.
 - Inquire about weapons in the area or access to weapons; identify and take temporary custody of firearms or weapons that are readily available.

V. ON-SCENE INVESTIGATION

- A. After the situation has been stabilized, officers will conduct a complete preliminary investigation of the incident, to include:
 1. Determine the identities of persons involved;
 2. Establishing the relationship between persons involved;
 3. Establishing reasonable cause that a crime has occurred;
 4. Confirming the existence or status of order of protections;
 5. Interview all available witnesses separately, including victim, suspect and children. In making the decisions about when and how to separate the parties and while conducting the interviews, do not jeopardize officer safety. Safety of officers and parties involved requires that the officer(s) maintain control of the parties during the interview.
 - If it is determined that there is a language barrier, contact the appropriate resources for assistance in obtaining a translator/interpreter as soon as possible.
 - Never use the children to translate or interpret. It can compromise the children's safety and expose them to details of the abuse that are inappropriate and is not an accurate way to obtain information. Terminology and language may be too

advanced for young children.

- Officers should also discourage the use of witnesses as translators because of their potential for bias.

6. Officers should obtain a comprehensive account of the events from **all** parties.

Interviewing the Victim

- a. The questions should be specific and direct and asked in a supportive and matter-of-fact tone of voice.
- b. Officers should avoid questions which appear to blame the victim or which are in a hostile tone of voice that may have the effect of further intimidating the victim or obscuring important evidence.
- c. Officers should avoid questions that are ambiguous or rhetorical; for example: Are you okay? Often the victim is in shock and may not be fully aware of their injuries. In order to find out the person's actual condition, ask specific questions, which will focus the victim's attention on their injuries and their extent.
- d. Be patient. Repeat questions if the victim does not understand or answer them fully.
- e. Question statements indicating that the injuries were caused by an accident. Use specific, non-accusatory questions.
- f. Be aware of the victim's fears, embarrassment and confusion.
 - Many factors affect a victim's ability and/or willingness to cooperate and provide information in an interview. Officers should be aware of these factors and conduct the interview in ways that reassure the victim that their concerns are legitimate and are being addressed.
 - After an episode of domestic violence, the victim will often experience feelings that might hinder a police investigation. This is especially true in cases where there is a history of domestic violence. Feelings that may inhibit the victim's willingness to cooperate can include: fear for self & children, guilt, shame, feelings of self-blame, feelings of isolation, feelings of helplessness and hopelessness, etc.
 - Officers may encounter victims who appear extremely reluctant to cooperate with the investigation. In addition to issues mentioned above, there are additional elements influencing domestic violence victim's response to law enforcement personnel and to the criminal justice system. These elements can include, lack of faith in the criminal justice system, genuine confusion, fear of retaliation/economic hardship/social stigma, etc.
- g. An officer should expect reluctance and not become impatient, frustrated or hostile when confronted with a victim's confusion or hesitation. In other areas of crime where the suspect knows the victim, the victim's whereabouts and the victim's family, victim/witness reluctance is expected and taken into account in the

investigation and handling of the case. This same understanding should be afforded to the victims of domestic violence, who not only know the suspect, but also may have a very long and complicated relationship with the suspect.

- h. A thorough investigation at the scene is critical to both the current and any future criminal case filed against the suspect. In addition, detailed knowledge of the present incident and past incidents will increase the officers' ability to make an appropriate decision about their arrest options, to correctly advise victims on follow-up procedures and to assist the prosecutor who will be prosecuting the case.

Interviewing the Suspect

- a. Officers should be alert to any manipulative language or behaviors of the suspect when questioning them. In some cases, the suspect may be agreeable or conciliatory to the officers. They may deny that abuse occurred or minimize the degree of the abuse. They may also blame their victim and that they had no other option but to take corrective action.
- b. Officers should not make any accusatory statements while questioning the suspect. They should allow the suspect to tell their version of the incident before confronting them with contradictory information.
- c. Officers should not collude or support the suspect's statements as to the reason for the abuse.
- d. Officers should document all spontaneous statements by the suspect, even if the statements appear on their face to be self-serving.
- e. Officers shall give the suspect Miranda warning before questioning, if the officers have placed the suspect under arrest or restrained their freedom of movement like an arrest.
- f. If the suspect has left the scene prior to the arrival of officers, then a reasonable effort should be made to locate and interview the suspect before the arrest decision has been made or before filing for an arrest warrant. Officers should contact the District Attorney's Office for guidance when determining a reasonable amount of time before filing for an arrest warrant if the suspect is unable to be located.

Interviewing Children

- a. Officers should interview children away from the other involved parties and in a comfortable place for the children. The officer also should be at eye level with the child.
- b. Officers should befriend the child and explain why the police are there.
- c. Officers should not indicate to the children what response the officers want from the

child. The officer should be careful in using leading questions when questioning children.

- d. Officers should be alert to any indication that the child is fearful of one or both parties involved or feels responsible for what has happened.
- e. Officers should be alert for any signs of child abuse. In the event that an officer has reasonable cause to suspect child abuse or maltreatment the officer shall report their concerns by telephone to the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) at 1 (800) 635-1522. Oral reports to the SCR must be followed within 48 hours by a written report to the local department of social services' CPS unit on form LDSS-221A. [See Attachment C.](#)

7. Photograph and collect physical evidence.

Photograph the Victim

- Photograph the victim's face to both identify them and to demonstrate their emotional state.
- Take close up photos of bruising, abrasions, and lacerations.
- Take mid-range photos of the injuries in relation to placement on the victim's body, using a ruler or item for scale comparison.
- Look for any indicators of past abuse such as scars, cluster or faded bruising, as well as varying skin discoloration. Photographs of these may demonstrate a pattern of abuse.
- Check for defensive injuries-scratches or marks.
- Ask the victim where the suspect touched them. There may be bruises or marks under their clothing. Ask the victim if there is someone they are comfortable with, that can check for injuries (i.e. specific gender officer, friend, neighbor, etc.).
- Ask the victim if the offender placed their hands on the victim's neck. Check for marks on the throat or petechiae in the eyes.
- Ask if hair was pulled out. Look for evidence of this to photograph and secure.
- Ask if any weapons (not just knives and guns) were used. If so, photograph them before collection.
- Follow up two or three days after the incident for increased visibility of bruises or marks.

Photograph the Offender

- Check the offender's hands and knuckles to see if marks coincide with the victim's injuries.
- Check for scratches on the chest, upper forearms, or face. It may indicate that the victim was trying to fight off the offender.
- Check for bite marks/scratches on the insides of forearms. It may indicate that the offender's arm was around the victim's neck and they bit or scratched the offender.

Photograph the Crime Scene

- Photograph outside door, window(s), locks, if forced entry was made.
 - Photograph damage to a cell phone or home phone.
 - Photograph any overturned or broken furniture, smashed pictures, mirrors, glass or dishware, holes punched in walls, bloodstains, etc.
8. Officers shall prepare a New York State Domestic Incident Report (DCJS 3221) for each investigation of a domestic incident as defined by section III (D) of this General Order. Once the NYS Domestic Incident Report has been completed, the victim shall be provided with the appropriate copy of the DIR/Victim Rights Notice before the scene is cleared. Officer will read the information on the Victim's Right Notice if necessary.
9. **All** calls dispatched as domestic incidents shall require completion of the Standardized Domestic Incident Form, unless the investigation indicates that no domestic incident occurred. The investigating officer(s) will contact an on-duty sergeant and outline the facts of the call. If the facts warrant the re-classification of the call (e.g. barking dogs, harassment, loud music, etc.), the sergeant may approve re-classifying the call.
10. When appropriate, officers will give the complainant/victim an [Advocacy Center Community Services Card](#) (see Attachment B) prior to leaving the scene. Officer will read the information on the card to the complainant/victim if necessary.

VI. **ARREST PROCEDURES**

- A. All arrests shall be made in conformance with Section 140.10 of the Criminal Procedure Law and applicable Department policies and procedures. It is the responsibility of all officers to be thoroughly familiar with and guide their actions in accordance with CPL 140.10 and Department policy and procedure.
- B. 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 reasonable cause shall be made in accordance with CPL 140.10.
1. Petty offenses (Infractions & Violations) must be committed in the officer's presence or the victim must sign the accusatory instrument. If the petty offense was committed out of an officer's presence, the victim shall be afforded the opportunity to make a citizen's arrest, pursuant to the provisions of the Criminal Procedure Law Sections 140.35 and 140.40. This is a useful alternative for those situations in which officers are not permitted to make a summary arrest.

2. When citizen arrests are appropriate and utilized, the officer shall:
 - a. Inform the victim, out of the suspect's presence, of the victim's rights to make a citizen's arrest;
 - b. Assist the victim with effecting and processing such an arrest.
 - c. In such cases, the citizen will sign the information as the complainant.
 - d. Officers do not need to make an affirmative finding of probable cause to assist with citizen's arrest. Officers shall not take into custody an arrested person if the officer has reasonable cause to believe that the arrested person did not commit the alleged offense or that the arrest is otherwise unwarranted.
3. In the following specific circumstances, without attempting to reconcile the parties or mediate, an arrest shall be made when the officer has reasonable cause to believe that the following offenses have occurred:
 - a. Any felony against a member of the same family or household;
 - b. Any misdemeanor constituting a Family Offense (see section III) 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 Designated Family Offense.
 - 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 the court when the Order was issued.
 - d. In any of the above situations, officers will neither inquire as to whether the victim seeks an arrest of the offender nor threaten the arrest of any person for the purpose of discouraging requests for police intervention. *See* CPL § 140.10-4(c).
 - e. The protected party in whose favor the Order of Protection or temporary Order of Protection is issued may not be held to violate such an order nor may such protected party be arrested for violating such.
4. Officers are reminded that there is no requirement that a crime (felony or misdemeanor) 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 reasonable cause and is required to affect an arrest under this policy, the following examples are **not** valid reason for failing to adhere to such policy:
 - There may be financial consequences caused by an arrest;
 - The complainant has made prior, frequent calls;
 - The involved parties appear to be impaired by alcohol or drugs;
 - The offender gives verbal assurance that he or she will not harm the victim;
 - The suspect lives on the premises with the complainant;
 - There is no Order of Protection in effect;
 - The suspect and complainant are married or had a prior or existing relationship.

C. NYS Primary Physical Aggressor Law and Guidelines

1. New York Law mandates that in the case of cross-complaints the investigating officer seek to determine which party is the “primary physical aggressor” and arrest that party. This, notwithstanding the “mandatory arrest” provisions of the Criminal Procedure Law,

“When an officer has reasonable cause to believe that more than one family or household member has committed [a misdemeanor constituting a family offense], the officer is not required to arrest each person. In such circumstances, the officer shall attempt to identify and arrest the primary physical aggressor after considering:

- The comparative extent of any injuries inflicted by and between the parties;
- Whether any such person is threatening or has threatened future harm against another party or another family or household member;
- Whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and
- Whether any such person acted defensively to protect himself or herself from injury. The officer shall evaluate each complaint separately to determine who is the primary physical aggressor and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.

CPL, § 140.10-4(c).

2. The following guidelines have been issued by the NYS Department of Criminal Justice Services Office of Prevention of Domestic Violence to implement the primary physical aggressor law. TCSO personnel will utilize these guidelines in dealing with this issue.
 - a. The intent of this policy is to protect the victims of domestic violence.
 - b. Cross complaints arrests based solely upon the parties’ allegations shall not be made. Where probable cause exists to believe that more than one family or household member has committed a family offense misdemeanor against one or more such members, the following policies shall apply:

- The officer shall not inquire as to whether the victim seeks an arrest of such person; or
 - Threaten the arrest of any person for the purpose of discouraging requests for police intervention.
- c. Officers are not required to arrest both or all parties. However, the “primary physical aggressor” shall be arrested. The primary physical aggressor is not necessarily the person who was first to use force. During the officer’s investigation to determine who was the primary physical aggressor, the officer shall consider the following:
- The comparative severity of any injuries inflicted by and between the parties;
 - Whether any such person has made threats of further harm against another party or another family or household member;
 - Whether any such person has a prior history of domestic violence that the officer can reasonably ascertain. When investigating this factor at the scene, the following sources of information may be available; agency (TCSO) records, E-Justice Registry of Orders of Protection, criminal history, prior acts of violence against others, reports of other officer(s) responding to address for past incidents and statements of neighbors or others in the residence.
 - Whether any such person acted defensively to protect himself or herself or a third person from injury.
- d. When investigating such a case, the officer shall evaluate each person’s complaint separately to determine who was the primary physical aggressor. The officer shall not base a decision to arrest or not arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.
- e. The arrest of the primary physical aggressor does not prohibit the officer from arresting both or all parties. If more than one arrest is made a separate Domestic Incident Report (DIR) shall be filed for each victim and each DIR shall cross-reference the other.
- f. No arrest shall be made for acts which officers have probable cause to believe were committed in self-defense in accordance with Article 35.00 of the Penal Law of New York.
- g. Should a complaint relating to the same incident be made at a later time – a delayed cross-complaint- it shall be investigated according to the guidelines outlined above and any arrest decision shall be made in a manner consistent with this policy.
- h. When investigating cases involving expanded populations, officers should use the same guidelines as they would with other populations. Always follow the physical evidence to lead you to conclusion. Be cognizant that when dealing with lesbian, gay, bi-sexual, transgender or teen populations, determining the primary aggressor by considering the size difference between the parties may not lead you to the conclusion as to who is the primary aggressor in the reporting incident, since persons in these groups may not show a significant difference in size. You should always do

a careful analysis of the immediate incident and the history of domestic violence.

D. Accusatory Instruments in Felony and Misdemeanor Family Offense Cases

1. When an arrest is made for a felony under this policy the arresting officer will complete and file a “Felony Complaint,” see CPL § 100.10-5. In such cases, the investigating or arresting officer will also take a supporting deposition from the victim and any other available witnesses. If the officer cannot obtain supporting deposition(s) for any reason the felony complaint may still be filed by the arresting officer. In either case, to be legally sufficient, the felony complaint:

- a. Must substantially conform to the form and content requirements of CPL § 100.15; **AND**
- b. The allegations of the factual part of the felony complaint, and/or any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part. *See* CPL§ 100.40-4.

2. When an arrest is made for a misdemeanor under this policy the arresting officer will complete and file an accusatory instrument as follows:

The officer may complete an Information that will be signed by the victim. In the alternative, the officer may take supporting deposition(s) from the victim and any other available witnesses. These depositions will then be attached to and filed with an Information signed by the officer. In either case, in order to be legally sufficient, the Information:

- a. Must substantially conform to the form and content requirements of CPL § 100.15; **AND**
- b. The allegations of the factual part of the Information, and/or any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part; **AND**
- c. **Non-hearsay** allegations of the factual part of the Information and/or any supporting depositions establish, if true, every element of the offense charged and the defendant’s commission thereof. *See* CPL, § 100.40-1.
- d. In the event that for any reason the complainant and any witnesses cannot or will not sign an Information or a supporting deposition, and the officer did not personally witness the commission of the misdemeanor, the officer may complete and file a **Misdemeanor Complaint**. *See* CPL, § 100.10-4. Similar to a Felony Complaint, a Misdemeanor Complaint may be based upon hearsay allegations of fact provided they establish reasonable cause to believe the defendant committed the offense charged. To be legally sufficient, a Misdemeanor Complaint:

- Must conform to the form and content requirements of CPL § 100.15; **AND**

- The allegations of the factual part of the Misdemeanor Complaint, and/or any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part. *See* CPL, § 100.40-1.
 - It is important to note that while a Misdemeanor Complaint may serve as the basis for the commencement of a criminal action, it may not serve as the basis for the prosecution of the action unless the defendant waives prosecution by Information. *See* CPL, § 100-10-4. Thus, a defendant may be arrested, charged, and arraigned on a Misdemeanor Complaint. However, before the prosecution of the case, a superceding Information and/or supporting deposition must be filed with the court. The Information and/or any supporting deposition must contain **non-hearsay** allegations of fact which establish, if true, every element of the offense charged and the defendant's commission thereof. For cases in which a Misdemeanor Complaint must be filed, the District Attorney's Office will be responsible for follow-up to obtain the necessary document(s). Department personnel will cooperate with requests from the District Attorney's Office for assistance with this.

E. Arrests for Petty Offenses

Note: There are no petty offenses standing alone that are subject to the "mandatory arrest" provisions of CPL, § 140.10-4. A petty offense is subject to the mandatory arrest provision only when it also involves the violation of an order of protection. *See* CPL, § 140.10-4(b). In such cases, there will always be at least a misdemeanor charge applicable for the violation of the order of protection.

1. When there is reasonable cause to believe a petty offense was committed out of the officer's presence, the victim shall be afforded the opportunity to make a civilian's arrest pursuant to the provisions of the Criminal Procedure Law. This is a useful alternative for those situations in which officers are not authorized to make a summary arrest. When civilian arrests are appropriate officers shall:
 - Inform the victim, out of the presence of the suspect whenever possible, of the victim's right to make a civilian's arrest.
 - Assist the victim in effecting and processing such an arrest.
2. In cases involving a civilian arrest, the complainant shall sign the accusatory instrument (Information).
3. Officers shall not take an arrested person into custody or take any other action on behalf of the arresting person if the officer does not have reasonable cause to believe that the subject committed an offense and that the arrest is authorized.

- F. Personnel with consult with G.O. titles; *Appearance Tickets and Pre Arraignment Bail (in progress)*, on policies and procedures for appearance tickets and pre-arraignment bail in domestic situations.

Note: Officers shall not make representations or promises regarding the length of time an arrested individual will remain in custody. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

VII. FAMILY OFFENSE ARREST PROCEDURES

- A. When a Family Offense has been committed and the offender is less than 16 years of age, officers shall assist the victim(s) in petitioning the case to Family Court. See G.O. 1004 titled, *Juvenile Procedures Contact & Arrest Procedure*.
- B. Whenever a Family Offense had been committed and the offender is 16 years of age or older officers will provide the victim(s) with the following information:
1. 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 court and criminal courts;
 2. That a Family Court proceeding is a civil proceeding for purposes of attempting to stop the violence, end the family disruption, and obtain protection;
 3. 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;
 4. 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 Temporary Family Court Order of Protection. See G.O. titled, *Order of Protection (in progress)*).
- C. When a victim wishes to proceed in a criminal court, advise the victim that they are not required to be present at arraignment. If an Order of Protection is desired the court should be advised of such request.
- D. When a victim wishes to proceed in Family Court on an offense, advise the victim that it will be necessary to appear in Family Court to file a petition. If Family Court is in session, this petition should be filed immediately. Procedures for obtaining a Temporary Family Court Order of Protection when Family Court is not in session are set forth in G.O. titled, *Order of Protection (in progress)*.
- E. Booking Procedures
1. Personnel will adhere to the policies and procedures set forth in G.O.s titled; *Arrest Procedures, and Prisoner Transport and Detention Procedures (in progress)*, when processing family offense arrest.

2. When a victim elects to proceed in Criminal Court, the officer will:
 - a. Complete and serve the victim with a Domestic Incident Report (DIR);
 - b. Take offender into custody;
 - c. Prepare an incident report;
 - d. Prepare an arrest report for all pertinent charges;
 - e. Prepare accusatory instruments returnable to the appropriate court; and
 - f. Provide the victim with necessary information and assistance (See Section XII Additional Services).

3. When the victim elects to proceed to Family Court only, the officer will:
 - a. Complete and serve the victim with a Domestic Incident Report (DIR);
 - b. Do not take the offender into custody;
 - c. Prepare an incident report;
 - d. Refer the victim to Family Court intake;
 - e. Provide the victim with necessary information and assistance (See Section XII Additional Services) and assist in obtaining a Temporary Family Court Order of Protection when necessary. See G.O. titled *Orders of Protection (in progress)*.

4. When the victim elects to proceed in BOTH courts simultaneously, the officer will:
 - a. Complete and serve victim with a Domestic Incident Report (DIR);
 - b. Take offender into custody;
 - c. Prepare and incident report;
 - d. Prepare an arrest report;
 - e. Prepare an accusatory instrument returnable to the appropriate court; and
 - f. Refer victim to Family Court intake (if Family Court is not in session, see G.O. titled, *Orders of Protection (in progress)*); and
 - g. Provide the victim with necessary information and assistance (See Section XII Additional Services).

5. Once the DIR has been completed, it shall be reviewed and signed by the shift supervisor. Once signed copy of the DIR shall be sent to DCJS at the following address:

NYS Division of Criminal Justice
Services NYS Identification Bureau-DIR
Unit-5th Floor 80 South Swan Street
Albany, New York 12210

VIII. NON-FAMILY OFFENSE ARREST PROCESSING

- A. 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).
- B. Personnel will adhere to the policies and procedures set forth in G.Os titled, *Arrest Procedures, and Prisoner Transport and Detention Procedures (in progress)*, when processing non-family offense arrests.
- C. 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.

IX. FEDERAL DOMESTIC VIOLENCE LAWS

- A. Officers should be alert to possible violations of Federal domestic violence laws, to include:
 1. Crossing a state line to commit an act of domestic violence;
 2. Forcing a spouse or intimate partner to cross a state line, and causing an injury; and
 3. Crossing a state line to violate a protective order.
- B. When officers believe that a Federal violation may have occurred:
 1. All applicable state laws will be enforced;
 2. Officers will notify the Criminal Investigations Division who will in turn notify or arrange for the notification of the local office of the Federal Bureau of Investigation and/or the United States Attorney (716) 263-6760.

X. FIREARMS AND OTHER WEAPONS

- A. Officers will confiscate legally possessed weapons as evidence when the domestic incident involved violence with the weapon or its threatened use.
- B. Officers will seize and confiscate illegally possessed weapons as contraband. Arrests for the appropriate weapons violations will be made.

- C. Officers will accept legally possessed weapons which are voluntarily surrendered for safekeeping.
- D. Upon arresting an individual who is licensed to carry, possess, repair, and dispose of firearms pursuant to Article 400 of the NYSPL, the arresting officer should, whenever practicable, notify the court of arraignment that the defendant is so licensed and also advise the court the licensing authority and county of issuance.
 - 1. Officers will make the following notation on the Defendant's Arrest Report: **THE DEFENDANT IS LICENSED TO (CARRY/POSSES/ETC.) A FIREARM IN (TOMPKINS/ETC.) COUNTY.** The officer may highlight this notation with a yellow or other colored highlighting marker.
- E. All weapons that come into possession of the Office as a result of domestic incidents will be processed following current Office policies.

XI. PROBATION & PAROLE DOMESTIC VIOLENCE INTERVENTION

A. Purpose and Background

To reduce the prevalence of domestic violence assaults and homicides through prompt intervention. This section is offered as a component to a comprehensive domestic violence policy in those cases where a subject in a domestic investigation by police is believed to be under the supervision of probation or parole.

Typically, parolee and probationers are subject to certain terms and conditions including reporting of any contact with law enforcement and refraining from certain conduct. It is imperative to the integrity of the parole and probation system that when a subject violates those terms that they are held accountable. While subjects might not be arrested in some domestic incidents, their conduct may still be in violation of the terms and conditions of their probation/parole. Prompt intervention requires prompt compliance with the legislative mandate of sharing DIRs with the departments supervising those individuals. This will provide an opportunity for more meaningful supervision through earlier intervention, appropriate sanctions and consequences and ultimately, enhanced victim safety.

B. Procedure

- 1. Officers will complete a Domestic Incident Report (DIR) in accordance with his policy and State law.
- 2. In situations whereby members believe that a subject named within a DIR is under parole or probation supervision, the member will make notification to such parole or probation department as soon as reasonably practical. Phone numbers and addresses for County Probation Departments and Parole Offices can be found in the Criminal Justice Directory at <http://criminaljustice.ny.gov>.

Tompkins County Probation Department phone number: (607) 274-5380

For subjects believed to be under the supervision of the United States Department of Probation and Parole, contact the department directly. U.S. Department of Justice Main Switchboard at (202) 353-1555.

3. Notification shall be made by telephone during regular business hours and then sending a hard copy of any reports to the appropriate department. All contacts shall be noted in the incident report.

XII. INCIDENTS INVOLVING LAW ENFORCEMENT PERSONNEL

A. Responsibilities of All Personnel both Sworn and Civilian

1. Any time sworn or civilian personnel become involved in a reported domestic incident or alleged domestic incident they shall notify an on-duty Sergeant as soon as is practical.
2. Any time sworn personnel become involved in a reported domestic incident or alleged domestic incident, whether or not an arrest is made, the on-duty Sergeant will immediately notify the Lieutenant. The Lieutenant will then immediately notify the Undersheriff.
3. All personnel, sworn or civilian, are required to immediately notify their supervisor if they are the subject of a court order of protection or if they learn that they are a defendant named in any such order. Employees shall also immediately notify their supervisor if there is a change in status of any existing order of protection including, but not limited to, the modification or addition of restrictions and an extension of the expiration date.

B. Responsibilities of the Responding Officers

1. Follow the standard operating procedure for responding to domestic incidence/violence call as defined in this General Order.
2. Notify the on-duty Sergeant.
3. Comply with all applicable laws and policies, including mandatory arrest, if probable cause exists to make the arrest.

C. Responsibilities of the Supervisor

1. Upon being notified of a domestic incident involving a member, sworn or civilian, or a law enforcement officer from another agency, the supervisor shall:
 - a. Respond to the scene of the incident and take control of the investigation of the incident.
 - b. Ensure that all applicable policies, including mandatory arrest are followed, if probable cause exists to make the arrest.
 - c. If the rank of the officer involved in the domestic incident is above the supervisor's

rank, immediately contact your supervisor.

- d. Upon investigation, if the supervisor has reasonable cause to believe that there is evidence of physical abuse or threats of harm exist and the abuser is a sworn member of the department, the supervisor will seize and take into custody all departmental issued firearms in possession of the member. In addition, the supervisor may direct the member to surrender all personally owned firearms.
- e. If the officer is a member of another agency, notify a supervisor from the involved officer's agency. Upon request, the supervisor from the involved officer's department may assist the Office of the Sheriff with the investigation. The Lieutenant will make all reports and files available to the other agency involved.
- f. Upon investigation, if the supervisor has reasonable cause to believe that there is evidence of physical abuse or threats of harm exist and the abuser is a member of another police agency, the supervisor may seize and take into custody all weapons in the possession of the party(ies) involved.
- g. The supervisor(s) will document in a supplementary report all actions taken as listed above and any other action taken.

XIII. ADDITIONAL SERVICES

A. Advocacy Center of Tompkins County

1. When appropriate, officers are encouraged to contact the Advocacy Center for assistance during and/or after domestic incidents for assistance to the victim (and children), including possible shelter at a confidential safe house. Call 607-277-5000 to reach on call staff at any hour. In addition, when appropriate, officers should refer victims to the Advocacy Center utilizing the Advocacy Center Community Services Card.
2. The Advocacy Center will assist with helping officers and victims find needed services as requested.
3. Officers will arrange for transportation of victims of domestic violence and their children to available shelters or other places of safety, or will assist in making such arrangements.

B. Adult Protective Services

1. Where victims of domestic violence are 65 years of age or older, incapacitated by physical, mental or emotional impairments, officers will consult with Adult Protective Services (607) 753-5248 and assist, where appropriate, in supportive interventions. *See DSS/DCJS Adult Abuse Protocol.*

C. Training

1. Office personnel will receive in-service training on domestic violence/family offense issues.

Attachments

- A. *New York State Standardized Domestic Incident Report (DIR)*
- B. [Advocacy Center Community Services Card](#)
- C. [Chile Abuse Hotline Report](#)

By Order Of



Derek Osborne
Sheriff