

VILLAGE OF WALDEN
POLICE DEPARTMENT
ONE MUNICIPAL SQUARE
WALDEN, NEW YORK 12586

Jeffry Holmes
Chief of Police

GENERAL ORDER

NO: 09.07

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Subject: Domestic Violence	
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I. Purpose:

The purpose of this policy is to improve the accountability and response to situations that occur during the investigation of domestic incident complaints. Few police agencies are justified in promoting the use of the words “always” or “never,” however, these situations and this policy are as close to being precise and clear cut as possible. We do not wish to undermine the discretion generally given to officers handling matters involving such incidents, but we must insure the well being and safety of the victims. The goals of this policy are; (1) to protect family members from violence, (2) to arrest the perpetrators of such violence and (3) to prevent recidivism.

II. Policy:

It shall be the policy of this 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. Department members shall protect victims of domestic violence and provide them with support through a combination of law enforcement and community services. The 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.

III. 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 formerly 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.

For the purpose of identifying and appropriately responding to the dynamics of domestic incidents, Officers are instructed to expand the definition of "family or household members" listed in the FCA for the **purpose** of "Law Enforcement" to include:

6. Members of the same household,
7. Persons not married, but who formerly lived together (no child in common),
8. Same sex couples,
9. Dating couples.

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. Aggravated harassment in the second degree
 - i. Stalking in the first, second, third, and fourth degree
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 of 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; a physical or verbal threat of damage to jointly held marital property, or acts which violate the terms of an order of 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 relationship (see B. above) exists, and
3. The alleged offender is 16 years of age or older.

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

IV. Dispatch Procedures:

- A. A domestic incident call will be given the same priority and prompt response as any other call for service. Staff assigned to communication functions will, whenever practicable, dispatch at least two officers.
- B. Upon receipt of a domestic incident call, staff assigned to communication functions will, along with information normally gathered, make every effort to determine and relay the following information to the responding officers:
 1. Whether the suspect is present and, if not, the suspect's description and possible whereabouts;
 2. Whether weapons or dangerous instruments are involved or known to be at the location or if any other threats exist (e.g., dogs);
 3. Whether medical assistance is needed at the scene;
 4. Whether the suspect or victim is under the influence of drugs or alcohol;
 5. Whether there are children present;
 6. Whether the victim has a current protective or restraining order;
 7. Complaint history at that location;
 8. Identity of caller (i.e., victim, neighbor, child).

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 terms and conditions.

- C. Police response to a domestic incident complaint shall not be canceled 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.
- D. A domestic incident call shall not be recoded (e.g., barking dog, harassment, loud music) without a supervisor's review. All calls dispatched as domestic incidents shall require completion of the Standardized Domestic Incident Form.

V. Responding Officer Procedures:

- A. A domestic incident call signifies people are in need of help, and shall be responded to as quickly and safely as circumstances permit.
- B. 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.

C. The responding on-scene officer shall:

1. Restore order by gaining control of the situation and separating the involved parties.
2. Take control of all weapons used or threatened to be used in the incident.
3. Locate and visually check all occupants of the location to verify their safety and well being.
4. Assess the need for medical attention and request that any required assistance be dispatched.
5. Interview all available parties and witnesses, separately if practicable.
6. 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.
7. 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.
8. Collect and record potential evidence, including spontaneous utterances by parties or witnesses. Where appropriate, canvass the area for witnesses, take photographs of injuries and/or property damage or, in accordance with Department policies, request the dispatch of appropriate crime scene investigators.
9. 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.
10. 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:
 - a. Conducting a search of the immediate area;
 - b. Obtaining information from the victim and witnesses that will aid in apprehending the suspect; and
 - c. Continuing the investigation as necessary, or referring the matter to the proper unit for follow-up investigation and arrest or warrant application.
 - d. 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.
 - e. Prior to leaving the scene, officers should attempt to obtain a signed information or complaint from the victim.

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

1. Advise all involved parties about the serious nature of domestic violence, its potential for escalation, and of legal and social assistance available;
2. Assess the immediate safety and welfare of the children;
3. 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;
4. Provide the victim with referral information regarding domestic violence shelters and services;
5. Assist in arranging for transportation or take the victim and family or household members to a place of safety.

VI. Officer Arrest Procedures:

- A. Officers are reminded that they have an official responsibility under §812 of FCA, which states, “no official or other person designated pursuant to subdivision (2) of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint form having access to any court for that purpose.”
- B. All warrantless arrests shall be made in conformance with section 140.10 of the Criminal Procedure Law and applicable Department policy and procedure. 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.
- C. 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 can be made in accordance with CPL 140.10.
- D. 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:
 1. Any felony against a member of the same family or household (except certain forms of grand larceny 4 - Penal Law §155.30 [3], [4], [9] or [10]).
 2. 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.
 3. 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.).
- E. 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.
- F. When an officer has probable cause and is required to effectuate an arrest under this

policy, the following examples are not valid reasons for failing to adhere to such policy:

1. There may be financial consequences caused by an arrest.
 2. The complainant has made prior frequent calls.
 3. The involved parties appear to be impaired by alcohol or drugs.
 4. The offender gives verbal assurance that he or she will not harm the victim.
- G. Cross Complaints; officers are not required to arrest both parties when physical force was used against each other, but shall attempt to learn which party may have lawfully used physical force in accordance with Article 35 of the Penal Law. An important part of your responsibility at a potential crime scene is a thorough inquiry to determine whether any use of physical force was lawful or unlawful, when developing probable cause *consider*:
- the comparative nature of the parties' injuries,
 - any serious threats creating fear of physical injury,
 - any prior history of violence between the involved parties.
- H. Civilian Arrests; when the officer lacks legal authority to make a warrantless arrest, the victim should be informed, (out of the presence of the suspect), 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.
- I. 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.
- J. Domestic Incidents Involving a Police Officer of this Department: any domestic incident involving another member of the department shall be fully investigated by a member of a higher rank than the member involved in the domestic or another agency and then If a member is arrested the investigating officer will secure the members issued handgun and the Chief of Police shall be notified immediately.
- K. Domestic Incidents Involving Police Officers of other Agencies: any domestic incident involving a police officer of another department shall be fully investigated and the investigating officers shall comply with all applicable laws and policies, including mandatory arrest provisions. Contact your supervisor and request that a supervisor from the involved officer's police department be notified.

VII. Family Offense Arrest Processing:

- A. Officers will provide victims of a Family Offense 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 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 Family Court order of protection); and
 5. 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.
- B. When a victim wishes to proceed in a criminal court, provide advice that the victim's presence is not required at arraignment. If an order of protection is desired, the court should be advised of such request.
 - C. Booking procedures, fingerprinting and photographing shall conform to current Department procedures and section 160.10 of the Criminal Procedure Law.

VIII. Non-Family Offenses 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. Booking procedures, fingerprinting and photographing shall conform to current Department procedures and section 160.10 of the Criminal Procedure Law.
- 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. Orders of Protection

- A. Enforcement The following policy shall be followed in the enforcement of an order of protection:
 1. The on-scene officer shall make an evaluation of the facts and circumstances surrounding the incident.
 2. 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 Department records or 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.
 3. 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 accusatory instrument.
 4. 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.
5. 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 of protection (e.g. criminal contempt) and the independent offense.
 6. 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 arraignment.
- B. Service of Order of Protection; officers will attempt to serve Orders of Protection personally upon the defendants expeditiously as possible. All attempts to serve the order will be documented and once served officers shall complete the affidavit of service and return it to the issuing court.
- C. Out-of-State Orders: Orders 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.

X. Firearms:

Upon arresting an individual who is licensed to carry, possess, repair, or dispose of firearms, the arresting officer should seize the weapon(s) when the domestic incident involves the use or threat of violence with the weapon. The officer shall notify the arraignment court that the alleged offender is so licensed and also advise the court of the circumstances of the domestic incident and the licensing authority and county of issuance.

XI. Appearance Tickets and Bail

- A. Following an on-scene arrest for a crime arising from a domestic incident, an appearance ticket shall not be issued. Instead, the officer shall remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with Department policy and section 160.10 of the Criminal Procedure Law.
- B. 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.
- C. 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.

XII. Additional Functions:

- A. The Department will maintain a current listing of agencies that provide aid to victims of domestic violence. Officers will refer victims to these agencies when appropriate.
- B. Officers will arrange for the transport and accommodation of victims of domestic violence and their children at available shelters or other places of safety, or will assist in making such arrangements.
- C. 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. (Note: See DSS/DCJS Adult Abuse Protocol for Law Enforcement).
- D. In cases where children are neglected or abused (physically or emotionally) officers are required by law to report such abuse to the NYS Child Abuse and Maltreatment Register at 1-800-635-1522 and complete the required State form (DSS-2221-A) and a department incident report.
- E. Officers and communications personnel should 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.
- F. The Department shall designate specific personnel to periodically review the adequacy of this policy, assess and enforce compliance with its provisions by Department personnel, and make recommendations to the head of the Department of any indicated revisions deemed necessary to improve or enhance the implementation of this policy.

XIII. Notifications:

- A. Notifications shall be made as follows:
 - 1. In situations whereby members believe that a subject named within a DIR is under parole or probation supervision, the investigating officer will make notification to such parole or probation department as soon as reasonably practicable.
 - 2. Notification shall be made by telephone during regular business hours, and/or by transmitting a copy of the DIR via facsimile, e-mail, intranet, etc. The manner or method of transmitting the document will be recorded in the case file.
 - 3. For subjects believed to be under the supervision of the New York State Division of Parole, by contacting the Domestic Violence Coordinator listed in your agency directory, etc. "see Parole Contact reference, herein"
PAROLE CONTACT:
Molly Lamora, Domestic Violence Parole Officer
molly.lamora@doccs.ny.gov
Sherry Frohman, Domestic Violence Coordinator
sherry.frohman@doccs.ny.gov

New York State Division of Parole Re-Entry Services Unit
97 Central Avenue
Albany, New York 12206
Telephone: 518-473-7455 Fax: 518-473-9404

4. For subjects believed to be under the supervision of a probation department within New York State, by contacting the Domestic Violence Liaison for the county charged with supervision of the subject. "see Probation Domestic Violence Liaison reference, herein"

PROBATION CONTACTS:

Orange	Debra Haynal	845-568-5027 fax 845-568-5030	dhaynal@orangecountygov.com
Sullivan	Linda Lukoff	845-794-3000 ext 3400 fax 845-794-3459	Linda.Lukof@scgnet.ny.us
Rockland	Grace Henriquez	845-638-5526 fax 845-638-5648	henriqg@co.rockland.ny.us
Putnam	Amy Dehais	845-225-0304 fax 845-225-1067	amy.dehais@putnamcountyny.com
Dutchess	Robert Dosiak	845-486-2600 fax 845-486-2676	rdosiak@co.dutchess.ny.us
Ulster	Nancy Schmidt	845-340-3482 fax 845-340-3220	nsch@co.ulster.ny.us
Westchester	Louis Conte	914-995-3504 fax 914-995-6261	lcc6@westchestergov.com

5. For subjects believed to be under the supervision of the United States Department of Probation and Parole, or under the jurisdiction of any other state or tribal authority, by contacting the appropriate liaison for such jurisdiction.



Jeffry Holmes,
Chief of Police