

# **OHIO MODEL PROTOCOL FOR RESPONDING TO DOMESTIC VIOLENCE**



This manual was revised in 2003 by the Ohio  
Domestic Violence Network's Violence Against  
Women Act (VAWA) Advisory Board.

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### **Comments, 2003:**

Several parts of the Ohio Model Protocol were updated for this printing. The law enforcement, prosecutor, clerk of courts (civil and criminal), and dispatch sections of the protocol were revised in late 2003 by an advisory board of advocates, prosecutors, victim service providers, and law enforcement convened by the Ohio Domestic Violence Network. The purpose of this revision was to update the protocol to reflect the shift toward evidence-based practices and integrate changes in state and federal domestic violence related statutes. The revised protocol is also designed to acknowledge and integrate issues of community collaboration, victim sensitivity, offender accountability, and cultural competency. Also, the International Association of Chiefs of Police Domestic Violence by Police Officers Model Policy has been included in the revised protocol, as effective response to officer involved domestic violence has been identified as a challenging issue for law enforcement.

We realize that many different criminal justice system professionals encounter victims of domestic violence on a daily basis and hope this protocol will be a tool to assist them in responding effectively. In closing, we would like to thank them for their continued efforts to increase victim safety and offender accountability.

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OHIO DOMESTIC VIOLENCE NETWORK

### **Comments, 1994:**

This Model Protocol was developed in October 1992. A model is ever evolving. Enhancements, suggested by the Ohio Domestic Violence Network, were integrated in March 1994.

Counties are encouraged to use their protocols to educate systems' actors about the myths/misconceptions and the dynamics of domestic violence. Each protocol should include an Introduction including this information, as well as a Statement of Principle as to why it is important to develop a community-wide protocol for responding to domestic violence.

All protocol systems have unique insight into their particular response approach, and the impact on victims, perpetrators, and on other systems. Coordination among all the systems is, therefore, essential, and should be acknowledged in an appropriate section of each community's protocol.

Future revisions of this protocol should include an enhanced Children's Protective Services section and the addition of the following actors: (1) Women's Shelters; (2) Batterers' Treatment Programs; (3) Rescue Intervenor, and (4) other advocacy groups such as Victim Witness programs.

## **PREFACE**

This model protocol was developed by the Legal Aid Society of Cincinnati under a grant from the Ohio Department of Human Services. Its goal is to provide a vehicle by which Ohio communities can reduce the incidence of domestic violence and help victims escape abuse. The protocol is not intended to mandate the duties or practices of any of the actors described within. It does, however, set forth a model for response that must be tailored to fit the circumstances and resources of individual communities. Thus, while the model occasionally uses words such as “must,” “will” and “shall,” it is to be understood that each agency will determine its own level of commitment to the guidelines contained here.

We suggest that the model protocol be implemented at the “community” level, which generally means a county or other area served by a particular court. One or more community leaders should call together the key actors necessary for a coordinated response to domestic violence: law enforcement, courts (administrative and judicial), prosecutors, probation department, battered women's shelters and other victim/witness assistance programs, batterer's treatment programs, medical providers and children's protective services. This “task force” can adapt the model protocol to local conditions and resources. This process has been carried out in a number of Ohio communities, including the counties served by the Legal Aid Society of Cincinnati - Hamilton and Clermont. We would be happy to share our experience and suggestions for implementation in other areas.

In addition to the model protocol, we have generated two other products for the Ohio Department of Human Services. One is a chart showing the key elements of a number of domestic violence protocols (models and actual documents) from all over the country. The chart provides an efficient way to examine similarities and differences among the many community approaches to domestic violence, and to inspire ideas that may work best for your own community.

The other product is an inventory of the many protocols and related domestic violence research that we gathered in preparation for preparing an Ohio model. The inventory includes a list of individuals and agencies throughout the United States who have done or are working on similar projects.

We received comments and input on a draft of this protocol from a number of dedicated and experienced domestic violence experts from throughout Ohio. Unfortunately, a great deal of wisdom has gone untapped because of time and resource limitations. We therefore consider this document a work in progress, and very much hope that others will take the time to review it and send any feedback to us or to ODHS.

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October 1992

## ABSTRACT

### SUGGESTIONS FOR IMPLEMENTING A MODEL DOMESTIC VIOLENCE PROTOCOL

A coordinated community response to domestic violence must take into account the uniqueness of each geopolitical area of coordination. A model protocol can serve as a solid foundation upon which a group of system actors can build and adapt to local resources and systems. Based upon our experience, a model protocol can be implemented in accordance with the following suggestions.

(1) A responsible person or agency should come forward to initiate implementation and to coordinate early efforts. This responsible entity could be an existing service agency, a law enforcement agency, the prosecutor, a judge, or an energetic, knowledgeable private citizen.

(2) The geopolitical area of implementation should be selected; generally it should include the area that is served by a single court system.

(3) The “coordinator” should call together a “task force” for the specific purpose of designing and implementing a local protocol. Before the call is formally made, the coordinator should line up allies, and bring on board one or more respected public officials to lend “clout” to the call for a task force. This informal group should divide up responsibilities for “networking”, so that by the time the task force meets for the first time, a substantial number of the members will be familiar with and supportive of the project.

(4) The informal group should identify the actors necessary to the successful design and implementation of a DV protocol. The systems that must be included are identified in the model, and the group should plug in local names and agencies. In addition to the necessary actors, the group should also identify other persons or agencies who will especially facilitate the process. For

example, the mayor may not be an actor directly involved in DV response, but she may certainly lend clout and credibility to the task force's efforts, and be able to persuade reluctant actors to participate. Also, the local Legal Aid office may not have a specific role to play in the coordinated response, but can contribute a unique legal perspective.

(5) The informal group should conduct a press conference to announce the formation of the task force and describe its goals. In our experience, the press conference will be successful if called by a current political officeholder. It emphasizes to the task force invitees that the project is already underway and has substantial support; hopefully motivating reluctant invitees to jump aboard in order to be heard.

(6) At the initial meeting of the task force, the model protocol should be distributed and some background given on its origin. It is helpful to have a representative from each system (e.g., legal, social service, law enforcement, medical) confirm his or her support for the project, describe the problems that exist in his or her system, and the need for a coordinated response to remedy the problems. The task force should identify what other actors need to be involved in the process, and make plans to lobby them to join. In our experience, it is very important to keep the atmosphere of this first meeting as "open" as possible; no suggestions or options should be ruled out. Members should feel that their views will be given serious consideration and that compromise is possible and anticipated.

(7) The task force should decide whether to begin considering the model protocol as a group or to break up into committees to work on different sections. Also, the group should decide how often it will meet. One member of the task force should be the logistical coordinator, keeping records of who is chairing each committee, who the members are, and when and where the

committee meets. If the committee method is used, the committees will report back to the whole task force for discussion and input on its work.

(8) The task force should continue to meet until it has hammered out a local protocol that is acceptable to its members. If the group cannot reach agreement on all aspects of a coordinated response, the group should cement the agreements that it has reached and make a plan for the other issues, e.g., get more information, review again after a certain period, negotiate compromise. Throughout the process, the task force should take advantage of any press coverage that can be garnered. Also, new members of the participating agencies must be invited to participate as staffs experience turnover. The task force should follow up continuously with members that “drop out” before the process is complete, and with those entities that initially declined to participate.

(9) The task force should decide what the process will be for “adoption” of the protocol. One method is to get all of the key actors to sign a pledge/endorsement/letter of support that can be made public. Consideration should also be given to obtaining the “endorsements” of umbrella groups, such as the county police chiefs’ association.

(10) The task force should also design a method of monitoring the implementation of the protocol and revising it as necessary. For example, the task force could send out a survey to all participating agencies to get feedback on the protocol after a selected number of months, and/or plan future task force meetings for this purpose. Also, certain agencies that have substantial contact with DV victims and their families could employ a survey or other evaluation form that compares the victim’s actual experience to the ideal that is set forth in the protocol. Another potential monitoring method is to set up a “courtroom observation” project; utilizing volunteers in the civil and criminal courts to evaluate the impact of the protocol upon DV cases that culminate in judicial proceedings. A system can be set up to bring any problems to the attention of the agency in question.





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## **I. TERMS AND DEFINITIONS**

- A. “VICTIM” AND “OFFENDER” are used throughout this protocol in order to conserve space and promote readability, even though at most stages of a domestic violence prosecution these persons are actually “alleged” victims and offenders.
- B. Domestic violence includes the crimes of domestic violence, menacing by stalking, aggravated trespass, and violation of protection orders.

According to section 2919.25 of the Revised Code, “DOMESTIC VIOLENCE” occurs when a person:

- 1. Knowingly causes or attempts to cause physical harm to a family or household member (O.R.C. § 2919.25(A));
- 2. Recklessly causes serious physical harm to a family or household member (O.R.C. § 2919.25(B));
- 3. By threat of force, knowingly causes a family or household member to believe that the offender will cause imminent physical harm to the family or household member (O.R.C. § 2919.25(C)).

According to section 3113.31(A)(1) of the Revised Code, “DOMESTIC VIOLENCE” means the occurrence of one or more of the following acts against a family or household member:

- a. Attempting to cause or recklessly causing bodily injury;
- b. Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 (Menacing By Stalking) or 2911.211 (Aggravated Trespass) of the Revised Code;
- c. Committing any act with respect to a child that would result in the child being an abused child as defined in O.R.C. § 2151.031.

Below are a list of crimes that should also be tracked as domestic violence related crimes if the offender and victim are family or household members:

2903.11 Felonious Assault, 2903.12 Aggravated Assault, 2903.13 Assault, 2903.14 Negligent Assault, 2903.21 Aggravated Menacing, 2903.211 (2903.21.1) Menacing by Stalking, 2903.22 Menacing, 2905.02 Abduction, 2907.02 Rape, 2907.03 Sexual Battery, 2907.05 Gross Sexual Imposition, 2907.06 Sexual Imposition, 2909.04 Disrupting Public Services, 2905.05 Vandalism, 2911.11 Aggravated Burglary, 2911.12 Burglary, 2905.01 Kidnapping, 2911.21 Criminal Trespass, 2911.211 (2911.21.1) Aggravated Trespassing, 2917.21

Telecommunications Harassment, 2919.22 Endangering Children, 2919.25 Domestic Violence, 2919.27 Violation of a Protection Order, 2921.04 Intimidation of Victim or Witness, 2923.03/2919.27 Attempted Violation of a Protection Order, 2923.02/2919.25 Attempted Domestic Violence, 2903.01 Aggravated Murder, 2903.02 Murder, 2903.03 Voluntary Manslaughter, 2903.04 Involuntary Manslaughter, 2923.02/2903.01 Attempted Aggravated Murder, 2923.02/2903.02 Attempted Murder, 2923.02/2907.02 Attempted Rape, 2909.02 Aggravated Arson, 2909.03 Arson, 2923.02/2909.02 Attempted Aggravated Arson, 2923.02/2909.03 Attempted Arson, 2903.06 Aggravated Vehicular Homicide; Vehicular Homicide; Vehicular Manslaughter, and 2903.08 Aggravated Vehicular Assault; Vehicular Assault

- C. “MENACING BY STALKING” occurs when: a person engages in a pattern of conduct knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person. O.R.C. § 2903.211(A)(1)

Menacing by Stalking occurs through the use of any electronic method of remotely transferring information including, but not limited to, any computer network, computer program, or computer system by posting a message with the purpose to urge or incite another to commit a violation of O.R.C. § 2903.211(A)(1). O.R.C. § 2903.211(A)(2)

“AGGRAVATED TRESPASS” occurs when: a person enters or remains on the land or premises of another with the purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to that person. O.R.C. § 2911.211(A)

- D. “VIOLATING A PROTECTION ORDER” occurs when: a person recklessly violates any terms of any of the following: (1) A protection order issued or consent agreement approved pursuant to section 2916.26 (Temporary Protection Order) or 3113.31 (Civil Protection Order) of the Revised Code; (2) An anti-stalking protection order issued pursuant to section 2903.213 or 2903.214 of the Revised Code; (3) A protection order issued by a court of another state (O.R.C. § 2919.27)(A).

The Violence Against Women Act (VAWA, 18 U.S.C., Section 2265) mandates that all states, territories and tribal courts provide full faith and credit to orders of protection issued by courts of other states, territories, and tribes. VAWA entitles victims of domestic violence certain protections under federal law. Any protection order issued by the court of one state or Indian tribe shall be given full faith and credit by the court of another State or Indian tribe and enforced as if it were the order of the enforcing State or tribe as long as it meets the following conditions of the act:

1. The court that issued the order has jurisdiction over the parties and the matter;
2. Reasonable notice and the opportunity to be heard was given to the person that the order was against in order to protect that person's due process rights;
3. In the case of ex parte orders, the subject of the order has to be provided the opportunity to be heard in a reasonable amount of time after the issuance of the emergency order to protect due process rights.

The full faith and credit provision applies to both civil and criminal protection orders, whether issued ex parte, after a hearing or by consent agreement. However, special safeguards are in place for mutual orders of protection. As provided for by Ohio law, there must be separate filings by the parties and a specific finding of fact by the court that each party has abused the other for mutual orders to be enforceable under full faith and credit. O.R.C. § 3113.31(E)(4)

E. According to sections 2919.25 and 3113.31 of the Revised Code, "FAMILY OR HOUSEHOLD MEMBER" means any of the following:

1. Any of the following who is residing or has resided with the offender:
  - a. A spouse, a person living as a spouse, or a former spouse of the offender;
  - b. A parent or child of the offender, or another person or another person related by consanguinity (blood), or affinity (marriage), to the offender;
  - c. A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity (blood) or affinity (marriage) to a spouse, person living as a spouse, or former spouse of the offender.
2. The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

F. "PERSON LIVING AS A SPOUSE" means a person:

1. Who is living or has lived with the offender in a common law marital relationship;
2. Who otherwise is cohabiting with the offender; or

3. Who otherwise has cohabited with the offender within five years prior to the date of the alleged domestic violence in question.

O.R.C. § 2919.25 and 3113.31

G. **PROBABLE CAUSE:** According to section 2935.03(B)(3)(a) of the Revised Code, a police officer has reasonable grounds to believe that the offense of domestic violence or violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

1. A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement. O.R.C. § 2935.03(B)(3)(a)(i)
2. No written statement is executed, but the police officer, based upon the officer's knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the police officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe the person in question is guilty of committing the offense. O.R.C. § 2935.03(B)(3)(a)(ii)
3. No written statement is executed, but the police officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order. O.R.C. § 2935.03(B)(3)(a)(iii)

#### Factors Not to be Considered in the Probable Cause Determination

The following factors should not be considered in determining probable cause because, while they may play a role in the ultimate outcome of the case, they are irrelevant to the determination of whether a crime has been committed:

1. Race, ethnicity, sexual orientation, social class, occupation, or prominence in the community;
2. Marital status of the parties (except to the extent necessary to determine if the parties fall within the statutory definition of domestic violence);



3. Previous court dispositions regarding these same persons;
4. The possibility that the victim will not want to assist the prosecution;
5. Assurances by one or both parties that the violence will stop;
6. Denial by the offender that the violence occurred when the facts and circumstances show otherwise. (Of course, when the victim denies that any violence occurred, the officer must determine if there is any independent evidence from which to establish probable cause, e.g., admissions by the offender, injuries, statements of witnesses.)

H. “PRIMARY PHYSICAL AGGRESSOR”: In a situation in which family or household members have committed the offense of domestic violence against each other, an officer is required by law to consider, in addition to any other relevant information, the following:

1. Any history of domestic violence or any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain O.R.C. § 2935.03(B)(3)(d)(i);
2. If violence is alleged, whether the alleged violence was caused by a person acting in self-defense O.R.C. § 2935.03(B)(3)(d)(ii);
3. Each person’s fear of physical harm, if any, resulting from the other person’s threatened use of force against any person or resulting from the other person’s use or history of the use of force against any person, and the reasonableness of that fear O.R.C. § 2935.03(B)(3)(d)(iii);
4. The comparative severity of any injuries suffered by the persons involved in the alleged offense O.R.C. § 2935.03 (B)(3)(d)(iv).

I. “VICTIM ADVOCATE” means:

1. A person who provides support and assistance for a victim of an offense during court proceedings (O.R.C. § 2916.26).
2. A person who provides support and assistance for a person who files a petition under section 3113.31 of the Revised Code (O.R.C. § 3113.31).
3. A person from a crime victim service organization who provides support and assistance for a victim of a crime during court proceedings and recovery efforts related to the crime (O.R.C. § 2305.236).

## **II. DISPATCHER**

The dispatcher who receives a family violence call can provide the responding officers with vital information that could save the victim's and the officer's life. The dispatcher will give a family violence call the same priority as any other life threatening call and will, whenever possible, dispatch two officers to the scene.

- A.** Officers should be dispatched as soon as enough information is obtained to determine the priority of the situation. Any remaining information can be gathered while the unit is on the way.

During the initial call for assistance, the call taker will obtain at least the following information:

1. Where is the emergency? What apartment? What phone number are you calling from?
2. What has happened?
3. Who am I speaking to?
4. Are you the victim? If no, are you a witness?
5. Has anyone been injured? If yes, is an ambulance needed? What are the injuries?
6. Is the suspect present? If not, a description of the suspect and his expected whereabouts.
7. What is the suspect's relationship to the victim? What is his/her name? Are they recently separated, or were divorce papers recently served? (Recent separation is an indicator of increased lethality.)
8. Are weapons involved? If yes, what kind? If no, are there any weapons in the household? If yes, where are they?
9. Is the offender under the influence of drugs or alcohol? If yes, what substance?
10. Are children present? Did they see or hear the incident? Where are the children now?
11. Does the victim have a current protection order? How recently was it served?

**B. Dispatch Priority**

1. Dispatchers will dispatch domestic calls in the same manner as any other life-threatening call (known in most jurisdictions as a “priority one” call).
2. Whenever possible, the dispatcher should assign a back-up unit to respond to domestic calls.
3. Dispatchers should inform the caller of the intended response and how long it will take for an officer to arrive at the household.
4. Dispatchers shall not cancel officer response to a domestic violence complaint. However, the dispatcher shall advise the officers of the complainant’s request.

**C. Victim Safety**

In volatile situations, the operator will keep the victim or child on the line until an officer arrives at the household.

**D. Check Previous Incidents and Protection Orders**

If the dispatcher has ready access to police department records that indicate whether the parties involved in the incident have been involved previously in domestic incidents, or that indicate whether there is a protection order involving the parties in effect, the dispatcher should consult such records and radio any relevant information to the responding officer. Always ask the responding officers if they are interested in obtaining information about the history of the parties.

### **III. LAW ENFORCEMENT**

#### **A. Approaching The Conflict Scene And Gaining Entry**

Officers should respond without undue delay to a report of an alleged domestic violence or the offense of violating a protection order or consent agreement.

Officers should employ standard precautionary measures and police practices for dealing with any conflict in which violence is alleged and the existence of weapons is a possibility. In addition, because domestic violence is a family crime, officers should try to ascertain prior to gaining entry whether there are children on the premises and take appropriate precautions for their safety.

Officers should listen outside of the premises, if possible, for any sounds, and look through windows to see what is going on inside. Such action is covered by the plain view doctrine, and it (1) increases officer safety, and (2) can establish probable cause that a crime is in progress or has been committed.

#### **B. Officer Approaching The Scene**

1. Park a reasonable distance away from the residence.
2. Approach with caution.
3. Listen through the door and observe through the windows.
4. Try to ascertain prior to gaining entry whether there are children on the premises and take appropriate precautions for their safety.
5. Determine a plan of action prior to knocking or entering the building.
6. Stand to the side of the door when knocking or announcing your presence.

#### **C. On-Scene Investigation And Procedures**

The purpose of the on-scene investigation is to establish “probable cause” and make a good criminal case through: interviewing of all parties and witnesses, recording statements, preserving the crime scene, and collecting evidence.

1. If a report is made away from the scene of the crime, return to the scene to gather evidence after taking the report.

2. Follow up all reports by returning to the scene of the crime 24-72 hours after the initial report and taking additional photographs, if new bruises or other injuries are visible.

#### **D. Entering The Residence**

1. Quickly get the attention of the disputants.
2. Identify yourself and your partner.
3. Identify potential weapons in the surroundings.
4. State the reason for your call. It is not necessary to identify the caller.

#### **E. Assess Injuries**

1. Assess injuries, including inquiry about possible internal injuries. Check for recurring or unexplained injuries; bruises; combination of new and old injuries; injuries in areas covered by clothing; burns in unusual places (on the back); injuries on the head or face; spongy scalp (soft to touch because of pulled hair; clusters of bruises shaped like fingers, fists or cords.
2. Administer first aid and/or notify emergency medical services.
3. If anyone shows evidence of serious injury but declines medical attention, call emergency medical services. It is the responsibility of medical personnel to determine the exact extent of injuries and the need for medical care. Carefully document any observed injuries as well as the refusal for medical treatment.
4. Victims can sustain internal injuries to the stomach, breast area, portions of the head covered by hair, and the back. Pregnant women are often hit or kicked in the stomach. The absence of external injury does not mean the victim has not been assaulted.
5. Many victims will report that they have been “choked” when they are the victims of **strangulation**. Some victims will say they were not choked, but with further questioning will acknowledge that the suspect put an object or the suspect’s hands around the victim’s neck. **Officers should always call EMS due to potential internal injuries that may be fatal and may not be apparent.** Because of underlying brain damage by lack of oxygen during strangulation, victims and unborn children have died up to several weeks later. Assess victim for strangulation injuries which may or may not be

observable.

Note: In the case of allegations of strangulation the absence of external injuries is not uncommon and the likelihood of serious internal injuries that could result in death absent external injuries is possible.

6. Questions to ask a victim to determine strangulation:

- (a) Did the suspect strangle (choke) you? If the response is no, ask, Did the suspect put the suspect's hands or an object around your neck?
- (b) If yes, did the suspect use one or both hands?
- (c) If yes, what object did the suspect use – plastic bag, clothing, etc.?
- (d) How long did the suspect strangle you?
- (e) How hard did the suspect grab the victim's throat?
- (f) Was the victim shaken simultaneous to being strangled?
- (g) If yes, how much shaking? Little to whipping back and forth.
- (h) Did the victim have difficulty breathing?
- (i) Did the victim report urinating or defecating?
- (j) Did the victim faint, black out, lose consciousness? How long?
- (k) Did the victim complain of nausea or report vomiting?
- (l) Any complaint of pain, discomfort, trouble swallowing, or raspy voice?
- (m) Any prior incidents of strangulation? How many? How often?
- (n) Any pre-existing neck injuries?
- (o) Was the suspect wearing any rings?
- (p) What did the suspect say while strangling the victim?
- (q) Describe the suspect's demeanor and facial expressions.

7. Assess strangulation victim for:

- (a) Neck pain
- (b) Sore throat
- (c) Scratch marks
- (d) Tiny red spots, red linear marks, bruising
- (e) Hoarseness
- (f) Loss of voice

- (g) Difficulty swallowing
- (h) Light headed or head rush
- (i) Fainting or unconscious
- (j) Nausea or vomiting
- (k) Loss of bodily function
- (l) Red eye (petechial hemorrhage)
- (m) Rope or cord burns
- (n) Neck swelling
- (o) Miscarriage
- (p) Chin abrasions

#### **F. Investigation When The Offender Has Fled The Scene**

If the offender has left the scene and there exists probable cause that a crime was committed, the officer should, in addition to interviewing the victim and witnesses and collecting physical evidence:

1. Conduct a search of the immediate area for the offender;
2. Obtain information from the victim and witnesses as to where the offender might be (at his or her job, a relative's or friends' house, a local business establishment); and
3. Remain on the scene until a safety plan is established, or the victim or parent of the children has stated that he or she desires to remain on the premises.
4. Transport victim's children to safe place, if necessary.
5. If the offender has fled the scene, the officer shall determine whether the facts and circumstances indicate a high risk that the offender will return to the residence and threaten or physically harm the victim.

For the safety of the victim and officers in the area, the investigating officer shall issue a broadcast to alert officers of the offender's potential danger and provide them with a physical description of the offender and possible vehicle the suspect may be driving.

6. The officer shall promptly seek a warrant for the arrest of the offender and arrest the offender immediately.

\*NOTE: If the only probable cause is an affidavit, consider further investigation prior to arrest.

7. The officer shall verify the identity of the perpetrator by having the victim identify a photograph of the offender. The officer shall secure the photograph until the case is concluded.

#### **G. Separate The Victim And Offender**

1. Separate the victim of the offense of domestic violence or the offense of violating a protection order or consent agreement and the alleged offender, and conduct separate interviews with the victim and alleged offender in separate locations.
2. Identify all occupants/witnesses, including children, on the premises.
3. Separate the occupants/witnesses from the victim and the offender and keep them out of hearing range (to avoid compromising their witness status).
4. If the parties are in a corridor, lobby, or other public place escort each of them to a private area.
5. Each officer should take charge of one disputant.
6. Position the disputants so that the alleged offender and victim are unable to make eye contact.

#### **H. Presence Of Children At Conflict Scene**

1. If children are present, they should be separated from the parties. If only small children are present, they should be placed in a crib or playpen, if available, and supervised. Officers should not rely on representations by the disputants concerning whether the children witnessed the incident.
2. Children should be interviewed about the abuse in a careful, gentle manner appropriate to the child's age and his or her emotional state. Children should be asked only very general questions about the alleged violence.

Officers should place themselves on the child's level (crouch or sit) before talking to them. They should speak in a calm voice, establish rapport with the child, and attempt to make the child as comfortable as possible before beginning the interview. If a child shows signs of discomfort or distress, comfort the child and take a break from the interview. If a break does not



appear to decrease the child's level of distress, consider stopping the interview.

Officers should collect as much evidence as possible from children, as some evidence, such as excited utterances, may be admissible in court (Evidence Rule 807).

Officers shall emphasize the following messages in closing an interview with a child: (a) they did a good job, (b) what they did was important, (c) they haven't done anything wrong, (d) it is not their fault, and (e) it is not right to hurt people.

3. If a child is the suspected victim of domestic violence, child abuse or neglect, the officer should make a report to Children's Protective Services agency as required by Ohio law. If the child is a suspected victim of abuse, the officer should follow the procedures spelled out in the "County Plan of Cooperation" (required in each county by O.R.C. § 2151.421) for interviewing child abuse victims.
4. After initial evaluation of the situation, officers should not keep children separated from their non-offending caretaker.
5. If the arrest of the accused or the hospitalization of the victim will leave a child without a caretaker, the officer should attempt to ascertain names of alternative caretakers. If no alternative caretakers are identified, contact Children's Protective Services. When practical remain at the residence until a protective service worker arrives, or take the child into custody pursuant to Children's Protective Services law. In no case should young minor children be left unattended.
6. Officers are required to report suspected incidents of child abuse or neglect, even when concluding that there is no probable cause that domestic violence was committed. Contact Children's Protective Services if you suspect child abuse or neglect.
7. If the Officer determines violence took place while children were in the household, the officer shall document this in the report.

## **I. Interviewing The Parties And Witnesses**

The responding officer should interview the victim and the assailant as fully as circumstances allow.

1. The officer's manner is critical to the success of the interview. Domestic violence is a serious offense, and the officer can communicate this both to the victim and the offender by the officer's behavior at the scene. The officer's use of effective listening skills can reflect the officer's interest in the victim's reciting of facts, and can help that process. The officer should be aware of nonverbal communication signals, such as a fixed stare, which can be a barrier to communications. Natural eye contact should be maintained.
2. The officer should be alert to possible incriminating statements of the assailant and record them in the field report. These statements may (1) establish probable cause, (2) constitute "admissions" that the court will consider as evidence that the accused committed the crime and (3) establish the relationship of the parties. The officer should be aware that his or her own statements at the scene may be repeated at trial, thereby undermining the prosecutor's case, especially where the officer expresses reluctance for enforcing the law. Examples are statements such as "I don't want to do this, but..." and "I don't think you ought to be arrested, but I have to". (Of course, at times such "soothing" statements may be necessary for the officer's own safety.)
3. In questioning the victim, the officer should use supportive interview techniques. The officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant, witnesses, and bystanders. The officer shall avoid questions or statements that are judgmental or have the effect of blaming the victim. For example, questions such as "why did you let him in if you knew he was drunk?" and "why didn't you press charges the first time this happened?" are never appropriate to ask when questioning a victim.

Instead, officers should use supportive statements to elicit information such as: "I am concerned about you, can you tell me what happened," or "many women call us when they have been hurt by someone they are with in a relationship. Can you tell me what happened?"

The officer should also ask the victim about the history of any previous violence involving the offender (including incidents not reported), and take a written statement from the victim that indicates the frequency and severity of any prior incidents of physical abuse of the victim by the alleged offender, the number of times the victim has called peace officers for assistance, and the disposition of those calls, if known. The officer must document information regarding prior abuse in the field report. O.R.C. § 2935.032(A)(2)(c)

4. Find out if there is a protection order in effect. The officer should ask the victim whether there is a civil or criminal domestic violence protection order

in effect and whether the victim can produce a copy. If the victim cannot produce a copy of the order, the officer will verify the existence and effective period of the order by calling dispatch. The officer should note carefully the restrictions imposed by the order so that the officer may determine whether there is probable cause to believe that the order has been violated.

5. The officer should interview any witnesses as fully and as soon as circumstances allow. Additionally, if witnesses provide information about prior incidents which they have observed, the officer should document such incidents to establish a pattern, and note the same in the bond information sheet.
6. Many community crisis resources are available to victims of domestic violence. Officers shall provide victims with information about local resources available to them.
7. Any law enforcement agency that investigates an offense committed in this state shall give the victim of the offense, his/her family, or his/her dependents a copy of the Attorney General's victims' rights pamphlet, upon first contact, or if the victim's condition or circumstance will prevent understanding the pamphlet and the agency anticipates additional contact upon the second contact with the victim, his/her family or dependents. If there is no second contact, the pamphlet shall be mailed to the last known address. O.R.C. § 109.42(B)
8. After its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime promptly shall give to the victim, in writing, all of the following information (O.R.C. § 2930.04(A)):
  - a. An explanation of the victim's rights under O.R.C. Chapter 2930;
  - b. Information about medical, counseling, housing, and emergency, and any other services that are available to a victim;
  - c. Information about compensation for victims under the reparations program in sections 2743.51 to 2743.72 of the Revised Code and the name, street address, and telephone number of the agency to contact to apply for an award of reparations under those sections;
  - d. Information about protection that is available to the victim, including protective orders issued by a court.
9. As soon as practicable after its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime shall give to the victim all of the following information (O.R.C. § 2930.04(B)):

- a. The business telephone number of the law enforcement officer assigned to investigate the case;
  - b. The office address and business telephone number of the prosecutor in the case;
  - c. A statement that, if the victim is not notified of the arrest of the offender in the case within a reasonable period of time, the victim may contact the law enforcement agency to learn the status of the case.
  - d. Notice of the arrest of a defendant (O.R.C. § 2930.05(A))
10. To the extent that the information required by this section is provided in the pamphlet prepared pursuant to section 109.42 of the Revised Code or in the information card or other material prepared pursuant to section 2743.71 of the Revised Code, a law enforcement agency that is required to provide the information under this section may fulfill that portion of its obligations under this section by giving that pamphlet, information card, or other material to the victim. O.R.C. § 2930.04(C)

## **J. Collecting Tangible Evidence And Contraband Weapons**

The purpose of any on-scene investigation is to determine whether there is reasonable cause to believe that domestic violence, violation of a protection order, or any other crime have been committed by using the same techniques that officers have been trained to use to investigate other types of crime.

Given the typical dynamics of domestic violence, officers should expect that a victim may not be available or “cooperative” at a later date. Financial pressures, lack of housing, fear of losing custody, and threats from the offender are possible reasons why it is difficult for many victims to follow through, even when it appears obvious to others that they should. Fear of death is another; separation is a risk factor for increased violence and homicide.

Thus, it is common for victims to be pressured or threatened not to participate in the prosecution of the offender. Therefore, enhanced investigation allows the case to proceed because the prosecution does not rely solely on the victim’s testimony. Independent evidence of the offense is critical as the goal of the investigative officer is to be able to make the case without the participation of the victim—like a homicide investigation.

The officer should collect and preserve all physical evidence reasonably necessary to support prosecution, including:

1. Photograph all injuries immediately. Preserve evidence substantiating the victim's injuries. Officers should attempt to collect evidence of serious injury which can be verified by an examining emergency room physician. Detailed information about each cut, bruise, scrape, or fracture should be recorded along with the physician's judgment about the type of weapon or amount of force used.

Officers should arrange to take color photographs of the victim's injuries and any injuries observed on the alleged offender. When photographing the injured party, officers shall photograph the full body and then specifically photograph each injury. When the alleged offender does not sustain any injuries, officers shall still photograph the non-injured party.

Officers should take additional pictures two or three days after the incident when the injuries are more visible to fully document bruising and other injuries.

2. Advise the victim to seek medical attention if there are any visible injuries or if the victim is experiencing any pain. Include names of any medical personnel treating the victim and ask the victim to sign a medical release.
3. Collect and preserve physical evidence. Collect evidentiary articles that substantiate the occurrence of violence or imminent threat of violence; weapons, torn or bloodstained clothing, broken window glass fragments, damaged furniture, disconnected telephones, etc.
4. Photograph the crime scene. Preserve evidence by recording the crime scene, such as a photograph of the crime scene showing evidence of a struggle, e.g., a forced door lock, broken window, broken or overturned furniture, blood stains, torn curtains, signs of forced entry, tampering with telephones, damage to walls, doors, windows, and general disarray.

Note: Officers are encouraged to communicate with their municipality, city, and/or county prosecutor's office(s) to determine what method of photo documentation is most beneficial to evidence-based prosecution in their jurisdiction(s).

5. If an officer responds to a report of an alleged incident of domestic violence or an alleged incident of a violation of a TPO, CPO or consent agreement, and the circumstances involved the use or threatened use of a deadly weapon, or any person involved in the incident brandished a deadly weapon during or

in relation to the incident, the weapon shall be seized as contraband and should also be treated as evidence. O.R.C. § 2935.03(B)(3)(h)

Also, if the suspect is in possession of any firearm or dangerous ordinance in violation of the Having Weapon While Under Disability Statute (O.R.C. § 2923.13) such weapons likewise should be seized and are subject to forfeiture (O.R.C. § 2923.13).

6. All physical evidence should be collected, noted in the field report, and vouchered as in other criminal investigations.
7. Record observations in the reporting form. Statements made by the victim, alleged offender, children or other witnesses may be admissible as admissions or excited utterances. Record statements as precisely as possible. Any observations of the crime scene, of offensive and defensive wounds, demeanors of victim, alleged offender, children, and witnesses should be described in as much detail as possible contemporaneously.

If possible, obtain tape or videotaped statements from the victim and the offender.

8. Follow Up Evidence:
  - a. Statements made by witnesses not initially interviewed—family, friends, children, neighbors, others
  - b. Follow-up interviews with the victim for clarifying information or further details
  - c. Follow-up photographs of the victim's injuries
  - d. All applicable 911 tapes
  - e. Criminal history records
  - f. Ambulance and emergency room records
  - g. Workplace information – i.e., missed work, statements made to co-workers or supervisors, escorts to car, etc.
  - h. Person with whom the victim or the suspect first spoke after the incident (first disclosure)
  - i. Medical Records

- j. History of previous calls to the scene
- k. E-mail messages, facsimiles, or voicemail messages
- l. Computer electronic files
- m. Jail visit sheets, phone logs
- n. Humane Society Records

**K. Immediate Arrest Misdemeanor**

This Protocol and Ohio Law [O.R.C. § 2935.03(B)(3)(b)] state a “preferred arrest” policy, wherein the preferred response to domestic violence or the violation of a domestic violence protection order, once probable cause has been established, is to arrest the offender. “Preferred” means that arrest is the preferred course of action, and non-arrest measures are the exception. In contrast with a “mandatory arrest” policy, “preferred” leaves some degree of discretion with the officer in deciding whether to arrest or take other action. The officer's discretion, however, shall be exercised in accordance with the principles outlined below. Reasons for not arresting when probable cause exists must be articulated in a report if no arrest is made. O.R.C. § 2935.03(B)(3)(c)

Sanctions may be imposed upon a peace officer who fails to comply with any provision in a policy or with O.R.C. § 2935.03(B)(1) or (3), or any other applicable Ohio law concerning domestic violence.

Law enforcement’s preferred course of action shall be to arrest and detain when (O.R.C. § 2930.03(B)(3)(b)):

- 1. There is probable cause to believe that the offender committed a crime of domestic violence.
- 2. There is probable cause to believe that the offender violated a temporary protection order or a civil protection order.
- 3. When it is believed that family or household members have committed the offense against each other, it is the preferred course of action that the officer arrest and detain, until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but the peace officer may arrest

and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor. (See section on DUAL COMPLAINTS.)

Note: The officer should not require the victim to sign the criminal complaint and the officer shall be the signature thereof. When possible, the officer should attempt to have the victim sign the domestic violence statement, or when applicable, the violation of protection order statements; however, this shall not be required of the victim.

Note: When an arrest is not made when an officer has reasonable cause to believe the offense of domestic violence or the offense of violating a protection order has been committed, the officer shall clearly state reasons on the report why the person was not arrested and detained until a warrant could be obtained. O.R.C. § 2935.03(B)(3)(c)

Note: Each agency that arrests an offender for an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order shall consider referring the case to federal authorities for prosecution under 18 U.S.C. 2261 (Interstate Domestic Violence) if the incident constitutes a violation of federal law (O.R.C. § 2935.032(G)).

## **L. Immediate Arrest Felonies**

When there is probable cause to believe a felonious assault or aggravated assault has been committed:

1. If the officer determines that there are reasonable grounds to believe that a person knowingly caused or attempted to cause physical harm to another by means of a deadly weapon or dangerous ordnance, then, regardless of whether the victim of the offense was a family or household member of the offender, the officer shall treat the incident as a felonious assault. In determining how the offender of a felonious assault should be treated the officer shall comply with whichever of the following is applicable (O.R.C. § 2935.032(A)(1)(a)):
  - a. Unless the officer has reasonable cause to believe that, during the incident, the offender who committed the felonious assault and one or more other persons committed offenses against each other, the officer shall arrest the offender who committed the felonious assault pursuant to section 2935.03 of the Revised Code and shall detain that offender pursuant to that section until a warrant can be obtained, and



the arrest shall be for felonious assault. O.R.C. § 2935.032(A)(1)(a)(i)

- b. If the officer has reasonable cause to believe that, during the incident, the offender who committed the felonious assault and one or more other persons committed offenses against each other, the officer shall determine in accordance with division (B)(3)(d) of section 2935.03 of the Revised Code which of those persons is the primary physical aggressor. If the offender who committed the felonious assault is the primary physical aggressor, then the officer shall arrest that offender for felonious assault pursuant to section 2935.03 of the Revised Code and shall detain that offender pursuant to that section until a warrant can be obtained, and the officer is not required to arrest but may arrest pursuant to section 2935.03 of the Revised Code any other person who committed an offense but who is not the primary physical aggressor. If the offender who committed the felonious assault is not the primary physical aggressor, the officer is not required to arrest that offender or any other person who committed an offense during the incident but may arrest any of them pursuant to section 2935.03 of the Revised Code and detain them pursuant to that section until a warrant can be obtained. O.R.C. § 2935.032(A)(1)(a)(ii)

- 2. If the officer determines that there are reasonable grounds to believe that a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, knowingly caused serious physical harm to another or knowingly caused or attempted to cause physical harm to another by means of a deadly weapon or dangerous ordnance, then, regardless of whether the victim of the offense was a family or household member of the offender, the officer shall treat the incident as an aggravated assault. In determining how the offender of an aggravated assault should be treated, the officer shall comply with whichever of the following is applicable (O.R.C. § 2935.032(A)(1)(b)):

- a. Unless the officer has reasonable cause to believe that, during the incident, the offender who committed the aggravated assault and one or more other persons committed offenses against each other, the officer shall arrest the offender who committed the aggravated assault pursuant to section 2935.03 of the Revised Code and shall detain that offender pursuant to that section until a warrant can be obtained, and the arrest shall be for aggravated assault. O.R.C. § 2935.032(A)(1)(b)(i)
- b. If the officer has reasonable cause to believe that, during the incident, the offender who committed the aggravated assault and one or more

other persons committed offenses against each other, the officer shall determine in accordance with division (B)(3)(d) of section 2935.03 of the Revised Code which of those persons is the primary physical aggressor. If the offender who committed the aggravated assault is the primary physical aggressor, then the officer shall arrest that offender for aggravated assault pursuant to section 2935.03 of the Revised Code and shall detain him/her pursuant to that section until a warrant can be obtained, and the officer is not required to arrest but may arrest pursuant to section 2935.03 of the Revised Code any other person who committed an offense but who is not the primary physical aggressor. If the offender who committed the aggravated assault is not the primary physical aggressor, the officer is not required to arrest that offender or any other person who committed an offense during the incident but may arrest any of them pursuant to section 2935.03 of the Revised Code and detain them pursuant to the section until a warrant can be obtained. O.R.C. § 2935.032(A)(1)(b)(ii)

3. If the officer determines that there are reasonable grounds to believe that a person committed a felony domestic violence, the officer shall consider the following:

- a. If an officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of section 2935.03 until a warrant can be obtained.

When it is believed that family or household members have committed the offense against each other, it is the preferred course of action that the officer arrest and detain, until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor. O.R.C. § 2935.03(B)(3)(b)

- b. When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a

warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained. O.R.C. § 2935.04

\*To constitute felony domestic violence, there must be a prior conviction of domestic violence against a family or household member or a prior conviction for one or more of the designated crimes in O.R.C. § 2919.25 against a family or household member. See Section AC. Appropriate Charges Should Be Filed for a list of offenses that are eligible to enhance subsequent domestic violence offenses (effective January 8, 2004).

4. If the officer has reasonable cause to believe that a felony violation of a protection order has been committed, then the officer shall arrest the offender who committed the felony violation of a protection order and shall detain him/her until a warrant can be obtained: and the arrest shall be for felony violation of a protection order. (See O.R.C. § 2919.27 for enhancement factors.)

#### **M. Determining Primary Aggressor**

If an officer has reasonable cause to believe that both parties have assaulted each other, the officer is not required to arrest both persons. An officer should make reasonable effort to identify, and arrest the primary aggressor in the incident. Section § 2935.03(B)(3)(d) of the Revised Code states that for purposes of determining which person is the primary aggressor, a police officer, in addition to any other relevant circumstances, should consider all of the following:

1. Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain O.R.C. § 2935.03(B)(3)(d)(i);
2. If violence is alleged, whether the alleged violence was caused by a person acting in self-defense O.R.C. § 2935.03(B)(3)(d)(ii);
3. Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear O.R.C. § 2935.03(B)(3)(d)(iii);
4. The comparative severity of any injuries suffered by the persons involved in the alleged offense O.R.C. § 2935.03(B)(3)(d)(iv).

**N. What Is Probable Cause?**

According to section 2935.03(B)(3)(a) of the Revised Code, a police officer has reasonable grounds to believe that the offense of domestic violence or violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

1. A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement. O.R.C. § 2935.03(B)(3)(a)(i)
2. No written statement is executed, but the police officer, based upon the officer's knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the police officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe the person in question is guilty of committing the offense. O.R.C. § 2935.03(B)(3)(a)(ii)
3. No written statement is executed, but the police officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order. O.R.C. § 2935.03(B)(3)(a)(iii)

**O. Factors Not To Be Considered In The Probable Cause Determination**

The following factors must not be considered in determining probable cause because they are irrelevant to the determination of whether a crime has been committed:

1. Race, ethnicity, sexual orientation, social class, occupation or prominence in the community;
2. Marital status of the parties (except to the extent necessary to determine if the parties fall within the statutory definition of domestic violence);
3. Previous court dispositions regarding these same persons;
4. The possibility that the victim will not want to prosecute;
5. Assurances by one or both parties that the violence will stop;

6. Denial by the offender that the violence occurred when the facts and circumstances show otherwise. (Of course, when the victim denies any violence occurred, the officer must determine if there is any independent evidence from which to establish probable cause, e.g., admissions by the offender, injuries, statements of witnesses).

**P. Factors Not To Be Considered In Arrest Decision**

Violence against a family or household member is a crime, and the officer must not allow this fact to be clouded over by myths or stereotypes about domestic violence, or by the belief (however likely in a particular case) that “they will just drop the charges anyway.” Assuming that probable cause has been established, the following factors should not be considered in determining whether to arrest the offender:

1. The marital status of the parties (except to the extent necessary to determine whether the parties fit within a relationship covered by the domestic violence statutes);
2. Verbal assurances that the domestic violence will stop;
3. A claim by the accused that the victim provoked or perpetuated the violence (this is different from the offender claiming that he or she acted in self-defense);
4. Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor);
5. The disposition of any previous police calls involving the same victim or accused (except to the extent necessary to establish credibility);
6. Speculation that the arrest may not lead to a conviction;
7. The existence or non-existence of a current protection order (except insofar as the violation of such an order might justify arrest);
8. The victim's emotional state, mental health, substance abuse, age, or disability;
9. Concern about reprisals against the victim;
10. Adverse financial consequences that might result from the arrest;

11. The racial, cultural, social, political or professional position, or the sexual orientation of either the victim or the offender;

12. Jail Overcrowding O.R.C. § 2935.03(B)(3)(f)

Note: It is the officer's responsibility to decide whether an arrest should be made. No consent of the victim is needed. The officer, therefore, should not give controlling weight to the victim's opposition to arrest. The officer should emphasize to the victim and to the offender that a criminal prosecution is an action by the state, and is not the victim's action.

**Q. Law Enforcement Shall Assess All The Facts And Circumstances As To Whether A Crime Has Been Committed**

Law enforcement shall assess all facts and circumstances to determine whether there is probable cause to believe that a crime has been committed.

O.R.C. § 2935.03(B)(3)(a)(ii)

Law enforcement shall consider:

1. Injuries;
2. Disheveled or torn clothes;
3. Broken furniture;
4. Broken or ripped out phone, disconnected phone line;
5. Broken locks, windows, doors;
6. Statements of parties or witnesses;
7. Admissions by alleged offenders;
8. Statements of neighbors or children;
9. Observations of victim and victim's demeanor;
10. Any other facts and circumstances observed by or known to the officer which leads you to believe that domestic violence has been committed.

- \* Note: Law enforcement does not have to observe the act of domestic violence or act of a protection order violation for probable cause to exist.**

**R. Law Enforcement Shall Assess All The Facts and Circumstances As To Whether A Protection Order Has Been Violated**

Law enforcement shall assess all the facts and circumstances to determine whether there is probable cause to believe that a protection order has been violated.

If the victim alleges that a temporary protection order (TPO) or civil protection order (CPO), consent agreement or anti-stalking protection order has been violated:

1. Ask the victim to produce a copy of the order.
2. If the victim produces a copy of the order, check the parties, the expiration date, and the terms of the order.
3. If the victim is unable to produce a copy of the order, the officer shall contact dispatch to verify the existence of the order from the crime scene.
4. Dispatch shall check the domestic violence files for a valid TPO, CPO, Consent agreement, anti-stalking protection order or bond order. Dispatch shall verify the parties, the expiration date, and the terms of the order.
5. If the victim produces a certified copy of an order from another county law enforcement shall check the parties, expiration date, terms of the order and enforce the order as instructed in the order.
6. The officer shall determine, based on the facts and circumstances whether there is probable cause to believe that a protection order has been violated.

**S. If Law Enforcement Is Unable To Find Probable Cause**

If law enforcement is unable to find probable cause that a crime was committed or that a protection order was violated by assessing all the facts and circumstances, law enforcement shall assist the victim in developing a safety plan and refer the victim to community resources, such as a local domestic violence or victim assistance program.

**T. If Law Enforcement Finds Probable Cause**

If law enforcement finds probable cause that a crime was committed or that a protection order was violated by assessing all the facts and circumstances, and law enforcement and the offender are present or otherwise immediately available for arrest, then law enforcement should arrest the offender and do the following:

1. Document the facts and circumstances which are the basis of the arrest on a Domestic Violence field reporting form and note all physical evidence that is collected.
2. If the victim signed a written statement alleging the offense of domestic violence or the offense of violating a protection order, document it in the field reporting form and attach them to the field reporting form.
3. Take pictures of the injuries and the crime scene.
4. Collect all physical evidence.
5. Obtain medical release of information from the victim if the victim obtains medical treatment.

Arrest is the preferred course of action. If no arrest is made when the officer has reasonable cause to believe the offense of domestic violence or the offense of violating a protection order has been committed, the officer shall clearly state the reasons for not arresting in the report. O.R.C. § 2935.03(B)(3)(c)

**U. If the Offender Is Arrested Review Procedure Options With The Victim  
O.R.C. § 2935.032(C)**

1. Upon first contact, give the victim, victim's family, or victim's dependents a copy of the domestic violence pamphlet with your name, unit number, the incident report number if available, and follow-up telephone number written on the form cover.
2. The officer will cause a call to be placed to the domestic violence program or shelter for supportive services. Law enforcement and the area domestic violence program shall work collaboratively to develop a plan for transporting victims of domestic violence to the local domestic violence program when a request for supportive services is made at the scene of the crime.
3. Inform the victim of the right to request and the availability of a TPO. If the victim wants a TPO, the officer should sign the petition for the TPO to be filed with the complaint.



4. Encourage the victim to articulate a safety plan to follow if the offender is released and assist her in developing this safety plan.
5. Within a reasonable period of time after the arrest of a defendant for a crime, the law enforcement agency that investigates the crime shall give the victim of the crime notice of all of the following (O.R.C. § 2935.03 (A)):
  - a. The arrest;
  - b. The name of the defendant;
  - c. Whether the defendant is eligible for pre-trial release;
  - d. The telephone number of the law enforcement agency;
  - e. The victim's right to telephone the agency to ascertain whether the defendant has been released from custody.
6. If a defendant is released on bond or personal recognizance, and the victim, the victim's family, or the victim's representative has been harmed or threatened by the defendant or someone acting at the defendant's direction, then the victim may request that the prosecutor motion for the court to reconsider bond or release conditions. O.R.C. § 2930.05(B)

## V. Dual Complaints

A batterer often claims that the victim is also guilty of domestic violence, in order to direct the blame away from him or herself. **Except as provided in Section "L" (Immediate Arrest Felonies) the officer should exercise discretion in determining whether to arrest either or both parties or refer both parties to the prosecutor keeping in mind the following:**

1. If both parties allege domestic violence and there is evidence that both parties may have committed some form of violence against the other, the officer must evaluate whether one party acted in self-defense. If the officer so concludes, the party acting in self-defense should not be arrested.
2. If there is evidence of violence on the part of both parties and the officer concludes that one party was the primary aggressor or that one party is likely to re-initiate the violence, the officer should arrest and detain until a warrant can be obtained only on that person. If the "primary physical aggressor" persists in demanding that the victim be arrested, also, the officer should tell the "primary physical aggressor to contact the prosecutor's office. The

prosecutor will evaluate the “primary physical aggressor's” complaint after the charges against him or her have been resolved.

3. If there is evidence of violence on the part of both parties and the officer is unable to conclude that one party was the primary aggressor based on the facts and circumstances and the guidelines for determining the primary aggressor in O.R.C. § 2935.03(B)(3)(a)(d), then the officer should call the prosecutor.

If the officer is unable to determine the primary physical aggressor, the officer is not required to arrest, but may arrest either or both parties on the authorization of the prosecutor. The officer must fully document in the field report the reasons for arresting neither party or both parties. Every effort should be used to determine the primary physical aggressor, so as not to further victimize the victim. O.R.C. § 2935.03(B)(3)(b); 2935.032(A)(1)(a)(ii); 2935.032(A)(1)(b)(ii); and 2935.03(B)(3)(c)

4. Officers should remember that victims of violence often strike out in their own defense. Officers should also remember that assailants will attempt to file charges against the person they have injured in order to use the charges as negotiating pressure or leverage to have the charges against them dropped.
5. The officer may allow both parties to sign the victim’s statement, thereby establishing probable cause for arrest when there is independent evidence that both parties are offenders or when the officer cannot make a determination and both parties are equally aggressive.
6. The officer may refer one or both parties to the Common Pleas Court, Domestic Relations Division, to seek a civil protection order.

\*Remember, in determining the primary aggressor, the following criteria should be considered:

- a. History of domestic violence or other violent acts by either person involved in the alleged offense—including all past acts of violence not limited to the current relationship.
- b. Whether the alleged violence was caused by a person acting in self-defense.
- c. Each person’s reasonable fear of physical harm resulting from threats or use of force by the other.
- d. The comparative severity of any injuries suffered by the persons involved in the alleged offense.

**W. Advise Victim Of Rights When The Offender Is Not Arrested**

1. Advise the victim of the availability of criminal charges as a means of relief.
2. Inform the victim of the right to request and the availability of a temporary protection order (TPO) if charges are filed.
3. Advise the victim of the right to request, without filing criminal charges, a civil protection order (CPO).
4. Give the victim a copy of the domestic violence pamphlet with your name, unit number, the incident report number if available, and with the shelter number, and number of any other available local victim advocate program.
5. Advise the victim of the availability of shelter, and support services.
6. The officer will cause a call to be placed to the domestic violence program for supportive services.
7. Encourage the victim to articulate a safety plan to follow if the offender is released.
8. All reports of alleged incidents of violations of protection orders (TPO's, CPO's) and domestic violence shall be in writing and document the officer's observations of the victim and the alleged offender, any visible injuries of the victim or alleged offender, any weapons at the scene, the actions of the alleged offender, any statements made by the victim or witnesses, and any other significant facts or circumstances.

If the officer does not arrest and detain until a warrant can be obtained a person who allegedly committed the offense of domestic violence or the offense of violating a protection order or consent agreement when it is the preferred course of action that the alleged offender be arrested, the officer must articulate in the report a clear statement of the officer's reasons for not arresting and detaining the alleged offender until a warrant can be obtained (O.R.C. § 2935.032). The officer shall submit the written report to the law enforcement agency to which he/she has been appointed, employed, or elected.

**X. Complete The State Reporting Form**

Complete the state reporting form and the domestic violence field reporting form even when the offender is not arrested and detained until a warrant was obtained.

Fully document the reasons why the offender was not charged, arrested, and detained until a warrant was obtained in the domestic violence field reporting form.

## **Y. Data Collection**

The information in the domestic violence field reporting form can be vital to bond determination and can also factor into other decisions that arise later in the prosecution.

The initial reports are a permanent record of information that tends to be overlooked if not recorded right away by someone other than the victim, and the officer should not underestimate the importance of thorough reporting, even where limited resources and time pressures exist.

A field reporting form must be filled out for each and every response to a domestic violence dispute, whether or not the charges will be filed. The officer must complete the form to the best of his or her ability using all available information.

O.R.C. § 2935.03(B)(3)(c)

A model domestic violence supplemental reporting form is appended to this protocol. (See Appendix A).

For departments declining to use the model reporting form, the following minimum facts should be gathered in the report:

1. Names, addresses, and phone numbers of the victim, the accused, any witnesses, and the caller.
2. A statement of the relationship between the victim and the accused.
3. A narrative of the incident.
4. What, if any, weapons were used or threatened to be used.
5. A description of any injuries observed by the officer.
6. A description of any injuries described by the victim but not observed by the officer, and an indication that the injury was not observed.
7. Documentation of any evidence that would tend to establish that a crime was committed.

8. The officer's response to the incident, e.g., arrest, warrant referral, social service referral.
9. Whether the accused actually was arrested or whether there is an outstanding arrest warrant.
10. The crime(s) with which the accused was charged or for which the officer made a warrant referral.
11. If the accused was arrested and arraigned, and, if the officer knows at the time of filling out the report, whether bail was set and any conditions of bail imposed.
12. Notation of previous incidents involving the accused.
13. Whether there is a criminal or civil protection order in effect and whether it has been violated.
14. Whether children were present at the scene, their condition and disposition.

#### **Z. Officer's Bond Recommendation**

The officer is usually in the best position to gather the information needed for informed bond setting. Each jurisdiction should have a "bond information form" designed to elicit critical information from the officer, such as the defendant's use of weapons or drugs, severity of injuries, etc.

If the officer is not able to fill out a bond information form, the officer should ensure that all important information reaches the bond evaluator and the court records. This may be done by giving the victim a copy of the completed Domestic Violence reporting form and instructing him or her to submit the form to the prosecutor or to the victim advocate at arraignment.

If the reporting form is not completed before the officer separates from the victim, the officer should advise the victim where she or he can obtain the completed form.

#### **AA. Juvenile Offenders**

If the officer has probable cause to believe that a crime of domestic violence was committed and juvenile was the alleged offender:

1. Law enforcement may take the juvenile offender into custody pursuant to the laws of arrest.

2. Law enforcement shall immediately contact juvenile probation to determine if placement of the juvenile or detention is appropriate.
3. IF THE VICTIM IS A CHILD: Law enforcement should immediately contact Children's Protective Services and follow the procedures spelled out in the "County Plan of Cooperation" for interviewing child abuse victims.
4. IF THE VICTIM IS AN ADULT: Law enforcement should contact the victims' advocacy agency within a reasonable time after responding to the call.
5. Law enforcement should complete the field report and arrest form.

**AB. Deadly Weapons And Domestic Violence**

If an officer responds to a report of an alleged incident of domestic violence or an alleged incident of violation of a protection order or consent agreement and the circumstances involved the use of or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the weapon shall be seized as contraband and should also be treated as evidence. O.R.C. § 2935.03(B)(3)(h)

**AC. Appropriate Charges Should Be Filed**

Whether the officer is the "complainant" or is filling out the Warrant Referral form for the victim, the officer should indicate all applicable charges:

1. Domestic Violence, O.R.C. § 2919.25(D).

Confirm prior convictions with the Clerk's Office before signing the escalated charges. The opportunity to apply the escalated penalties for repeat domestic violence offenders may be lost if this step is omitted. If the officer is merely filling out a warrant referral form and does not have the opportunity to confirm the prior conviction, the officer should indicate on the form that the clerk should check for prior convictions before processing the complaint.

**Note: The following amendments have been made to laws regarding domestic violence and will be effective January 8, 2004:**

**Violation of O.R.C. § 2919.25(A) or (B):**

First offense: First Degree Misdemeanor

One prior conviction: Fourth Degree Felony

Two or more prior convictions: Third Degree Felony

**Violation of O.R.C. § 2919.25(C):**

First offense: Fourth Degree Misdemeanor

One prior conviction: Second Degree Misdemeanor

Two or more prior convictions: First Degree Misdemeanor

**The following offenses enhance subsequent offenses:**

- 1) Domestic violence
- 2) An existing or former municipal ordinance or law of this or any other state or of the U.S. substantially similar to DV
- 3) If the victim was a family or household member at the time of the prior violation: O.R.C. § 2903.14 Negligent Assault, 2909.06 Criminal Damaging or Endangering, 2909.07 Criminal Mischief, 2911.12 Burglary, 2911.211 Aggravated Trespass, 2919.22 Endangering Children
- 4) O.R.C. § 2903.01 Aggravated Murder
- 5) O.R.C. § 2903.02 Murder
- 6) O.R.C. § 2903.03 Voluntary Manslaughter
- 7) O.R.C. § 2903.04 Involuntary Manslaughter
- 8) O.R.C. § 2903.11 Felonious Assault
- 9) O.R.C. § 2903.12 Aggravated Assault
- 10) O.R.C. § 2903.13 Assault
- 11) O.R.C. § 2903.15 Permitting Child Abuse
- 12) O.R.C. § 2903.21 Aggravated Menacing
- 13) O.R.C. § 2903.211 Menacing by Stalking
- 14) O.R.C. § 2903.22 Menacing
- 15) O.R.C. § 2905.01 Kidnapping
- 16) O.R.C. § 2905.02 Abduction
- 17) O.R.C. § 2905.11 Extortion
- 18) O.R.C. § 2907.02 Rape
- 19) O.R.C. § 2907.03 Sexual Battery

- 20) O.R.C. § 2907.05 Gross Sexual Imposition
  - 21) O.R.C. § 2909.02 Aggravated Arson
  - 22) O.R.C. § 2909.03 Arson
  - 23) O.R.C. § 2909.24 Terrorism
  - 24) O.R.C. § 2911.01 Aggravated Robbery
  - 25) O.R.C. § 2911.02 Robbery
  - 26) O.R.C. § 2911.11 Aggravated Burglary
  - 27) O.R.C. § 2917.01 Inciting to Violence
  - 28) O.R.C. § 2917.02 Aggravated Riot
  - 29) O.R.C. § 2917.03 Riot
  - 30) O.R.C. § 2917.31 Inducing Panic
  - 31) O.R.C. § 2919.25 Domestic Violence
  - 32) O.R.C. § 2921.03 Intimidation
  - 33) O.R.C. § 2921.04 Intimidation of attorney, victim or witness in criminal case
  - 34) O.R.C. § 2921.34 Escape
  - 35) O.R.C. § 2923.161 Improperly discharging firearm at or into habitation; school-related offenses
  - 36) O.R.C. § 2911.12(A)(1), (2), or (3) Burglary
  - 37) O.R.C. § 2919.22(B)(1), (2), (3), or (4) Endangering Children
  - 38) Former O.R.C. § 2907.12 (felonious sexual penetration)
- 2. Violation of a Temporary Protection Order (criminal) or Civil Protection Order (O.R.C. § 2919.27).
  - 3. Assault (O.R.C. § 2903.13).
  - 4. Aggravated Assault (O.R.C. § 2903.12).
  - 5. Felonious Assault (O.R.C. § 2903.11).
  - 6. Menacing by Stalking (O.R.C. § 2903.211).



7. Any other appropriate charge, i.e., weapons violations, property crimes, child endangering, etc. It should be remembered, however, that only certain charges provide the victim the option of a temporary protection order.\* (See Section AG. Protection And Restraining Orders, as the list of offenses for which a TPO can be filed expands on January 8, 2004.)

#### **AD. Property Of Victim**

1. The law enforcement agency that has responsibility for investigating a crime shall promptly return to the victim of the crime any property of the victim that was taken in the course of the investigation except as otherwise provided in sections 2933.41 to 2933.43 of the Revised Code. If the ownership of the property is in dispute, the agency shall not return the property until the dispute is resolved. O.R.C. § 2930.11(A)
2. The law enforcement agency that has responsibility for investigating a crime shall retain any property of the victim of the crime that is needed as evidence in the case, including the weapon used in the commission of the crime, if the prosecutor certifies to the court a need to retain the property in lieu of a photograph of the property or of another evidentiary substitute for the property itself. O.R.C. § 2930.11(B)
3. If the defendant in a case files a motion requesting the court to order the law enforcement agency to retain property of the victim because the property is needed for the defense in the case, the agency shall retain the property until the court rules on the motion. The court, in making a determination on the motion, shall weigh the victim's need for the property against the defendant's assertion that the property has evidentiary value for the defense. O.R.C. § 2930.11(C)

#### **AE. Method Of Notice**

1. A person or entity required or authorized under chapter 2930 to give notice to a victim shall give the notice to the victim by any means reasonably calculated to provide prompt actual notice. Except when a provision requires that notice is to be given in a specific manner, a notice may be oral or written. O.R.C. § 2930.03(A)
2. A person or agency that is required to furnish notice under O.R.C. Chapter 2930 shall give the notice to the victim at the address or telephone number provided to the person or agency by the victim. A victim who requests to receive notice under this chapter as described in division (B) of section 2930.03 of the Revised Code shall inform the person or agency of the

name, address, or telephone number of the victim and of any change to that information. O.R.C. § 2930.03(C)

3. A person or agency that has furnished information to a victim in accordance with any requirement or authorization under O.R.C. Chapter 2930 shall notify the victim promptly of any significant changes to that information. O.R.C. § 2930.03(D)

#### **AF. For The Purpose Of Keeping the Peace**

Law enforcement should respond to requests from domestic violence victims, potential victims, or Domestic Violence Task Force advocates requesting assistance on behalf of victims, for accompaniment to the victim's residence to obtain necessary personal belongings. Law enforcement should not negotiate or act as a decision maker in property disputes, but should refer to appropriate social and/or legal service providers. Law enforcement should arrest offender, if a crime is committed in their presence.

Law enforcement should be aware of departmental procedures regarding requests for accompaniment in domestic violence cases.

#### **AG. Protection And Restraining Orders**

1. Temporary Protection Order (TPO) (Criminal)

A temporary protection order is available upon the filing of a complaint that alleges a violation of O.R.C. § 2919.25, a violation of a municipal ordinance substantially similar to that section, a violation of O.R.C. § 2903.11, 2903.12, 2903.13, 2903.211, 2909.06, 2909.07, 2911.12 or 2911.211 that involves a person who was a family or household member at the time of violation (Underlined O.R.C. sections are effective January 8, 2004.). The complainant may file, or if in an emergency, the complainant is unable to file, a person who makes an arrest for the alleged violation under O.R.C. § 2935.03 may file on behalf of the complainant, a motion that request the issuance of a temporary protection order as a pre-trial condition of release of the allege offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the Clerk of Court that has jurisdiction of the case at any time after the filing of the complaint. The court may also issue a temporary protection order on its own motion.

Effective January 8, 2004: A temporary protection order can be filed for any offense of violence as defined in O.R.C. § 2901.01(A)(9):

O.R.C. § 2903.01 Aggravated Murder, 2903.02 Murder, 2903.03 Voluntary Manslaughter, 2903.04 Involuntary Manslaughter, 2903.11 Felonious Assault, 2903.12 Aggravated Assault, 2903.13 Assault, 2903.15 Permitting Child Abuse, 2903.21 Aggravated Menacing, 2903.211 Menacing by Stalking, 2903.22 Menacing, 2905.01 Kidnapping, 2905.02 Abduction, 2905.11 Extortion, 2907.02 Rape, 2907.03 Sexual Battery, 2907.05 Gross Sexual Imposition, 2909.02 Aggravated Arson, 2909.03 Arson, 2909.24 Terrorism, 2911.01 Aggravated Robbery, 2911.02 Robbery, 2911.11 Aggravated Burglary, 2917.01 Inciting to Violence, 2917.02 Aggravated Riot, 2917.03 Riot, 2917.31 Inducing Panic, 2919.25 Domestic Violence, 2921.03 Intimidation, 2921.04 Intimidation of attorney, victim or witness in criminal case, 2921.34 Escape, 2923.161 Improperly discharging firearm at or into habitation; school-related offenses, 2911.12(A)(1), (2), or (3) Burglary, former 2907.12 (felonious sexual penetration).

Note: O.R.C. § 2911.12(A)(4) is not an offense of violence as defined in O.R.C. § 2901.01(A)(9), but is an offense for which a TPO can be filed. This order is available as a condition of bond when the victim or the police officer signs a petition for a TPO and submits it with the complaint. A temporary protection order can order the offender to stay away from the victim's residence, workplace, or school. It can order the offender to refrain from telephoning, harassing, or threatening the victim directly or through another person. It can also include any other terms necessary to ensure the victim's safety and protection.

- a. When the arresting officer signs the Domestic Violence charge, he or she will also request a TPO.
- b. When the victim is signing the Domestic Violence charge, the officer should recommend that the victim request a TPO.
- c. If the Court issues an ex parte TPO, a hearing shall be held not later than the next business day after the day on which the alleged offender was arrested or at the time the alleged offender appears pursuant to a summons. O.R.C. § 2916.26
- d. Regardless of who requests the TPO, the victim must appear at the protection order hearing. Advise the victim where the hearings are held.
- e. When the officer signs the TPO, the officer should also appear.
- f. Duration of Criminal TPOs

The TPO does not have an expiration date stated on its face. The order is effective until there is a “disposition” of the criminal case. (Usually, “disposition” means dismissal or sentencing, but it may also mean plea, conviction, or special court order. Officers should be familiar with local practice.)

- g. Victim advocates may accompany a domestic violence victim at all stages of their criminal domestic violence case. O.R.C. § 2916.26
- h. An advocate for the victim will be permitted to attend and testify at a TPO hearing in lieu of the victim when the victim is hospitalized or medically incapacitated as a result of the abuse. O.R.C. § 2916.26

## 2. Civil Protection Order (CPO) (Civil)

- a. The victim must file a petition with the Common Pleas Court. In a civil protection order, the Judge can order the abuser to stay away from the victim’s residence, workplace and school. The Judge can order the abuser to refrain from abusing, telephoning or harassing, or threatening the victim directly or through a third party. The Judge can award custody or establish visitation rights with regard to the children. The Judge can order child support, counseling, use of a motor vehicle, division of property, and any other relief necessary for the victim’s protection.
- b. There are two hearings and two separate orders issued in the civil process:
  - i. The first stage is an “ex parte hearing” which is held on the same day that the petition is filed. At this hearing, the court will generally issue an ex parte order. The expiration date appears in the body of the order, and usually corresponds to the date of the second hearing.
  - ii. At the second stage, the court will hold a “full” hearing 7-10 days after the ex parte hearing at which the abuser will have an opportunity to appear and state his or her side of the story. The court may then issue a final protection order. The expiration date of this final order appears in the order, and may be effective for up to five years after the hearing (or beyond, if renewed by order of the Court).
- c. Both the ex parte order and final order are civil protection orders and are fully enforceable.

- d. If one of the parties to a CPO files a legal separation, dissolution or divorce or juvenile court custody action against the other party, subject to the duration of the CPO, the temporary custody award in the CPO will remain in effect until a custody order is issued in the legal separation, dissolution, divorce action, or juvenile court custody action. Similarly, a child support order issued in a CPO will remain in effect until a child support order is issued in the legal separation, dissolution, divorce, or juvenile court action involving child support. See O.R.C. § 3113.31(E)(3).
- e. It should be noted that a CPO is available even when there are criminal charges pending and a criminal TPO is in place O.R.C. § 3113.31(G). The domestic violence statute provides, however, that the issuance of a CPO automatically terminates the effectiveness of a criminal TPO. There may be cases where it is advisable for the victim to obtain a CPO. The advantages of a CPO are that the Domestic Relations Court may also make orders concerning temporary custody of minor children, and temporary orders of child and spousal support. Further, the CPO may be effective for up to five years, and can be extended by the court for good cause. By contrast, the criminal TPO is only effective until the criminal case is disposed of.

3. Divorce Restraining Orders Distinguished From Domestic Violence Protection Orders

Do not confuse the civil protection order with a “restraining” order that is issued by the Domestic Relations Court pursuant to its inherent authority in divorce cases. (Note, however, that in some jurisdictions a CPO may be issued in conjunction with a pending divorce case.) Law enforcement agencies have no duty or authority to enforce the latter.

Divorce-related restraining orders (unless a CPO) do not fall under the domestic violence statutes, and are enforceable only by a motion for contempt filed by the aggrieved party with the Domestic Relations Court. Officers should advise the person alleging that his or her divorce-related restraining order has been violated to contact their attorney or the Domestic Relations Court.

Keep in mind, however, that an act by one party that is a violation of a divorce-related restraining order may also independently constitute an act of domestic violence, and should be charged as such. Parties to a divorce are entitled to no less protection than other victims of domestic violence. Also, the officer should consider whether there is probable cause that any other crimes have been committed, such as trespass or property damage crimes.

4. Violations of Temporary Protection Orders

Reckless or intentional violation of a criminal TPO or of a CPO is a criminal offense in itself and should be treated as such. (O.R.C. § 2919.27)

- a. If the victim alleges that a TPO or CPO has been violated, but cannot produce a copy of it, the officer should make every effort to verify the existence of the order from the scene of the conflict.
- b. Violation of a TPO or a CPO is also subject to the “preferred arrest” policy stated in this protocol. Therefore, upon a finding of probable cause that a valid TPO/CPO has been violated, and if the offender is still on the scene or otherwise immediately available for arrest, an arrest should be made. If the offender has fled, or if the case is a justified exception to the preferred arrest policy, the officer should issue a warrant referral to the victim.
- c. If the victim produces a valid certified copy of a TPO or CPO from another county or state, and there is probable cause that a term of the protection order was violated, arrest the offender. O.R.C. § 3113.31(F)(3); 2919.26(G)(4)
- d. Violations of a TPO/CPO should be charged as follows  
O.R.C. § 2919.27(B)(1):
  - i. First Offense: First Degree Misdemeanor
  - ii. One prior conviction of violating an order issued pursuant to O.R.C. § 2903.213 (Stalking Protection Order): Fifth Degree Felony
  - iii. One prior conviction of violating an order issued pursuant to O.R.C. § 2903.214 (Stalking Civil Protection Order): Fifth Degree Felony
  - iv. Two or more prior convictions (if the prior convictions involved the same person subject to the current protection order) of: O.R.C. § 2903.21 (Aggravated Menacing), 2903.22 (Menacing), 2903.211 (Menacing by Stalking, or 2911.211 (Aggravated Trespass): Fifth Degree Felony
  - v. One or more prior convictions of O.R.C. § 2919.27 (Violating a Protection Order): Fifth Degree Felony

- vi. Violates protection order while committing a felony offense:  
Third Degree Felony (Effective January 8, 2004)

Because of the escalating penalties, it is important to check to see if there have been prior convictions for TPO/CPO violations before charging the offender. If the officer is issuing a warrant referral, he or she should indicate on the referral form that there have been prior convictions, or that the Clerk should verify this.

- e. Violation of a civil protection order is also punishable by the Common Pleas/Domestic Relations Court as contempt of court. The victim or the victim's attorney must file a motion for contempt with the Common Pleas/Domestic Relations Court. This often is not a viable option for most domestic violence victims because of his or her lack of access to an attorney and because the motion may not be heard by the court for weeks or even months.
- f. A TPO/CPO is effective when served upon the defendant.
- g. Victims who have a TPO and/or a CPO may notify the Courts and law enforcement official in any county other than the county in which the TPO/CPO was originally issued, by registering a certified copy in that other county's Common Pleas or Municipal Court Clerk's office, and by filing a copy of the registered order with the law enforcement agency. But regardless of whether the TPO/CPO is registered the TPO/CPO is enforceable statewide. O.R.C. § 2916.26

## 5. Changing a TPO

Occasionally a victim will need to change the terms of a TPO or CPO. For example, she may have moved from the address stated on the TPO. If asked, the officer should advise the victim that she can have the terms of her order changed in the following manner:

- a. CPO: File a Motion in the Domestic Relations Court Clerk's office asking the Domestic Relations Court to change the wording of the CPO, from what it now says, to what you want it to say, and why. Ask the Court to schedule a hearing date, or to rule first without a hearing, if it's an emergency situation, and to schedule a hearing soon after ruling so all parties can be heard.
- b. TPO: Contact Prosecutor's Office

## **AH. Elder Victims And Dependents**

1. When responding to a report of domestic violence perpetrated upon an elderly person, the officer must take special precautions to avoid leaving a physically dependant elder alone in the residence without assistance. This may arise when the officer arrests the elder's only caretaker, or when the caretaker is the victim of domestic violence and he or she can no longer provide care (because of hospitalization or fleeing to a shelter).

Before leaving the residence, the officer should determine if the elder is physically endangered, either as a result of the abuse, a pre-existing medical condition, or the removal of the caretaker.

- a. If the elder is found to be endangered, yet is mentally alert, the officer should ask the elder for the name of a friend or relative who can be contacted immediately to assist the elder.
- b. If there is no one available to assist the elder, or if the elder appears not to be mentally alert, the officer should make an emergency referral to the Department of Human Services, Adult Protection Services.

2. Advising the Elder Victim

In addition to the written information that the officer will give all domestic violence victims, the officer should advise the elderly victim of the availability of comprehensive victim services for the elderly through the Department of Human Services, Adult Protection Services.

3. Mandatory Reporting Requirement

Ohio Revised Code section 5101.61(A)(6)(g)(ii) requires that any peace officer having reasonable cause to believe that an adult is being abused, neglected, or exploited or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the county department of job and family services.



#### **IV. CLERK OF COURTS (CRIMINAL)**

##### **A. Information for the Victim**

As the “gatekeeper” to the court, the Clerk's Office plays an important role in domestic violence cases. The criminal process is very confusing, and especially so for persons traumatized by recent abuse. Upon request, the clerk's office shall inform the victim of:\*

1. How to file criminal charges;
2. How to obtain a temporary protection order;
3. How to let the court or prosecutor know important information relevant to bond-setting, sentencing, and violation of protection orders;
4. Status of the case: time, location, and nature of the next hearing;
5. Identity and phone number of the judge and prosecutor;
6. Whether the offender is incarcerated;
7. Referral to another agency for information on civil relief;
8. The clerk should also provide copies of an existing TPO to the victim upon request;
9. Upon the request of the victim the Clerk of Courts shall provide the victim with a certified copy of the temporary protection order for registering in another county.
10. The Clerk of Court shall accept a certified copy of out of county temporary protection orders for registration. The Clerk shall place an endorsement of registration on the order and give the victim a copy of the order that bears that proof of registration. The Clerk shall maintain a registry of certified copies of temporary protection orders that have been issued or approved by courts in other counties and that have been registered with the Clerk.
11. The Clerk of Courts shall provide County law enforcement with a certified copy of the registered protection order.

The Clerk's Office shall give prompt, courteous and thorough answers (or referrals, where appropriate) to these questions so that lack of information will not be one more barrier the victim must contend with in order to ameliorate his or her situation.

- \* For certain crimes, such as felonious assault, the prosecutor is required by Ohio law to notify the victim of the time, date, and location of the trial, plea, or other final disposition of the case.

**Note:** No court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition for a TPO or CPO or in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement. O.R.C. § 2919.26(J) and 3113.31(J)

**B. Literature Display**

The Clerk shall have available written informational materials, including pamphlets about victims' rights and remedies, as well as information about local victim services and legal services available to victims of domestic violence.

**C. Cooperation with Victim Advocacy Service Agency**

The Clerk of Court shall furnish the victim/witness advocates' office with a copy of the docket each day in order that they may provide support, court escort and advocacy to victims.

## **V. PROSECUTOR**

### **A. Ethics and Advocacy**

The assistant prosecuting attorney's highest ethical responsibility is the duty to seek justice, not merely to convict. (Hereinafter, all references to the “assistant prosecuting attorney” shall mean the Prosecuting Attorney through his or her assistant.) This special duty exists because the assistant prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers such as the selection of cases to prosecute. During trial the assistant prosecutor is not only an advocate, but he or she may make decisions normally made by an individual client and those decisions affecting the public interest should be fair to all. In our system of criminal justice, the accused is to be given the benefit of all reasonable doubts. Further, an assistant prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecution's case or aid the accused.

### **B. Vertical Prosecution**

Prosecutors are encouraged to adopt policies that enable prosecutors to be permanently assigned to domestic violence cases. Research indicates that victims are more likely to remain cooperative with the prosecutor if the victim has established rapport with the prosecutor.

### **C. Determinations As To Dismissal**

Often victims approach prosecutors regarding their desire to dismiss criminal charges against the perpetrator. Prosecutors should understand that victims make decisions regarding their lives based on their holistic interests which often are not served by the prosecution of the perpetrator or by getting involved in or utilizing criminal justice system resources. Although victims want the violence to stop, many do not want the relationship to end. Often, victims do not necessarily see cessation of violence bound to the end of the relationship. Victims sometimes will compromise their personal safety for financial and emotional considerations. Often victims believe that they can better protect themselves and their children by remaining in the relationship, and in some cases they are actually correct in that regard. The request of a victim to dismiss a domestic violence case may be motivated by the victim's concerns regarding personal safety or financial security; however, complicating the process may be the fact that lurking behind the victim's request for dismissal is the perpetrator's manipulation of the victim to seek dismissal of the case. Perpetrators will manipulate the victim with whatever threat or promise will effect action on the part of the victim. Prosecutors need to understand that threats are not limited to

threats of physical harm, but may also involve other financial or emotional sanctions, such as threats to take the children.

Consequently, prosecutors are encouraged to develop protocols and/or procedures to evaluate domestic violence cases from a perspective that is victim sensitive without being victim driven. As prosecutors have a duty to the community in addition to the duty to a victim, a prosecutor should consider a victim's position in conjunction with other factors such as: (1) the perpetrator's criminal record, (2) the perpetrator's history of violence, (3) whether or not the violence resulted in contact with the police, (4) the facts and circumstances of the incident giving rise to criminal prosecution and (5) the strength of the case if the victim would choose not to assist the prosecution.

If the prosecutor utilizes a case by case analysis that is victim sensitive without being victim driven, the result should be that the prosecutor will avoid the circumstance where the perpetrator controls whether the prosecution goes forward or not.

#### **D. Charging Procedure**

Although some domestic violence related cases originate with local police departments, some originate in the prosecutor's office intake or complaint unit. The following guidelines apply to cases originating there:

##### **1. Filing criteria**

In determining whether to file a misdemeanor charge, the intake/complaint unit will determine [specify local criteria].

##### **2. Referral to the Victim Advocacy Service**

Early and consistent contact between the assigned prosecuting attorney and the victim, and referral of the victim to an appropriate support service agency, is crucial to effective prosecution of domestic violence cases because it enhances victim cooperation. The following steps should be taken:

- a. The intake/complaint unit will refer the case to the victim/witness advocacy service, if this has not already been done. The victim advocacy service will assist the victim throughout the prosecution of the case and inform him or her of the availability of support and treatment.
- b. The assigned prosecuting attorney will attempt to contact or interview the victim as soon as possible prior to each hearing.

- c. A representative from the intake/complaint unit and/or the prosecuting attorney will inform the victim that the prosecutor's office is responsible for charging and prosecuting the case.
- d. The representative from the intake/complaint unit and/or the assigned prosecuting attorney will stress that the victim is an important witness in the case.
- e. The victim will be instructed to report his/her address and phone number (and any changes) to the prosecutor's office and/or the victim/witness advocacy agency.

Prosecutors should also be aware of Ohio Revised Code Sections 1901.20, 1907.02, 2930.06 and 2931.03 which specify that a judge of a municipal court, district court, or court of common pleas does not have the authority to dismiss a criminal complaint, charge, information or indictment solely at the request of the complaining witness and over objection of the prosecuting attorney, law director, village solicitor or other chief legal officer responsible for the prosecution of the case.

#### **E. Declined Prosecutions**

If the intake/complaint unit, or the assistant prosecuting attorney, declines to prosecute the case, written reasons shall be provided for the file. The victim will receive notification that the charges were not accepted and will be advised to contact the victim advocacy service or prosecutor's office should she or he have any additional questions.

#### **F. Bond**

##### **1. Information Provided**

Prosecutors should provide to the court all relevant information reasonably accessible for consideration on bond-setting and establishing terms of the temporary protection order including, but not limited to:

- a. Facts of the incident giving rise to the criminal case;
- b. Injuries suffered by either the victim or the perpetrator in the current incident;
- c. The perpetrator's history of violence;
- d. Mental health history or diagnosis of the perpetrator;

- e. Any history of suicidal threats of the perpetrator;
- f. Any threats of harm directed toward the victim or others;
- g. Access to firearms.

2. Fully utilize domestic violence bail statute

The assistant prosecutor will request that the Court consider all factors described in O.R.C. § 2919.251 before setting bail. These factors -- the offender's history of violence, violation of court orders, mental health issues, potential threat to others -- must be considered when the offender is charged with domestic violence or related crimes while subject to the terms of a TPO or CPO, or has previously been convicted of domestic violence or a related crime.

**G. Subpoenas**

Victims and all other witnesses will be subpoenaed at the earliest possible date to allow sufficient time to achieve service of the subpoenas.

The prosecutor's office shall notify the victim or the victim's representative of all scheduled court proceedings.

**H. Addressing Victims' Fears and Uncertainties**

Helping a victim overcome the fear and uncertainty of the judicial process is crucial to building cooperation with the victim as a witness. Early contact with the victim can clear up any misunderstandings regarding criminal prosecution. The State can assure the victim that its goal is to stop the violent behavior. Victims are often concerned over the possible punishment of the offender. They rarely understand the crime of domestic violence and believe that lengthy imprisonment is the only outcome. The various other potential outcomes should also be explained, e.g., probation/community control sanctions, partially suspended jail sentence, batterer's intervention and/or treatment, drug/alcohol treatment, etc. By sharing the State's goals with the victim, the prosecutor may gain an ally.

Experience shows that early and ongoing, supportive contact with victims decreases fear of the process and increases victim/witness cooperation. All victims should be contacted by a victim/witness advocate and/or local domestic violence program advocate. They should be offered information about the dynamics of domestic violence and court accompaniment.

Given the typical dynamics between a batterer and a victim, a prosecutor should expect that a victim may recant prior statements or testimony as a means of self-protection. Financial pressures, lack of housing, fear of losing custody, and threats from the defendant are possible reasons why it is difficult for many victims to follow through, even when it appears obvious to others that they should. Fear of death is another concern; separation is a risk factor for increased violence and homicide. Subsequent prosecution of the victim for making false statements or testimony not only destroys any likelihood of proceeding with an evidence-based prosecution but also serves to reduce the likelihood that the victim would report future domestic violence to law enforcement.

Prosecutors should be encouraged to prosecute without the availability of the victim by using evidence gathered on the scene, police reports, all calls, medical witnesses, other witnesses, etc.

Cases in which the victim is afraid or uncertain about the legal process and/or its outcomes will be dealt with individually.

1. The victim advocacy service should be contacted for assistance in cases where the assigned prosecuting attorney determines that the victim is reluctant to testify.
2. If the victim fails to appear for trial and his or her testimony is not essential to successful prosecution (i.e., there is sufficient independent corroboration of the crime to prove the charges without the victim's full involvement), the matter should proceed to trial.
3. If the victim refuses to testify and/or fails to appear for trial and his or her testimony is essential to successful prosecution, the assigned prosecuting attorney may seek to enforce a subpoena when the ends of justice require it. This option should be reserved for exceptional circumstances where there has been a determination of lethality. In this case, the prosecutor should work closely with the victim/witness advocate assigned to the case.
4. If the victim refuses to testify, the assistant prosecutor may nonetheless subpoena him/her to court and call the victim to testify under oath, seeking a declaration that he/she is a court's witness, if necessary.
5. If the victim refuses to testify and his or her testimony is essential to successful prosecution, the case may be recommended for dismissal, with prior supervisory approval.
6. In a case where the assistant prosecutor chooses to dismiss, based on the victim's refusal to testify, he or she will encourage the victim to file charges again if the violence reoccurs.

## **I. Plea Negotiations**

### **1. Restrictive Plea Bargain Policy**

Reduction of charges will be limited to those cases in which evidentiary deficiencies suggest that a conviction for the charged offense has become unlikely. In these situations, and consistent with prosecutor discretion, there will be an offer to amend the complaint or to plea bargain to the court. Dismissals are appropriate in cases where evidentiary problems preclude the possibility of proving all elements of the crime.

2. Prosecutors must, “to the extent practicable,” confer with the victim or designated representative before a plea bargain, amendment, dismissal, or trial. Judges must note on the record any known time a prosecutor fails to confer and the prosecutor’s reason for failing to do so. O.R.C. § 2930.06(A)
3. The assigned prosecuting attorney will personally contact the victim prior to disposition.
4. There shall be no pleas offered or dismissals solely because a victim so requests. The reluctance or refusal of a victim or a witness to testify shall not be a sufficient basis in itself for reduction or dismissal.

However, cases in which the victim is uncooperative will be dealt with on an individual basis. As prosecutors have a duty to the community in addition to the duty to the victim, a prosecutor should consider a victim’s position in conjunction with various other factors, including those listed below, when determining whether a plea negotiation or dismissal of charges is appropriate:

- a. The perpetrator’s criminal record;
- b. The perpetrator’s history of violence;
- c. Whether or not the violence resulted in contact with the police;
- d. The facts and circumstances of the incident giving rise to criminal prosecution;
- e. The strength of the case if the victim would choose not to assist the prosecution.

## **J. Continuances**



1. The prosecution should proceed with as few continuances as possible to increase the likelihood of conviction and to protect the victim and society.
2. If a victim fails to appear for trial and the victim's testimony is essential, a continuance should be requested.
3. If a continuance is granted, it should be brought to the attention of the court and made clear to the defendant on the record that any conditions of bond or orders of protection remain in effect. If there has not been a previous order of protection and the victim desires one, it should be requested from the court.
4. If practicable, the prosecutor in a case shall inform the victim in the case of a motion, request, or agreement between counsels that may result in a substantial delay in the prosecution of the case. If the victim objects to the delay, the prosecutor shall inform the court of the victim's objections, and the court shall consider the victim's objections in ruling on the motion, request or agreement. O.R.C. § 2930.08

**K. Advocates Role/Representative of Victim**

1. Advocates will be permitted to attend hearings with the victims, and to act as advocates at any and all pretrial conferences (O.R.C. § 2930). Prosecutors shall support the advocacy role.
2. Under section 2930.02 of the Revised Code, a member of a victim's family or another person may exercise the rights of the victim as the victim's representative if either of the following applies:
  - a. The victim is a minor or is incapacitated, incompetent, or deceased.
  - b. Division (2)(a) does not apply, and the victim authorizes the family member or other person to act as the victim's representative.
3. A victim may choose to have a representative, such as a family member or victim advocate, exercise his or her legal rights. When more than one representative seeks to act as the victim's representative, the court may designate a single representative. O.R.C. § 2930.02
4. Confidentiality

The prosecutor may motion for the court to suppress victim or victim representative identifying information if there are reasonable grounds to fear from threats or violence. The court shall hold the recorded hearing in chambers. O.R.C. § 2930.07(A)

The court may suppress victim information from files, except when determining the location of the crime or delinquent act, and seal the transcript at the hearing. O.R.C. § 2930.07(B)

## **L. Sentencing Recommendations**

Prosecutors should make case-by-case evaluations in preparing arguments concerning post-conviction sentences.

1. In the case of first-time offenders, the assigned prosecuting attorney should request, at a minimum, that the court (1) impose a sentence of supervised probation/community control sanctions; (2) order an appropriate fine and costs; (3) order the defendant to make restitution to the victim, including payment for her stay at a protective shelter; and (4) order the defendant to participate in a domestic violence treatment program. When required by the ends of justice, the prosecuting attorney should request that the court impose a period of incarceration.

Offenders shall remain on supervised probation/community control for the duration of the treatment program.

In addition, special conditions of probation/community control may be recommended, including, but not limited to, a psychiatric or psychological evaluation and substance abuse evaluation.

2. In the case of second or repeat offenders, the assigned prosecuting attorney should request that the court impose a period of incarceration.

**Please Note: The following amendments have been made to laws regarding domestic violence and will be effective January 8, 2004:**

**Violation of O.R.C. § 2919.25(A) or (B):**

First offense: First Degree Misdemeanor

One prior conviction: Fourth Degree Felony

Two or more prior convictions: Third Degree Felony

**Violation of O.R.C. § 2919.25(C):**

First offense: Fourth Degree Misdemeanor

One prior conviction: Second Degree Misdemeanor  
Two or more prior convictions: First Degree Misdemeanor

**The following offenses enhance subsequent offenses:**

- a) Domestic violence
- b) An existing or former municipal ordinance or law of this or any other state or of the U.S. substantially similar to domestic violence
- c) If the victim was a family or household member at the time of the prior violation: O.R.C. § 2903.14 Negligent Assault, 2909.06 Criminal Damaging or Endangering, 2909.07 Criminal Mischief, 2911.12 Burglary, 2911.211 Aggravated Trespass, 2919.22 Endangering Children
- d) O.R.C. § 2903.01 Aggravated Murder
- e) O.R.C. § 2903.02 Murder
- f) O.R.C. § 2903.03 Voluntary Manslaughter
- g) O.R.C. § 2903.04 Involuntary Manslaughter
- h) O.R.C. § 2903.11 Felonious Assault
- i) O.R.C. § 2903.12 Aggravated Assault
- j) O.R.C. § 2903.13 Assault
- k) O.R.C. § 2903.15 Permitting Child Abuse
- l) O.R.C. § 2903.21 Aggravated Menacing
- m) O.R.C. § 2903.211 Menacing by Stalking
- n) O.R.C. § 2903.22 Menacing
- o) O.R.C. § 2905.01 Kidnapping
- p) O.R.C. § 2905.02 Abduction
- q) O.R.C. § 2905.11 Extortion
- r) O.R.C. § 2907.02 Rape
- s) O.R.C. § 2907.03 Sexual Battery
- t) O.R.C. § 2907.05 Gross Sexual Imposition
- u) O.R.C. § 2909.02 Aggravated Arson
- v) O.R.C. § 2909.03 Arson

- w) O.R.C. § 2909.24 Terrorism
- x) O.R.C. § 2911.01 Aggravated Robbery
- y) O.R.C. § 2911.02 Robbery
- z) O.R.C. § 2911.11 Aggravated Burglary
- aa) O.R.C. § 2917.01 Inciting to Violence
- bb) O.R.C. § 2917.02 Aggravated Riot
- cc) O.R.C. § 2917.03 Riot
- dd) O.R.C. § 2917.31 Inducing Panic
- ee) O.R.C. § 2919.25 Domestic Violence
- ff) O.R.C. § 2921.03 Intimidation
- gg) O.R.C. § 2921.04 Intimidation of attorney, victim or witness in criminal case
- hh) O.R.C. § 2921.34 Escape
- ii) O.R.C. § 2923.161 Improperly discharging firearm at or into habitation; school-related offenses
- jj) O.R.C. § 2911.12(A)(1), (2), or (3) Burglary
- kk) O.R.C. § 2919.22(B)(1), (2), (3), or (4) Endangering Children
- ll) Former O.R.C. § 2907.12 (felonious sexual penetration)

### 3. Use of Alternatives to Incarceration

Alternatives to incarceration are intended to serve at least two purposes: they offer at least some possibility of rehabilitating the offender; and their prospect may encourage a victim to cooperate with the prosecution, who otherwise would not have cooperated out of concern that the offender would be imprisoned. It, therefore, should be the policy of each prosecutor to recommend alternative sentencing only when the prosecutor can verify that the program to be included in the sentence meets appropriate effectiveness criteria.

See Appendix C for a checklist that outlines the criteria that a Batterer Intervention Program should meet. This checklist was published in the *Children, Family, and the Courts: Ohio Bulletin* (Summer 2003, Vol. 1, No. 2), a newsletter supported by the Ohio Department of Job and Family Services.

There should be a relationship between the treatment program and the probation department, such that the treatment provider is required to report the defendant's non-participation to his/her probation officer. Pre-conviction diversion programs should be avoided.

Under no circumstances will the prosecutor agree to generalized “family counseling” in which the convicted defendant himself will be allowed to decide when he is cured.

4. A risk-assessment of offender dangerousness will be included as part of the sentencing process. The victim will be provided assistance in preparing the victim impact statement. The victim shall have input concerning the continued risk.

#### **M. Confidentiality of Victim Identifying Information**

1. If the prosecutor determines it is appropriate, the prosecutor may file a motion with the court requesting that the court issue an order specifying that the victim or other witnesses in the case not be compelled to disclose the victim's or victim's representative's address, place of employment, or similar identifying fact about the victim without the victim's consent. The court shall hold a hearing on the motion in chambers, and a court reporter shall make a record of the proceeding. O.R.C. § 2930.07(A)
2. If the court orders that the victim's or victim's representative's identifying information shall be confidential, the court file or court documents in a case shall not contain the address, telephone number, place of employment, or other identifying fact of the victim in the case or of the victim's representative unless the address is contained in a transcript of the trial or is used to identify the location of the crime. The court file or court documents in a case shall not contain the telephone number of the victim in a case or of the victim's representative unless the number contained in a transcript of the trial. O.R.C. § 2930.07(B)
3. The prosecutor shall file a motion and direct the clerk of court to remove any victim identifying information from online court databases.

#### **N. First Contact Notice**

Any prosecuting attorney, assistant prosecuting attorney, city director of law, assistant director of law, village solicitor, assistant village solicitor, or similar chief legal officer of a municipal corporation or an assistant of any of those officers who prosecutes an offense committed in this state, upon first contact with

the victim of the offense, the victim's family, or the victim's dependents, shall give the victim, the victim's family, or the victim's dependents a copy of the pamphlet prepared pursuant to O.R.C. § 109.42(A) and explain, upon request, the information in the pamphlet to the victim, his family, or his dependents. O.R.C. § 109.42(B)(1)(a)

**O. Information Provided by Prosecutor**

1. The prosecutor in a case, to the extent practicable, shall confer with the victim in the case before pretrial diversion is granted to the defendant in the case, before amending or dismissing an indictment, information, or complaint against that defendant, before agreeing to a negotiated plea for that defendant, or before a trial of that defendant by judge or jury.

If the prosecutor fails to confer with the victim at any of those times, the court, if informed of the failure, shall note on the record the failure and the prosecutor's reasons for the failure. A prosecutor's failure to confer with a victim as required by O.R.C. § 2930.06 and a court's failure to provide the notice as required by law do not affect the validity of an agreement between the prosecutor and the defendant in the case, a pretrial diversion of the defendant, an amendment or dismissal of the indictment, information, or complaint filed against the defendant, a plea entered by the defendant, an admission entered by the defendant, or any other disposition in the case. O.R.C. § 2930.06(A)

2. Pursuant to section 2930.06(B) of the Revised Code, after a prosecution in a case has been commenced, the prosecutor or a designee of the prosecutor other than a court or court employee, to the extent practicable, promptly shall give the victim all of the following information:
  - a. The name of the crime with which the defendant in the case has been charged and the name of the defendant;
  - b. The file number of the case;
  - c. A brief statement regarding the procedural steps in a criminal prosecution involving the crime with which the defendant has been charged and the right of the victim to be present during all proceedings held throughout the prosecution of the case;
  - d. A summary of the rights of a victim under O.R.C. Chapter 2930;
  - e. Procedures the victim or the prosecutor may follow if the victim becomes subject to threats or intimidation by the defendant or any other person;

- f. The name and business telephone number of a person to contact for further information with respect to the case;
  - g. The right of the victim to have a representative exercise the victim's rights under this chapter in accordance with section 2930.02 of the Revised Code and the procedure by which a victim's representative may be designated.
- 3. Upon the request of the victim, the prosecutor shall give the victim notice of the date, time, and place of any scheduled criminal proceedings in the case and notice of any changes in those proceedings or the schedule in the case. O.R.C. § 2930.06(C)
- 4. A victim who requests notice under this section and who elects to receive any further notice from the prosecutor shall keep the prosecutor informed of the victim's current address and telephone number until the case is dismissed or terminated, the defendant is acquitted or sentenced, or the appellate process is completed, whichever is the final disposition in the case. O.R.C. § 2930.06(D)

**P. Method of Notice**

- 1. Notice under this chapter shall be given to the victim by any means reasonably calculated to provide prompt actual notice. Except when a provision requires that notice is to be given in a specific manner, a notice may be oral or written. O.R.C. § 2930.03(A)
- 2. A person or agency that is required to furnish notice under O.R.C. Chapter 2930 shall give the notice to the victim at the address or telephone number provided to the person or agency by the victim. A victim who requests to receive notice shall inform the person or agency of any change to that information. O.R.C. § 2930.03(C)
- 3. A person or agency that has furnished information to a victim in accordance with any requirement or authorization under O.R.C. Chapter 2930 shall notify the victim promptly of any significant changes to that information. O.R.C. § 2930.03(D)

**Q. Notice of Acquittal or Conviction**

At the request of the victim in a criminal prosecution, the prosecutor shall give the victim notice of the defendant's acquittal or conviction (O.R.C. § 2930.12). If the defendant is convicted, the notice shall include all of the following:

1. The crimes of which the defendant was convicted;
2. The address and telephone number of the probation office or any other person, if any, that is to prepare a presentence investigation report pursuant to section 2951.03 of the Revised Code, and the address and telephone number of the person, if any, who is to prepare a victim impact statement pursuant to section 2947.051 of the Revised Code;
3. Notice that the victim may make a statement about the impact of the crime to the probation officer or other person, if any, who prepares the presentence investigation report or to the person who prepares a victim impact statement, that a statement of the victim included in the report will be made available to the defendant unless the court exempts it from disclosure, and that the court may make the victim impact statement available to the defendant;
4. Notice of the victim's right under section 2930.14 to make a statement about the impact of the crime at sentencing or disposition;
5. The date, time, and place of the sentencing hearing;
6. Any sentence imposed upon the defendant and any modification of that sentence. O.R.C. § 2930.12(F)(1)

**R. Notice of Appeal**

1. If a defendant is convicted of committing a crime against a victim, if the victim requests notice of the filing of an appeal, and if the defendant files an appeal, the prosecutor in the case shall promptly notify the victim of the appeal (O.R.C. § 2930.15(A)). The prosecutor also shall give the victim all of the following information:
  - a. A brief explanation of the appellate process, including the possible disposition of the case;
  - b. Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal;
  - c. The time, place, and location of appellate court proceedings and any subsequent changes in the time, place, or location of those proceedings;
  - d. The result of the appeal.



2. If the appellate court returns the defendant's case to the trial court for further proceedings, the victim may exercise all rights that previously were available to the victim in the trial court. O.R.C. § 2930.15(B)

**S. Notice of Incarceration or Release**

1. If a defendant is incarcerated, a victim in a case who has requested to receive notice under section 2930.06 of the revised code shall be given notice of the incarceration of the defendant. Promptly after sentence is imposed upon the defendant, the prosecutor in the case shall notify the victim of the date on which the defendant will be released from confinement or the prosecutor's reasonable estimate of that date. The prosecutor also shall notify the victim of the name of the custodial agency of the defendant and tell the victim how to contact the custodial agency. The victim shall keep the custodial agency informed of the victim's current address and telephone number. O.R.C. § 2930.16(A)
2. Upon the victim's request, the prosecutor in a case promptly shall notify the victim of any hearing for judicial release of the defendant pursuant to section 2929.20 of the Revised Code and of the victim's right to make a statement under that section. The court shall notify the victim of its ruling in each of those hearings and on each of those applications (O.R.C. § 2930.16(B)(1)).
3. Upon the victim's request made at any time before the particular notice would be due, the custodial agency of a defendant shall give the victim any of the following notices that are applicable (O.R.C. § 2930.06(C)):
  - a. At least three weeks before the adult parole authority recommends a pardon or commutation of sentence for the defendant or at least three weeks prior to a hearing before the adult parole authority regarding a grant of parole to the defendant, notice of the victim's right to submit a statement regarding the impact of the defendant's release in accordance with section 2967.12 of the Revised Code;
  - b. At least three weeks before the defendant is transferred to transitional control under section 2967.26 of the Revised Code , notice of the pendency of the transfer and of the victim's right under that section to submit a statement regarding the impact of the transfer;
  - c. Prompt notice of the defendant's escape from a facility of the custodial agency in which the defendant was incarcerated, of the

defendant's absence without leave from a mental health or mental retardation and developmental disabilities facility or from other custody, and of the capture of the defendant after an escape or absence;

- d. Notice of the defendant's death while in confinement or custody.
- e. Notice of the defendant's release from confinement or custody and the terms and conditions of the release.

## **T. Issuance of Protection Orders**

### **1. Temporary Protection Orders**

- a. A temporary protection order is available upon the filing of a complaint that alleges a violation of O.R.C. § 2919.25, a violation of a municipal ordinance substantially similar to that section, a violation of O.R.C. § 2903.11, 2903.12, 2903.13, 2903.211, 2909.06, 2909.07, 2911.12 or 2911.211 that involves a person who was a family or household member at the time of violation (Underlined O.R.C. sections are effective January 8, 2004.). The complainant may file, or if in an emergency, the complainant is unable to file, a person who makes an arrest for the alleged violation under O.R.C. § 2935.03 may file on behalf of the complainant, a motion that request the issuance of a temporary protection order as a pre-trial condition of release of the allege offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the Clerk of Court that has jurisdiction of the case at any time after the filing of the complaint. The court may also issue a temporary protection order on its own motion.

Effective January 8, 2004: A temporary protection order can be filed for any offense of violence as defined in O.R.C. § 2901.01(A)(9):

O.R.C. § 2903.01 Aggravated Murder, 2903.02 Murder, 2903.03 Voluntary Manslaughter, 2903.04 Involuntary Manslaughter, 2903.11 Felonious Assault, 2903.12 Aggravated Assault, 2903.13 Assault, 2903.15 Permitting Child Abuse, 2903.21 Aggravated Menacing, 2903.211 Menacing by Stalking, 2903.22 Menacing, 2905.01 Kidnapping, 2905.02 Abduction, 2905.11 Extortion, 2907.02 Rape, 2907.03 Sexual Battery, 2907.05 Gross Sexual Imposition, 2909.02 Aggravated Arson, 2909.03 Arson, 2909.24 Terrorism, 2911.01 Aggravated Robbery, 2911.02 Robbery, 2911.11 Aggravated Burglary, 2917.01 Inciting to Violence,

2917.02 Aggravated Riot, 2917.03 Riot, 2917.31 Inducing Panic, 2919.25 Domestic Violence, 2921.03 Intimidation, 2921.04 Intimidation of attorney, victim or witness in criminal case, 2921.34 Escape, 2923.161 Improperly discharging firearm at or into habitation; school-related offenses, 2911.12(A)(1), (2), or (3) Burglary, former 2907.12 (felonious sexual penetration).

\*Please note: O.R.C. § 2911.12(A)(4) is not an offense of violence as defined in O.R.C. § 2901.01(A)(9), but is an offense for which a TPO can be filed.

- b. The victim and the victim advocate or another person providing support to the victim have the right to be present at all stages on a motion for a TPO. O.R.C. § 2919.29(A)(2) and 2930.09

- c. Hearing requirement when an ex parte protection order is issued

Existing law permits the Court to issue a TPO as an ex parte order (i.e., without the alleged offender being present). Section 2919.26(D)(1) of the Revised Code provides that “the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender.”

If a Court issues an ex parte protection order under O.R.C. § 2919.26(D)(2), the Court shall hold a full hearing in the presence of the offender no later than the next court day after arrest or when the offender appears pursuant to summons. The Court may then determine whether the order should remain in effect, be modified, or withdrawn.

- d. Issuance of “mutual TPOs” is restricted

“Mutual TPOs” are severely restricted under Section 2919.26(I): If a TPO has been issued against the defendant, another TPO may not be issued against the complainant (or other family or household member) unless both of the following apply: (a) The defendant has filed a separate complaint for domestic violence or for felonious assault, aggravated assault, menacing by stalking, or aggravated trespass involving a family or household member, AND (b) The Court determines that both the complainant (or other family or household member) and the defendant “acted primarily as aggressors” AND that neither “acted primarily in self-defense” AND

that, in accordance with the standards and criteria of O.R.C. § 2919.26, it should issue the TPO against the complainant (or other family or household member).

e. Standard TPO form

The Supreme Court of Ohio has adopted a comprehensive temporary protection order form for use in all courts.

f. The prosecutor or advocate should explain the availability of the TPO, what protections the TPO offers, and the process of obtaining a TPO to all victims of domestic violence and related offenses to whom the order is available.

g. Prosecutors are encouraged to adopt the practice of requesting a TPO as a standard pre-trial condition of release.

h. Request for a Dismissal of a TPO

If a victim requests that a TPO be dismissed, it would require a conversation between the victim and prosecutor (or advocate) to (1) determine whether there is coercion by the defendant to dismiss the TPO and (2) to reexamine risk factors.

2. Civil Protection Orders (CPO)

Whether or not a victim has obtained a temporary protection order, prosecutors and victim advocates should also inform a victim of the possibility of obtaining a CPO through Domestic Relations Court.

3. Protection Order Enforcement

Any violation of a protection order is a significant lethality indicator. Therefore, a prosecutor should promptly and aggressively prosecute any protection order violation as if it were a domestic violence charge, enhancing to the felony level where possible. If the facts warrant it, the prosecutor should recommend some degree of incarceration. At the time charges are filed, the prosecutor should take steps to demonstrate sufficient evidence of service of the protection order (i.e., admission, testimony of officer who served it, etc.)

A protection order is granted against the batterer and is meant to control the batterer's behavior. If the batterer is violating a protection order, charges should be filed, whether or not the victim requested or in any way facilitated the conduct prohibited by the order. Pursuant to the Ohio Supreme Court's

ruling in *State v. Lucas*, 100 Ohio St.3d 1, 2003-Ohio-4778, no victim can be prosecuted for aiding or abetting the batterer's violation of a protection order.

## **VI. VICTIM ADVOCATE**

The purpose of victim advocacy is to make the justice system and legal remedies more accessible to victims of domestic violence. Court-based victim advocates should clarify their agency's confidentiality policy with all victims.

1. Attempt to contact in person, by telephone, or in writing all domestic violence victims as soon as possible, ideally not later than at the arraignment or initial appearance stage.
2. Provide information regarding court procedures and legal remedies and limitations to the victim. Discuss civil remedies available through Section 3113.31 of the Revised Code and local resources for affordable or free legal counsel, temporary protection orders and enforcement resources for TPOs.
3. Inform and explain to the victim the process of obtaining both criminal and civil protection orders.
4. Maintain contact with the victim, assist in notifying the victim of hearings and case status and inform the victim how to contact the jail to check on the release of the offender. Advocates shall also confirm service of subpoenas and protection orders as well as advise victims of the availability of the VINE service (Victim Information and Notification Everyday) if this service may be useful to them.
5. Accompany the victim to court hearings and arrange for whatever safe witness-waiting areas are available in court.
6. Make appropriate referral to shelter and other services, and whenever appropriate, inform the victim of compensation potentially available through the Ohio Crime Victims Compensation Program and assist in the application process.
7. Provide emotional support, crisis intervention, safety planning, and advocacy to the victim through the entire pendency of the case.
8. Assist with the delivery of TPOs to victims unable to attend arraignments or initial appearances due to hospital stays, physical incapacity, lack of notice, or other reasons.
9. With the victim's consent, advocates will communicate additional information regarding the case to the prosecutor.
10. Assist the victim in obtaining transportation to any legal proceedings.
11. Assist the victim in obtaining interpretative services or any other service necessary for a victim to fully participate in the court process.



## **VII. THE JUDICIARY (CRIMINAL)**

The cooperation of the courts is essential to the success of any coordinated effort toward reduction of the incidence of domestic violence cases. Research consistently shows that “when the bench is serious about domestic violence, the rest of the justice system cooperates”. However, it would be counterproductive (and questionable on legal grounds) to attempt to mandate rules for the judges which would dictate how every domestic violence case should be handled. Each case is unique on its own facts and, within the parameters of the law, each judge must bring to bear his or her individual discretion in deciding how the cases which appear before him or her should be handled.

The following, then, constitutes a suggested framework for a consistent overall approach to the unique problems which domestic violence cases present to the criminal justice system, while leaving intact the full range of judicial responses to those problems.

### **Motions for Temporary Protection Order (TPO)**

#### **A. Ex Parte Appearance by the Complainant**

Since the purpose of the TPO is to maintain the peace and prevent the possibility of further violence, pending a judicial determination of, at a minimum, probable cause, these orders are in the nature of injunctive relief and should be liberally granted.

#### **B. Appearance of Defendant Following Summons or Arrest**

1. A formal hearing with full due process protection should be afforded the defendant, if he\she so requests, to allow him/her to challenge the allegations made in the motion for TPO.
2. The hearing shall be held not later than the next day on which the Court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons. O.R.C. § 2919.26
3. At the conclusion of the hearing, if the motion is granted, the defendant will be given a copy of the TPO, and the Court will request that he sign the TPO to acknowledge its receipt.
4. The Court cannot issue a TPO against the complainant unless the defendant files a separate complaint, and the Court determines that both the complainant and defendant primarily as aggressors, and that neither of them acted primarily in self-defense. O.R.C. § 2919.26

#### **C. The burden of proof at the formal hearing on the motion for a TPO should be reasonable belief.**



1. This is not, and should not be, a trial on the merits.
  2. The purpose of the order is to keep the defendant away from the victim in order to prevent further violence.
- D. The terms of the TPO must be carefully and completely spelled out, since police officers can enforce only the exact terms of the order. The victim should be given an opportunity to inspect the TPO, to point out any errors (such as address(es) from which defendant is restrained), and to ask any questions before court is adjourned.
- E. Admonishing the defendant.

The judge should explain the terms of the TPO to the defendant and warn him/her about the penalties for violation. If the victim is present, the judge should explain (within hearing of the defendant) what steps he/she should take to enforce the TPO.

#### **Defendant's Appearance at Arraignment**

The judge should require the appearance of the defendant at arraignment and not authorize overnight release. The appearance will serve as a reminder of the potential consequences of future violence and may therefore deter pre-trial violence directed at the victim.

#### **Verify Whether This is a Second Offense**

At this stage, it should already have been determined whether defendant has a previous domestic violence conviction (by the police, court clerk, or prosecutor) that would escalate the current pending charge to a felony. The judge should inquire of the prosecutor whether the defendant's record has actually been examined. If the victim or the victim's advocate indicates that there has been a prior court case, the judge should direct the prosecutor to make this determination before proceeding with the case, and amend the complaint if appropriate.

#### **Right of Victim to Be Present**

A victim in a case may be present whenever the defendant in the case is present during any critical stage of the case against the defendant that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant's right to a fair trial. At the victim's request, the court shall permit the victim to be accompanied by an individual to provide support to the victim unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial. O.R.C. § 2930.09

#### **Witness Protection**

Witnesses, including the victim, who are threatened with unlawful force against his or her person by the offender or another person “acting in concert” with the offender, may obtain a protection order directing the defendant or another person not to communicate with, contact or come near the complainant or a witness in the case. This covers criminal domestic violence as well as all other criminal cases.

The court that hears a criminal case shall make a reasonable effort to minimize any unwanted contact between the victim in the case, members of the victim’s family, the victim’s representative, or witnesses for the prosecution and the defendant in the case, members of the defendant’s family, or witnesses for the defense before, during, and immediately after court proceedings.

The court shall provide a waiting area for the victim, members of the victim’s family, the victim’s representative, or witnesses for the prosecution that is separate from the waiting area used by the defendant, members of the defendant’s family, and defense witnesses if a separate waiting area is available and the use of the area is practical. O.R.C. § 2930.10

No employer of a victim shall discharge, discipline, or otherwise retaliate against the victim, a member of the victim’s family, or a victim’s representative for participating, at the prosecutor’s request, in preparing for a criminal justice proceeding or for attendance, pursuant to a subpoena, at a criminal justice proceeding if the attendance is reasonably necessary to protect the interests of the victim. An employer who knowingly violates this section is in contempt of court. O.R.C. § 2930.18

If the prosecutor in a case determines that there are reasonable grounds for the victim in a case to be apprehensive regarding acts or threats of violence or intimidation by the defendant in the case or at the defendant’s direction against the victim, the victim’s family, or the victim’s representative, the prosecutor may file a motion with the court requesting that the victim or other witnesses in the case not be compelled in any phase of the criminal proceeding to give testimony that would disclose the victim’s address, place of employment, or similar identifying fact about the victim without the victim’s consent. The court shall hold a hearing on the motion in chambers, and a court reporter shall make a record of the proceeding.

The court file or court documents in a case shall not contain the address of the victim in the case or of the victim’s representative unless the address is contained in a transcript of the trial or is used to identify the location of the crime. The court file or court documents in a case shall not contain the telephone number of the victim in a case or of the victim’s representative unless the number is contained in a transcript of the trial. O.R.C. § 2930.09

## **Bond**

The judge should request and consider all available information in deciding what type of bond will be set. Such information should include, at minimum:

- (a) Input from the victim about the nature of the current violence, the history of violence and injuries, history of violation of protection orders, and whether she fears further assault pending trial;
- (b) the defendant's record of prior arrests and convictions for violent behavior;
- (c) the number and nature of police reports filed whether or not charges were filed;
- (d) the police offense report or bond recommendation; and
- (e) if applicable, the pre-release investigation report.

When a TPO has not been issued for some reason, the judge should nonetheless consider imposing a “no-contact” order as a condition of bond. Whether or not the violent incident involved children, they should be named in the TPO and the Court should order supervised visitation as a condition of bond.

For second offenses as described in O.R.C. § 2919.251, the Court should request and consider all available information related to the considerations enumerated in the statute.

### **Dismissal or Reduction of Charges**

Judges should not accept civil compromises, deferred prosecutions, reduced charges, or dismissals where justice is not served by these devices. If a dismissal is filed, the court should have all parties in court to make an independent determination.

Alternative dispositions and diversion in family violence cases are frequently inappropriate, and send a message to both the victim and the offender that the crime is less serious than comparable crimes against non-family members. When these alternatives are proposed, judges should ascertain that they are in the interest of justice and not simply devices for docket management. When a victim asks to have the complaint withdrawn or is reluctant to testify, the judge should inquire about coercion and intimidation. (This may be especially true where a divorce is pending or contemplated. Victims are often coerced into “dropping” charges by empty, unenforceable promises of a favorable divorce settlement.) In cases where the victim refuses to testify, it is often possible to prove the case with other evidence. Prosecutors and Judges should maintain a “no drop” policy in regard to domestic violence cases unless the case is impossible to prove without the victim, and the victim cannot be located to testify.

### **Pretrial Conference**

Given the dynamics of family violence and the existence of an ongoing intimate relationship between the defendant and the victim, speedy resolution of the case will serve to better protect the victim as well as increase the efficiency of the entire process. Therefore, the pretrial conference should take place within two weeks of arraignment.

Inappropriate pleas to reduced charges should not be accepted. Continuances should be discouraged.

Cases of family violence shall not be dismissed at the pretrial conference stage if the sole reason for dismissal is the victim's unwillingness or reluctance to testify. (The victim shall be subpoenaed to appear at trial). Where possible, the victim shall be informed that a sheriff or police officer will be available to escort her to the trial. If the prosecutor insists on dismissing the charge solely on the basis of the victim's reluctance to testify, judicial disapproval of the dismissal shall be stated on the record. Inappropriate pleas to reduced charges will not be accepted.

### **Notice of Potential Delay**

If practicable, the prosecutor in a case shall inform the victim in the case of a motion, request, or agreement between counsel that may result in a substantial delay in the prosecution of the case. The prosecutor shall inform the court of the victim's objections to the delay, if any, and the court shall consider the victim's objection in ruling on the motion, request, or agreement. O.R.C. § 2930.08

### **Trial**

If the victim has been subpoenaed and appears but indicates a continuing reluctance to testify, the judge should order the victim to testify. The prosecutor should proceed with any independent evidence of the assault, even if the victim refuses to testify or does not appear at the trial. If the prosecutor refuses to proceed, even though there is independent evidence, and agrees to dismiss, judicial disapproval of the dismissal should be noted in the record. The victim witness advocate should be permitted to be with the victim throughout the proceeding including sitting beside the victim during the victim's testimony.

### **Presentence Investigations and Recommendations**

- A. Following conviction for domestic violence, or any allied offense, the judge should refer every defendant to the probation department or other appropriate entity for the preparation of a presentence investigation and report.
- B. The judge should require that every reasonable effort be made to contact the victim or the victim's advocate in order to:

1. Inform the victim of the sentencing options and/or release conditions available to the court, and obtain a statement from the victim regarding the case;
2. Discuss the need for conditions of probation or release which will provide for the on-going safety of the victim, i.e., limited contact by the assailant with the victim, supervised visitation of children, temporary removal of weapons from the household, continued absence of assailant;
3. Inform the victim of the resources available, including Ohio Victims of Crime Compensation Act monies, legal advocacy, emergency shelter, and support/counseling groups;
4. Obtain information from the victim regarding any aggravating circumstances, including but not limited to:
  - a. Serious bodily injury or threat thereof to any adult or minor child in the household;
  - b. Forces sexual contact or threat thereof to any adult or minor in the household or any prohibited intrafamilial sexual contact;
  - c. Use of, or threat with, a dangerous weapon;
  - d. Verifiable history of physical abuse by the offender to the victim or other family or household member;
  - e. On-going harassment of the victim by phone, mail, or in person by the assailant, or through a third party.

C. Victim Impact Statement:

1. If the court orders the preparation of a victim impact statement pursuant to Section 2947.051 of the Revised Code, the victim in the case may make a written or oral statement regarding the impact of the offense to the person whom the Court orders to prepare the victim impact statement. A statement made by the victim under this Section shall be included in the victim impact statement.
2. If a probation officer is preparing a presentence investigation report concerning the defendant, the victim may make a written or oral statement regarding the impact of the offense to the probation officer for use by that officer in the presentence investigation report. Upon the victim's request, the probation officer shall include a written statement submitted by the victim in the presentence investigation report.

## **Sentencing**

A. Every sentence in a family violence case should:

1. Hold the offender accountable;
2. Order offender involvement in activities specifically designed to reduce future violence;
3. Require an alcohol and drug evaluation where appropriate, mandate successful completion of treatment, and provide for mandatory chemical testing;
4. Provide for formal supervision and monitoring of compliance;
5. Place restrictions on the defendant as needed to protect the victim and other family members.

Key to this recommendation is the principle that all of these items must be a part of every sentence or court order. Offender accountability may be accomplished in a variety of ways, including restitution (for lost wages, shelter costs, medical, counseling and treatment fees, and replacement cost of destroyed property), supervised probation, and/or jail time.

Please see the discussion of sentencing alternatives contained in the Prosecutor section, part M.

B. The typical sentence for first offenders (except in aggravated cases) should include the following elements:

1. Imposition of maximum jail term;
2. Suspension of no less than half of the jail term, depending on the facts;
3. A supervised probationary period of at least one year;
4. Specific conditions of probation prohibiting any act of violence and, where appropriate, the use of all mind-altering substances;
5. Mandated counseling and treatment, as appropriate, including:
  - education/therapy monitored by a domestic violence program
  - substance abuse rehabilitation
  - mental health treatment

- prompt payment of any associated fees.

Treatment programs should be designed specifically to deal with battering and violent behavior. Individual or couples counseling does not address these issues or remediate the problems of violence, power and control. Alcohol and drug evaluations are also usually appropriate. While treatment for the alcohol and drug problems will not solve the violence problem, it is often a necessary prerequisite. Urine testing for alcohol and drug abuse as a condition of probation is absolutely necessary to monitor compliance.

Provision must be made for formal supervision and monitoring of the offender's behavior. Unsupervised bench probation is not appropriate or effective. In addition to offender accountability, formal supervision provides a measure of protection for the victim who will have an officer of the court to turn to in the event of subsequent threats or assaults.

Enhanced sentences may be called for in a number of circumstances such as the presence of children; use of a dangerous weapon; elderly, pregnancy, youthful or handicapped victim; sexual assault; serious injuries requiring hospitalization; or threats of death or serious bodily injury.

## **VIII. PROBATION DEPARTMENT**

Probation departments should classify family violence offenders in the maximum supervision category and monitor them intensively.

### **A. Post-sentence Probation Agreement:**

1. Immediately following sentencing, the probation department shall add the court's special conditions to the written probation agreement, which the defendant is required to sign. The defendant should be ordered to refrain from harassing the prosecutor;
2. Copies of the agreement shall be provided to each person or agency specifically named in the agreement;
3. Conditions in the agreement shall be set forth explicitly. Any questions as to the court's requirements shall be resolved before the defendant signs. The probation department shall thoroughly review all conditions with the defendant before he signs.

### **B. The probation department shall periodically, but in no case less than once a month, meet face-to-face with the offender following sentencing. Any modifications in this schedule shall be approved by the court, in its discretion, following the presentation of documentation to justify the request.**

### **C. The probation department in conjunction with the victim witness coordinator, shall attempt to contact victims, by phone and/or letter, at least once every ninety (90) days to encourage the reporting of any non-compliance with the provisions of the court's probation order.**

### **D. Any non-compliance with the court's probation order may result in the probation department initiating probation violation proceedings, including arrest where probable cause of the violation can be established. However, allegations of continued harassment, verbal or physical, or unauthorized contact or substance abuse shall require the probation department to institute probation violation proceedings. Deviations from this practice shall be documented in writing and reviewed by a supervising probation officer and, when appropriate, the sentencing court.**

### **E. The filing of new charges of violence by the original complainant or any other person shall cause the probation department to institute probation violation proceedings (independent of the hearing on the new charges). The same shall be true even if the probation department does not discover the existence of the new charges until well after they have been filed, or even after they have been disposed.**

## **IX. CLERK OF COURTS (CIVIL)**



## Facilitating Petitions For Civil Protection Orders

**Note:** No court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition for a TPO or CPO or in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement. O.R.C. § 2919.26(J) and 3113.31(J)

1. The desk or person that a petitioner must initially approach to obtain civil relief should be clearly marked.
2. The clerk will at all times have available a supply of blank petitions, as well as any other lawful and relevant forms the petitioner will be required to complete. Standardized CPO forms have been developed by the Supreme Court of Ohio and are available on the Supreme Court's website at [http://www.sconet.state.oh.us/spec\\_dockets/dvac/](http://www.sconet.state.oh.us/spec_dockets/dvac/).
3. The clerk will provide prompt and courteous information to the petitioner about the procedures and court appearances, e.g., date, time, location, and purpose of hearings.
4. To the extent permitted by law, the clerk will assist the petitioner in completing the required forms.
5. Upon initial contact, the clerk will refer the petitioner to the victim advocacy agency, and inform him or her of the availability of court accompaniment.
6. The clerk will refer the petitioner to the local bar association and/or legal aid office should the victim express a desire to be represented by an attorney. However, attorney representation is not required and no petition shall be refused if filed *pro se*.
7. The clerk shall have in the immediate proximity a literature display, stocked with free written information about victims' rights and remedies, as well as information about victim services and legal services available to victims.
8. The clerk shall furnish the victim advocate service a copy of the docket each day in order that the service may provide support, court escort, and advocacy to victims.
9. The clerk will promptly provide copies of ex parte and final protection orders to the appropriate law enforcement agencies.
10. The clerk will promptly respond to requests from law enforcement to verify the existence and terms of CPOs.

11. Upon the request of the victim or petitioner, the Clerk of Court shall provide the victim with a certified copy of the TPO, CPO, or consent agreement for registering in another county. U.S.C., Section 2265, O.R.C. § 3113.31(N)
12. The Clerk of Court shall accept a certified copy of out of county TPOs, CPOs, and consent agreements for registration. The Clerk shall place an endorsement of registration on the order and give the victim or petitioner a copy of the order that bears that proof of registration. The Clerk shall maintain a registry of certified copies of TPOs, CPOs, and consent agreements that have been issued or approved by courts in other counties and that have been registered with the clerk. O.R.C. § 3113.31(N)

## **X. THE JUDICIARY (CIVIL)**

Civil restraining orders should be issued ex parte upon request when family violence has occurred or is threatened. Such orders should be clear and specific and should address:

- (a) The safety of victims at home, school, work, and other places where the victim is subject to harassment or potential violence;
- (b) Child custody and visitation;
- (c) Telephone threats or harassment;
- (d) Removal of the perpetrator from the home;
- (e) Financial support and maintenance for the victim and family members;
- (f) Weapons in the home or in the possession of the offender;
- (g) Physical description of the offender;
- (h) Expiration date;
- (i) Method of modification;
- (j) Provision for service upon offender together with notice and an opportunity for a speedy hearing.

Ohio law requires that the court hold an ex parte hearing on the same day that the petition for ex parte relief is filed. The court should thus prioritize such hearings and permit interruption of proceedings in progress in order to achieve compliance with this statutory requirement.

### **Role of Victim Advocate**

The court should permit the victim advocate to accompany the victim at all times during civil proceedings.

### **Judges should not issue mutual protective or restraining orders.**

Issuance of mutual restraining orders raises issues of due process, enforcement, and gender bias. This practice has emerged as a major problem in some areas, and has been cited in several states' gender bias reports as evidence of continued bias in the court's response to family violence.

In some cases, mutual orders of protection are issued even when the respondent has filed no cross petition nor alleged any violence by the petitioner. Thus, both parties are labeled as

abusers and are treated as equally blameworthy. The message to the batterer is that such behavior is excusable, was perhaps provoked, and he or she will not be held accountable for the violence. Victims who have not engaged in violent behavior are confused, humiliated, and stigmatized when such orders are issued against them.

Mutual restraining orders create due process problems as they are issued without prior notice, written application, or finding of good cause. The petitioner of the original request for restraining order now finds himself or herself a subject of the order of protection, having had no opportunity to prepare a response or consult with an attorney.

Mutual restraining orders create significant problems of enforcement which render them ineffective in preventing further abuse. They are confusing to law enforcement and unenforceable. When an order is violated, police have no way of determining who needs to be arrested. Often, they will arrest both parties, further victimizing the real victim.

If both parties are alleged offenders, there should be two separate applications, hearings, findings of good cause, and separate orders issued. It should be recognized that most women who are accused of domestic violence are actually victims.

Should a respondent appear with or without counsel and request a trial, the original order should be extended, a continuance given, and the victim referred for representation.

### **Words to the Parties**

Respondent. The judge should explain the terms of the CPO to the respondent and require him/her to sign a statement to indicate that he understands its terms. The judge should warn the respondent about the penalties for violation of the CPO.

Petitioner. The judge should permit the petitioner to review the CPO prior to leaving the courtroom, so that he/she may point out any errors or omissions, and may ask questions. The judge should explain the victim's options if the CPO is violated (motion for contempt or filing a new criminal charge) and how the victim should pursue these. He/she should also be given written instructions and explanations.

### **Victim Safety at the Courthouse**

Since domestic relations courts are civil courts, it is unusual for security measures, such as police presence, to be in place. Therefore, courts should permit domestic violence victims, their families, and victim's advocates to use separate and secure facilities while filling out forms or waiting for hearings to begin.

## **XI. ADDITIONAL RESOURCES**

### **Domestic Violence Programs**

- Please see The Promising Practices Standards for Ohio Domestic Violence Programs developed by the Ohio Domestic Violence Network's Promising Practices Committee. A copy of the standards is available online at [www.odvn.org](http://www.odvn.org) or can be requested by contacting ODVN at 800-934-9840.

### **Medical Facilities**

- Please see The Ohio Domestic Violence Protocol for Health Care Providers: Standards of Care developed by the Ohio Domestic Violence Network and the National Health Care Standards Committee Ohio Chapter (2003). This protocol is available online at [www.odvn.org](http://www.odvn.org) or can be requested by contacting ODVN at 800-934-9840.

### **Children's Protective Services**

- Please contact The Ohio Domestic Violence Network to obtain a copy of a model policy for working with Children's Protective Services.

**The Ohio Domestic Violence Network has a comprehensive reference collection of more than 2,200 articles, books and videos available for use in your local community. To learn more about resources and services available through ODVN, please visit our website at [www.odvn.org](http://www.odvn.org) or contact us directly at 800-934-9840.**



## **XII. APPENDICES**

Appendix A: Domestic Violence Law Enforcement Supplement

Appendix B: Authorization for Release of Medical Information

Appendix C: Court Checklist for Batterer Intervention Programs

Appendix D: International Association of Chiefs of Police Domestic Violence by Police  
Officers Model Policy

Please contact ODVN at 800-934-9840 for more information about the appendices. They are not currently available online.

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# PROSECUTING ATTORNEY

## COUNTY LAW ENFORCEMENT DOMESTIC VIOLENCE SUPPLEMENT

(Form to be completed by Scene Officer via Victim/Witness Questioning)

LAW ENFORCEMENT AGENCY \_\_\_\_\_ P.D. Case No. \_\_\_\_\_  
SUSPECT'S NAME \_\_\_\_\_ SSN \_\_\_\_\_ DOB \_\_\_\_\_ AGE \_\_\_\_\_  
VICTIM'S NAME \_\_\_\_\_ SSN \_\_\_\_\_ DOB \_\_\_\_\_ AGE \_\_\_\_\_

### SPECIAL BOND REVIEW INDICATORS

☐ Suspect subject to TPO/CPO at time of this offense ☐ Suspect has criminal conviction for: \_\_\_\_\_

**VICTIM – Observations** ☐ Victim services information given to victim

Spontaneous Statements: \_\_\_\_\_

Physical/Behavioral  
(torn clothing, alcohol odor,  
sweating, etc.): \_\_\_\_\_

Emotional  
(crying, upset, agitated, etc.): \_\_\_\_\_

Stated injuries and/or signs of physical abuse  
(i.e. strangulation, bruises, cuts, etc.): \_\_\_\_\_

Also record victim's statements in narrative of report

**Strangulation Evidence:** ☐ Blood in eyes ☐ Breathing difficulty ☐ Loss of bladder/bowel control  
☐ Neck marks ☐ Coughing blood ☐ Voice change ☐ Loss consciousness/fainted ☐ Red spots @ eyes/face/neck/under  
eyelids

☐ Neck swelling

**NOTE: STRANGULATION CAN RESULT IN DEATH.**

**IF ALLEGATIONS OF STRANGULATION ARE MADE--ADVISE DANGER AND CONTACT EMT.**

Signs of alcohol and/or drug use: \_\_\_\_\_

### SUSPECT – Observations

Spontaneous Statements: \_\_\_\_\_

Physical/Behavioral  
(torn clothing, alcohol odor,  
sweating, etc.): \_\_\_\_\_

Emotional  
(crying, upset, agitated, etc.): \_\_\_\_\_

Stated injuries and/or signs of physical abuse  
(i.e. strangulation, bruises, cuts, etc.): \_\_\_\_\_

Also record defendant's statements in narrative of report

**Strangulation Evidence:** ☐ Blood in eyes ☐ Breathing difficulty ☐ Loss of bladder/bowel control  
☐ Neck marks ☐ Coughing blood ☐ Voice change ☐ Loss consciousness/fainted ☐ Red spots @ eyes/face/neck/under  
eyelids

☐ Neck swelling – If allegations of strangulation are made, ADVISE DANGER and CONTACT EMT.

Signs of alcohol and/or drug use: \_\_\_\_\_

### RELATIONSHIP OF SUSPECT TO VICTIM

☐ Spouse ☐ Cohabitant ☐ Child in common ☐ Sibling  
☐ Living as spouse ☐ Former Cohabitant within 5 years ☐ Putative/Alleged child in common ☐ Parent/Child  
☐ Former Spouse ☐ Other Family  
Length of Relationship \_\_\_\_\_ years \_\_\_\_\_ months Date relationship ended: \_\_\_\_\_

COPIES OF PAGES 1 – 4 TO:

\*SCREENING SERVICES

\*ARRAIGNMENT JUDGE

\*PROSECUTOR

Print name of officer(s) who completed this page: \_\_\_\_\_

SUSPECT'S NAME

Date

**LETHALITY CHECKLIST**

Past	Present	Lethality Indicator:	Description of Indicator:
<b>A. <u>Severity of Violence:</u></b>			
<input type="checkbox"/>	<input type="checkbox"/>	Serious Injury	_____
<input type="checkbox"/>	<input type="checkbox"/>	Threats to Kill	_____
<input type="checkbox"/>	<input type="checkbox"/>	Use of Weapons	_____
<input type="checkbox"/>	<input type="checkbox"/>	Threats with Weapon	_____
<input type="checkbox"/>	<input type="checkbox"/>	Strangulation	_____
<input type="checkbox"/>	<input type="checkbox"/>	Sexual Assault/Abuse	_____
<input type="checkbox"/>	<input type="checkbox"/>	Abuse of Animals	_____
<input type="checkbox"/>	<input type="checkbox"/>	Sadistic, Terrorist or Hostage Acts	_____
<input type="checkbox"/>	<input type="checkbox"/>	Abuse During Pregnancy	_____
<input type="checkbox"/>	<input type="checkbox"/>	Property Damage to Intimidate/Control	_____
<input type="checkbox"/>	<input type="checkbox"/>	Forcible Entry	_____
<input type="checkbox"/>	<input type="checkbox"/>	Repeated/Escalating Violence	_____
<input type="checkbox"/>	<input type="checkbox"/>	Prior Incidents Per Victim:	_____
<b>B. <u>Child Endangerment</u></b>			
<input type="checkbox"/>	<input type="checkbox"/>	Child Abuse	_____
<input type="checkbox"/>	<input type="checkbox"/>	Violence in Presence of Child(ren)	_____
<input type="checkbox"/>	<input type="checkbox"/>	Threats to Harm Child(ren)	_____
<input type="checkbox"/>	<input type="checkbox"/>	Threats to Abduct Child(ren)	_____
<b>C. <u>Centrality of Victim to Suspect</u></b>			
<input type="checkbox"/>	<input type="checkbox"/>	Obsessive Behavior (following, monitoring, phone harassment)	_____
<input type="checkbox"/>	<input type="checkbox"/>	Stalking	_____
<input type="checkbox"/>	<input type="checkbox"/>	Ownership (sees victim as property)	_____
<input type="checkbox"/>	<input type="checkbox"/>	Isolation of Victim (social, physical, financial)	_____
<b>D. <u>Anti-Social Behavior</u></b>			
<input type="checkbox"/>	<input type="checkbox"/>	Assaults on others	_____
<input type="checkbox"/>	<input type="checkbox"/>	Violence/Threats in Public	_____
<input type="checkbox"/>	<input type="checkbox"/>	Threats/Harassment of Victim's Friends/Family	_____
<b>E. <u>Failed Community Control of Suspect</u></b>			
<input type="checkbox"/>	<input type="checkbox"/>	Violated Protection Order	_____
<input type="checkbox"/>	<input type="checkbox"/>	Violated Probation/Community Control Sanctions	_____
<input type="checkbox"/>	<input type="checkbox"/>	Batterer Intervention/Treatment	_____
<b>F. <u>Suspect Criminal History</u> – Indicate source of information in box: C = complainant; S = suspect; O = other source</b>			
<b>#Prior Police Calls</b>	<input type="checkbox"/> 0 – 5	<input type="checkbox"/> 6 – 10	<input type="checkbox"/> 11 – 15
<b>Prior Arrests</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unsure
<b>Prior Charges</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unsure
<b>Prior Convictions</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unsure
<b>Pending Charges</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unsure
			Charge(s): _____ Jurisdiction: _____
			Charge(s): _____ Jurisdiction: _____
			Charge(s): _____ Jurisdiction: _____
			Charge(s): _____ Jurisdiction: _____
<b>Past</b>	<b>Present</b>	<b>G. <u>Psychological Indicators of Suspect</u></b>	
<input type="checkbox"/>	<input type="checkbox"/>	Suicidal Threats	_____
<input type="checkbox"/>	<input type="checkbox"/>	Extreme Life Stressors (job loss, death in family)	_____
<input type="checkbox"/>	<input type="checkbox"/>	Hospitalized and/or Treated for Depression	_____
<input type="checkbox"/>	<input type="checkbox"/>	Hospitalized and/or Treated for Other Mental Illness	_____
<b>H. <u>Other Danger Indicators</u></b>			
<input type="checkbox"/>	<input type="checkbox"/>	Victim Is Separating or Recently Separated	_____
<input type="checkbox"/>	<input type="checkbox"/>	Suspect Has Access to Weapons	_____
<input type="checkbox"/>	<input type="checkbox"/>	Suspect Has Weapons Training	_____
<input type="checkbox"/>	<input type="checkbox"/>	Suspect Abuses Alcohol/Drugs	_____
<input type="checkbox"/>	<input type="checkbox"/>	Parties Have Intimate/Romantic Relationship	_____
<input type="checkbox"/>	<input type="checkbox"/>	Suspect Interferes With Victim's Access to Emergency Services (pulled phone out of wall, etc.)	_____
<input type="checkbox"/>	<input type="checkbox"/>	Other Unusual Behavior of Suspect	_____

Print name of officer(s) who completed this page: \_\_\_\_\_

SUSPECT'S NAME

Date

**PROTECTION ORDERS**

Protection Order Current ☐ Yes ☐ No  
 Type ☐ Criminal ☐ Civil  
 Issuing Court \_\_\_\_\_  
 Protection Order # \_\_\_\_\_

Prior Protection Order ☐ Yes ☐ No  
 Type ☐ Criminal ☐ Civil  
 Issuing Court \_\_\_\_\_  
 Date(s) Expired \_\_\_\_\_  
 Number of Prior Order(s) Issued \_\_\_\_\_

☐ Unknown  
☐ Unknown

**EVIDENCE CHECKLIST****Please Check All That Apply**

**EVIDENCE COLLECTED FROM** ☐ Crime scene ☐ Hospital ☐ Other \_\_\_\_\_

**PHOTOS**☐ Yes ☐ No**PHOTOS SHOT AT SCENE:**

**DESCRIPTION:** ☐ 35 mm ☐ Polaroid ☐ Digital # of photos \_\_\_\_\_ Taken by: \_\_\_\_\_

**FOLLOW-UP PHOTOS****NEEDED:**☐ Yes ☐ No**SUBJECTS:**☐ Victim ☐ Crime Scene ☐ Weapons; indicate type(s): \_\_\_\_\_☐ Suspect ☐ Children**FAMILY PHOTOS REMOVED FROM SCENE:**

**SUBJECTS:** ☐ Victim ☐ Suspect ☐ Children Removed by: \_\_\_\_\_

**IMPOUNDED ITEMS**

Weapons ☐ Yes ☐ No Damaged Items ☐ Yes ☐ No 911 Tape ☐ Yes ☐ No  
 Firearms ☐ Yes ☐ No Clothing ☐ Yes ☐ No

**Note: See offense report for description and disposition of evidence.****CHILDREN PRESENT DURING INCIDENT****Children Interviewed** ☐ Yes ☐ No**Report Made to Children's Services** ☐ Yes ☐ No**Describe Observations Below:**

1. Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_ Witnessed Incident: ☐ Yes ☐ No  
 Physical: \_\_\_\_\_  
 Emotional: \_\_\_\_\_  
 Spontaneous Statements: \_\_\_\_\_
2. Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_ Witnessed Incident: ☐ Yes ☐ No  
 Physical: \_\_\_\_\_  
 Emotional: \_\_\_\_\_  
 Spontaneous Statements: \_\_\_\_\_
3. Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_ Witnessed Incident: ☐ Yes ☐ No  
 Physical: \_\_\_\_\_  
 Emotional: \_\_\_\_\_  
 Spontaneous Statements: \_\_\_\_\_

**MEDICAL TREATMENT**

☐ None ☐ Will Seek Own Doctor ☐ First Aid ☐ Paramedics/EMT ☐ Hospital ☐ Refused Medical Treatment

**Paramedics/EMT at scene:** ☐ Yes ☐ No

Unit: \_\_\_\_\_

Name(s)/ID#: \_\_\_\_\_

**Attending Physician(s)**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

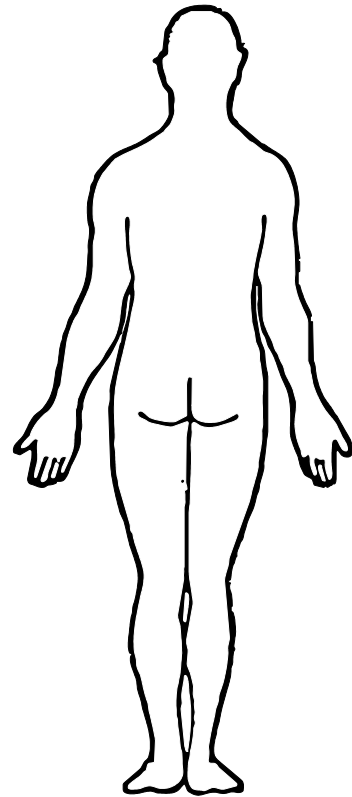
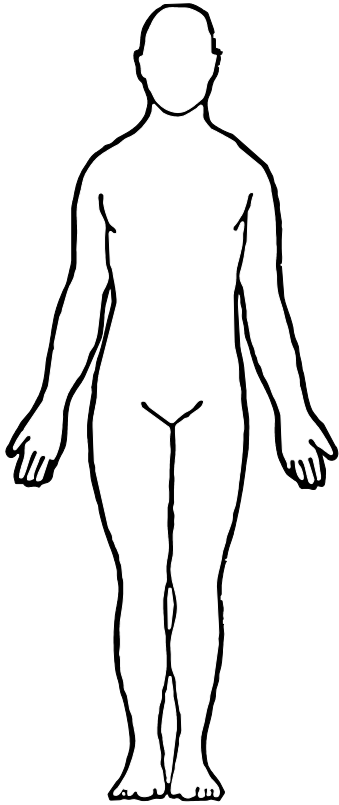
Hospital: \_\_\_\_\_

Nurse(s): \_\_\_\_\_

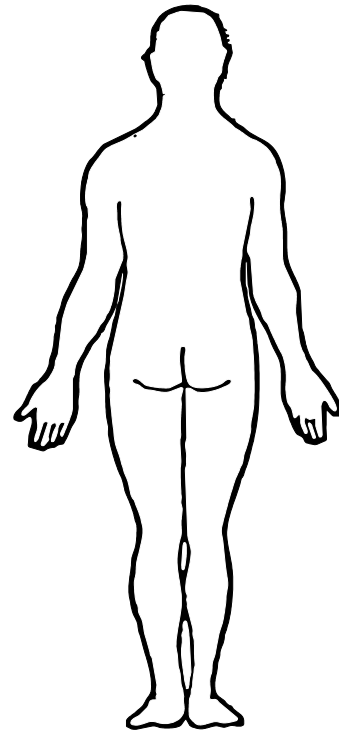
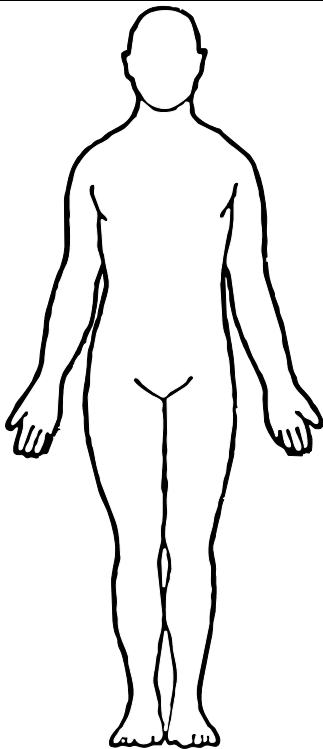
**Print name of officer(s) who completed this page:** \_\_\_\_\_

**Domestic Violence Injury Map**

**Victim:** \_\_\_\_\_



**Suspect:** \_\_\_\_\_



O-Individual indicates pain and/or injury

X-Police Officer observes injury

DV LAW ENFORCEMENT SUPPLEMENT

Print name of officer(s) who completed this page: \_\_\_\_\_

Appendix B:

**Authorization for Release of  
Medical Information**

**[INSERT PROSECUTOR'S NAME]**  
**[Insert County Name] COUNTY PROSECUTING ATTORNEY**

**AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION**

<b>PATIENT'S NAME:</b> _____			<b>DOB:</b> _____	<b>SSN:</b> _____
<b>Address:</b> _____				
_____			_____	
City/State			Zip	
<b>Treatment date(s):</b> _____				
I hereby authorize, request, and consent that the following medical facility(s) or provider(s), their agents and employees:				
<p>release all medical information, records and communications, without limitation, including testimony regarding same, relating to my diagnosis and treatment on the above stated date(s); <b>including</b> treatment for drug and/or alcohol abuse or for psychiatric and/or mental conditions, HIV test results or diagnosis of AIDS and or other communicable diseases. I understand that the information I authorize a person or entity to receive may be re-disclosed and is no longer protected by federal privacy regulations. I understand that this authorization is voluntary and that I may refuse to sign this authorization. My refusal to sign will not affect my ability to obtain treatment. I understand that this authorization may be withdrawn at any time by written notification to the parties involved; however, if action has already been taken on my authorization, it cannot be withdrawn. I have read and fully understand the foregoing. This consent expires sixty (60) days from the date below, unless I indicate an earlier expiration date in this space _____.</p>				
The above information is to be (    ) released (    ) forwarded to:				
<b>Name</b>		<b>Title</b>		
<b>Name of Employer</b>	<b>Address</b>	<b>Phone</b>		
I have read and fully understand the foregoing. I consent to the disclosure of the medical records to the extent and for the purposes authorized by [Insert Prosecutor's Name], [Insert County Name] County Prosecuting Attorney, [Insert Address], [Insert City], Ohio [Insert Zip Code].				
<b>Patient's Signature</b>		<b>Patient's Printed Name</b>		<b>Date</b>
The patient is unable to sign this consent because he/she is:				
_____ an unemancipated minor		_____ deceased	_____ other reason (specify below)	
The undersigned is the patient's: (    ) parent (    ) guardian (    ) spouse (    ) other: _____ (specify)				
<b>Patient's Representative's Signature</b>		<b>Patient's Representative's Printed Name</b>		<b>Date</b>
<b>Witness' Signature</b>		<b>Witness' Printed Name</b>		<b>Date</b>

## Court Checklist for Batterer Intervention Programs

Preferred arrest policies for domestic violence in Ohio have increased the number of batterers seen in criminal courts. When available, Batterer Intervention Programs\* (BIPs) offer courts a treatment approach that holds batterers accountable, while striving to change their behavior. Unfortunately, poorly run or improperly constructed BIPs also can pose increased risks to victims of domestic violence. Therefore, it is important that courts understand the critical elements of effective BIPs. This guide was adapted from the Ohio Domestic Violence Network's Self-Evaluation Tool for Batterers Intervention Programs to help Ohio judges consider the quality of existing programs.



### Does the program have written procedures for victim safety to:

- ☐ Screen at intake and periodically thereafter for lethality/dangerousness toward partner and children?
- ☐ Warn a victim in cases where a potential risk of harm has been identified by program staff (often referred to as the "duty to warn" policy)?
- ☐ Limit the confidentiality of BIP clients (e.g., authorizations to release information)?
- ☐ Contact victims safely and appropriately according to the procedure developed with assistance from the local domestic violence programs\*\*?



### Does the program seek input from the local domestic violence program to:

- ☐ Develop procedures for victim contact?
- ☐ Train BIP providers on domestic violence and victimization in general?
- ☐ Monitor the BIP through observation by skilled staff trained in the dynamics of domestic violence?
- ☐ Provide interventions for women who are arrested for domestic violence, including procedures that determine the primary aggressor and protect victims from being placed in groups with batterers?



### Does the BIP have written procedures for providing information to the courts that specify:

- ☐ Information exchange between BIP staff and probation officers, judges, court clerks, or another designated agent?
- ☐ The necessary information to effectively monitor batterers (e.g., attendance, any non-compliance or lack of progress)?
- ☐ Timelines for regular reporting (e.g., weekly or monthly)?
- ☐ Requirements for additional reports in exceptional circumstances?



### Does the program work collaboratively within the community? Is the program:

- ☐ Represented on the local domestic violence taskforce or other coordinating efforts?
- ☐ Included in the inter-agency protocols that clarify roles and responsibilities between law enforcement, service providers, and the courts within the community?
- ☐ Involved in collaborative efforts to provide education to other professionals and in the community?
- ☐ Able to clearly explain the process for receiving referral from all possible sources, including appropriate contact persons and the procedural requirements for each agent (e.g., the information required for a referral and timing)?
- ☐ Able to place victim safety as first priority?



**Does the program support BIP clients by:**

- ☐ Informing them of program policies and procedures?
- ☐ Providing or making referrals for services to address common problems such as substance abuse, mental health, and or physical disability?
- ☐ Providing outreach to underserved populations by building collaborative relationship with diverse communities?
- ☐ Ensuring client participation is for a minimum length of 52 weeks with 1.5 hours sessions?
- ☐ Including group education and intervention strategies?
- ☐ Ensuring regular oversight of sessions by supervisors experienced in batterer interventions?



**Does the program support staff with regular, in-service training:**

- ☐ That includes a core written curriculum that focuses on the behavior of a batterer as a system of oppression, with stopping all forms of abuse and victim safety as the primary goals?
- ☐ That teaches the power imbalance between men and women?
- ☐ Based on a male/female, co-facilitator model?
- ☐ That offers training opportunities for staff to further their knowledge and skills in domestic violence in general as well as in batterer intervention?



**Does the program demonstrate its efficacy by:**

- ☐ Basing its practices on accepted clinical interventions and domestic violence research?
- ☐ Establishing measures to evaluate program effectiveness on clients?
- ☐ Developing long-term outcome measures on batterer recidivism?
- ☐ Working closely with the local research community and domestic violence programs?

\* Batterer intervention program refers to a program that provides treatment for male domestic violence perpetrators.

\*\* Domestic violence program refers to a community-based program that directly serves victims, including shelters and other agencies that advocates for victims and their children.

**About the Ohio Domestic Violence Network (ODVN)**

ODVN is a statewide coalition of domestic violence programs, supportive agencies, and concerned individuals organizing to ensure the elimination of domestic violence by: providing technical assistance, resources, information, and training to all who address or are affected by domestic violence; and promoting social and systems change through public policy, public awareness, and education initiatives.

For more detailed information, contact ODVN at (800) 934-9840 or [info@odvn.org](mailto:info@odvn.org). The ODVN Standards for Batterers Interventions and an accompanying Self-Evaluation Guide are available online at [www.odvn.org](http://www.odvn.org).



Appendix D:  
International Association of  
Chiefs of Police Domestic  
Violence by Police Officers  
Model Policy

International Association of Chiefs of Police

## **DOMESTIC VIOLENCE BY POLICE OFFICERS**

### ***A Policy of the IACP Police Response to Violence Against Women Project***

Effective Date: July 2003

#### **I) Purpose**

This policy recognizes that the profession of law enforcement is not immune from members committing domestic violence against their intimate partners. The purpose of this policy is to establish procedures for handling acts of domestic violence committed by police officers and for implementing prevention strategies. This policy will provide police executives, officers, and all department employees guidance in addressing incidents where one (or more) party to a reported domestic violence incident is an employee, whether sworn or civilian, of any rank in the department.

#### **II) Policy Statement**

This policy offers a comprehensive, pro-active approach to domestic violence by police department employees with an emphasis on victim safety. It delineates a position of zero tolerance by the department. It is imperative to the integrity of the profession of policing and the sense of trust communities have in their local law enforcement agencies that leaders, through the adoption of clear policies, make a definitive statement that domestic violence will not be tolerated. In the process of implementing this policy, the department should review the records of all employees to determine whether convictions for qualifying misdemeanor crimes of domestic violence \*(MCDV) or valid protection orders exist. If an employee is found to have a MCDV or is the subject of a qualifying protection order, department legal counsel and/or city/county attorney shall be consulted immediately regarding continued employment or duty assignment.

Federal law prohibits police officers convicted of qualifying misdemeanor domestic violence crimes from possessing firearms.

Officers found guilty of a qualifying domestic violence crime through criminal proceedings shall be terminated.

#### **III) Definitions**

“Domestic violence” refers to an act or pattern of violence perpetrated by a police officer upon his or her intimate partner not done in defense of self or others, including but not limited to the following:

- A. Bodily injury or threat of imminent bodily injury
- B. Sexual battery
- C. Physical restraint
- D. Property crime directed at the victim
- E. Stalking
- F. Violation of a court order of protection or similar injunction
- G. Death threats or death

An “intimate partner” of a police officer is any person who meets one or more of the following criteria:

- A. Is or was legally married to the police officer
- B. Has a child in common with the police officer
- C. Has or had a dating relationship with the police officer
- D. Is specified as an intimate partner by state law
- E. Is cohabitating or has cohabitated romantically with the police officer

“Protection order” refers to any injunction or other order issued by a court, including criminal or civil orders of protection, regardless of form, content, length layout, or name (such as stay away, restraining, criminal, and emergency or temporary protection orders or injunctions), issued for the purpose of preventing the following:

- A. Violent or threatening acts against another person
- B. Stalking or harassment of another person
- C. Contact or communication with another person
- D. Physical proximity to another person

#### **IV)Procedures**

While prioritizing the safety of victims, this policy is designed to address prevention through hiring and training practices, provide direction to supervisors for intervention when warning signs of domestic violence are evident, institutionalize a structured response to reported incidents of domestic violence involving officers, and offer direction for conducting the subsequent administrative and criminal investigations. Components of this policy include: (A) Prevention and Training (B) Early Warning and Intervention (C) Incident Response Protocols (D) Victim Safety and Protection (E) Post-Incident Administrative and Criminal Decisions.

##### **A. Prevention and Training**

The department will adhere to a zero-tolerance policy towards police officer domestic violence and will not tolerate violations of the policy. The department will provide ongoing training to every officer on domestic violence and the zero-tolerance policy throughout all phases of the police officer’s career.

##### **1) Prevention Through Collaboration**

- (a) Through ongoing partnerships with local victim advocacy organizations the department shall develop domestic violence curricula and train officers in order to enhance the officers'/agency's response to victims.
- (b) The department shall provide local domestic violence victim advocacy organizations copies of all domestic violence training curricula, protocols and policies for review and possible revision.

## **2) Training Topics**

Upon implementation of this policy, all officers shall receive comprehensive mandatory instruction covering the following topics:

- i. Understanding Domestic Violence
- ii. Departmental Domestic Violence
  - Response Protocol
- iii. Warning Signs of Domestic Violence by Officers
- iv. Victim Safety
- v. Federal Domestic Violence Laws

## **3) Ongoing Training**

Departments shall use a variety of training techniques including in-service, roll-call, FTO, ride-alongs, and training bulletins to regularly reinforce standards of effective response protocol.

## **4) Program Evaluation**

To enhance the effectiveness of the training, departments should work with internal or external research resources to evaluate the training and its impact.

# **B. Early Warning and Intervention**

## **1) Pre-Hire Screening and Investigation**

- (a) Certification agencies and/or departments shall conduct thorough background investigations of all potential new employees using address history, driver's record, protection order database and a search on IADLEST.
- (b) All candidates shall be asked if they have engaged in or been investigated for domestic violence and asked about any past arrests, suspended sentences, diversion programs, convictions, and protection orders related to elder abuse, sexual assault, stalking, or domestic violence.
- (c) Those candidates with a history of perpetrating violence (to include: elder abuse, child abuse, sexual assault, stalking, or domestic violence) should be screened out at this point in the hiring process.

- (d) Candidates shall be clearly informed of the department's position of zero tolerance concerning domestic violence by officers.

## **2) Post Conditional Offer of Employment**

- (a) The psychological screening of all viable candidates will focus on indicators of abusive tendencies in their backgrounds.
- (b) Departments should strongly consider a no-hire decision in the case of a candidate with tendencies indicative of abusive behavior.

## **3) Post-Hire Intervention**

- (a) When new officers are hired, the department shall reach out to their intimate partners/family members to introduce this policy and other relevant department policies.
- (b) Departments should engage in periodic outreach to officers and their intimate partners/family members with information on this policy, the point of contact within the department and referrals for local support services.

## **4) Department Responsibilities**

- (a) The department shall develop cross-jurisdictional MOUs to ensure timely notification of an incident involving an officer.
- (b) The department shall, either in response to observed waning signs or at the request of an officer, intimate partner, or other family member, provide non-punitive avenues of assistance before an act of domestic violence occurs.
- (c) The department shall inform officers of the procedure for seeking confidential referrals, either internally or externally, to confidential counseling services.
- (d) A disclosure on the part of any officer, intimate partner or family member to any member of the department that an officer has personally engaged in domestic violence will be treated as an admission or report of a crime and shall be investigated both administratively and criminally.

## **5) Supervisor Responsibilities**

- (a) Supervisors shall be cognizant of and document any pattern of abusive behavior potentially indicative of domestic violence including but not limited to the following:

- i. Aggressiveness
    - a. Excessive and/or increased use of force on the job
    - b. Stalking and inappropriate surveillance activities
    - c. Unusually high incidences of physical altercations and verbal disputes
    - d. Citizen and fellow officer complaints of unwarranted aggression and verbal abuse
    - e. Inappropriate treatment of animals
    - f. On- or off-duty officer injuries
  - ii. Domestic violence-related issues
    - a. Monitoring and controlling any family member or intimate partner through such means as excessive phone calling
    - b. Stalking any intimate partner or family member
    - c. Discrediting and/or disparaging an intimate partner
  - iii. Deteriorating work performance
    - a. Tardiness
    - b. Excessive absences
    - c. Alcohol and drug abuse
- b) When the supervisor notes a pattern of problematic behavior (as detailed above), the supervisor shall:
  - i. Address the behaviors through a review or other contact with the officer and document all contacts
  - ii. Forward written reports capturing the behaviors to the chief through the chain of command in a timely manner to determine discipline as warranted
  - iii. Prepare and submit to the chief a written request for a psychological exam/counseling by a psychologist/psychiatrist who is knowledgeable about domestic violence.
  - iv. When warranted, request the chief order an officer to seek assistance from a certified program for batterers, and if such a program is not available, a counselor knowledgeable about domestic violence.

## **6) Police Officer Responsibilities**

- (a) Officers are encouraged to take personal responsibility in seeking confidential referrals and assistance from the department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.
- (b) Officers who engage in the following actions will be subject to severe discipline

up to and including dismissal:

- i. Failure to report knowledge of abuse or violence involving a fellow officer
  - ii. Failure to cooperate with the investigation of a police officer domestic violence case (except in the case where that officer is the victim)
  - iii. Interference with cases involving themselves or fellow officers
  - iv. Intimidation/coercion of witnesses or victims (i.e., surveillance, harassment, stalking, threatening, or falsely reporting)
- (c) Officers who learn they are the subject of a criminal investigation, regardless of jurisdiction, are required to make a report immediately to their supervisors and provide notice of court dates, times, appearances, and proceedings. Failure to do so may result in severe discipline up to and including dismissal.
- (d) Officers who learn they are the subject of any protective order proceeding, whether or not the order is issued and regardless of jurisdiction, shall immediately notify their supervisor and provide a copy of the order, if issued. If subject to a qualifying protection order, the officer shall surrender all firearms unless department policy allows for possession of the primary service weapon. Failure to do so may result in severe discipline up to and including dismissal.

## **C. Incident Response Protocols**

### **1) Department-wide Response**

- (a) The department shall accept, document and preserve all calls or reports, including those made anonymously, regarding domestic violence as on-the-record information.
- (b) All reports of possible criminal activity implicating police officers in domestic violence shall be documented in accordance with the policies governing the handling of reports of domestic violence involving civilians.
- (c) The on-scene supervisor shall forward a copy of the report alleging domestic violence by the officer to the chief through the chain of command.
- (d) All such incident reports shall be made available by the department to the victim without cost.

### **2) Communications Response**

- (a) Communications officers/dispatchers shall be instructed to assign a high priority to all domestic violence calls, including those that involve or appear to involve a police officer of any department.

- (b) Communications officers/dispatchers shall immediately notify the supervisor on duty and the dispatch supervisor of any domestic violence call received that involves, or appears to involve, a police officer, regardless of the involved officer's jurisdiction.
- (c) Communications officers/dispatchers shall prepare and preserve documentation of the facts and circumstances of the call, including the 911 tape, for use in potential administrative or criminal investigations.
- (d) Communications officers/dispatchers shall have available current contact information of local domestic violence victim advocacy organizations for on-scene supervisors to provide to victims.

### **3) Patrol Response**

- (a) Upon arrival on the scene of a domestic violence call or incident involving a police officer, the primary patrol unit shall immediately notify dispatch and request a supervisor of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.
- (b) The responding officers shall perform the following actions:
  - i. Obtain needed medical assistance
  - ii. Address the immediate safety of all parties involved
  - iii. Secure the scene and preserve evidence
  - iv. Note all excited utterances, admissions and/or incriminating statements
  - v. Make an arrest if probable cause exists

### **4) On-Scene Supervisor Response**

- (a) A supervisor of higher rank shall report to the scene of all police officer domestic violence incidents including a police officer, regardless of the involved officer's jurisdiction.
- (b) The on-scene supervisor shall assume command and ensure that the crime scene is secured and that all evidence is collected. Photographic and/or video documentation of the parties involved and scene shall be recorded where such resources are available.
- (c) The supervisor shall inquire as to the safety of all children present at the time of the incident and all children in the household. As appropriate and necessary, the children should be interviewed separately from other parties.



- (d) In cases where probable cause exists, the on-scene supervisor shall ensure an arrest is made.
- (e) If the alleged offender has left the scene and probable cause exists, the supervisor shall perform the following actions:
  - i. Exhaust all reasonable means to locate the alleged offender
  - ii. Ensure that an arrest warrant is sought, if unable to locate the alleged offender
  - iii. Document all subsequent actions in a timely manner
- (f) In the event that the victim has left the scene, the supervisor shall make every effort to follow through on the investigation and attempt to locate the victim.
- (g) Arrest of both parties involved in a domestic violence incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the dominant aggressor is made in accordance with state law.
- (h) Whenever an officer is arrested, the supervisor shall relieve the accused officer of all service weapons regardless of whether the officer is a member of the responding department.
- (i) Where allowable under federal, state, or local ordinances, all other firearms owned or at the disposal of the accused officer shall be seized for safety reasons.
- (j) The command staff officer shall inquire whether the victim wants any firearms removed from the home for safekeeping by the department and make arrangements as necessary.
- (k) The on-scene supervisor shall ensure the victim is informed of the following:
  - i. The judicial process and victim rights
  - ii. The department's policy on police officer domestic violence, procedures and cross-jurisdictional responsibilities as they apply
  - iii. The standard of probable cause for arrest
  - iv. Procedures for obtaining protective orders
  - v. Victim compensation
  - vi. The availability of an on-scene advocate
  - vii. The availability of confidential transportation to a location that can provide improved victim safety
  - viii. Community resources and local domestic violence victim service
  - ix. The option to remove firearms for safekeeping
- (l) Whenever a police officer involved domestic violence call does not result in an arrest or a warrant is not sought, the on-scene supervisor shall explain in a written report.

- (m) The on-scene supervisor shall notify the chief and the accused officer's immediate supervisor as soon as possible. In the event that the officer is from another jurisdiction, the supervisor shall ensure that the accused officer's chief is notified. All notifications, and attempts to notify, shall be fully documented.

## **5) Additional Critical Considerations**

- (a) When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers, investigators, and supervisors shall follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from their own department.
- (b) In the event that the reported incident involves the chief of police or commissioner, the supervisor shall immediately notify the district/state's attorney and the individual in government who has direct oversight for the chief, for example, the mayor.
- (c) In responding to the domestic violence incidents where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.
- (d) In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence response and investigation procedures should be followed. After probable cause and dominant aggressor are determined, an arrest should be made and all service weapons of the accused officer confiscated.

*If a protective order is issued against an officer, additional firearm seizure may be required under state law.*

## **6) Department Follow-Up**

- (a) In a timely manner, the chief shall ensure that all officers who responded to a police officer domestic violence call are debriefed. The debriefing shall include the following:
  - i. A review of department confidentiality guidelines
  - ii. A direct order prohibiting discussion of the incident outside of the official inquiry
  - iii. A clear delineation of assignments
- (b) Follow-up investigators shall proactively seek out information on existing protective orders and, if found, shall enforce them and any applicable state and federal firearms laws and determine whether the officer violated department

policy by failing to report the protective order.

- (c) Arrest warrants charging police officers with domestic violence and protective orders issued at a later time shall be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, firearms shall be seized if allowed by the department and decisions about service weapons will be made.
- (d) In the event the protection order expires or the victim asks that it be discontinued, the department shall still conduct a thorough administrative investigation.
- (e) Following the reported incident, the department shall designate a member of the command staff to perform the following duties:
  - i. Conduct a danger assessment of the accused officer to determine the potential for further violence and inform the victim of the possibility of danger regardless of the outcome of the assessment
  - ii. Act as a principal point of contact to keep the victim apprised of all developments
  - iii. Ensure that safety planning and danger assessment is made available to the victim
  - iv. Report the findings of the danger assessment to the chief who will make decisions concerning appropriate sanctions, administrative actions, and referrals for the accused officer

#### **D. Victim Safety and Protection**

- 1) Departments shall work with community resources and advocacy agencies to connect victims and their children with appropriate services.
- 2) The command staff designated as principal contact for the victim, shall inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.
- 3) All officers shall be aware of possible victim/witness intimidation or coercion and the increased danger when the victim leaves an abusive partner. The designated principal contact shall assist the victim and children in safety planning and caution the victim to be alert to stalking activities.
- 4) If an officer suspects intimidation or coercion of the victim/witness is occurring, the officer shall prepare a written report to be delivered immediately to the investigator in charge of the case through the chain of command.
  - (a) In order to determine whether the victim/witness is being intimidated or coerced, the investigator in charge shall seek out secondary sources of the information.

- (b) Given the possibility that a victim will recant or choose not to participate in court proceedings, supplemental evidence shall be sought out and preserved.

## **E. Post Incident Administrative and Criminal Decisions**

Departments shall conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic violence in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case, the department shall uphold all administrative decisions. If the facts of the case indicate that domestic violence has occurred or any department policies have been violated, administrative action shall be taken independent of any criminal proceedings as soon as practicable.

The department will adhere to and observe all necessary protocols to ensure an accused officer's departmental, union, and legal rights are upheld during the administrative and criminal investigations.

### **1) Administrative Investigations and Decisions**

The responsibility to complete the administrative investigation of a police officer domestic violence incident shall rest with the Internal Affairs Division of the department, or in the event that no such unit exists, the chief shall appoint an experienced investigator. The chief may ask an outside law enforcement agency to conduct the administrative investigation.

- (a) Regardless of whether an arrest was made on scene, the investigating official shall conduct an independent, comprehensive administrative investigation using standard elements of criminal investigations. Victims and witnesses shall be re-interviewed and their statements recorded; crime scene evidence, photographs, and medical records accessed; and 911 tapes requested.
- (b) Where sufficient information/evidence exists, the department shall take immediate administrative action against the accused officer that may include removal of badge and service weapons, reassignment, sanctions, suspension, or termination.
- (c) When an investigation of an incident uncovers officers who had knowledge of violence on the part of another officer but failed to notify the department or engaged in actions intended to interfere with the investigation, the department shall investigate those officers and take disciplinary action and criminally charge as warranted.
- (d) The chief shall determine whether and when the accused officer should be issued an administrative order of protection.
- (e) If administrative policies and/or administrative orders of protection are violated or

sufficient concern exists regarding a violation, the department shall initiate an independent administrative investigation, seize firearms as allowed under department policy as soon as practicable, and take disciplinary action up to and including dismissal.

- (f) In determining the proper course of administrative action, a department shall consider factors including the level of danger an officer poses as indicated by the outcome of the danger assessment of the officer, the officer's history of compliance with departmental rules, prior written or verbal threats, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.
- (g) If the accused officer is assigned enforcement duties while the administrative and/or criminal investigations are under way, those duties should not include response to domestic violence calls.
- (h) If the department determines through an administrative investigation that the officer violated department policy, regardless of whether the officer plead *nolo contendere* in response to criminal charges, the department may employ the full range of administrative sanctions. Any officer determined through an administrative investigation to have committed domestic violence shall be terminated from the department.

## **2) Criminal Investigations and Decisions**

The responsibility to complete a criminal investigation of an incident of police officer domestic violence shall rest with the domestic violence unit of the department, or in the event that no such unit exists, the criminal investigations unit or detective division. The chief may ask an outside law enforcement agency to conduct the criminal investigation.

- (a) The investigating official shall conduct criminal investigations as would be the case for any other criminal violation.
- (b) In accordance with the officer's and victim's privacy rights, the investigating official or agency shall conduct sufficient interviews (taped) of family members, friends, neighbors, colleagues, and others who may have information regarding criminal charges.
- (c) Even though an initial report may already exist concerning a police officer, reports of any subsequent or additional criminal or non-criminal incidents, which may include fellow officers engaging in surveillance or intimidation of the victim, shall be documented in separate incident reports, assigned a case number, cross-referenced with the original case number and investigated thoroughly.
- (d) The department shall completely investigate the charges and where warranted seek prosecution even in cases where the victim recants.

- (e) The department shall establish a liaison to work with the prosecuting attorney for each case. This officer shall present all the information to the prosecuting attorney for action and ask that decisions about the adjudication of the case be made in a timely manner.
- (f) As with any other case for criminal prosecution, the investigating officer shall request filing of court papers/complaints.
- (g) Any officer convicted through criminal proceedings of a domestic violence crime shall be terminated from the department.

### **3) Termination Procedures**

- (a) Upon the decision to terminate an officer, the chief shall do the following in accordance with department policy and state law:
  - i. Notify the officer, in writing, of the effective date of termination
  - ii. Inform the officer of available support services, to include counseling
  - iii. Ensure that the victim is notified in a timely manner and offered available assistance, to include safety planning
  - iv. Notify the state licensing body within 30 days and inform them of the reason for termination
- (b) Federal law prohibits anyone convicted of a misdemeanor domestic violence from possessing firearms. The department shall ensure compliance with federal law.

Note: This protocol is available online at the following website address:

<http://www.theiacp.org/documents/pdfs/Publications/domviolmodelpolicy%2Epdf> .