

DOMESTIC VIOLENCE: A MODEL PROTOCOL FOR POLICE RESPONSE

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The Task Force urges the Pennsylvania State Police and each police department in Pennsylvania to adopt a written protocol establishing guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic calls. In aid of that purpose, the Task Force offers the following model protocol, which can be readily adapted to the particular needs of the state police and police departments throughout the Commonwealth.

The core feature of the model protocol is the provision that police should arrest the assailant in domestic violence cases whenever arrest is authorized. To underscore the presumption that arrest is the proper response in the overwhelming majority of domestic violence cases, the protocol requires the responding officer, if he decides not to arrest, to include in his report of the incident a detailed explanation of the reasons why an arrest was not made. The protocol further provides a list of factors that the officer should not consider in making the arrest decision.

Many other jurisdictions, either by legislation or through police department protocols, have adopted policies that mandate arrest of the assailant in domestic violence cases. The Task Force considered but rejected this absolute approach because it found problematic the concept of removing all discretion from the responding officer. However exceptional they may be, cases are certain to arise in which arrest, though authorized, is inappropriate because it does not serve the interests of justice and is not necessary to ensure the victim's safety.

Another important feature of the model protocol is the provision that police should identify the victim to a domestic violence program whenever the accused has been arrested or is the subject of an arrest warrant. The intent and expectation of this provision is that the domestic violence program will contact the victim, in the manner that the program finds most appropriate, to offer the victim support and referral to services. This aggressive outreach is designed to help overcome the fear and isolation that so often deter victims of domestic violence from pursuing needed assistance on their own initiative.

Some members expressed concern that, while the law does not require police to keep the victim's identity confidential, the identification of victims to domestic violence programs nevertheless might unduly compromise the preference of some victims for strict privacy. The majority believed, however, that the benefit to the many victims who otherwise would receive no help when they needed it most justifies the approach of affirmative referral and outreach, particularly in view of the minimal intrusion upon privacy that such referral and outreach entails. Domestic violence programs routinely observe the strictest confidentiality; no victim is required to accept assistance, and the risk of further disclosure of the victim's identity is remote.

The following protocol, in the judgment of the Task Force, combines law enforcement and victim assistance into an effective program of police response to domestic violence.

MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE

A. Purposes

1. The principal purpose of this protocol is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic calls.
2. Other purposes and goals of this protocol are:
 - (a) To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, rather than mediation, as the preferred means of police response to domestic violence;
 - (b) To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance;

- (c) To ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases;
- (d) To reaffirm the police officer's authority and responsibility to make arrest decisions in accordance with established probable cause standards;
- (e) To promote officer safety by ensuring that officers are as fully prepared as possible to respond to domestic calls; and
- (f) To help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

B. Policy

Domestic violence is a crime that differs from other crimes because of the intimate relationship between the victim and the accused. Notwithstanding that difference, police should respond to domestic violence as they would respond to any crime. Police should arrest and pursue criminal remedies appropriate to the crime that the police have probable cause to believe the accused has committed. In recognition of the difference between domestic violence and other crimes, however, police also should provide victims with special assistance, including efforts to ensure that victims are informed of services available to victims of domestic violence.

C. Scope of Coverage

1. This protocol applies to any call to police reporting a disturbance between persons in a "covered relationship" to each other.
2. "Covered relationships" include: persons related by blood or marriage; persons who reside or formerly resided together; persons who are biological parents of the same child; and current or former sexual or intimate partners.

D. Dispatch

1. Dispatchers under the direct supervision of a police department should dispatch domestic calls in the same manner as any other call for police assistance, in accordance with the priority criteria prescribed by generally applicable department procedures.
2. Dispatchers who serve multiple police departments should accord domestic calls the highest priority classification. Whenever possible, the dispatcher should assign a back-up unit.
3. The dispatcher receiving a domestic call should attempt to elicit from the caller and should communicate to the responding officer as much of the following information, in the following order of importance, as time and the exigencies of the reported incident allow:
 - (a) The nature of the incident;
 - (b) The address of the incident, including the apartment number or the name of the business, as appropriate;
 - (c) A telephone number where the caller can be called back;
 - (d) Whether weapons are involved;
 - (e) Whether an ambulance is needed;
 - (f) Whether the suspect is present and, if not, the suspect's description, direction of flight, and mode of travel; and
 - (g) Whether children are at the scene.
4. If the caller is the victim, the dispatcher should attempt to keep the caller on the telephone as long as possible and should tell the caller that help is on the way and when the caller can expect the police to arrive.
5. If the caller is a witness to a domestic incident in progress, the dispatcher should keep the caller on the telephone and should relay ongoing information provided by the caller to the responding officer.
6. 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 from abuse order involving the parties in effect, the dispatcher should consult such records and radio any relevant information to the responding officer.

E. Initial Police Officer Response

1. Approaching the scene.

- (a) The responding officer should approach the scene of a domestic dispute as one of high risk. Whenever possible, two officers will respond to a domestic call.
- (b) The officer should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.
- (c) The officer should avoid the use of sirens and emergency lights in the vicinity of the scene of the incident. Sirens and lights should be employed only when speed is essential.
- (d) The officer should not park the police vehicle directly in front of the residence or other site of the disturbance. The officer should be alert for assailants leaving the scene and for the employment of weapons from doors, windows, or nearby vehicles.
- (e) The officer otherwise should employ standard precautionary measures in approaching the scene of the incident.

2. Initial contact with occupants.

- (a) The responding officer should identify himself as a police officer, explain his presence, and request entry into the home. The officer should ask to see the person who is the subject of the call. If the person who called the police is someone other than the subject of the call, the officer should not reveal the caller's name.
- (b) The officer may enter and conduct a search of the premises relevant to the incident if consent has been given to do so.
- (c) If refused entry, the officer should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused, the officer should request the dispatcher to contact the caller if the caller is the subject of the call. If access is still refused, the officer must decide whether to leave, remain and observe, or force entry. If the officer leaves the scene, he should drive by and observe frequently. If the officer remains to observe, he should move to public property (the street) and observe the premises. In some circumstances, forced entry will be necessary and appropriate.

3. Once inside, the responding officer should establish control by:

- (a) Identifying potential weapons in the surroundings;
- (b) Separating the victim and the assailant;
- (c) Restraining the assailant if necessary, and removing the assailant to the patrol car if immediate arrest is warranted;
- (d) Assessing the injuries (including inquiry about possible internal injuries), administering first aid, and/or notifying emergency medical services;
- (e) Inquiring about the nature of the dispute;
- (f) Identifying all occupants/witnesses on the premises; and
- (g) Separating occupants/witnesses from the victim and accused and keeping them out of hearing range (to avoid compromising their witness status).

4. On-scene investigation:

- (a) The responding officer should interview the victims and the assailant as fully as circumstances allow. The officer should be alert to possible incriminating statements.
- (b) The officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant, witnesses, and bystanders. In questioning the victim, the officer should use supportive interview techniques. The officer should ask the victim about previous domestic incidents, their frequency and severity. The officer should not tell the victim what action he intends to take until all available information has been collected.
- (c) If the accused has been arrested prior to interview, the accused must be given *Miranda* warnings before being questioned. If the accused has fled the scene, the officer should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.).

- (d) If the dispatcher has not advised the officer of the existence of a protection from abuse order, the officer should ask the victim whether there is such an order and, if so, if the victim can produce a copy and what police department might have a copy. The officer should contact the countywide registry of protection from abuse orders, the prothonotary's office, or a local police department specified by the victim to verify the existence and effective period of the order. 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.
- (e) The officer should interview any witnesses as fully and as soon as circumstances allow. If witnesses provided information about prior incidents, the officer should document such incidents to establish a pattern.
- (f) Children should be interviewed in a manner appropriate to the child's age. Signs of trauma and any apparent healing of abuse wounds on the child should be noted by the officer.
- (g) The officer should collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. The officer should ensure that photographs are taken of visible injuries on the victim and of the crime scene.
- (h) The officer should encourage the victim to seek an emergency room examination. Emergency room pictures are excellent evidence of injuries. The officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. Also, because bruises may not appear for several days after an assault, the office should advise the victim to contact the police for photographs if injuries later appear and, if possible, should revisit the victim if there is reason to suspect that such evidence of injury indeed may later appear.
- (i) All physical evidence should be collected, noted in reports, and vouchered as in other criminal investigations.

F. The Arrest Decision

1. *The responding officer should arrest the assailant whenever arrest is authorized.* If the officer decides not to arrest, he must include in his report of the incident a detailed explanation of the reasons why an arrest was not made.
2. Under current Pennsylvania law, arrest is authorized in the following circumstances:
 - (a) When the officer has probable cause to believe that the suspect has committed a felony.
 - (b) When the officer observes the commission of a felony or a misdemeanor.
 - (c) When the officer has probable cause to believe that the suspect has committed a domestic violence misdemeanor as specified in 18 Pa.C.S. §2711, which authorizes warrantless arrest when the misdemeanor is involuntary manslaughter (18 Pa.C.S. §2504), simple assault (18 Pa.C.S. §2701), or recklessly endangering another person (18 Pa.C.S. §2705), *and* the officer observes recent physical injury or other corroborative evidence, *and* the victim is the spouse of the suspect or a person with whom the suspect resides or has formerly resided. The domestic violence misdemeanor need not have been committed in the officer's presence.
 - (d) When the officer has probable cause to believe that the suspect has violated a valid protection from abuse order. The violation need not have occurred in the officer's presence, and no corroborative evidence is required.
 - (e) When a misdemeanor not included among those in paragraphs (b) through (d) has been committed and the officer has obtained an arrest warrant.
3. The officer should not consider the following factors in making the arrest decision:
 - (a) The marital status of the parties.
 - (b) The ownership or tenancy rights of either party.
 - (c) Verbal assurances that the violence will stop.
 - (d) A claim by the accused that the victim provoked or perpetuated the violence.
 - (e) Denial by either party that the abuse occurred when there is evidence of domestic violence.

- (f) 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).
 - (g) The disposition of any previous police calls involving the same victim or accused.
 - (h) Speculation that the arrest may not lead to a conviction.
 - (i) The existence or not of a current protection from abuse order (except insofar as the violation of such an order might justify arrest).
 - (j) The victim's emotional state.
 - (k) Concern about reprisals against the victim.
 - (l) Adverse financial consequences that might result from the arrest.
 - (m) That the incident occurred in a private place.
 - (n) The racial, cultural, social, political, or professional position, or the sexual orientation, of either the victim or the accused.
4. It is the officer's responsibility to decide whether an arrest should be made. The officer, therefore, should not consider the victim's opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the Commonwealth's action, not the victim's action.
 5. If the officer arrests for the commission of a crime, the officer should confiscate all weapons used or threatened to be used in the commission of the crime, and such weapons should be held as evidence for prosecution.
 6. If the officer arrests for violation of a protection from abuse order, the officer is required by 35 P.S. §10190 to confiscate all weapons used or threatened to be used in the violation, and to deliver such weapons to the office of the sheriff.
 7. If there is evidence of mutual battering and the officer concludes that one party was acting in self-defense, that party should not be arrested.
 8. If there is evidence of mutual battering and the officer concludes that one party was the principal aggressor, the officer should arrest only that party.

G. Effectuating the Arrest

1. The responding officer should take the accused into custody as soon as the officer determines that a warrantless arrest is appropriate. If the suspect has fled the scene, the officer should initiate procedures to pursue and apprehend the accused as promptly as possible, since the risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If a warrant is necessary, the officer should obtain and execute the warrant as soon as practical.
2. When the accused is a minor (under 18 years of age), the provisions of this protocol shall be fully applicable, except that arrest should be effectuated and the juvenile processed pursuant to the Juvenile Act.
3. If, upon examination of the accused, the responding officer determines that a voluntary or involuntary commitment to a mental health facility is required, the officer should restrain the accused and contact a MH/MR delegate. The officer should not allow the possibility of mental illness to preclude a valid criminal arrest.
4. Domestic disturbances involving prominent citizens, public officials, or police officers may present particular difficulties for the responding officer. In such circumstances, the responding officer should request that an appropriately senior officer come to the scene. The responding officer should take whatever action is necessary to protect the victim and detain the assailant, while awaiting the arrival of the senior officer. When there is probable cause to believe that the accused has committed a crime, the procedure followed upon arrival of the senior officer should be the same as it would be in any other domestic incident.

H. Procedure When Arrest Is Not Authorized or, if Authorized, Is Not Made

1. If an arrest is not authorized because the abusive act is a summary offense, the responding officer should issue a citation.
2. If arrest is not authorized because of the absence of probable cause to believe that a crime was committed, or if arrest is authorized but not made (for reasons to be detailed in the incident report), the officer should:
 - (a) Explain to the victim the reasons that arrest is not being made;
 - (b) Advise the victim of procedures for filing a private criminal complaint; and
 - (c) Encourage the victim to contact the domestic violence program identified in the notice required by 18 Pa. C.S. §2711 (see paragraph I.2. of this protocol) for information regarding counseling and other services available to victims of domestic violence.
3. The officer should not become involved in the disposition of personal property, ownership of which is in dispute. In the absence of a warrant or probable cause to believe a crime has occurred, the officer should remain neutral and be concerned primarily with maintaining the peace and safety of those present.

I. Other On-Scene Assistance to Victims and Dependents

1. Whether or not an arrest is made, the responding officer should not leave the scene of the incident until the situation is under control and the likelihood of further violence has been eliminated. The officer should stand by while victims gather necessities for short-term absences from home, such as clothing, medication, and necessary documents.
2. Whether or not an arrest is made, the responding officer is required by 18 Pa. C.S. §2711 to notify the victim orally or in writing of the availability of a shelter, including its telephone number, or other services in the community. The notice must include the following statement:

If you are a victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from abuse pursuant to the Act of October 7, 1976 (P.L. 1090, No. 218), known as the Protection From Abuse Act, which could include the following:

 - (1) An order restraining the abuser from further acts of abuse.
 - (2) An order directing the abuser to leave your household.
 - (3) An order preventing the abuser from entering your residence, school, business or place of employment.
 - (4) An order awarding you or the other parent temporary custody of or temporary visitation with your child or children.
 - (5) An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.
3. If an arrest is made or an arrest warrant obtained, the officer should:
 - (a) Advise the victim that the officer will give the victim's name, address, and telephone number to the domestic violence program and proceed to do so before the officer's shift has ended;
 - (b) Advise the victim that a domestic violence counselor will be asked to contact the victim to offer assistance and referrals to other available services (such as counseling, legal aid, etc.);
 - (c) Advise the victim of what procedure will happen next, including the probability that the accused will be in custody for only a short period of time;
 - (d) Obtain the address and telephone number where the victim can be contacted if the victim decides to leave the residence (being careful that the accused cannot overhear);
 - (e) Obtain from the victim information to be included in the arrest report indicating any special conditions of bail that should be requested at the preliminary arraignment; and
 - (f) Provide the victim with the police incident number (if available), the officer's name and badge number, and a follow-up telephone number.
4. If the victim does not speak English, the officer should arrange for translation of the foregoing notices and advice.

5. In circumstances in which it is necessary for the victim temporarily to leave the residence, the officer should offer the victim assistance in locating lodging with family, friends, in public accommodations, or at a domestic violence shelter.

6. The officer, upon request of the victim, should provide or help arrange transportation to emergency housing or to a medical facility.

7. Elder victims and dependents.

(a) When a victim of domestic violence is elderly (60 or over), the accused is the sole caretaker, and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of a physically dependent elder and the victim can no longer provide care (as, for example, when the victim is hospitalized), the responding officer should determine whether the elder is physically endangered, either as a result of the abuse, a pre-existing medical condition, or the removal of a caretaker. If the elder is physically endangered and mentally alert, the officer should ask the elder for the name of a relative or friend 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 a local agency on aging. The officer should remain at the residence until the protective services worker arrives or should transport the elder to a medical facility or other appropriate place where the elder can wait for the worker.

(c) In addition to providing the notification required by other provisions of this protocol, the officer should advise the elder of the availability of protective services through the local area agency on aging.

8. Child victims and dependents.

(a) When the victim of abuse is a minor child, the officer should arrest the assailant upon probable cause to believe that a crime has been committed and should make a report to child protective services, as required by the Child Protective Services Law. If the child is physically injured, the officer should escort the child to the nearest hospital for treatment. The officer should provide victim notification, as described in this protocol, to an adult caretaker of the child who is not the perpetrator of abuse.

(b) If the accused is arrested and was the sole caretaker of a child, and/or if the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized), the officer should determine whether there is a responsible relative who can care for the child and, if so, should contact that relative and await the relative's arrival. If no responsible relative is available, the officer should contact child protective services and remain at the residence until a protective services worker arrives or should take the child into custody pursuant to the Juvenile Act and/or the Child Protective Services Law.

J. Processing the Accused

1. A person arrested without a warrant for a domestic violence misdemeanor pursuant to 18 Pa. C.S. §2711 should be charged with any other crimes properly charged as a result of the incident. Likewise, a person arrested for violation of a protection from abuse order should be charged with any crimes properly charged as a result of the incident in which the violation occurred.

2. When arrest is made pursuant to 18 Pa. C.S. §2711 or for violation of a protection from abuse order, the accused should be taken before a district justice for preliminary arraignment without unnecessary delay. Under no circumstances should the arresting officer release the defendant before the preliminary arraignment.

3. The officer responsible for presenting the accused for preliminary arraignment should bring to the attention of the district attorney or the court any circumstances noted in the arrest report or known to the officer that argue for special conditions of bail authorized by 18 Pa. C.S. §2711 and Pa. R. Crim. P. 4013. Such conditions may include, but are not limited to: enjoining the defendant from abusing, harassing, or intimidating the victim; excluding the defendant from the home, school, and/or workplace of the victim; enjoining the defendant from contacting the victim in person or by telephone; and restraining the defendant from contact that will prevent the victim from performing the victim's normal daily activities.

4. All reports and other documents generated in the case should be marked "domestic incident" as an aid to processing the accused and to the identification of such cases.

K. Encouraging Follow-Through by Victims

1. The chief of police (in the jurisdiction in which the incident occurred) should designate a person to notify the victim of any conditions of bail imposed and to advise the victim of the right to request revocation of bail from the district attorney's office if the conditions are violated.
2. To the extent possible, the chief also should designate a person to make contact with victims of domestic incidents for the purpose of follow-up. The contact should be made within 30 days following the incident to determine whether subsequent violence or intimidation have occurred. If such acts have occurred, a designated officer should investigate the incident, proceeding in accordance with the provisions of this protocol.

L. Written Report and Data Collection

1. A written report clearly identified as a domestic incident report must be completed by the officer responding to any call covered by this protocol. The report should include the following information:
 - (a) Names, addresses, and phone numbers of the victim, the accused, any witnesses, and the caller.
 - (b) A second permanent address and telephone number for the victim (such as a close family member or a friend).
 - (c) A statement of the relationship between the victim and the accused.
 - (d) A narrative for the incident (including the date, time, and whether the accused appeared intoxicated or under the influence of a controlled substance).
 - (e) What, if any, weapons were used or threatened to be used.
 - (f) A description of any injuries observed by the officer.
 - (g) A description of any injuries described by the victim but not observed by the officer and an indication that the injury was not observed.
 - (h) Documentation of any evidence that would tend to establish that a crime was committed.
 - (i) An indication of what arrest decision was made: a warrantless arrest; an arrest with a warrant; or no arrest.
 - (j) Whether the accused actually was arrested or whether there is an outstanding arrest warrant.
 - (k) The crimes with which the accused was charged.
 - (l) If the accused was arrested and arraigned, whether bail was set and any conditions of bail imposed.
 - (m) If the officer did not arrest or seek an arrest warrant even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest.
 - (n) The names and ages of any children present in the household; their address and phone number if children were relocated.
 - (o) Notation of previous incidents of which the officer is personally aware.
 - (p) Notation of previous incidents reported by the victim or witnesses.
 - (q) If an officer was injured in the incident, the nature and circumstances of the injury.
2. Data collection.
 - (a) All written reports on the same person should be kept together or cross-referenced so that repeat domestic violence can be monitored.
 - (b) The written report, or another document (such as an index card) or computer entry generated from the written report, should become a domestic violence tracking report.
 - (c) To the extent possible, the domestic violence tracking report should be accessible to dispatchers and police officers.

REFERENCES

1. Law Enforcement Training Project, Victim Services Agency, **A State-By-State Guide to Legislation on the Law Enforcement Response to Family Violence 6** (DRAFT, April 1988), at 7-8 and National Chart.
2. See, e.g., **The Denver Domestic Violence Manual, Denver Police Dept. Procedures and Guidelines** (Dec. 16, 1986); Domestic Abuse Intervention Project of Duluth, Minnesota, **The Justice System's Response to Domestic Assault Cases: A Guide for Policy Development**, 48-57 (1985); P.R.I.D.E. Program, Newport News Police Dep't, **Program Summary and Evaluative Statistics 2** (Concept Paper).
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