

Policy #3

Subject: Domestic Violence

Effective Date: December 2000

Reference: Standard Operating Procedures

Distribution: All Personnel

STATEMENT:

The department assigns domestic violence calls a high priority response. We shall exercise leadership in the community in addressing domestic violence issues. An immediate response can make a major difference in the lives of the persons involved. Officers responding to a domestic violence call shall use all means within reason to protect the parties and prevent further abuse. Including confiscating all firearms and ammunition in the possession or control of the perpetrator.

I. PURPOSE

To establish guidelines, responsibilities, and procedures for domestic violence and stalking intervention.

II. POLICY

A. The Department assigns domestic violence and stalking calls a high priority response.

B. We shall exercise leadership in the community in addressing the domestic violence problem.

C. An immediate police response can make a major difference in the lives of the persons involved.

D. Officers responding to a domestic violence call shall use all means within reason to protect the parties and prevent further abuse.

III. PROCEDURES

A. When responding to a domestic violence or stalking call, officers should be alert and anticipate the unexpected.

1. These arguments are characterized by anger, frustration, and pent-up emotion and responding officers can suddenly become the focus of hostility by any or all of the parties.

2. Arrests are required whenever probable cause exists, unless the officer can document in a report a substantial reason for not making an arrest. Arrests are mandated whenever a protective order has been violated.

B. There are many reasons why victims are reluctant to press criminal charges against abusers, including fear of reprisal against the victim or others, fear of economic hardship, and fear of public embarrassment.

C. Department personnel shall refer victims of domestic violence or stalking, when such referrals might help prevent future disturbances or provide needed support to victims, to appropriate community resources such as:

1. Shelters,
2. Medical facilities,
3. Legal assistance programs,
4. Victim/witness programs,
5. Mental health agencies,
6. The Attorney General's program that allows them to move and establish a confidential address (RSA 7:41), or
7. Family financial planning agencies.

IV. DEFINITIONS:

A. **Abuse:** The commission or **attempted commission** of one or more of the following acts between family or household members, or current, or former sexual or intimate partners, where such conduct constitutes a credible threat to the plaintiff's safety.

1. Assault or reckless conduct;
2. Criminal Threatening;
3. Interference with freedom, specifically kidnapping, criminal restraint, false imprisonment or stalking;
4. Destruction of property, specifically arson or criminal mischief;
5. Unauthorized entry, specifically burglary or criminal trespass; and
6. Harassment as defined in 644:4

B. **Contact:** any action to communicate with another person either directly or indirectly, including but not limited to using any form of electronic communication, leaving items, or causing another to communicate in such fashion.

C. **Course of Conduct:** two or more acts over a period of time, however short, which evidences a continuity of purpose (but not any constitutionally protected activity or conduct necessary to accomplish a legitimate purpose independent of making contact with targeted person), including but not limited to.

D. **Cross-Orders for Relief:** Separate court orders granted to parties in a domestic violence situation where each has filed a petition on allegations arising from the same incident or incidents. New Hampshire courts only issue cross-orders under **extraordinary circumstances**, but we do recognize issued cross-orders from other jurisdictions.

E. **Deadly Weapon:** Deadly weapon as defined in RSA 625:11(V), including any firearm or other object designed or intended to be used, or in the manner in which it is used, is capable of causing death or serious bodily injury.

F. **Domestic Violence:** Abuse as defined in paragraph A above.

G. **Family or Household Member:** Spouses, ex-spouses, persons cohabiting with one another, persons who cohabited with one another, but who no longer

share the same residence, or parents, and others related by consanguinity (blood) or affinity other than minor children residing with the defendant.

H. **Firearm**: Any weapon, including a starter gun, which will, or is designed to, or may readily be converted to, expel a projectile by force of gunpowder.

I. **Foreign Protective Order**: An order enforceable, although issued by an out-of-state court.

J. **Harassment**: Telephone calls made, whether or not a conversation ensues, with a purpose to annoy or alarm; repeated communications at extremely inconvenient hours, or in offensively coarse language with a purpose to annoy or alarm; insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; communicating in any matter of character tending to incite murder, assault or arson; with a purpose to annoy or alarm, communicate any threat to kidnap any person, or to commit sexual assault, or a threat to the life of another; with the purpose to annoy or alarm, after having been previously notified that the recipient does not desire further communication, communicate with such person, when the communication is not for lawful purpose or constitutionally protected.

K. **Harassment** – Includes:

1. Making telephone calls, whether or not a conversation ensues, with a purpose to annoy or alarm another,
2. Making repeated communications at extremely inconvenient hours or in offensively coarse language with a purpose to annoy or alarm another.
3. Insults, taunts, or challenges to another in a manner likely to provoke a violent or disorderly response,
4. Knowingly communicating any matter of character tending to incite murder, assault, or arson, with the purpose to annoy or alarm another,
5. Communicating any threat to kidnap any person or commit sexual assault, or a threat to the life of another, or with the purpose to annoy or alarm another,
6. Having been previously notified that the recipient does not desire further communication, communicating with such person, when the communication is not for a lawful purpose or constitutionally protected.

L. **Intimate Partners**: persons currently or formerly involved in a romantic relationship, whether or not the relationship was ever sexually consummated.

M. **Mutual Order of Relief**: an order restraining both parties from abusing the other, originating from a petition filed by one of the parties.

N. **Stalking**:

1. Purposely, knowingly or recklessly engaging in a course of conduct as prohibited by RSA 633:3-a, I, targeted at a specific person which would cause a reasonable person to fear for their personal safety or that of a member of his/her immediate family and the person is actually placed in such fear, or

2. Purposely or knowingly engaging in a course of conduct targeted at a specific individual that he/she knows will place that individual in fear for his/her personal safety or that of an immediate family member, or

3. After being served with a domestic violence, divorce, or stalking protective order or bail order that prohibits contact with a specific person purposely, knowingly or recklessly engaging in a single act of conduct that violates the order.

O. **Officer Response**

1. Officer response should be immediate but with due regard for the safety of other road users.

a) Officers should obtain all available information from the dispatcher while en route.

2. Unless approaching with lights and siren is likely to terminate an ongoing assault, the cruiser should be slowed to normal speeds and warning devices turned off before coming within sight and sound of the scene.

a) The cruisers should be parked a short distance away and exited quietly, utilizing any available cover.

b) An emotionally out-of-control assailant may attempt to ambush arriving officers.

3. A lone officer should await backup before entering unless the officer believes doing so is necessary to save someone's life.

- a) When backup arrives, quickly determine an entry strategy, watch and listen on the outside to determine what is going on.
- b) Use proper officer safety tactics to gain entry, considering the situation, layout of the premises, number of persons involved, known presence of weapons, etc.
- c) Officers must be concerned for their own safety as well as that of others, and should stand to the side of the door when knocking and announcing their presence.

4. Unless the officers believe they would be in danger by doing so, they should knock, identify themselves, and request to be admitted to the house or apartment.

- a) If entry is refused, explain that you have a duty to determine that nobody inside is injured.
- b) Ask to see the complainant.
- c) Refusal of entry or no response to a knock may require a forced entry to check the safety of persons inside.
- d) Officers may make a warrantless entry to conduct a search if they reasonably believe a true emergency exists, i.e., that someone is in distress and needs police assistance.
- e) In deciding whether to force an entry, officers should evaluate:
 - (1) The degree of urgency and likely time to obtain a search warrant;
 - (2) The possibility of danger to others including any officers left to guard the site;
 - (3) Whether the suspected offense threatens life or limb or involves violence; and
 - (4) Whether there is reason to believe someone at the address may be armed.

f) Officers have a lawful right to investigate any situation they reasonably believe to be an emergency.

5. After entering premises:

a) Officers should give their name and department affiliation and ask to see the caller and determine that person's relationship to the suspect.

b) Officers are not limited to the room they have entered if they feel there may be someone elsewhere in the dwelling who might pose a danger to the officers.

c) Such a search of the premises must be limited to a search for suspects who could pose a threat to the officers.

Otherwise, officers cannot conduct a search of the premises without a warrant, probable cause, or the consent of an owner or co-occupant, freely and voluntarily given.

d) If two people have joint ownership or tenancy or are cohabiting, either may give a valid consent as to any areas of the premises they share in common.

e) If one party exercises sole control over part of the premises, the other cannot give valid consent to search that part.

6. Immediate Intervention:

a) Once inside, officers should establish control by preventing any further abuse, inquiring about the nature of the dispute, identifying the individuals involved, being aware of potential weapons in surroundings, determining who else is in the dwelling and their location and extent of injuries and involvement, not allowing third parties to intervene unless they can positively contribute toward solving the dispute, and arranging for any medical assistance needed.

b) If parties refuse medical assistance, this fact should be documented along with the extent of any observed injuries.

7. When alcohol, drugs, or mental illness are a factor, great patience is required in handling these people and departmental procedures for intervening with mentally ill or intoxicated persons should be followed.

8. Criminality of the offense: Domestic Violence and stalking are crimes, and should be treated as such.

Sufficient evidence including physical evidence should be obtained and documented. A prosecution may be possible even if the victim is reluctant to testify.

9. Existence of protective orders: Officers should determine if a protective order (including a foreign protective order, stalking order, child protective order, protective portion of a bail order or divorce order) is in effect, and its terms.

a) Ask to see a copy of it if available. If no copy is available, contact the dispatcher to determine if one is in effect or on file at the Department of Safety, and if a copy was served on the defendant.

b) You may also rely on the statement of the protected person that such an order is in effect.

c) If no other information is available, ask the abusive party if they are aware of the order and that they are violating it.

If the person is not in custody at the time of the admission, *Miranda* is not required.

d) A temporary reconciliation of the couple, where the protectee allowed the abuser to enter the residence, does not void the order.

Police officers are unequivocally directed to enforce protective orders as written, and no action by either party relieves you of the duty to enforce the order.

10. Once officers have determined the facts, they should decide whether there is probable cause to make an arrest.

a) RSA 173-B:8 provides that irrespective of whether the abused person wishes to press charges, *WHEN A DEFENDANT VIOLATES A DOMESTIC VIOLENCE OR CHILD PROTECTION PROTECTIVE*

ORDER, THE OFFICERS SHALL ARREST THE DEFENDANT AND ENSURE THAT S/HE IS DETAINED UNTIL ARRAIGNMENT.

b) Such arrest can be made within 12 hours without a warrant upon probable cause, regardless of whether or not the offense occurred in the presence of the officers.

c) In addition, even if no protective order was in effect, unless there are compelling reasons not to do so, officers in domestic violence cases shall make an arrest without a warrant if there is probable cause to believe that the defendant committed abuse.

This arrest must be made within 12 hours or a warrant will be necessary.

d) The following reasons *should not be considered compelling reasons not to make an arrest*, when officers are determining probable cause:

(1) Whether the parties are married or living together,

(2) Whether the complainant has sought or obtained a protective order,

(3) Their own preference to reconcile the parties,

(4) The complainant's insistence that an arrest be made or not be made,

(5) That previous criminal complaints have been withdrawn or not pursued by the abused person,

(6) Whether or not divorce proceedings have begun,

(7) Job circumstances.

(8) Social situation.

(9) Alcohol or drug abuse by either party,

(10) Family disruption,

(11) Perceived reconciliation,

(12) Adultery or infidelity,

(13) Loss of custody, sex or service

e) If the persons have committed or are committing mutual abuse against each other, officers need not arrest both persons, but should arrest the person believed to be the *primary physical aggressor*.

This determination should be made by considering the relative degree of injury or fear inflicted on the persons involved, and any history of domestic violence between these persons that can reasonably be obtained.

f) If an arrest is not made in any case where probable cause exists, the officers shall file a written report with the (Colonel/Chief/Deputy Chief) detailing their reasons for not making the arrest.

g) If an arrest is made, once the suspect is in custody and the emergency has abated, officers should take the following steps, as they would in any other criminal case:

(1) Make arrangements for any care of minor children at the scene,

(2) Photograph injuries and property damage,

(3) Take custody of torn clothing or other evidence of a crime

P. Subsequent to an arrest, the officers shall seize:

1. Any firearms and ammunition in the control, ownership, or possession of the defendant, or being held for the defendant by any other person, and
2. Any deadly weapons that have been used, or were threatened to be used, during the violation of a domestic violence, stalking, child protection, or bail protective order.

a) Note the use of the phrase "may have been" used or threatened to be used in the violation of a protective order. "May have been" gives probable cause if a certain type of assault was threatened, several weapons are at the scene, and a particular one cannot be identified, to seize all the weapons.

b) In addition, the statute as of January 1, 2001 provides that officers having probable cause to believe that any person has been abused, *SHOULD CONFISCATE ANY DEADLY WEAPONS INVOLVED IN THE ALLEGED ABUSE AND ANY FIREARMS AND AMMUNITION IN THE DEFENDANT'S CONTROL, OWNERSHIP, OR POSSESSION*, even though no protective order was violated (RSA 173-B:10,1 (a)).

c) If weapons are seized, advise the defendant that it is also a federal offense to be in possession of a firearm while a qualifying restraining order is in effect.

(1)Note that local and state officers cannot enforce federal laws, however.

d) The weapons shall be placed in the evidence storage area and custody maintained by the Department until the court issues an order for their return or disposal, specifying the person to whom they are to be relinquished.

Q. If there are no exigent circumstances permitting a search and you do not have a search warrant or consent to search, you may only seize weapons that are in plain view.

1. If you have reason to believe that all such weapons have not been surrendered, and are kept at a particular location, you should apply for a search warrant.
2. If an officer is legally on the premises at the time, an officer may remain there while the warrant is being sought, to prevent removal of the weapons.

R. Violation of a domestic violence or child protection protective order is a *Class A misdemeanor and shall not be reduced to a lesser charge.*

1. A person who has been convicted in this or another jurisdiction of violating a domestic violence or child protection protective order *within the past 6 years of such conviction or the imposition of any sentence as the result of such conviction, who subsequently violates a protective order may be charged with an enhanced penalty.*

2. Thus, a Class A misdemeanor becomes a Class B felony, etc.

S. Remaining at the Scene

If no crime has been committed or there is no probable cause to make an arrest, officers should try to mediate the dispute, refer the parties to a counseling service, or suggest a temporary separation or cooling-off period.

1. Officers shall remain at the scene until they reasonably believe there is no immediate threat of physical harm, and that all appropriate measures have been taken to protect the persons present.
2. Officers may remain for the protection of one or more individuals as long as they desire protection, or long enough to make an arrest.
3. You may not remain at the scene without permission after the emergency has ended and persons no longer desire your protection.

Further investigation at the scene will require a consent to search or a search warrant.

V. TELEPHONIC ORDERS OF PROTECTION

- A. If any person has been threatened with harm and there is sufficient probable cause for an arrest, or the perpetrator has left the scene and no protective order is in effect, the officer may seek a domestic violence protective order over the telephone under RSA 173-B:6, if exigent circumstances warrant it.
- B. This process should not be used as a substitute for an arrest, or for asking the court or bail commissioner to hold the defendant without bail until arraignment and should ordinarily be used only during the hours when the court is not session.
- C. A justice, special or associate justice of a district or municipal court can issue a telephonic order to an officer who has taken a statement from the victim and any witnesses, and determined that the facts warrant such an order.
- D. The officer should use court form AOC-253045, "Emergency Order of Protection and Affidavit or Service" and have the complainant complete and sign the allegation of abuse on the form, being as specific as possible regarding dates, times, and events.
- E. Contact the justice, identify yourself and relay the information that justifies the order.

1. If possible, hold the conversation on a taped line. Otherwise, ask the judge to make a record of the conversation.
2. Have the form in front of you and read the allegation.
3. If possible, make the call in the presence of the victim and allow the judge to speak with the victim if the judge requests it.

The standard for issuance of a protective order is a showing of immediate and present danger of abuse.

4. Sign the form in the appropriate place, checking the blocks on the form that the judge indicates.

a) Give the complainant the copy, and explain that it remains in effect *only until the close of the next court business day.*

F. A victim who is a minor does not require parental permission to seek a protective order.

G. Serve the order on the abuser or have it served, and file the Return of Service at the *court of jurisdiction of the residence of the complainant* at the opening of the next business day, or have someone else deliver it for you. If delay is contemplated, fax it to the court.

1. If the suspect has fled the scene and must be arrested at a third party's residence, both an arrest warrant and a search warrant, or an arrest warrant and the homeowner's consent are required, unless the offense was a felony or Class A misdemeanor and exigent circumstances exist so that there is no time to get a warrant.

2. If an arrest is mandated or advisable and the suspect is not present, remove any persons eligible for protection to the police station, obtain their sworn statements and seek an arrest warrant.

Keep the persons at the station or remove them to a safe location until the arrest has been made.

H. Never delay unnecessarily the service of an arrest warrant or protective order, or the obtaining of a warrant if required.

1. If unable to locate the defendant and make an arrest during your shift, be sure that whoever relieves you is informed of the need to serve the order or warrant.

2. If the defendant is arrested while riding in a motor vehicle, weapons may be seized if there are exigent circumstances to search the vehicle, or another exception to the warrant requirement is present.

VI. OBLIGATION TO ABUSED PARTY

A. Officers at the scene of domestic calls where abuse has occurred shall use all means within reason to prevent further abuse, including:

1. Confiscating any deadly weapons involved in the abuse and any firearms or ammunition in the defendant's control, ownership, or possession,
2. transporting or obtaining transportation for the victim and any child to a designated place to meet with a counselor, local family member or friend,
3. assisting the victim in removing personal hygiene items, clothing, medication, business equipment and any other items ordered by the court.

B. The victim must be given immediate and written notice of the rights of victims and remedies or services available, using the statement contained in Attachment A to this policy.

C. Any act or omission of a peace officer rendering emergency care or assistance to a victim of domestic violence including but not limited to transportation, shall not impose civil liability upon the officer if rendered in good faith and not the result of gross negligence or willful misconduct.

D. Officers are cautioned that developing any sort of romantic or dating relationship with the victim of domestic violence or stalking that was investigated by the officer will be perceived as taking advantage of the vulnerability of the victim of domestic violence, and as such is a clear conflict of interest and will be subject to departmental discipline.

VII. TRANSPORTING VICTIMS

A. Officers should offer to arrange transportation for victims to the hospital, police station, or other place of safety.

If the victim appears injured, offer to arrange transportation to a medical facility for examination in conformity with the Attorney General's protocols for medical examination of victims of domestic abuse.

B. If one of the parties must leave, it is advisable for the abused party or any minor children present to leave.

1. Emergency shelter is available for victims of abuse.
2. Officer should know the location of the shelter but NEVER give out the location or phone number to any person not authorized to receive it, especially the abuser.

C. Victims may be transported in the cruiser, in which case you shall transmit in your mileage and time upon departure and arrival, to be recorded by the dispatcher.

1. Once the victim is delivered to the location, the officer shall ensure that they have not been followed, and escort the victim inside, ensuring that persons inside are notified of their arrival.
2. If children under the age to require child safety seats are involved, it possible, have an officer stand by until a child seat can be located and brought to the scene.
3. If the victim wants to leave on his/her own, you should stand by at the scene while they pack any essentials, however, you have no authority to decide ownership of property or custody of children.

VIII. SERVICE OF PROTECTIVE ORDERS

A. If directed by the court or the Department to serve a protective order, and refused permission to enter the defendant's residence to serve it, you may make abode service by dropping it on the floor inside the open door or sliding it under the door or leaving it on a porch, or contact the court for permission to enter to serve the order.

Be certain to check any order to see if it calls for the seizure of weapons.

B. If the order calls for the seizure of weapons and the defendant refuses, unless the order specifically authorizes a warrantless search you may have to seek a search warrant, in which case you should do so without delay.

An order may call for the seizure of any weapons in the custody of the defendant, and/or being held by any other person on behalf of the defendant.

C. If you seize weapons, record the descriptions and serial numbers and give the defendant a receipt, keeping a copy to turn in with your report.

Tell the defendant the weapons cannot be returned without a written order from the court.

D. Ask the dispatcher to notify the protectee, the court, and the State Police of the date and time a protective order was served.

E. NOTE: AS OF JANUARY 1, 2001, IF WEAPONS WERE USED OR THREATENED TO BE USED IN THE COMMISSION OF ABUSE AS DEFINED IN THE DOMESTIC VIOLENCE LAW, THE STATUTE ALSO REQUIRES SEIZURE OF THE WEAPONS EVEN IF NO PROTECTIVE ORDER WAS IN EFFECT.

IX. CIVIL STANDBYS

A. Officers when requested shall accompany the subject of a protective order to the premises and curtilage where the person was residing, after reasonable notice to the abused party.

If the abused party then gives consent, or the court has so ordered, the defendant may enter with the officer for the sole purpose of retrieving toiletries, medication, clothing, business equipment, and any other items determined by the court.

B. When available, it is advisable to have more than one officer present for a civil standby.

If only one officer responds, that officer should take his/her portable radio along, and not hesitate to call for backup if the situation becomes tense.

C. When performing such a civil standby, the officer shall keep the defendant within view at all times, keep the peace, and check bureau drawers, closets and clothing as necessary before allowing the defendant access to them, to determine that no weapons are present.

D. If the defendant starts to make threats or get out of control, s/he shall be warned and if the behavior continues, arrested for obstructing government administration (RSA 642:1) or another appropriate charge, and removed from the premises.

E. In the event of a medical emergency or similar situation, the plaintiff or family of a protectee under a protective order may request an officer to notify the defendant and accompany the defendant to a designated location such as a hospital, so as not to violate the terms of a no-contact order.

X. STORAGE AND RETURN OF WEAPONS SEIZED

A. Instead of storing weapons at the police station, the court may issue an order allowing the defendant to make alternative arrangements with a federally-licensed firearms dealer for storage of firearms at the defendant's own expense.

In such case, the weapons shall be turned over to the Police Department for transfer to the storing party.

B. In any case, the Police Department shall not be liable for damage or deterioration due to the transportation or storage of any such weapons as long as due care was used.

C. The Police Department shall not release weapons or ammunition seized in a domestic violence situation without a court order, and may charge a reasonable fee for storage of firearms and ammunition, not to exceed the total cost incurred by the Department for the storage.

D. No sooner than 15 days before the expiration of a protective order, a defendant may petition the court for the return of any and all firearms, ammunition, and other deadly weapons held by the Police Department while the protective order was in effect.

The court must notify the plaintiff and the Police Department, and either party may appear at a hearing and object to the return of the weapons and ammunition, if:

1. There is any federal or state law (federal domestic violence law, or the defendant is a felon and not authorized to possess firearms, etc.) which prohibits possession of firearms by the defendant, or
2. The defendant continues to represent a credible threat to the safety of the protected person.

XI. POLICE OFFICERS AS ABUSERS

A. In the event that a police officer is the subject of an abuse complaint or the service of a protective order, an arrest shall be made or an order served on any police officer, including one superior to you in rank, without delay, in the same manner that it would be served on any other person.

B. If an officer from this or any other department is arrested or served with a protective order, the Chief or Deputy Chief shall be notified at once and if the officer is from another department, you shall notify the Chief or Deputy Chief so that the outside agency can be advised of the situation.

IF AN ARREST IS MADE OF A POLICE OFFICER, IT SHALL BE REPORTED TO THE POLICE STANDARDS & TRAINING COUNCIL ON THE FORM G THAT IS MANDATED BY THEIR RULES.

C. Officers served with a protective order or arrested for domestic violence or stalking, shall be immediately placed on administrative leave by the Chief or Deputy Chief.

1. The defendant officer shall surrender all police equipment and identification pending an internal affairs investigation.

2. If after such investigation it appears the officer committed no crime and poses no harm to the victim or others, the officer may be restored to duty pending the outcome of the criminal case, only to the extent allowable under state and federal laws, or at the option of the Chief or Deputy Chief, given a light duty assignment at the station that does not require the carrying of a weapon.

Otherwise, the officer shall remain on leave unless there is just cause to dismiss him/her from the force.

3. If the officer is subsequently found guilty of a crime, appropriate disciplinary action shall be taken as in the case of conviction of any other criminal offense.

D. If an officer of this Department is served with a protective order that does not call for the seizure of weapons, the officer shall nevertheless surrender his/her service weapons.

1. It is a federal offense for any person, including a police officer, to possess a firearm during the pendency of any qualifying restraining order.

For Police officers, they can only possess, on- or off-duty, a firearm or ammunition for use in performing official duties on behalf of the Department.

2. The Chief or Deputy Chief following an internal investigation and only after consultation with the judge who issued the protective order and the Resident Agent of the federal Bureau of Alcohol, Tobacco and Firearms to determine any recent changes to this law may, if s/he feels it appropriate to do so, allow the re-issuance of the firearm either on or off duty, or restricted to duty hours, if satisfied that it is lawful to do so.