

*Maryland-National Capital Park Police  
Prince George's County Division*

**DIVISION DIRECTIVE**

TITLE <b>DOMESTIC VIOLENCE INCIDENTS</b>		PROCEDURE NUMBER <b>PG458.0</b>	
SECTION <b>Operational Procedures</b>	DISTRIBUTION <b>A</b>	EFFECTIVE DATE <b>02/01/05</b>	REVIEW DATE <b>02/01/</b>
REPLACES <b>D.D. 458.0 – “Domestic Violence Incidents”, issued 02/15/02</b>			
RELATED DIRECTIVES <b>PG436.0</b>	REFERENCES <b>CALEA 55</b>	AUTHORITY <b>Commander Larry M. Brownlee, Sr.- Division Chief</b>	

**I. PURPOSE**

This directive provides guidance to officers when handling domestic violence incidents. It covers the Domestic Violence Act of 1994 (hereinafter DVA) as amended through October 1995.

**II. POLICY**

Physical assault as the result of domestic violence will be treated as a criminal violation by this Division. Officers shall make a physical arrest whenever probable cause exists to believe a person has been assaulted in a domestic situation and the other arrest criteria are present (see Section III. A. below).

**III. DEFINITIONS**

**A. Victim**

In this directive, victim of domestic violence means an individual who has received deliberate, severe, and demonstrable physical injury, or is in fear of imminent deliberate, severe, and demonstrable physical injury from a current or former spouse, or a current or former co-habitant (a person who has had a sexual relationship with the respondent and resided with the respondent in the home for a period of at least 90 days within one year before the filing of the petition).

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#### B. Abuse

Abuse means any of the following acts: an act that causes serious bodily harm; an act that places a person eligible for relief in fear of imminent serious bodily harm; battery or assault and battery; rape, attempted rape or sexual offense; false imprisonment; if the person for whom relief is sought is a child, abuse may also include abuse of a child. Nothing in this definition shall be construed to prohibit reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child, from being performed by a parent or stepparent of the child. If the person for whom relief is sought is a vulnerable adult, abuse may also include abuse of a vulnerable adult.

#### IV. DOMESTIC DISPUTES PRIOR TO COURT INTERVENTION

Domestic disputes can be both criminal and civil and the courts have specific procedures and designated personnel to resolve these issues. When officers respond to domestic disputes, their primary concern will be to resolve the incident without violence. This type of call is frequently dangerous for the police and should be handled by utilizing one or more of the following responses:

##### A. Arrest Criteria

1. Pursuant to Criminal Procedure Article 2-204 of the Maryland Code, a police officer **may** arrest a person **without a warrant** when the officer has probable cause to believe:
  - a. The person battered his or her spouse, co-habitant, or another person with whom the person resides.
  - b. There is evidence of physical injury. The amended law defines a victim of domestic violence as an individual who "has received deliberate, severe, and demonstrable physical injury, or is in fear of imminent deliberate, severe, and demonstrable physical injury from a current or former spouse, or a current or former co-habitant," as defined in Section 4-501 of the Family Law Article, §4-513.
  - c. That unless the person is immediately arrested, he/she may not be apprehended, may cause personal injury or property damage, or may tamper with, dispose of, or destroy evidence.
  - d. **A report to the police was made within 48 hours of the alleged incident.**
2. Although the state law gives the respective officer discretionary powers to arrest or not arrest under these criteria, **our Division policy is that when these criteria are met we will arrest the offender.**

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- B. Officers responding to a domestic abuse complaint will provide a Victim/Witness Assistance Information form to the victim. In cases of alleged domestic violence where no arrest is made, all parties involved **will** be advised of the following:
1. Under the current law, filing fees once required of the victim for obtaining ex parte orders and subpoenas are eliminated.
  2. An individual may respond to a Commissioner to apply for a charging document; the Commissioner will determine whether a warrant or summons will be issued.
  3. If the Commissioner does not issue a charging document, the victim may elect to request the issuance of a charging document through the State's Attorney's Office.
  4. The victim will be given the Incident Report Number (IRN) or CCN of the report. The victim may, at a later date, obtain a copy of the incident report from the Records Section for a fee of \$5.00.
  5. The individual may seek a Court Order for Protection from Abuse; information can be obtained by contacting the District Court at (301) 952-4080. The petitions can be filed between 0830 - 1600 hours, Monday through Friday.
  6. To obtain shelter, counseling, and legal advice, the individual may contact the "Domestic Violence Services", Family Crisis Center at (301) 779-2100 or House of Ruth- Domestic Violence Legal Clinic at (301) 699-7790 or Maryland Network Against Domestic Violence at 1-800-MDHELPS.
  7. Non-violent domestic disputes are primarily civil matters and the courts have specific proceedings and personnel to resolve them.

## **V. COURT ORDER FOR PROTECTION FROM DOMESTIC VIOLENCE (EX PARTE ORDERS AND PROTECTIVE ORDERS)**

### **A. Sheriff's Responsibilities**

The sheriff's department is the primary agency for the service of ex parte and protective orders and maintains these records.

### **B. Police Officer's Responsibilities**

Although the Sheriff's Department bears the primary responsibility for the service of said orders, the sometimes volatile nature of domestic disputes will frequently require police officers to both serve and enforce these orders. The following procedures will be followed in cases where Sheriff's Department personnel are

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unavailable or it would otherwise be impractical or unsafe for the petitioner to wait for their arrival.

No arrest power is inherent in the Court Order for Protection from Domestic Violence; **however, failure to comply with certain provisions as outlined in the Family Law Article, Section 4-505 and 4-506, are misdemeanors** and carry possible fines and prison sentences as outlined in Section 4-509 (penalties).

1. If officers arrive at the scene of a domestic disturbance call and it is learned that a petition has been filed but the order has not yet been served, officers **will** serve the petitioner's copy by personally delivering the order to the respondent (accused) if the respondent is present. A call to the Sheriff's Department will be made to confirm whether the order has already been served or not. If an officer serves the order, the Sheriff's Department will immediately be notified, via telephone, and advised of the date, time and name of the officer serving the order. Officers will explain the provisions of the order to the respondent and will advise the respondent that a violation of any provision in paragraphs 1 through 5 constitutes a criminal violation of an otherwise **civil** order and may result in the respondent's arrest if there is non-compliance. If child custody is awarded in paragraph 6, a violation of that provision does not constitute a criminal violation. The respondent should be advised that failure to comply could result in a finding of contempt by the court. If the respondent has been ordered to vacate the residence, officers will allow a reasonable amount of time for the respondent to gather enough personal belongings to remain away until the hearing date set forth in paragraph 9 of the order. For safety reasons, officers will accompany the respondent while gathering these belongings and will ensure that the respondent leaves the premises. Officers will not allow the respondent to remove any community property or any property that is in dispute and will advise both parties that those disputes may be settled by the court.

While on the scene of domestic violence incidents, police officers will initiate a check via MILES to determine if any warrants, ex parte orders or protective orders are on file. If an ex parte order is on file and not served, the officer **will** serve the order. If an order is on file and the suspect is in violation, the officer **will** make the arrest. **Failure to check via MILES for an ex parte order may subject the responding officers to civil charges for failure to protect.**

2. The law provides that an officer **will** arrest, with or without an arrest warrant, and take into custody, the respondent if the officer has **probable cause** to believe the respondent is in violation of an ex parte or protective order that is in effect at the time of the violation. These violations include phone contact or going to the victim's place of work. **The main criteria here will be the victim's safety.** Upon arrest, the respondent will be

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charged either by issuance of a Maryland Uniform Criminal/Civil Citation or by a Statement of Charges.

3. In order to discourage dual arrests by officers when victims have struck out in self defense, new language has been added: **If the police officer has probable cause to believe that mutual battery has occurred and arrest is necessary, the officer shall consider whether one of the parties acted in self defense when making the determination whether to arrest the person whom the officer believes is the primary aggressor.**
4. On the date set forth in paragraph 9 of the ex parte order, the court will conduct a hearing to determine if the provisions of the order will be continued. If the court finds that sufficient evidence exists, the court can issue a protective order that may be in effect for up to 200 days. The protective order may contain the same provisions as contained in paragraphs 1 through 5 of the ex parte order, however, they will be numbered 2 through 6 in the protective order. Paragraph 1 will indicate the date the order expires. As in the ex parte order, a violation of any provision in paragraphs 2 through 6 of the protective order constitutes a criminal violation of the order and the same procedures will apply as in Sections III. B. 1-3 above. A violation of any provisions, other than those in paragraphs 2 through 6, do not constitute a criminal violation, but may subject the respondent to the court's contempt powers.
5. The issuing of mutual ex parte orders will be eliminated unless both parties applied separately, and both are primary aggressors. Ex parte orders will be entered into MILES so that judges and police officer's can verify their existence.
6. **The penalty for violating a protective order is 90 days in jail.**
7. Should the officer make a traffic stop and the results of a warrant file check reveal that a protective order or ex parte order has not been served to the subject, the following steps must be taken:
  - a. Seek the subject's voluntary compliance to be escorted to nearest police station where the order can be faxed by the Sheriff's Department and served.
  - b. If the subject refuses to comply voluntarily, no arrest can be made. However, the officer should get as much personal information on the subject as possible: home address and telephone number, place of employment and telephone number, and so forth, so that they can serve the order and forward it to the Sheriff's Department.
  - c. Civil warrants are not enforceable by arrest except as outlined in Sections III and IV of this directive.

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- C. In cases of alleged domestic violence, where no arrest is made, the parties involved should be advised of the following options:
  - 1. They may go to the District Court Commissioner who can determine if a warrant or summons may be issued.
  - 2. They may seek a Petition for Protection from Abuse by contacting the District Court in Upper Marlboro at (301) 952-4080 between 0830 and 1600 hours, Monday through Friday, excluding holidays. During other times they may go to the District Court Commissioner.
  - 3. They may contact the Family Crisis Center (Shelter and Hotline) to obtain shelter, counseling and legal advice 24 hours a day at (301) 779-2100.
- D. An Incident Report (MIR) shall be written in all instances where a victim is referred to the District Court Commissioner for charging document application.
- E. Historically, domestic violence cases have run into serious problems at the testimony phase of the trial. Frequently, in cases in which the victim is married and the suspect is the spouse, well prepared cases have been lost due to the invocation of the spousal privilege rule. This particular provision is included under the rules of evidence and it affords a husband or wife the privilege not to testify against their spouse in a criminal case unless the charge involved the abuse of a child under 18. On October 1, 1994, the Domestic Violence laws amended this rule so that a spouse may only invoke the spousal privilege rule one time and never thereafter.

## **VI. DOMESTIC PROPERTY DISPUTES**

In disputes over property or over access to a residence, the following procedures will be followed:

- A. Officers will not act as an arbitrator. If a party seeking possession of personal property (furniture, clothing, etc.) is the owner or a tenant and is not subject to a court order to vacate, he/she can be presumed to have the right to enter the premises unless the party in the dwelling can show otherwise. The police will not enforce one party's claim against the other nor will assaultive behavior or disorderly conduct be tolerated.
- B. Parties involved should be advised to consider consulting a lawyer and preparing a separation agreement covering the disposition of household property.
- C. All property disputes regarding vehicles shall be referred to the District Court Commissioner. Officers shall advise the participants to go to the commissioner's office to apply for charging document (Section IV. D. above does not apply here)

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and inform them that the commissioner has no authority to order any party to give up property, even if a charging document is issued.

- D. Officers should further advise the complainant(s) that the Commissioner will determine the proper charging document to be issued or recommend pursuing their claims through civil procedures if appropriate.
- E. **All officers** shall be familiar with Family Law Article 4-502, Maryland Code, entitled Duties of law enforcement officers, which states:

"(a) *Help to victim* -- Any person who alleges to have been a victim of spousal assault and who believes there is a danger of serious and immediate injury to himself or herself may request the assistance of a local law enforcement agency. A local law enforcement officer responding to the request for assistance shall:

- (1) Protect the complainant from harm when responding to the request; and
- (2) Accompany the complainant to the family home so that the complainant may remove his or her personal clothing and effects and also the personal clothing and effects of any children that may be in the care of the complainant. The personal effects to be removed shall be only those required for immediate needs.

(b) *Immunity of law enforcement officers from civil liability* -- Any law enforcement officer responding to such a request shall have the immunity from liability described under subsection 5-610 of the Courts Article."

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