

# CITY OF OAK POINT

## DEPARTMENT OF PUBLIC SAFETY POLICE OPERATIONAL POLICIES

### **POLICY: 7.11 Domestic Violence and Protective Orders**

**REVISED DATE: 01.20.2015**

#### **I. POLICY**

The department assigns domestic or family violence (domestic disturbance) calls a high priority. The nature and seriousness of crimes committed between family or household members are not mitigated because of the relationships or living arrangements of those involved. An immediate criminal justice response can make a major difference in the disputants' lives. **With all due consideration for their own safety, department personnel responding to a domestic disturbance call shall (1) restore order; (2) arrest persons when probable cause exists that a crime has occurred; (3) provide safety and security for the crime victim(s); (4) attempt to ensure no further violence will occur; and, (5) provide participants with contact information for the appropriate agencies to help prevent future occurrences.**

#### **II. PURPOSE**

This order expresses the Department's commitment to enforcing criminal laws without regard to the relationship between the alleged offender and victim, and outlines enforcing officer's duties and authority in enforcing criminal laws regarding family violence.

#### **III. DEFINITIONS**

##### **A. Assault**

Intentionally, knowingly, or recklessly causes bodily injury to another including the person's spouse or threatens to cause imminent bodily injury to another including the person's spouse. This definition is not all inclusive as family violence may also entail aggravated circumstances, sexual assault, as well as other offenses.

##### **B. Family abuse**

Any threat or act of violence, including forceful detention, which results in physical injury or places one in reasonable fear of bodily injury and which is committed by a person against such person's family or household member.

##### **C. Family or household member**

1. Spouses, whether or not residing in the same home.
2. Former spouses, whether or not residing in the same home.

3. Persons who have a child in common, whether or not they have ever been married or resided together.
4. Parents, children, stepparents, stepchildren, grandparents, grandchildren, brothers and sisters half-brothers and half-sisters regardless of whether they reside in the same home with the suspect.
5. Parents-in-law, children-in-law, brothers- and sisters-in-law regardless of whether they reside in the same home with the suspect.
6. Persons, whether or not related, who cohabit or who previously cohabited with the suspect, and any children of either who then resided in the same home as the suspect.

D. Protective order

A court order of protection on behalf of an abused family/household member that restrains the abuser from further acts of violence, may order the abuser to refrain from further contact, vacate the residence, relinquish custody of a vehicle, provide temporary child support, plus other measures. It should be remembered that a protective order maybe included in dissolution or marriage paperwork (Family Code 6.504). A protective order may be valid up to two years. Types of protective orders include:

1. Emergency protective order
2. Protective order(Standard)
3. Temporary Ex Parte Orders: an order that is issued without the person who committed family violence present; a person subject to an order (the actor) who violates an ex parte order may not be arrested unless it is established the actor had been served with the order prior to the commission of the act(s) violating the order. (TPC 25.07(a)) In the event that an officer arrives and the actor is not aware of the order, the officer may assist the protected person in informing the actor subject of the existence of the order. The officer shall then remain at the scene until the actor has complied with any wording that requires him or her to leave the residence. If the order does not require the actor to leave, the officer shall remain at the scene while the protected person gathers necessary items to leave.

#### IV. PROCEDURES - General responsibilities

- A. In all cases where a party is alleging an assault has occurred officers shall request for EMS to be dispatched and a refusal of treatment must be signed if the parties refuse. All parties to an assault shall be offered EMS services even if there are no apparent injuries. Department personnel shall refer victims of domestic violence or serious bodily injury crimes to appropriate community resources (mental health agencies, legal assistance agencies, victim/witness assistance programs,

and domestic violence shelters/programs). Regardless of whether an arrest is made, the officer shall provide the "Notice to Adult Victims of Family Violence" to the victim, which explains legal and community resources available, including the name, address and telephone number of the District Attorney and the investigating law enforcement agency.

- B. Department personnel shall be trained regarding domestic violence and its impact. Personnel must be well trained to confront unexpected violence.
- C. Officer responsibilities dealing with communications.
  - 1. Because the dispatcher is likely to be the first person to receive the call, he or she is instrumental in determining the type of response.
  - 2. The dispatcher is responsible for deciding whether an officer is needed at the scene. After making that decision, the dispatcher shall dispatch an officer and the officer should request the following information if not provided:
    - a. Is the crime (incident) in progress or when did it occur?
    - b. Who is complaining? Whereabouts, identity, and description of the suspect/aggressor? If not on scene, time lapse between occurrence, suspect leaving and call?
    - c. Name of caller and location of incident? Location of caller and complainant, if different? Phone numbers?
    - d. Is a weapon involved? Is alcohol or drugs involved?
    - e. Have people at the scene been injured? Has EMS been dispatched?
    - f. Presence of children?
    - g. A history of calls to this address? A protective order in effect?
  - 3. In the event dispatch advises an officer is no longer needed or the complainant has advised that officers are no longer needed, officers will continue on and ascertain if in fact a crime has occurred. Once dispatched under no circumstances will an officer disregard the call and all documentation is to be completed.

## **V. PROCEDURES - Patrol responsibilities**

- A. Arrival at the scene
  - 1. Attempt to obtain all available information from the dispatcher before arrival.
  - 2. When possible, officers should wait for back-up, and approach the scene in pairs.

3. Officers will activate their in-car camera and turn on the rear seat camera before exiting the vehicle if possible. Officers should remember they may not have time to do this later with a combative subject.
- B. Avoid the use of sirens and other alarms in the vicinity of the scene. This announces the arrival of officers and could further endanger them.
  - C. Observe the location of the dispute before contacting the complainant. Consider the surroundings. Park the patrol unit a short distance away. Each officer should follow a separate approach to the scene of the dispute, maintaining maximum cover and an escape route. Officers should whenever possible avoid walking in front of windows or doors when approaching the scene. From this point on, officers should remain within sight of one another, if possible.
  - D. If safe to do so, and the situation allows, before knocking on the door, listen. Observe anything which may be an indication of violence, (broken door or door frame, number of people, weapons, damage to potted plants, bloody rags or towels in trash).
  - E. Officers must be concerned for their own safety as well as the disputants'. To minimize the possibility of injury, stand to the side of the door and not in front of windows when knocking.
1. Initial contact with occupant(s).
    - a. Identify yourselves as law enforcement officers and request entry into the home (when conditions permit). Ascertain identity of complainant, and ask to see him or her and any other person at the home. Whenever possible additional officers shall make a precursory search of the home for additional persons, for officer safety purposes only.
    - b. Officers shall not accept statements from any disputant or witness that the call was a mistake without investigating further. Officers shall not leave without interviewing the complainant, (alone whenever possible.)
    - c. If entry is refused, officers must explain that they must ensure there are no injured persons inside. If no one responds to knocking, officers shall try to establish voice contact by shouting for an answer.
    - d. Refusal of entry or no response to a knock at the door may require a forced entrance only if officers have a reasonable belief that the safety of people inside is in jeopardy.
    - e. A spouse can consent to the search of premises used jointly by both husband and wife. This also applies if any of the parties are unmarried cohabitants. If both are present, either one may legally object. Once a party refuses consent, even if the other has given consent, officers must obtain a warrant to search or articulate another exception to the warrant requirement.

- F. Officers may also make a warrantless entry to conduct a search if exigent circumstances exist. Officers must have and be able to articulate a reasonable belief that such a circumstance does exist (example: officers believe that someone, perhaps the victim or a child, is in need of emergency assistance due to ...).
1. Officers shall evaluate the following elements when considering a warrantless entry:
    - a. The degree of urgency involved and the time required to get a warrant.
    - b. The possibility of danger to others, including officers left to guard the site.
    - c. Whether the suspected offense is serious or involves violence.
    - d. Whether officers reasonably believe that persons may be armed.
    - e. Finally, officers are reminded that they have a lawful duty to investigate any situation which they reasonably believe to be an emergency involving the safety of another.
  2. Once inside:
    - a. If weapons (whether firearms, knives, or any other object which could be used as a weapon) are present, secure them away from the disputants. If appropriate, seize weapons for evidence.
    - b. Identify disputants.
    - c. Inquire about the nature of the dispute.
    - d. Being aware of the surroundings.
    - e. Determine if persons are in other rooms, whether children or adults, and the extent of any injuries (these persons should be separated from the parties involved and kept out of hearing range so their status as possible witnesses won't be compromised, (only if safe to do so).
    - f. Protect the victim from further abuse. Separate the victim from the suspect and arrange for medical attention if victim is hurt. If the victim appears injured and yet refuses medical assistance, carefully document any observed injuries, as well as the refusal of medical treatment. Photograph the victim's injuries if possible. If the victim refuses to allow themselves to be photographed, if at all possible move them to a position where the patrol car video will be able to capture documentation.
    - g. Ascertain whether a protective order has been violated.
  3. Officers shall attempt to assist the victim in arranging transportation to a safe location if

they wish.

4. If a complainant seeks officers' help in entering his or her residence to obtain personal property, the officers must determine that the complainant has lawful authority to do so; must advise all parties that they are accompanying the complainant to obtain items for immediate personal (or children's) use; that the officers' function is to maintain order; that any dispute over property is a matter for the courts to decide.

#### G. Interviewing all disputants

1. Ensure safety and privacy by interviewing the victim in a place separate from the suspect, if safely possible.
2. Critical to the success of the interview is the officer's manner. Officers must listen, show interest in the disputant's problem, and remain aware of nonverbal communications signals.
3. Officers shall remain alert in domestic violence cases. Maintain good eye contact through natural, spontaneous glances. Attempt to not develop a fixed stare as this can limit the officer's awareness of the surroundings and situation.
4. If safely possible, separate the parties so that they can individually describe the incident without interruption. (This may help the parties relieve emotional tension.) Although the disputants may be separated, officers shall remain within sight and hearing of each party or each other.
5. After the parties have given their statements, the officers should ask about details for clarification, and summarize the stated accounts (which allow the parties to point out anything that might be misrepresented). Officers should note changes in stories.
6. Be aware that parties may make excited utterances which may have evidentiary value. These utterances must be noted in the report.

#### H. Interviewing the Subjects

Ascertain the following information from the participants:

1. What happened?
2. Any injuries, who caused them, and what weapons or objects were used.
3. Relationship to other participants.
4. Any threats made against victim or others.
5. Forced sexual contact against victim's will.

6. Any protective orders in effect.
  7. Is anyone on probation or parole?
  8. Did anyone threaten others, particularly children, damage property, or hurt pets.
- I. Interviewing witnesses
    1. Interview any witnesses to the incident--children, other family members, neighbors--as soon as possible.
    2. Remember that witnesses may be experiencing emotional crises that might influence the accuracy of their accounts. If any conflicts in statements arise, attempt to clarify these but do not make accusations which may cause them to become uncooperative.
    3. If witnesses provide information about prior assaults, document them as the charge may be enhanced.
    4. Children of disputants should be interviewed with care. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma or abuse should be noted and a separate report begun if appropriate.
  - J. Collection of Evidence

Officers should conduct a preliminary investigation to include:

    1. Collecting any physical evidence or if the offense rises to the felony level contact the sergeant to do so.
    2. Photograph any damages or injuries received by ALL parties.

## **VI. PROCEDURES - Arrests**

- A. Officers may make an arrest without a warrant if they have probable cause to believe that the individual has committed an assault resulting in bodily injury to a member of the person's family or household and the suspect is on scene.(See Article 14.03 CCP)
- B. If officers cannot identify a predominant physical aggressor and do not make an arrest, they shall nevertheless thoroughly document the incident. Further, officers are prohibited from threatening to arrest all parties involved for the purpose of obtaining cooperation or discouraging future requests for law enforcement intervention.
- C. In cases where the conditions of a protective order have been violated, officers shall review the victim's copy of the order, checking it for validity to the extent possible. If a protective

order exists and its terms ("no contact," "no trespass," or "no further abuse") are violated then the officer shall arrest the violator if probable cause exists.

- D. Officers making arrests for family violence may petition for an emergency protective order if so requested by the victim OR if the officer believes there is a significant danger of future assaults.
- E. If children are involved in the incident, officers shall contact the on-call Child Protective Services worker if a child is abused or neither parent can reasonably look after the child's safety and well-being. It should be remembered that neglect is a separate, reportable offense and if the probable cause exist for that charge an arrest may be made, but a report will always be generated.
- F. In determining probable cause, the officer shall not consider:
  - 1. Whether the parties are married or living together, or their race, sex, ethnicity, social class, or sexual orientation.
  - 2. Whether the complainant has not sought or obtained a protective order.
  - 3. That the complainant has called for law enforcement protection previously and has not pursued or has withdrawn the criminal complaint against the abuser.
  - 4. That the complainant has not begun divorce proceedings.
  - 5. Assurances of either disputant that violence will stop.
  - 6. The lack of visible bruises or injuries.
  - 7. Denial by either disputant that violence occurred.
- G. Factors favoring the decision to arrest
  - 1. Arrest is the most appropriate response when these factors are present:
    - a. Serious, intense conflict.
    - b. Use of a weapon.
    - c. Previous injury or damage.
    - d. Previous DV arrest of the offending party.
    - e. Previous calls for law enforcement help.

- f. When a felony has occurred.
  - g. Evidence of drugs or alcohol use at the assault.
  - h. Offenses committed with the officer present.
  - i. Valid warrants on file for other crimes.
  - j. A protective order has been violated.
  - k. Aggressive or any other threatening behavior in the officer's presence.
- H. Making the arrest
- 1. Arrest the suspect if he or she is present, apply handcuffs, inform him or her that the decision to arrest is a law enforcement one, and transport to the jail.
  - 2. If the suspect is absent or has been arrested, the officer shall make every effort to help the victim find transportation to a safe shelter or other appropriate place if requested. All paperwork is to be turned into the Sergeant who will make the decision whether or not to arrange for an arrest warrant.
  - 3. Regardless of whether an arrest is made, the officer shall provide the "Notice to Adult Victims of Family Violence" to the victim, which explains legal and community resources available, including the name, address and telephone number of the District Attorney and the investigating law enforcement agency
  - 4. If an arrest will be made because a protective order has been violated, verify its validity by:
    - a. Examining the victim's copy, if available.
    - b. Having communications search TCIC and if possible contact the jurisdiction that issued the order to confirm its validity.
- I. If the abusive person is not arrested
- 1. Complete the report and obtain written statements from ALL victims and witnesses.
  - 2. Explain to the victim about protective orders and refer them to the District Attorney Office.
  - 3. If the victim wants to leave the premises to ensure safety, remain at the scene while

the victim packs essentials.

4. Regardless of whether an arrest is made, the officer shall provide the "Notice to Adult Victims of Family Violence" to the victim, which explains legal and community resources available, including the name, address and telephone number of the District Attorney and the investigating law enforcement agency
5. Attempt to explain measures for enhancing his or her own safety.

J. Gathering evidence:

1. Physical evidence takes three forms in domestic violence cases: the injuries of the victim, evidentiary articles that substantiate an attack, and the crime scene itself. **Photograph everything. We cannot go back.**
2. The victim's account of injuries sustained should be corroborated by a physician if possible.
3. When feasible, take photographs of injuries.
4. Photograph the crime scene to show that a struggle occurred; if photography is not possible, call for a supervisor. Write a description of the crime scene.
5. Collect evidence according to the same principles as applied to any crime scene.
6. Collect any weapons that the predominant physical aggressor used or threatened to use in the commission of any crime
7. Obtain statements from all witnesses, particularly noting any excited utterances that bear on the incident.

K. Documenting the incident

1. All incident reports on domestic violence shall follow general reporting procedures.
2. Include in all reports of domestic violence:
  - a. Facts and circumstances of domestic violence including a description of why one disputant was deemed the predominant physical aggressor.
  - b. Victim's statements as to the frequency and severity of prior incidents of abuse by the same family or household member.
  - c. The victim's statements as to the number of prior calls for law enforcement assistance.

L. The disposition of the investigation.

1. In any case involving domestic violence thoroughly document probable cause to arrest.
2. If an arrest is not made for domestic violence the incident must still be documented, where either no probable cause existed, or circumstances dictated another course of action. In such cases, in addition to the above considerations, officers shall note:
  - a. What referral information was given?
  - b. The name of any counselor contacted.
  - c. Why no arrest was made, nor any warrant issued.
3. If children were present, make a report of abuse or neglect, if appropriate, and forward it to Child Protective Services
4. Regardless of whether an arrest is made, the officer shall provide the "Notice to Adult Victims of Family Violence" to the victim, which explains legal and community resources available, including the name, address and telephone number of the District Attorney and the investigating law enforcement agency.

M. Arrests of law enforcement personnel

1. If the predominant physical aggressor or abuser is an employee of this agency, the responding officer shall notify the Director, who shall in turn notify the City Manager.
2. The scene shall be secured and medical attention given, if required. The employee shall be disarmed or removed from access to weapons. The possibility exists that the employee's departmental weapon may be evidence of an offense.
3. The sergeant shall be called who shall begin an internal criminal investigation
  - a. If probable cause to arrest exists, the Director shall request assistance through the Texas DPS or the Denton County Sheriff Dept. The sergeant shall assist and gather evidence (including taking photographs) consistent with this general order for an internal investigation.
  - b. The sergeant shall work with the responding patrol officer to ensure that the victim receives medical attention, if necessary, is transported to a hospital or safe shelter, and that all reports are completed, evidence gathered, and photographs taken for the internal investigation. The sergeant shall also ensure that all assistance is given to the assisting agency in their investigation. The responding patrol officer shall assist in obtaining an emergency protective order.

- c. The Director shall ensure that the investigator shall speedily present the case to the district attorney.
4. Upon termination of the criminal investigation, the Director may suspend the employee without pay pending the outcome of the internal investigation.
  - a. Federal law states that any person (including a law enforcement officer) convicted under any state or federal law for a misdemeanor involving the use of, attempted use of physical force, or the threatened use of a deadly weapon when committed by a current or former spouse, parent or guardian of the victim, a person sharing a child in common, or a cohabitant of the victim (past or present), is prohibited from shipping, transporting, possessing, or receiving firearms or ammunition. The offense may have occurred at any time. Law enforcement officers convicted of offenses involving weapons or threats of force may therefore be unable to maintain their certification.
  - b. Note that officers who are the subject of a protective order shall not carry firearms. Officers who are the subject of a protective order shall turn in all agency-issued weapons.

## **VII. PROCEDURES - Requesting an emergency protective order**

- A. Emergency protective orders (EPO) (Domestic Violence)
  1. The EPO is aimed to protect the health or safety of a victim of domestic violence. It is issued only if the offender is arrested. The judge or magistrate who arraigns the offender after the arrest may issue the EPO on the magistrates own initiative, upon request of the victim, the guardian of the victim, a peace officer, or an attorney representing the state. If an officer has probable cause that an assault has occurred and there exists a reasonable belief there is a danger of further abuse, the officer shall request the judge or magistrate to issue an EPO.
    - a. The officer shall advise the victim that he or she can request an EPO directly from a magistrate or the District Attorney.
    - b. An EPO may order a stop to abusive behavior, prohibit contact between parties, order the abuser out of a shared home, or possessing a firearm, and provide other relief.
  2. An officer can petition for an EPO.
  3. The EPO remains in effect for up to 61 days but not less than 31 days. The victim can petition for a permanent protective order before the expiration of an EPO.

4. The offender is served with a copy of the order at the time of arraignment. The victim will be contacted and informed that an EPO has been issued and will be provide with a copy and informed of its requirements.
5. A copy is also delivered to the Chief Law Enforcement Officer and communications center for the jurisdiction where the victim resides.

B. Protective Orders from Other States(Family Code Chapter 88)

Officers shall enforce protective orders from other states or possessions of the United States as if they were issued in Texas to the extent they can verify all stipulations have been met. This applies to all orders in which the respondent has received notice and opportunity to attend a protective order hearing.

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