

THURMONT POLICE DEPARTMENT

GENERAL ORDER	Date Issued: November 2, 2009	Effective Date: November 2, 2009	Order No: Chapter 2.10
Authority: Chief of Police Gregory L. Eyler		Manual Page No:	
Subject: Domestic Violence Investigations		Replaces Page No:	
CALEA Standard: 41	Distribution: ALL	Amends: 11/2/09	Number of Pages: 16
Related Documents:		Rescinds: Order dated January 18, 2008	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

I. PURPOSE:

The purpose of this policy is to establish guidelines for handling incidents which involve domestic violence.

II. POLICY:

The Maryland law enforcement community has adopted a **“preferred-arrest” policy** in domestic violence cases. Accordingly, whenever the law permits, the officers of the Thurmont Police Department has been committed. The Thurmont Police Department is committed to reducing the incidence and severity of domestic violence by recognizing it as a significant societal problem, and dealing with it as a serious criminal offense. The Department will strive to:

1. Educate victims as to their legal rights.
2. Advise victims that help is available to them.
3. Encourage victims to seek legal and social assistance.
4. Hold abuser accountable for their actions.
5. Ensure that officers are prepared to respond to and effectively deal with domestic violence calls for service.

III. DEFINITIONS:

Definitions from the Criminal Law of MD, Family Law, Subtitle 5. Domestic Violence §4-501.

ABUSE: any act of the following:

1. an act causing serious bodily harm;
2. an act that places a person eligible for relief in fear of imminent serious bodily harm;
3. assault in any degree;
4. rape or sexual offense as defined by CL 3-303 - 3-312 or attempted rape or sexual offense in any degree; or,
5. false imprisonment.

COHABITANT: 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.

DOMESTIC STAND-BY: when a law enforcement officer provides assistance to a person who alleges to be a victim of abuse and thought to be in immediate danger of injury from the abuser.

PROTECTIVE ORDER: (including Interim, Temporary and Final) - an order from the Court that is issued under the Family Law Article, Sections 4-504, 4-504.1, 4-505 and 4-506.

FIREARMS: handguns and long guns.

INTIMATE RELATIONSHIP: a relationship between spouses, former spouses, past or present unmarried couples, including homosexual relationships, or person who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

Persons not involved in an intimate relationship within the meaning of the definition are: Individuals living together in a situation in which the relationship is usually not considered intimate, such as in a dormitory or rooming arrangement.

PETITIONER: an individual who files a petition and includes a person eligible for relief or persons who may seek relief from abuse on behalf of a minor or vulnerable adult.

RESPONDENT: the person alleged in the petition to have committed the abuse.

VULNERABLE ADULT: an adult who lacks the physical or mental capacity to provide for his daily needs.

IV. DOMESTIC VIOLENCE TERMINOLOGY

DOMESTIC VIOLENCE: domestic violence occurs when a person commits or attempts to commit one of the following types of offenses against a current or former spouse or a person with whom he/she has, or has had an intimate relationship:

1. an act that cause physical injury;
2. an act that places one in fear of physical injury to self or others;
3. sexual assault;
4. property crimes;
5. violation of a Protective Order; or,
6. false imprisonment.

DOMESTIC DISPUTE: as used in this Order, means a **noncriminal** occurrence involving persons who have an intimate relationship; i.e., verbal argument.

DOMESTIC INCIDENT: as used in this Order, is a universal term to describe a criminal or noncriminal occurrence involving persons who have an intimate relationship or to describe an occurrence that has not yet been determined to be criminal or noncriminal.

V. PROCEDURES

A. Arrests in General (CL 2-202: Arrests without Warrants Generally)

Law enforcement officers may arrest a person without a warrant for the following reasons:

1. **Felony or misdemeanor committed or attempted in officer's presence.** Under CL 2-202, when a felony or misdemeanor is committed, or attempted, in the presence or view of the officer;
2. **Felony or misdemeanor, committed or attempted in officer's presence, based on probable cause.** Under CL 2-202, when the officer has probable cause to believe that a felony or misdemeanor is being committed, or attempted in the officer's presence or view;
3. **Felony based on probable cause.** Under CL 2-202, when the officer has probable cause to believe that a felony has been committed, or attempted, whether or not in the officer's presence or view;
4. **Domestic abuse with physical injury.** Under CL 2-204,

- a. When an officer has probable cause to believe that:
 - (1) a person battered his/her spouse or other individual with whom the person resides,
 - (2) there is evidence of physical injury,
 - (3) unless the person is immediately arrested, he/she
 - (a) might not be apprehended,
 - (b) may cause injury to the victim or damage to the property of one or more other persons, or
 - (c) may tamper with, dispose of, or destroy evidence; and
- b. When a report was made to the police within 48 hours of the alleged incident.

B. Arrests for Domestic Violence

1. When evidence of injury to the victim exists, an officer may make an arrest without a warrant regardless of the victim's interest in the aggressor being arrested, keeping in mind that the victim's decision may be based on fear or other circumstances unknown to the officer.
2. When probable cause exists to effect an arrest and no on-scene arrest is made, the officer will document the circumstances and facts in the narrative section of the incident reports and explain why the aggressor was not arrested.
3. Having probable cause to believe, or an allegation that a mutual battery occurred, the officer will consider whether one person acted in self-defense, and should not arrest persons who acted in self-defense.
4. If two people committed acts of domestic violence against each other, and neither acted in self-defense, the officer may consider arresting both persons, keeping in mind that Maryland law seeks to hold the primary aggressor accountable.

C. Investigation and Evidence Collection by Officers

After verifying that a domestic violence incident has occurred, police officers will conduct a thorough investigation, which will include the following steps

and responses:

1. Physically approach and handle the scene of a domestic violence call using appropriate safety, intervention, and investigative techniques.
2. Interview all parties separately, if possible, taking into consideration the dynamics of domestic violence.
3. Be thorough in the collection of evidence; paying particular attention to the need for:
 - a. collecting the “911” tape of the call;
 - b. taking photographs of injuries and of the crime scene, and arranging for or taking additional photographs of the victim’s injuries one to three days later, when bruises would be more developed;
 - c. documenting “excited utterances” made in the presence of the officers;
 - d. interviewing witnesses, including children;
 - e. recovering and seizing torn clothing. If necessary, accompanying the victim to the hospital to recover clothing which may be evidence;
 - f. seizing any notes or writings made by the respondent; and,
 - g. inquiring, identifying, and seizing weapons and/or objects used as weapons.

D. Documentation

Under no circumstances will a domestic violence complaint be closed without documentation. Officers will:

1. Fully complete a Frederick County Domestic Violence Report form to include a signed, written statement by the victim; and,
2. In cases where an arrest is made, complete a Statement of Charges and Arrest Card, in addition to the Frederick County Domestic Violence Report and Incident Report.

E. Assisting the Victim

1. Family Law Section 4-503, requires that victims of domestic violence incidents

be given a written notice of rights by the responding officer which:

- a. States that the victim:
 - (1) may request that a District Court Commissioner file a criminal charging document against the alleged abuser;
 - (2) may, if the Commissioner declines to charge the alleged abuser, request that the State's Attorney file a criminal charging document against the alleged abuser; and,
 - (3) may file a petition for relief from abuse in the District Court or Circuit Court under the Family Law Article.
 - b. Contains the telephone number for the local domestic violence program, (Heartly House 301-662-8800). Officers must remember that the location of the Heartly House is **NEVER** divulged to anyone other than police officers with a need to know the location.
2. The officer responding to domestic violence calls, including attempts or threats to commit domestic violence, and domestic stand-bys, will provide the victim with a copy of the brochure entitled "CRIME VICTIMS AND WITNESSES: Your Rights and Services."
 3. The responding officer will provide the domestic violence victim with a tear off sheet entitled Domestic Violence Information Frederick County, Maryland, as provided by the Department.
 4. Officers responding to a domestic violence call will advise the victim as to the availability of a copy of the report concerning their incident, from the Department's records section.
 5. Officers will review with domestic violence victims, their rights, to include obtaining a Temporary Protective Order.
 6. Officers, when requested by the victim, will assist in obtaining transportation to the court to obtain an order and assist in filing.
 7. Officers will inquire if the victim wants to leave the residence on a temporary or permanent basis and assist the victim in contacting the Heartly House or Department of Social Services, or other agencies or individuals to obtain temporary shelter.
 8. Officers will complete the Domestic Violence Lethality Screen for First

Responders and determine if the victim screens in according to protocol. If victim screens in, officers will attempt to have victim contact hotline counselor.

F. Domestic Stand-Bys, Assistance to Victim

Law enforcement officers will conduct domestic stand-bys in accordance with § 4-502, which states:

“The officer will accompany the complainant to the family home, as necessary, so that they can remove their clothing and that of children in their care and personal effects, including medicine and medical devices, regardless of who purchased them, required for the immediate needs of the complainant or the children.”

1. If the victim’s name is on the lease, they have the right to enter the premises to collect their effects.
2. If the victim’s name is not on the lease, they do not have a right to enter the premises, and the responding officer does not have the authority to make entry.
3. Any law enforcement officer responding to such a request shall have the immunity from liability described under §5-610 of the Courts Article

G. Civil Protective Orders

1. Protective Orders are an order from the Court to provide relief to an eligible person through a petition that alleges abuse in circumstances specified in the Family Law Article. The following persons are eligible to petition for relief from abuse:
 - A. Current or former spouse;
 - B. Cohabitant, as defined in this Order;
 - C. A person related by blood, marriage, or adoption;
 - D. An individual who has a child in common with the respondent;
 - E. A parent, step-parent, child, or step-child of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before filing the petition; or,

F. A vulnerable adult.

2. In domestic violence situations, law enforcement officers in the State of Maryland are called upon to enforce and take other police action on three types of **civil** protective orders:

A. Interim Protective Order – Issued by a District Court Commissioner, when a Court is not in session, pending a hearing by a judge on a petition.

B. Temporary Protective Order - an order from a judge providing for relief from abuse that is effective for no more than 7 days unless extended by a judge as needed, not to exceed 6 months.

C. Final Protective Order – an order from a judge providing for relief from abuse that under certain circumstances may be effective for up to 2 years.

H. Temporary Protective Order (Step One)

1. Persons eligible for relief may file a petition with the civil clerk at the civil desk of either the district or circuit court, usually in the county in which they reside. This person filing for relief is referred to as the “petitioner.”

2. The petitioner will meet with the judge on the day the petition is filed.

3. If the judge finds “reasonable grounds to believe” that the petitioner has been abused, the judge will sign a Temporary Protective Order.

4. This order becomes effective when it is served by a law enforcement officer. The person served with the order is referred to as the “respondent.”

5. The Temporary Protective Order will remain in effect for not more than seven days after service, and can be extended for up to 6 months to effect service.

a. Effective October 1, 2009 District Court Commissioners or judges may order a law enforcement officer to use reasonable and necessary force to return a minor child to the custodial parent at the time of service of an interim or temporary protective order.

b. Effective October 1, 2009, Judges at their discretion, may order a respondent of a temporary protective order to surrender all firearms to law enforcement and refrain from possession of any firearm for the duration of the temporary protective order.

I. Final Protective Order (Step Two)

1. A Final Protective Order hearing is usually held within the seven days that the Temporary Protective Order goes into effect. It is civil in nature.
2. If the respondent consents to the issuance of a Final Protective Order, or if the judge finds “clear and convincing evidence” that the abuse occurred, the judge may issue a Final Protective Order.
3. A Final Protective Order is effective upon service in open court, or if the respondent is not present at the Final Protective Order hearing, by mailing it first class to the respondent’s last known address.
4. Final Protective Orders, under certain circumstances, may be effective for up to 2 years.
5. The court may issue mutual Final Protective Orders if it finds that mutual abuse has occurred. However, the court may issue mutual Final Protective Orders only if it finds that:
 - a. both parties acted primarily as aggressors; and,
 - b. neither party acted primarily in self-defense.
6. Effective October 1, 2009 respondents of final protective orders will be required to surrender all firearms to law enforcement as well as refrain from possession of any firearm for the duration of the final protective order. The Frederick County Sheriff’s Office (FCSO) is generally responsible for all civil process and will be the primary agency taking possession of all surrendered weapons pursuant to conditions of a Final Protective Order. However, should a Thurmont Police Officer be required to take possession of firearms, they will follow the procedures outlined in sections L. and M. of this General Order.

J. Arrestable & Non-Arrestable Conditions of Protective Orders

1. Civil protective orders offer the petitioner relief by ordering the respondent to one or all of the following:
 - a. refrain from abusing or threatening the petitioner;
 - b. refrain from contacting, attempting to contact, or harassing the petitioner;

- c. refrain from entering the petitioner's residence, which includes the yard, grounds, outbuildings, and common areas surrounding the area;
 - d. vacate the residence and award temporary use and possession of the home to the petitioner; or,
 - e. stay away from the petitioner's or other family members' place of employment, school, or temporary residence.
2. A respondent who violates one of the above orders is guilty of a misdemeanor for which the law enforcement officer is required to make an arrest. (Family Law Sec 4-509)

K. Non-Arrestable Conditions of Protective Orders

1. Both types of civil protective orders also provide relief in the form of temporary child custody, temporary visitation rights, financial support, use of the couple's vehicle, counseling, and payment of filing fees and the cost of the proceedings.
2. In addition, in the case of Protective Orders, the court may order a respondent to surrender to a law enforcement officer any firearm in the respondent's possession for the duration of the Protective Order.
3. Violation of these conditions **does not constitute a criminal offense** and is therefore not arrestable, but it could result in a finding of contempt by the court.

L. Removal of a Firearm from the Scene by a Law Enforcement Officer
Under § 4-511 of the Family Law Article, law enforcement officers:

1. May remove a firearm from the scene, if they have:
 - a. probable cause to believe that an act of domestic violence has occurred: and
 - b. observed the firearm on the scene during the response. (Nothing in this section precludes the officer from inquiring about weapons inside the residence; however, this section in no way authorizes a search for weapons.)
2. If they remove the firearm from the scene, officers will:

- a. provide the owner of the firearm with information on the process for retaking possession of the firearm;
- b. provide for the safe storage of the firearm during the pendency of any proceeding related to the alleged act of domestic violence; and,
- c. advise the owner that he may retake possession of the firearm at the conclusion of a proceeding on the alleged act of domestic violence, unless the court orders the surrender of the firearm.

M. Records Section Responsibilities

The Department's Property/Evidence Officer will store all firearms confiscated by officers during domestic violence investigations, and will be responsible for the return of the confiscated firearms to the lawful owner in accordance with Maryland law. This will include, but not be limited to:

1. assuring that a criminal history check of the firearm owner is completed and that the person claiming ownership of the firearm is eligible to possess same;
2. assuring that all protective orders are expired and not in effect;
3. assuring that the firearm is not reported stolen through the NCIC; and,
4. resolution of any competing claims of ownership.

N. Aggressors Who are Law Enforcement Officers

1. When a law enforcement officer is an aggressor in a domestic violence investigation and any firearm, including a service weapon, is in view and the responding officer has probable cause to arrest the offending officer for domestic violence abuse, the responding officer will seize all firearms in view.
 - a. Effective October 1, 2009 Law Enforcement officers are not exempt if they are the respondent of a Final Protective Order and will be required to surrender all firearms and refrain from possession of any firearms for the duration of the Final Protective Order.
2. The supervisor on duty will immediately notify the agency for which the respondent is employed:
 - a. to inform that agency of the officer's arrest; and,

- b. to arrange for that agency to take possession of that agency's service weapon, if one was seized as a result of a domestic violence incident. If the weapon was actually used in the commission of a crime and is considered evidence, it will be handled per regular evidence procedures.
3. When the aggressor is a TPD officer and there is not probable cause to effect an arrest, the responding officer's supervisor will be informed of the incident.
4. When the aggressor is a TPD employee and there is probable cause to make an arrest, the required action is:
 - a. Member/Employee: any member or employee of the Department who becomes involved in an incident involving domestic violence **and** is named as a defendant in a formal **criminal** proceeding addressing this incident will:
 - (1) Notify the Chief of Police, in writing, via official channels, of the details of the incident. A copy of the official police report outlining the incident and to which is attached any court documents relative to the incident will be submitted with the written report, if available. If such documents are unavailable, the police agency of record will be noted in the report as well as any other significant identifying information such as case number and responding officer's name, which will enable the Department to obtain a copy of the report. This information will be submitted as soon as possible after the incident has occurred but in no case later than the individual's first working day following the incident;
 - (2) Submit to the Office of the Chief a copy of any additional official documents relative to the issue which are received after the initial report has been filed; and,
 - (3) Notify the Office of the Chief, in writing, of any court proceeding **at least three working days prior to the scheduled court appearance** to which he is summoned.
 - b. Supervisor: upon notification of any "domestic violence" incident involving a member of the Department, supervisory personnel will:
 - (1) ensure that a written report is submitted via official channels to the Office of the Chief as soon as possible;

- (2) attend any court session or administrative hearing relative as directed by the Chief of Police or his designee;
- (3) provide a written follow-up report relative to any action taken by the court and any administrative action taken by the supervisor in attendance; and,
- (4) if the court action results in a guilty plea/conviction for a crime of domestic violence, the supervisor in attendance will take possession of any departmental firearm, ammunition, badge of authority and identification card and suspend the police powers of the sworn member convicted of a crime of domestic violence. In the event the sworn member does not have in his possession the department-issued weapon, the supervisor will **order** the member to accompany him to the location where the gun is stored, retrieve it and the department-issued ammunition and return them to the Department. The supervisor will order the member whose police powers have been suspended to report to the Office of the Chief at 0900 hours on the **next** working day.

O. Enforcement of Out of State Civil Protective Orders

A law enforcement officer is mandated to arrest, with or without a warrant, and take into custody a person whom the officer has probable cause to believe is in violation of a civil protective order that was issued by a court of another state or an Indian tribe, and is in effect at the time of the violation, if the person seeking assistance of the officer:

1. has filed a copy of an authenticated order with the District or Circuit court of Maryland; or,
2. displays or presents to the officer a copy of an out of state authenticated order.

P. Records Section will:

1. maintain a log of all in-coming Protective Orders.

Q. Peace Orders

1. A Peace Order is a form of relief available to individuals who are experiencing problems with another person. A Peace Order is available to individuals who are not eligible for a Protective Order. The petitioner may seek relief by filing with the court a petition that alleges the commission of

any of the following acts against the petitioner, by the respondent, if the act occurred within 30 days before the petition is filed:

- a. An act that cause serious bodily harm;
 - b. An act that places the petitioner in fear of imminent bodily harm;
 - c. Assault in any degree;
 - d. Rape or sexual offense as defined by CL 3-303 - 3-312 or attempted rape or sexual offense in any degree;
 - e. False imprisonment; (Common Law)
 - f. Harassment, as described in CL 3-803;
 - g. Stalking, as described in CL 3-802;
 - h. Trespass, as described in CL 6-403; or
 - i. Malicious Destruction of Property, as described in CL 6-301 of the Code.
2. If the court finds that there are reasonable grounds to believe that the respondent has committed, and is likely to commit in the future, a qualifying act against the petitioner, the court, in a temporary order proceeding, may issue a Peace Order to protect the petitioner.
 3. The Peace Order may order the respondent to:
 - a. refrain from committing or threatening to commit a qualifying act against the petitioner;
 - b. refrain from contacting, attempting to contact, or harassing the petitioner;
 - c. refrain from entering the residence of the petitioner; and,
 - d. remain away from the place of employment, school, or temporary residence of the petitioner.
 4. The Peace Order shall be effective for not more than seven days after service of the order. The court may extend the Peace Order as needed, but not to exceed 30 days, to effectuate service of the order where necessary to provide protection or other good cause.

5. **Peace Orders will be entered into MILES and served by the Frederick County Sheriff 's Office.**
6. Violations of a Peace Order are charged under Courts & Judicial Proceedings Section 3-1508 and are enforceable by **any** police officer in this State.

ATTACHMENTS :

DOCUMENT DATES :

Amended Date: 11/2/09

Review Date:

Review Date:

Review Date:

Rescinds:

Order Written By: Chief Gregory L. Eyler

Order Edited and Approved By: Chief Gregory L. Eyler
Lt. P.A.Droneburg

Accreditation Standards Included in this Order
CHAPTER 41