

# Model Domestic Violence Policy for the Maryland Law Enforcement Community

*July 2013 (updated)*

Under a grant supported by the Maryland Police and Correctional Training Commissions and the Maryland State's Attorney's Association, the Maryland Network Against Domestic Violence (MNADV) worked together with the Maryland Chiefs of Police Association, the Maryland Sheriff's Association, the Maryland State Police and the Baltimore Police Department to develop a model domestic violence policy for the Maryland law enforcement community. Five representatives from the above four law enforcement organizations formed a Policy Development Committee that created a model policy document, ensuring that the document received broad input from various members of the Maryland law enforcement community. In April, 2004 a version of the *Model Domestic Violence Policy for the Maryland Law Enforcement Community* was published and made available to law enforcement agencies throughout Maryland.

One provision of the model policy called for an annual review and update of that document by a Model Domestic Violence Policy Review Board composed of representatives from the Maryland Sheriff's Association, the Maryland Chiefs of Police Association, the Maryland State Police, the Baltimore City Police Department and the Maryland Police and Correctional Training Commissions. In the spring of 2013, the Policy Review Board convened to review and update the original model policy as published in 2004.

Assisted by a representative of the Maryland State's Attorney's Association as well as receiving input from a representative of the Women's Law Center of Maryland, Inc., the Policy Review Board updated the 2004 version of the model policy. The document that follows is the result of the Board's efforts. While there were a number of minor cosmetic or style changes to the original document any substantive or noteworthy changes to the original model policy have been highlighted in yellow.

In keeping with the intent of the original model policy, the Policy Review Board will continue to review and update the document as necessary. A current edition of the Model Domestic Violence Policy will remain posted on [www.mdle.net](http://www.mdle.net)

Model Domestic Policy Review Board

# Model Domestic Violence Policy for the Maryland Law Enforcement Community

*July 2013(updated)*

[original Model Policy published April, 2004]

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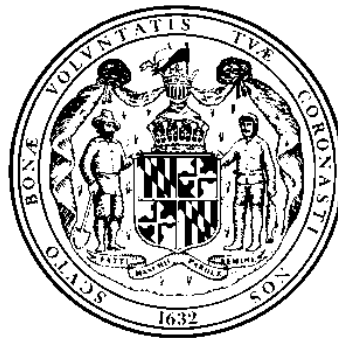
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## *Introduction*

Under a grant supported by the Maryland Police and Correctional Training Commissions and the Maryland State's Attorneys' Association, the Maryland Network Against Domestic Violence (MNADV) worked in a cooperative venture with the Maryland Chiefs of Police Association, the Maryland Sheriffs' Association, the Maryland State Police, and the Baltimore Police Department to develop a model domestic violence policy for the Maryland law enforcement community.

With five representatives from the above four law enforcement organizations forming a Policy Development Committee, this group created a model policy document and ensured that the document received broad input. Beginning in July 1996, the document took the committee nine meetings and over 20 hours to develop.

- .. The first full draft was reviewed in January 1997 and amended by the committee.
- .. In March 1997, the second draft was submitted to and examined by the chief executives of the four member organizations, the Maryland Police and Correctional Training Commissions, the Maryland State's Attorneys' Association, and the Attorney General's and Lieutenant Governor's Family Violence Council.
- .. Based on comments from this review, the third draft was presented to law enforcement executives, state's attorneys, and service providers throughout the State at four regional workshops held in June 1997. Over 40 comments and recommendations were evaluated for incorporation by the Policy Development Committee.
- .. In October 1997, the fourth draft was reviewed, with minor language amendments, by the Policy Development Committee.
- .. In November 1997, the fifth draft was re-submitted to the chief executives of the four member organizations, the Maryland Police Training Commission, the Attorney General's and the Lieutenant Governor's Family Violence Council, and the local service providers across the State that comprise the MNADV for final comment and approval/concurrence.
- .. In February and March 1998, the approved document was finally submitted to the above organizations for formal endorsement, which was unanimously given.

The Policy Development Committee wanted to create a policy that would accomplish three things:

- .. Unify the law enforcement response to domestic violence throughout the State;
- .. Balance a practical, reasonable law enforcement approach with responsible, helpful service to the parties, especially the victims, of domestic violence; and
- .. Educate the law enforcement community about domestic violence in general and how it is treated in the State of Maryland in particular.

It is recognized that not all law enforcement agencies in the State will decide to adopt every issue treated in the policy. This policy was developed for the guidance of and use by Maryland's law enforcement agencies and officers. The care given to its development, the review by so many across the State, and, finally, its endorsement by government and professional organizations commend it to law enforcement executives for their serious consideration.

Law enforcement chief executives who adopt and implement the policy will reduce individual officers' and agencies' risk of liability.

To reduce their risk of personal liability, law enforcement officers specifically should:

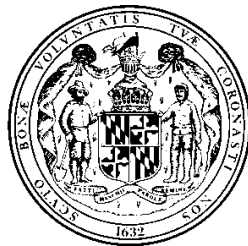
- .. Comply with the law;
- .. Comply with their agency's policies and procedures;
- .. Consult a supervisor or the agency's legal department if they have questions about how to proceed and document the advice given;
- .. Take advantage of domestic violence training; and
- .. Document all domestic situations, and, for domestic situations in which they decide not to make an arrest, explaining in their report why an arrest was not made and what actions were taken to ensure the safety of the victim.

For their part, law enforcement agencies should:

- .. Know the law and changes that affect it;
- .. Adopt and periodically review their policies and directives to ensure that they are in accordance with the ***Model Domestic Violence Policy for the Maryland Law Enforcement Community***;
- .. Provide domestic violence training for officers, especially when changes in the law or policy occur, and document the training;
- .. Subscribe to the ***Model Domestic Violence Policy for the Maryland Law Enforcement Community*** and ensure compliance with it by supervisors and officers; and
- .. Seek advice from legal counsel when appropriate.

Without broad, statewide support and application, the model policy cannot be effective. The policy was developed by law enforcement officers during a rigorous process to standardize the law enforcement response to domestic violence incidents. Moreover, the policy reflects what is considered the most effective law enforcement response for stopping domestic violence as well as the response most supportive of its victims.

Following is a summary of the 11 chapters of the model policy.





## *Summary*

### 1. **Philosophy of the Maryland Law Enforcement Community**

Chapter 1 contains a:

- .. **preamble** that pledges "positive and vigorous intervention...to begin the process of stopping the violence;"
- .. **purpose** which is to create a protocol for all officers throughout the State; and,
- .. statement of **goals** that reflects a customer-oriented focus.

### 2. **Definition of Domestic Violence**

Chapter 2 defines domestic violence to include people in "**intimate relationships**"; i.e., people who are or have been in a relationship as a couple – married, living together, or dating. It does **not** include other family members or people who live together in a dormitory arrangement.

### 3. **Dynamics of Domestic Violence**

Chapter 3 educates officers about the characteristics of domestic violence so that they can use this information to help them conduct investigations and establish probable cause.

### 4. **Arrest**

Chapter 4 advocates support and a preference for a domestic violence policy that calls for an arrest of an assailant whenever probable cause exists to arrest the offender. It examines probable cause in the context of domestic violence. It also examines the difficult issues of dual arrest and self-defense, and it tells officers to avoid dual arrest whenever a person acted in self-defense.

### 5. **Investigation**

Chapter 5 deals extensively with the subject of criminal investigations.

- .. It provides that all domestic violence calls will be given the same priority as any other crime of violence according to the degree of danger and treated as any other criminal investigation.
- .. It provides further that calls will not be canceled based on the request of the caller and that emergency communications specialists will not ask the victim about his or her intention to prosecute or proceed in any other manner.
- .. **The policy lays out the steps that should be taken when conducting an investigation, including the completion of a Lethality Assessment when appropriate, the collection of evidence, the transportation of victims, and the notification of the Division of Parole and Probation in cases where the arresting officer determines that the arrested individual is under the supervision of that agency.**
- .. It calls for the preparation of a written field report, in criminal and non-criminal domestic situations alike, as well as preparation of the Maryland Domestic Violence Supplemental Form.

### 6. **Civil Protective Orders**

Chapter 6 treats the subject of protective orders in detail, informs officers that custodial arrest is mandatory for certain violations of civil protective orders, and reviews the provisions that contain restrictions about firearms. **It specifically provides that the firearms of law enforcement officers who are respondents to Protective Orders "will be removed from the officer during the period in which the Protective Order is in effect."** The policy also suggests procedures for the service of civil protective orders, and it further suggests procedures that address six common situations in which law enforcement officers may find themselves concerning civil protective orders.

**7. Victim Assistance**

Chapter 7 sets forth legal requirements and provides guidelines for helping victims on the scene of every type of domestic situation.

**8. Supervision**

Chapter 8 discusses the matter of supervision and provides for the basic handling of cases that involve members of the criminal justice system, especially law enforcement officers, as follows:

- .. If either party in a domestic situation is a law enforcement officer, a supervisor, preferably one of higher rank, should respond to the scene to take charge and report the incident to the chief executive of the agency.
- .. If a law enforcement officer from another jurisdiction is involved in a domestic situation as the alleged assailant, the responding supervisor should notify the alleged assailant's agency of the incident.

**9. Training**

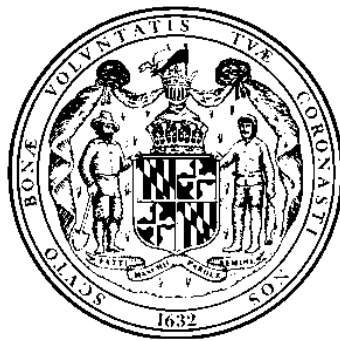
Chapter 9 requires that all law enforcement officers receive domestic violence training and specifies the areas of training for entry-level personnel. It also provides that in-service training should be given to all law enforcement officers. Finally, it provides for the annual review of in-service and entry-level curricula.

**10. Policy Review**

In Chapter 10, to ensure that the policy remains current, an annual review is provided for by a board composed of the four member organizations, chaired and administered by the Maryland Police Training Commission. Change in the policy can be made only upon the approval of four of the five member organizations.

**11. Implementation of the Model Policy by Law Enforcement Agencies**

Chapter 11 calls for the endorsement of the model policy by all law enforcement agencies, and it provides that all agencies should have a written directive employing the standards of the model policy.



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**1.0 Philosophy of the Maryland Law Enforcement Community**  
**1.1 Preamble**  
**1.2 Purpose**  
**1.3 Goals**

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**1.1 Preamble**

**1.1.12** Domestic violence is a crime that devastates families and intimate relationships. It is a relentless social issue, the scope and treatment of which have not been fully uncovered.<sup>[1]</sup> In the past victims were often ignored and sufficient services for them and their children were lacking. However, since the publication of the original version of the Model Domestic Violence Policy in 2004, members of the law enforcement community, as well as other participants in the criminal justice system including prosecutors and the judiciary, have become more responsive to the needs of the victims of domestic violence incidents. As part of a response to provide necessary services, the State established a domestic violence program to help victims and their children.<sup>[2]</sup>

**1.1.13** As a partner in the efforts of the State government and concerned organizations, the Maryland law enforcement community seeks to combat domestic violence on a uniform, statewide basis and has accordingly established this model law enforcement policy. Through the policy we offer the highest level of service to people involved in domestic violence, and we pledge positive and vigorous intervention so that the criminal justice system can supportively and systematically begin the process of stopping the violence, helping those involved, and creating a safe and secure atmosphere.

**1.1.14** We believe the implementation of this policy will help the law enforcement community to more effectively protect and serve the citizens of Maryland. We therefore urge **all** members, particularly the chief executives, of the law enforcement community to subscribe to the policy, so that citizens throughout the State can expect to receive the most uniform and consistent services we can offer.

***Commentary:** In the opening sentence of Section 1.1.1, the original developers of the policy considered that the acknowledgment about domestic violence as criminal behavior should be the opening sentence of a law enforcement statement, because crime is the chief concern of law enforcement. That direct statement is followed with a brief description about the negative effects of the crime. The direct, simple statement by itself was considered too stark and seemed as if it lacked depth and understanding about the effects of domestic violence. The developers expressed the concern that the law enforcement focus should be on the people involved in domestic violence. This view demonstrates an understanding of the problem of domestic violence and a true concern for people, their problems, and their well-being. The developers felt that the policy's opening statement needed to reflect the scope of its view. The developers, therefore, incorporated language – "that devastates families and intimate relationships" – that briefly and explicitly demonstrates that domestic violence has harmful societal implications and, therefore, is a problem requiring law enforcement's attention. Use of the word "devastates" signifies that the developers wanted the law enforcement community to demonstrate its understanding of the severity of the problem. The second sentence acknowledges that domestic violence is a problem within society, about which society still does not have completely reliable answers. This is so because it only recently became a matter of public awareness and because, despite considerable research already, even more research needs to be conducted. Even policy that is finally approved will be subject to continuous change. The third sentence has been adopted from Subsection 4-514(3) of the Family Law Article. Wording in the fourth sentence reflects the on-going progress the criminal justice system – law enforcement, prosecutors and the judiciary – have made since the publication and adoption of the original Model Policy on Domestic Violence was published in 2004. The language of the law, regarding the fourth sentence, conveys anticipation that the State's establishment of a domestic violence program will indeed "reverse the shortages" of services. The language was changed to reflect a less absolute, but hopeful, goal.*

*The first sentence of Section 1.1.2 provides for law enforcement to join in a cooperative effort with, and to recognize the constructive work of other government agencies and private organizations. It also sets out the basic reason for the preamble: the establishment of a model policy and recognition of law enforcement's own constructive action and participation with other government and private agencies.*

*The second sentence of Section 1.1.2, about the level of service, is taken from the opening "Goals" statement. It requires reiteration because it addresses the provision of quality services to the customers law enforcement serves when it handles domestic violence cases. The pledge captures the essence of one of the original cornerstones that the developers put in place: Law enforcement must direct its efforts primarily at the people it serves – at helping them and at stopping the violence – not at how law enforcement is supposed to overcome "all the problems" that administration of a domestic violence policy brings with it. In addition, the developers decided that it was important to cite that active intervention is only the beginning step in a process that must be supportive and systematic, in that it must include other entities that have responsibilities if victims and abusers alike are to be helped and the violence stopped. Finally, the phrase "creating a safe and secure environment" was included in the preamble because that is the ultimate goal of being able to break the cycle of violence.*

*The first sentence of Section 1.1.3 is intended to convey that implementation of the policy will help the law enforcement community to more effectively protect and serve the citizens of Maryland. It is further intended as a lead-in to the next statement. The second sentence is a call for all of the law enforcement community, particularly the decision-makers in each jurisdiction, to subscribe to the policy so that the citizens of Maryland can be the beneficiaries of a uniform policy throughout the State. The statement was included to seek greater compliance among law enforcement executives. However, the word "all" is highlighted in bold to convey the view that all law enforcement officers, no matter their rank or position in the agency should subscribe to the policy.*

## **1.2 Purpose**

**1.2.1** The purpose of the policy is to establish a model domestic violence protocol for Maryland law enforcement officers. As more effective ways of combating domestic violence become known, this policy will be modified to incorporate approaches adapted to meet the needs of the citizens of Maryland.<sup>[3]</sup>

**Commentary:** *The purpose of the policy is singular: "To establish a model domestic violence protocol for State law enforcement officers." The word "model" is used because it conveys a standardized policy, though not necessarily a binding one, for law enforcement executives.*

*The second sentence is drawn from a similar version used by the Police Chiefs' Association of Santa Clara County. It was adapted still utilizing the central theme – when a better way is demonstrated, Maryland law enforcement will adopt it. Language was added that connotes that Maryland law enforcement will not necessarily employ a method as it is offered, even a proven one; it will take that method and, if necessary, tailor it to fit to the specific needs of Maryland's citizens. The statement demonstrates that the law enforcement policy is dynamic, responding to changing conditions. The term "effective" is used because law enforcement is looking for ways that work; i.e., ways that are "effective." The term "become known" is used to convey the position that methods should not be changed unless there is a reason to change them. The phrase, "as effective ways ...become known," conveys the consideration that only proven methods should be introduced to the law enforcement community. The word "combating" is used simply to connote that domestic violence is a crime against which law enforcement should take aggressive action.*

### **1.3 Goals**

**1.3.1** In striving to provide the highest level of service to people involved in domestic violence, through this policy the Maryland law enforcement community seeks to continue to:

- A. Significantly reduce the level of domestic violence in the State;
- B. Ensure a consistent and uniform law enforcement response throughout the State;
- C. Provide a safe, problem-solving approach during the delivery of services;
- D. Provide contemporary education to law enforcement officers and the public;
- E. Improve coordination with the criminal justice system and service providers; and
- F. Standardize reporting and data collection.

***Commentary:** Three main criteria about goal-setting were established by the developers. First, goals should be broad in scope, and not tactical, as some goals in other documents seem to be articulated. Second, goals should reflect a customer-oriented focus. Finally, the expression of goals should be simple.*

*The opening goals statement expresses concern about the uneven level of the law enforcement response to domestic violence across the State. The response should not only be uniform, it should also be of the highest caliber. The developers believed that a main theme of the policy should be that development of responses to issues should reflect the "highest level of service to the public." The words "continue to" were added to the original version of the Model Policy to reinforce the view that while progress has been made in dealing with domestic violence and its attendant issues the law enforcement community should be continually seeking to improve its response to this crime.*

*Subsection 1.3.1-A reflects the view that the prevention of domestic violence must be the first and primary goal of the policy. The choice of the verb "reduce" over "eliminate" reflects recognition that the latter is not a possibility, but it should be what law enforcement should strive for in its delivery of services. However, the developers opted for "reduce," qualified by "significantly." The developers' view is that it should express goals that are practical and attainable so that law enforcement officers can expectantly aspire and work toward goals to which they can concretely contribute.*

*Subsection 1.3.1-B expresses the concern that all jurisdictions should provide law enforcement services in domestic violence situations in generally the same way across the State. Citizens should know and be able to rely on the fact that the law enforcement community statewide is united in dealing with domestic violence and should be able to expect an even enforcement effort. A goal of a Maryland law enforcement policy should be to standardize the response. The developers judged that the term "consistent and uniform" concisely captured the spirit they wanted to articulate.*

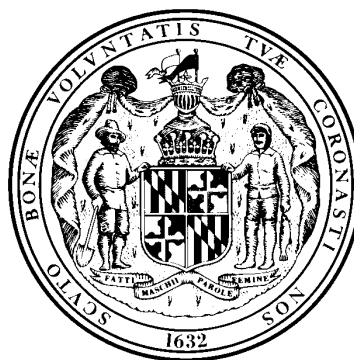
*Subsection 1.3.1-C addresses the community-policing orientation of many law enforcement agencies throughout the State and country. Domestic violence can be positively affected by community policing when law enforcement officers genuinely seek to problem-solve - "solve" being the key term. It means that officers will try to put a stop to the problem and render appropriate and effective assistance. They will not simply attempt to resolve the problem by, for example, sending the abuser away and referring the victim so that they can be done with the situation and return to service.*

*In addition, the goal addresses the issue of officer safety at scenes of domestic violence. Because this goal addresses the entire matter of police response, and to keep the expression of goals simple and efficient, the developers decided to use the word "safe" in the goal. In doing so they incorporated the matter of safety for the law enforcement officers on the scene and for the parties involved in the dispute.*

*Subsection 1.3.1-D expresses the view that the lack of knowledge and awareness about domestic violence, both among law enforcement officers and the public alike, is a chief reason law enforcement officers do not always provide the highest level of service to the parties of domestic violence. Accordingly, one of the goals of the policy should be to inform officers and, through them, the public about the gravity of domestic violence.*

*Subsection 1.3.1-E advocates the continued coordination of law enforcement with the entire criminal justice system and appropriate service providers. Without a unified, systematic approach, the quality of the law enforcement response to domestic violence will be inconsistent and inadequate.*

*Subsection 1.3.1-F seeks to unify domestic violence data collection throughout the State so that the effects of the response by law enforcement can be properly calculated and assessed. In addition, standardized reporting is key to data collection and critical to the effective delivery of services, including prosecutions, civil protective orders, and victim assistance.*



- 2.0 Definition of Domestic Violence
  - 2.1 Definition
  - 2.2 Explanation of "Intimate Relationship"
  - 2.3 Definition of Other Terms
- 

## 2.1 Definition

**2.1.1** Domestic Violence, as used in this policy, means a criminal occurrence involving persons who have an **intimate relationship**. 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:”

- A. an act that causes physical injury;
- B. an act that places one in fear of physical injury to self or others;
- C. sexual assault;
- D. property crimes;
- E. violation of a protective order; or
- F. false imprisonment. <sup>[4]</sup>

**Commentary:** In Section 2.1.1, the method of listing specific crimes, as employed in International Association of Chiefs of Police Training Key #411 in setting out its definition, was utilized for the definition.

In Subsection 2.1.1-B, the fear of injury to oneself and a victim's fear of injury to others, such as the victim's children, were also considered primary elements of domestic violence.

Subsection 2.1.1-C acknowledges that, although it could be classified for purposes of a definition as an injury, sexual assault is such a significant and characteristic feature of domestic violence that it should be singled out in the definition.

In Subsection 2.1.1-D property crimes are considered to be a characteristic feature of domestic violence, primarily because such events cause fear, are obviously destructive, and are the types of actions that typically precede actual physical violence.

In Subsection 2.1.1-E violations of court orders are the easiest element to include in a definition because the court has already ruled that "domestic violence" has occurred. When dealing with civil protective orders, law enforcement officers can quickly determine an incident's classification.

Subsection 2.1.1-F was included in the definition for the sake of consistency with the definition of "abuse" in FL §4-501 of the Family Law Article. All other elements that constitute "abuse" can be subsumed within the listing of offenses in the law enforcement definition of domestic violence.

## 2.2 Explanation of "Intimate Relationship"

2.2.1 An "intimate relationship" is one in which heterosexual or homosexual partners have or have had a sexual or emotional relationship.

- A. Persons involved in an "intimate relationship" are partners who:
- (1) are married, separated, or divorced;
  - (2) live or have lived together;
  - (3) have children in common; or
  - (4) date, or have dated, but do not live, or never have lived, together.
- B. Persons **not** involved in an "intimate relationship" within the meaning of the definition are:
- (1) other family members, such as children or parents; and
  - (2) individuals living together in a situation in which the relationship is usually not considered intimate, such as in a dormitory or rooming arrangement.

*Commentary:* In establishing the above relationships listed in Section 2.2.1, the goal was to keep the defined relationships simple and straightforward so that law enforcement officers would not be confused as to how to handle incidents to which they responded.

A second goal was to establish the position that domestic situations are those in which people have or have had an "intimate relationship." "Intimate" means people, i.e., couples or partners, who have been "attracted" to one another and have been involved in a physical, or sexual, relationship, as well as those involved only emotionally. In addition to married, separated, and divorced couples, and couples who are cohabiting and have cohabited in the past, are people who have dated but have never lived together, and persons who live together and have a strong emotional relationship, though not necessarily a sexual one. Persons expressly not included are those who live together in a dormitory or rooming situation but who have no intimate relationship.

In situations where couples are not or never have been married, or do not live together, the goal was to make it easy for a law enforcement officer to determine whether an incident involves a domestic dispute. The common denominator should be the "couple" or "partner" relationship, in which people currently live or once lived together, or have or have had an intimate relationship. Explicitly included in the definition are heterosexual and homosexual relationships.

Although this policy does not include other family members in its definition, law enforcement officers should be aware of the possibility of other types of violence in a household. Child and elder abuse, for example, are common family violence problems, much of which spin- off from the partner relationship.<sup>[5]</sup>

In establishing the partner aspect of the definition, other relationships, such as parent-child and the host of other family relationships that could be involved, were expressly excluded. The view was to include only those couple-type relationships that comprise about 75% of all family dispute calls for service.

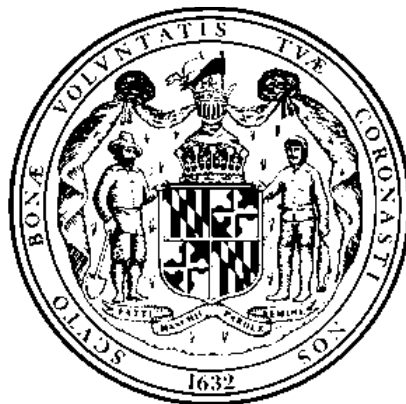


## 2.3 Definition of Other Terms

2.3.1 "Domestic **incident**," as used in this policy, means a **non-criminal** occurrence involving persons who have an intimate relationship.

2.3.2 "Domestic **situation**," as used in this policy, is a universal term to describe a criminal or non-criminal occurrence involving persons who have an intimate relationship or to describe an occurrence that has not yet been determined to be criminal or non-criminal.

*Commentary:* Because the terms are used frequently in the policy and should be clear to the reader, Section 2.3 makes distinctions between "**domestic incident**" as a **non-criminal** domestic occurrence and "**domestic situation**" as a universal term that can mean that an occurrence is either criminal or non-criminal in the context of "**domestic violence**," which is a criminal occurrence.



- 3.0 Dynamics of Domestic Violence
- 3.1 Introduction
- 3.2 Scope of the Problem
- 3.3 Battering Is Learned Behavior
- 3.4 Behaviors of a Domestic Violence Assailant
  - 3.4.1 Power and Control
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  - 3.6.1 Assailant Behaviors
  - 3.6.2 Victim Behaviors
  - 3.6.3 Putting Behaviors in Context
- 3.7 Signs of Danger
  - 3.7.1 Lethality Assessment Program

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### 3.1 Introduction

- 3.1.1 The Maryland law enforcement community asserts that domestic violence is both a problem in society and a crime perpetrated by an abusive person who has an intimate relationship with the victim. By examining the characteristics of domestic violence in this policy, we hope to educate our members statewide so that they will better understand the problem of domestic violence and be in an informed position to deliver the most appropriate and most effective response to the parties involved.

*Commentary:* Section 3.1.1 reiterates the problematic and criminal nature of domestic violence. It goes on to underscore the educational value for law enforcement officers of learning about the dynamics of domestic violence. This is the purpose of this section: to educate law enforcement officers on the characteristics of domestic violence so that they will be in a better position to conduct proper investigations and build probable cause to make legal arrests.

### 3.2 Scope of the Problem

- 3.2.1 Domestic violence occurs in many relationships. Men and women alike commit crimes of violence against persons with whom they have been intimate. However, we recognize that the vast majority of victims in domestic cases are women.<sup>[6]</sup> We understand this phenomenon, take special note of it in developing this policy and in training and educating our members, and will respond to it sensitively and impartially as we perform our duty to protect the public. Enforcement efforts by Maryland law enforcement officers against the crime of domestic violence concentrate on proper investigation to determine the existence of probable cause to ensure that appropriate action will be taken against the violator.
- 3.2.2 Many studies have examined the scope of domestic violence in the United States. We, in the Maryland law enforcement community, accept information from the U.S. Department of Justice which reports that annually about 600,000 women are victims of violence perpetrated by an "intimate partner"; i.e., a husband, ex-husband, boyfriend, or ex-boyfriend.<sup>[7]</sup> Fully recognizing that unreported crime raises the actual level of crime,<sup>[8]</sup> we believe that over a million women a year are victimized by domestic violence.<sup>[9]</sup>

- 3.2.3** As a law enforcement community, we realize that our enforcement efforts must be uniform and reach out across the State, for the problem of domestic violence extends equally to people living in our cities, suburbs, and rural areas.<sup>[10]</sup>
- 3.2.4** We acknowledge the serious nature of the problem as well. Women who are injured during the commission of a violent crime are nearly twice as likely to be injured if the assailant is an intimate partner than if the assailant is a stranger. Additionally, in about a quarter of domestic violence cases a victim seeks medical treatment, usually for cuts, bruises, black eyes, and similar injuries.<sup>[11]</sup> In addition, a sizable percentage of persons involved in domestic violence are victims of repeated offenses at the hands of their abusers.<sup>[12]</sup> We believe that the frequency of such occurrences indicates escalating violence and severity and increases the likelihood of such events leading to homicide. The fact that women now report violence perpetrated by an intimate partner at the same rate as that committed by a stranger highlights the serious nature of assaults by intimate partners.<sup>[13]</sup>
- 3.2.5** We realize that a number of domestic violence incidents are still not being reported to law enforcement agencies and, therefore, that a portion of the data about domestic violence is not being officially collected. We thus have no way of knowing the true extent of the problem. However, the information we receive from government studies, as well as from many private studies, and our own experience in dealing with domestic disputes on a daily basis throughout the State, lead us to conclude that the problem deserves the vigorous, concentrated, and unified attention of the Maryland law enforcement community, in conjunction with the rest of the criminal justice system and service providers.

*Commentary:* Section 3.2 acknowledges that the problem of domestic violence is serious and requires a unified approach.

### **3.3 Battering Is Learned Behavior**

- 3.3.1** Studies consistently show that many batterers come from abusive homes.<sup>[14]</sup> Witnessing domestic violence is the most common risk factor for becoming a batterer. Our own experience conveys to us that people who commit violent acts have experienced violence in their own lives, and we would conclude from these studies and our law enforcement experience that battering, in many cases, is learned behavior.<sup>[15]</sup>

*Commentary:* Section 3.3 serves to inform the law enforcement officer that domestic violence is learned, and that it is not just the action of a person who momentarily loses control or becomes drunk and strikes someone because of it. This section serves as the first stepping stone toward building an understanding of domestic violence and why intervention might be the beginning to stopping violence in a relationship.

### **3.4 Behaviors of a Domestic Violence Assailant**

#### **3.4.1 Power and Control**

Domestic violence assailants (abusers) exert a phenomenon described as "power and control" over their "intimate partner" victims.<sup>[16]</sup> In gaining and maintaining control over a victim, the abuser uses the following types of behaviors:

#### **3.4.2 Nonphysical Behavior**

A. Economic abuse:

- (1) Preventing the victim from getting or keeping a job;
- (2) Making the victim ask for money;
- (3) Giving the victim an allowance;
- (4) Taking the victim's money; and,
- (5) Not letting the victim know about or have access to family income.

B. Emotional abuse:

- (1) Belittling the victim;
- (2) Making the victim feel bad about himself/herself;
- (3) Calling the victim names;
- (4) Making the victim think he/she is crazy;
- (5) Humiliating the victim; and,
- (6) Making the victim feel guilty.

C. Intimidation:

- (1) Using looks, actions, and gestures to make the victim afraid;
- (2) Smashing objects; and,
- (3) Brandishing weapons.

D. Coercion and threats:

- (1) Making and/or carrying out threats to do something to hurt the victim;
- (2) Threatening to leave the victim, to commit suicide, to report him/her to welfare/social services;
- (3) Stopping or attempting to stop the victim from cooperating with the prosecution;
- (4) Making the victim commit illegal acts; and,
- (5) Threatening to harm pets.

E. Using children:

- (1) Making the victim feel guilty about the children;
- (2) Using the children to relay messages;
- (3) Using visitation to harass the victim; and,
- (4) Threatening to take the children away.

F. Isolation:

- (1) Controlling what the victim does, who the victim sees and talks to, what the victim reads, where the victim goes;
- (2) Limiting the victim's outside involvement; and,
- (3) Using jealousy to justify actions.

G. Minimizing, denying, and blaming:

- (1) Making light of the abuse and not taking the victim's concerns about it seriously;
- (2) Saying the abuse did not happen;
- (3) Shifting responsibility for abusive behavior; and,
- (4) Saying the victim caused it.

H. Using male privilege:

- (1) Treating the victim like a servant;
- (2) Making all the big decisions;
- (3) Acting as though they are masters of the castle; and
- (4) Being the one to define men's and women's roles.

I. Using the sympathies of the law enforcement officer:

- (1) Playing on the law enforcement officer's sympathies to talk the officer out of taking action.

J. Technological Abuse:

- (1) Monitoring cell phones and computers (e-mail/social media accounts);
- (2) Limiting ability to use technology; and,
- (3) Using built in GPS to track the victim.

### 3.4.3 Criminal Behavior

When it becomes apparent to the abuser that he/she cannot maintain control over the victim through non-physical tactics, the abuser will resort to aggressive, physical, and criminal acts such as physical and sexual abuse, threats of violence, stalking, kidnapping, destruction of property, and injuring or killing pets.<sup>[17]</sup>

*Commentary:* Section 3.4, taken from the Domestic Abuse Intervention Project in Duluth, Minnesota, identifies behaviors the officer can consider when trying to determine if the alleged assailant fits the profile of an abuser.

### 3.5 Cycle of Violence

The "cycle of violence" is a term that analogizes battering to a revolving door.<sup>[18]</sup> Although not all cases fit neatly into the "cycle of violence", many follow a similar pattern.

#### 3.5.1 The Tension-Building Phase

During this phase of the "cycle of violence" the batterer becomes less able to control his/her partner through power and control techniques. He/she becomes more and more frustrated. He/she will begin arguments with the victim over trivial matters. The batterer will become jealous and fly into a rage. He/she will shout and call the victim names and make verbal threats. Those threats will begin escalating to pushing and shoving and restraining the victim against his/her will. The incidents will become more and more frequent and edge closer to physical and/or sexual violence.

### 3.5.2 The Acute Battering Incident

The tension-building phase of the “**cycle of violence**” will build up with ever-increasing tension and violence until there is an explosion of violence. The seriousness of this explosion will vary from couple to couple, and will depend on how many times the couple has been through the “**cycle of violence.**” The explosion of violence on the first occasion may be a slap to the face. The second incident may include throwing the victim to the ground and punching him/her several times in the face. Later, the batterer may begin using weapons. The level of injury suffered by the victim will increase accordingly. During this phase of the “**cycle of violence**” the explosion of violence may last a few minutes or several days.

### 3.5.3 The "Hearts and Flowers" or "Honeymoon" Phase

Following a severe battering incident most batterers enter the "hearts and flowers" phase of the “**cycle of violence.**” The batterer, either immediately following the battering incident, or shortly thereafter, will become contrite and apologetic and will beg the victim's forgiveness. He/she tells the victim that the violence will never happen again and promises to reform. Batterers during this stage will court their spouse and become again the person with whom the victim fell in love. Many batterers say that they will reform their behavior, and victims want to believe them. However, without outside intervention, in most cases, the “**cycle of violence**” will gradually repeat itself, moving from this third phase back into the tension-building phase.

*Commentary:* Section 3.5, dealing with Dr. Lenore Walker's "**cycle of violence,**" is key for the law enforcement officer's learning about domestic violence and using this particular dynamic to build probable cause. If the officer hears the victim identifying the three elements of the “**cycle of violence**” in relating how the assailant has been abusive in the past, that information should alert the officer to the strong possibility that the victim is being truthful.

## 3.6 Behaviors at the Scene of Domestic Situations

Officers responding to a domestic situation may encounter any of several behaviors from both parties. The more officers know about these behaviors, the better equipped they will be to determine who the assailant and victim might be and to make an informed assessment of probable cause.

### 3.6.1 Assailant Behaviors

Abusive partners may demonstrate a variety of and possibly all of the following behaviors:

- A. Assailants will often **rationalize** their behavior as being caused by the victim. They may portray the victim as hysterical, alcoholic, mentally ill, or needing to be physically restrained. They may point to the victim's highly emotional state as evidence of this. Assailants may complain that they are the real victims in the family. An assailant may claim that his wife caused the violence because she did not treat him right. Assailants may claim that they are trying to keep the family together, that the victim is destroying the family.
- B. Assailants will **deny or minimize the violence** when confronted with evidence of their violent behavior. Officers may hear such statements as: "She bruises easily;" "She was hysterical;" "She was drunk/high;" "I had to restrain her." An assailant may also admit that there was an argument but that "it was nothing and everything is fine now."

- C. Assailants will **blame the victim for the violence**, stating that the victim was the one who became physical. This type of statement frequently omits details concerning the incident. For example, the assailant may have been attempting to force sex on the victim or blocking a victim's means of escape.
- D. Assailants may **make complaints** to a law enforcement agency, or try to obtain a warrant or a protective order, against the victim before the victim does in order **to counter accusations** that the victim will make against the assailant. Maryland law addresses this strategy by permitting mutual protective orders only when both parties were primary aggressors and neither party acted in self-defense.
- E. Assailants may appear **calm, non-combative, and cooperative**. Officers observing this type of behavior should be aware that it is inconsistent with the nature of a domestic violence call and may be manipulative behavior designed to bond the male assailant with a male officer.
- F. Assailants may **attempt to draw officers in** by making statements such as "What would you do?"; "You know how it is."; "You know how women are."; "You seem like a reasonable person – look at her. What do you think I should do?"<sup>[19]</sup>

### 3.6.2 Victim Behaviors

Victims, just like assailants, will display a variety of behaviors.

- A. Victims of domestic violence react the same as victims of other traumatic experiences:
  - (1) Victims may be **unresponsive** and may withdraw to the extent that they do not recognize the opportunity for help the officers are providing them.
  - (2) Victims may seem **panicked or overly excited, upset and angry**. They may not be able to articulate what happened in a logical sequence; they may be speaking loudly or quickly, omitting words and thoughts. Officers should recognize that a victim is not necessarily lying but may have suffered an injury that has impaired her/him or may be under the influence of alcohol or drugs. A victim also does not have the same priority as the responding officer: The officer is interested in making a good case; the victim is concerned with surviving.
  - (3) After reacting to the immediate violence, **victims sometimes feel that things will somehow work out alright**.
- B. Victims may **minimize or deny the violence**. They may say that nothing happened or that it was not so bad. Victims often act out of feelings of fear of retaliation, love for the assailant, a belief that the assailant is sorry for what he/she did and that it will not happen again (the honeymoon phase in action), or resignation that nothing will help because violence is tolerated by society.



- C. Victims may **rationalize the assailant's behavior** out of a belief that the violence is the victim's fault or that the assailant's life or job is so stressful or difficult.
- D. Victims may show a **reluctance to discuss what happened**, especially if the assailant is present, because the victim fears retaliation. Perhaps the assailant has threatened to harm the victim if he/she says anything to the police; perhaps the "system" has let the victim down when he/she sought help and now he/she feels that nothing can help the situation; perhaps the victim is embarrassed or ashamed about what has happened.
- E. Victims may **ask the police to leave**. They may be acting out of fear of their assailant. A victim may believe that the officers will not make an arrest and that he/she will be at the abuser's mercy once they leave, so the victim doesn't want to do anything that would make the assailant angrier. Even if the victim thinks that an arrest will be made, he/she may attempt to show the assailant his/her loyalty so that the assailant will not be as angry with him/her when he/she is released. The victim may also fear the police or other government agencies because the assailant may have told him/her that the victim will be the one who will get in trouble if he/she draws attention to the situation.
- F. Victims may **ask the police not to arrest the assailant**. Such a request is common. It may stem from a victim's fear of the assailant and what he/she might do to him/her; the victim may rationalize the assailant's behavior; he/she may believe he/she will now change; the victim may be concerned about the financial consequences of the assailant being arrested. When the victim called police, he/she was most likely looking for one thing: to stop the violence. Once that goal has been achieved, the victim may not want anything further to be done because he/she may believe the assailant has learned a lesson, the victim fears retaliation, or the victim fears the unknown because he/she does not know what will happen next. Officers must be aware of this behavior. It will happen often. Officers should carefully and patiently explain what will happen to the assailant once an arrest is made, and to provide the victim with options such as leaving the home or contacting a domestic violence counselor.
- G. Victims may **try to physically protect the assailant from the police**. This action exhibits the need of a victim to show the assailant that he/she is on the assailant's side. However, the victim might be employing this strategy out of fear of retaliation or of the consequences that an arrest might have on the family.
- H. Victims may be **crying or acting irrationally**. Officers should be aware that the victim may be in the throes of a dilemma: he/she loves his/her partner for the person the assailant is, for the person that attracted the victim to the assailant; but the victim wants the assailant to stop beating him/her...but he/she doesn't want the assailant to go to jail! This notion may be confusing, but it is behavior that officers should expect.
- I. Another component of victim behavior is that **victims may not be likeable**. A victim may provoke responding officers; a victim may use foul language; he/she may be angry and yelling. This behavior on the victim's part may cause the officers to look upon him/her as being the aggressor, or as being a "mental observation" case, or simply as someone the officers do not like, and officers might even be drawn to sympathize with the assailant. Officers should be aware that victims may not be likeable or sympathetic persons and that they are prone to act erratically.<sup>[20]</sup>

### 3.6.3 Putting Behaviors in Context

Putting a victim's and assailant's behaviors in context will enable officers to use these behaviors to help determine probable cause to make an arrest.

*Commentary:* Section 3.6 is for the purpose of giving officers some ideas about the types of behaviors they will encounter so they might understand in a more concrete fashion the dynamics of domestic violence and so they can use this behavioral information as part of their investigation.

### 3.7 Signs of Danger – Batterer Behavior

- A. There are some signs that a batterer might display that might indicate that the level of danger to the victim is increasing, and that the victim might be in a life-threatening situation. There may be only a single sign exhibited that may indicate trouble or there may be a combination of signs. It is important to understand that these signs are not absolute indicators and that there may be other signs as well, including the intuition of the victim which may be the most important one. Nevertheless, the more signs that are present and the greater the intensity of the signs, the more likely it is that the victim's life may be in danger. The presence of any or all of these danger signs should cause responding officers to conduct a Lethality Assessment with the victim.
- B. The danger signs may include:
- (1) **Batterer's "ownership" of the victim.** The batterer may make statements that indicate that he/she will kill his/her partner before he/she divorces him/her or leaves him/her. The batterer may say such things such as: "If I can't have you, nobody can." Ownership may be exhibited by the obsessiveness of the batterer about his partner, and how devastating it would be to the batterer to lose him/her.
  - (2) **Threats of homicide or suicide, to do harm, or to take hostage.** These threats may be to kill or harm the victim, or his/her children, or family members. The batterer may threaten to kill him/herself. The batterer who has fantasized about killing as a solution to his/her problem may be intent on acting it out. Threats to do harm or to take the victim or family members hostage may be an indication that the batterer feels that his/her level of control is eroding.
  - (3) **Depression.** If the batterer has been depressed and seems unable to move beyond it, this is a risk factor.
  - (4) **Weapons.** The access to weapons increases the potential for danger. If the batterer has used or threatened to use weapons in the past against the victim, children, or family members, the potential for danger is even greater.
  - (5) **Timing.** When a batterer believes he/she is about to lose his/her partner, and is not able to live without him/her, the potential for danger may increase.

- (6) **History of domestic violence.** If there is a history of domestic violence between the parties, and if there is a history of calls to the law enforcement agency in particular, this may be a sign that the severity of abuse has escalated. Because victims do not usually call the police on the first occurrence of violence, and because of the belief that much of domestic violence is unreported, the fact that the victim has a history of calls to the police is an even stronger indicator that the level of violence may be intensifying.
  - (7) **History of violent behavior against others.** Such behaviors serve to demonstrate the violent nature of the abuser.
  - (8) **Stalking behavior.** Such behavior is a sign that the potential for danger is increasing.
  - (9) **Killing/mutilating of pets.** This behavior serves notice to the victim that the batterer is capable of killing and demonstrates that he/she can back up death threats made against the victim or others. It can also be a sign of escalating violence, perhaps in the face of losing control over the victim.
  - (10) **Alcoholism or drug addiction.** These conditions may only serve to intensify the batterer's violent behavior.
- C.. An additional indicator for gay and lesbian partners might be whether the abuser has been closeted, and is risking exposure by battering his/her partner. Such behavior might be viewed as an act of desperation on the part of the abuser and should be assessed as a sign of danger to the victim.
- D. The main factors that these signs indicate are that the batterer believes he/she is losing control of his/her victim (whether in fact he/she is or not), believes his/her victim is leaving him/her and he/she cannot bear to live without him/her, and violence is or looms as a prevailing behavior.<sup>[21]</sup>
- E. Remember: if a victim states to an officer that she believes that her life or that of others is in danger, the officer must take the victim's claim seriously, for it is the victim who knows the abuser better than anyone else.<sup>[22]</sup>

### **3.7.1 Lethality Assessment**

The Lethality Assessment Program, as offered by the Maryland Network Against Domestic Violence [MNADV], is a lethality screening tool and accompanying referral protocol that provides direction for law enforcement officers to initiate appropriate action based on the results of the screening process when responding to calls for domestic violence.<sup>[23]</sup> The Domestic Violence Lethality Screen for First Responders provided by MNADV or an agency generated screening tool should be completed by officers responding to domestic violence calls for service involving intimate partners, especially those incident during which a physical assault has occurred.

- A. Upon arrival at the scene of a domestic violence call the responding officer will initially assess the situation to determine who the victim is, whether the victim and assailant have an intimate relationship, whether an assault has taken place and whether there are signs of danger to the well-being and safety of the victim.
- B. If the officer:
1. determines that a domestic violence assault has occurred;
  2. senses that potential danger to the victim exists;
  3. determines that the names of the parties or the location are repeat names or locations; or,
  4. simply believes a lethal assessment screening should take place he/she will ask the victim to answer a series of questions from the “*Lethality Screen for First Responders*.”
    - a. Has the assailant ever used a weapon against you or threatened you with a weapon?
    - b. Has the assailant threatened to kill you or your children?
    - c. Do you think the assailant might try to kill you?
    - d. Does the assailant have a gun or can he/she get one easily?
    - e. Has the assailant ever tried to **strangle** you?
    - f. Is the assailant violently or constantly jealous or does he/she control most of your daily activities?
    - g. Have you left him/her or separated after living together or being married?
    - h. Is the assailant unemployed?
    - i. Has the assailant ever tried to kill him/herself?
    - j. Do you have a child that the assailant knows is not his/hers?
    - k. Does the assailant follow or spy on you or leave threatening messages?
    - l. Is there anything else that worries you about your safety?
- C. If an officer receives a **YES answer to questions a, b or c** the protocol referral is **automatically triggered**.
- D. If an officer receives **NEGATIVE** responses to questions “**a, b and c**” but **at least 4 positive responses to questions “d through l”** the protocol referral is **triggered**.
- E. If an officer receives a **POSITIVE response to question “a”** or an officer believes the victim is in potentially lethal situation the **protocol referral is triggered**.
- F. Once the Lethality Assessment is completed the officer shall advise the victim of the results of the screening and, according to the results of the screening as indicated above, explain to the victim that the officer will call the “hotline” in order to contact a counselor. The officer will then request that the victim speak to the counselor who will provide response options to the victim.

If the **victim agrees** to talk to the “hotline” counselor and after the victim does so, the officer will assist the victim in participating in the coordinated safety planning developed between the victim and counselor.

If the **victim refuses** to speak to the “hotline” counselor, even after repeated attempts by the officer to convince him/her to do so, the officer shall consult with the counselor in an effort to seek guidance. The officer will then advise the victim of the factors that are predictive of death so that the victim can be on the lookout for them, encourage the victim to contact the domestic violence program, provide the victim with referral information and follow any other established agency protocols designed to address the victim’s safety and well-being.

- G. Once the call for service has been completed, the officer shall complete a **written** report of the incident according to agency reporting procedures including in that report whether a Lethality Assessment was conducted. If none was conducted the reporting officer should note the reason one was not conducted.

**Commentary:** *In a number of instances the officer responding to a domestic violence call for service is placed in a difficult situation in that he/she will not be able to establish probable cause that a crime has just occurred. Lacking this legal standard to make an arrest, the officer is placed in a situation where he/she is still being asked to take some kind of action to safeguard the well-being of the victim.*

Section 3.7 presents the “**Lethality Assessment**” as an intervention tool available to officers who respond to domestic violence calls. The “**Lethality Assessment Program**,” as offered by the Maryland Network Against Domestic Violence, is a two-pronged intervention process that features a research-based lethality screening tool and an accompanying protocol referral that provides direction for law enforcement, medical personnel, clergy, social workers and others to initiate appropriate action based on the results of the screening process. The goal of the **Lethality Assessment Program** (LAP) is to prevent domestic violence homicides, serious injury and re-assault by encouraging more victims to utilize the support and shelter services of domestic violence programs. By using the **Lethality Assessment Screen** the responding officer attempts to determine whether the situation with which he/she is dealing has the potential to move toward further and more serious violence, or to death.

*The Domestic Violence Lethality Screen for First Responders, provided by MNADV, can be either adopted by agencies that do not have their own screening tool or serve as prototype for agencies wishing to develop their own screening instrument.*

*While there is no legal requirement that a **Lethality Assessment** be conducted in all domestic violence situations, law enforcement agencies are urged to consider making completion of a **Lethality Assessment** part of their standard operating procedures in response to these calls for service.*

**Note:**

*In the original version of the **Lethality Assessment** the question posed in section 3.7.1.B.4.e used the word “choke” instead of the word “strangle.” In this update of the model policy, the question “Has the assailant ever tried to **strangle** you?” has been reworded to reflect current thinking on the difference between the term “choking” [an accident caused by ingesting a foreign object] and “strangling” [an intentional act of violence]. It is recommended that the word “choke” be replaced by the word “strangle” for the reasons cited on page 62 of this model policy.*

**4.0 Arrest****4.1 Arrest Policy****4.2 Enabling Statutes****4.2.1 CP § 2-202: Arrests without Warrants Generally****4.2.2 FL § 4-509: Mandated Arrest for Violation of Protective Orders****4.2.3 Maryland Statutes Commonly Related to Domestic Violence****4.3 Probable Cause****4.3.1 Definition of Probable Cause****4.3.2 Factors a Law Enforcement Officer Should Consider in Determining Probable Cause****4.3.3 Factors a Law Enforcement Officer Must Disregard in Determining Probable Cause****4.4 Dual Arrest****4.4.1 Investigative Guidelines****4.4.2 Basic Arrest Policy in Cases of Mutual Battery****4.1 Arrest Policy**

**4.1.1** Recognizing the potential for injury to a victim during a domestic violence crime the Maryland law enforcement community advocates a preference for domestic violence policies that call for an arrest of an offender whenever probable cause exists to arrest the offender for a domestic violence crime.

**4.1.2** Accordingly, whenever the law permits, law enforcement officers should arrest the assailant if there is probable cause to believe that a crime of domestic violence has been committed.

**4.1.3** When a law enforcement officer is able by law to make an arrest, and he/she chooses not to, the officer will prepare an incident report. In the report, the officer will explain why an arrest was not made and what specific actions were taken to ensure the safety of the victim.

**Commentary:** In the original Model Domestic Violence Policy published in 2004 the developers of that version of the Policy commented “it was the accepted view of the Maryland law enforcement community...that a “preferred” arrest policy is the best-suited course of action to be taken in response to a domestic violence call for service. The developers continued by saying a “preferred-arrest policy does not mandate arrests, except, as required by law, in cases of violations of civil protective orders, and it leaves room for officer discretion.” Since that original version of the Policy was published the Policy Review Board has reconsidered the words “preferred arrest” as being possibly confusing and has chosen to re-word 4.1 Arrest Policy to its current wording that focuses on the existence of probable cause. This change in wording is in no way intended to lessen a responding officer’s focus on stopping the violence, protecting the victim or allowing the criminal justice system and service providers to do what they can toward seeking a more long-term solution to the violence in the relationship. It is only intended to reduce any confusion that may exist in the minds of officers at the scene of domestic violence incident and increase the likelihood that the assailant can be successfully prosecuted in a court of law.

When probable cause exists and an arrest is not made, Section 4.1.3 requires that a report be prepared explaining why the arrest was not made and explaining what specific actions were taken to ensure the safety of the victim. There are four main reasons for this report: (1) Some might consider this requirement time-consuming. In certain respects this consideration is obviously correct; however, there is a trade-off with time for other benefits that accrue by preparing the report. In another respect, the law enforcement officer's decision not to arrest, even with an incident report, has already saved time that would have been

spent processing the prisoner. (2) The primary purpose of the report is not to collect statistics. It is to introduce the abuser and the victim into the system. (3) The report serves as a record of the violence in this particular relationship. (4) The report protects the officer by documenting his/her actions in ensuring the victim's safety.

## 4.2 Enabling Statutes

### 4.2.1 CP § 2-202: Arrests without Warrants Generally

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

- A. **Felony or misdemeanor committed or attempted in officer's presence.** Under CP § 2-202 (a), when a felony or misdemeanor is committed, or attempted, in the presence or view of the officer;
- B. **Felony or misdemeanor, committed or attempted in officer's presence or view, based on probable cause.** Under CP § 2-202 (b), 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;
- C. **Felony based on probable cause.** Under CP § 2-202 (c), 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;
- D. **Domestic battering with physical injury.** Under CP § 204 (a):
  - (1) When an **officer has probable cause** to believe that:
    - (a) a person battered his/her spouse or other individual with whom the person resides;
    - (b) there is evidence of physical injury; and
    - (c) unless the person is immediately arrested, he/she:
      - (i) might not be apprehended;
      - (ii) may cause physical injury to the victim or damage to the property of one or more other persons; or
      - (iii) may tamper with, dispose of, or destroy evidence; and
  - (2) When a report (or call for service) was made to the police within 48 hours of the alleged incident;

- E. **Specified misdemeanor offenses.** Under CP § 2-203 (a)
- (a) When an officer **has probable cause** to believe that:
    - (1) One of the offenses listed in CP § 2-203 (b) has been committed;
    - (2) The person has committed the offense; and
    - (3) Unless the person is immediately arrested, he/she:
      - (i) may not be apprehended,
      - (ii) may cause physical injury to the victim or damage to the property of one or more other persons, or
      - (iii) may tamper with, dispose of, or destroy evidence.
  - (b) offenses under CP § 2-203 (a) for which an officer may arrest without a warrant that are common to domestic violence, include, but are not limited to:
    - (1) CR § 4-101 (relating to carrying or wearing a concealed weapon); and
    - (2) CR § 6-301 (relating to destroying, injuring, etc., property of another), including attempts;<sup>[24]</sup>
- F. **Stalking.** Under CP § 2-205, when
- (1) The officer has **probable cause** to believe that a stalking under CR § 3-802 has been committed;
  - (2) The officer has reason to believe that the alleged stalking victim or a third person is in danger of imminent bodily harm or death; and
  - (3) The probable cause under CP § 2-205 (also Subsection 4.2.1-f-(1), above) is supported by credible evidence other than statements of the alleged stalking victim.

#### 4.2.2 § 4-509: Mandated Arrest for Violation of a Protective Order

- a. Under FL § 4-509 (b), an officer **shall** arrest **with** or **without** a warrant and take into custody a person whom the officer has probable cause to believe is in violation of an **Interim**, **Temporary** or **Final** protective order in effect at the time of the violation.



- b. Under FL § 4-509 (a), the officer **shall** arrest a person, **with** or **without** a warrant, for the following violations of a protective order:
- (1) Failure to refrain from abusing or threatening to abuse a petitioner;
  - (2) Failure to refrain from contacting, attempting to contact, or harassing a petitioner;
  - (3) Failure to refrain from entering any residence of a petitioner;
  - (4) Failure to vacate the home immediately and to award temporary use and possession of the home to the petitioner;
  - (5) Failure to remain away from the place of employment, school, or temporary residence of a petitioner or the home of other family members; or
  - (6) Failure to remain away from the residence of any family member of a petitioner.<sup>[25]</sup>

### **4.2.3 Maryland Statutes Commonly Related to Domestic Violence**

Almost any crime can be related to domestic violence. The following Maryland criminal statutes, as contained in the Maryland Criminal Laws - Annotated, while not an exclusive list, are commonly associated with domestic violence situations:

- A. First degree murder (CR § 2-201),
- B. Second degree murder (CR § 2-204),
- C. First degree rape (CR § 3-303),
- D. Second degree rape (CR § 3-304),
- E. First degree sexual offense (CR 3-305),
- F. Second degree sexual offense (CR § 3-306),
- G. Third degree sexual offense (CR § 3-307),
- H. Fourth degree sexual offense (CR § 3-308),
- I. Rape and Spousal offense – spousal defense (CR § 3-318),
- J. Arson and related offenses (CR § 6-102 – 6-105),
- K. Burglary in first degree (CR § 6-202),
- L. Burglary in second degree (CR § 6-203),
- M. Burglary in third degree (CR § 6-204),
- N. Burglary in fourth degree (CR § 6-205),
- O. First degree assault (CR § 3-202),
- P. Second degree assault (CR § 3-203),
- Q. Reckless endangerment (CR § 3-204),
- R. Kidnapping (CR § 3-502),

- S. False imprisonment (common law offense),
- T. Harassment (CR § 3-803),
- U. Stalking (CR § 3-802),
- V. Destroying, injuring, etc., property of another (CR § 6-301),
- W. Unlawful use of telephone (CR § 3-804), and
- X. Trespass (CR § 6-402)

**Commentary:** *The listing of enabling and applicable domestic violence statutes is for the purpose of informing the law enforcement community. It is important to understand what CP § 2-202 authorizes and what it does not. CP § 2-204 – the domestic violence provision – allows for warrantless arrest only for battery, and it includes only spouses and persons who reside together; it does not include common domestic violence offenses that do not cause physical injury, and it does not include, for example, dating relationships. Certain other provisions of the law do enable a law enforcement officer to arrest for common domestic violence related offenses that the domestic violence provision does not. For example, CP § 2-203 permits arrest for destroying property.*

### **4.3 Probable Cause**

#### **4.3.1 Definition of Probable Cause**

Probable cause is a "set of facts and circumstances, or reliable information that would lead a reasonable, prudent, and cautious officer to believe that a crime had been committed and a certain person committed it." (*Stacy v. Emery*)<sup>[26]</sup>

**Commentary:** *Probable cause is a misunderstood concept in domestic violence cases, and a law enforcement officer often wants probable cause established for him/her in "black and white with no grays." As cited in the notes under CP § 2-202, the "rule of probable cause is a nontechnical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction, but more evidence than that which would arouse a mere suspicion." Moreover, "[o]nly the probability, and not a prima facie showing of criminal activity, is the standard for probable cause."<sup>[27]</sup> In this context, the listing of factors a law enforcement officer should consider should serve to help the officer determine whether probable cause exists.<sup>[28]</sup>*

#### **4.3.2 Factors a Law Enforcement Officer Should Consider in Determining Probable Cause**

- A. In domestic violence cases there may be factors present that help to establish probable cause for an arrest that do not exist for the same offense if it occurred in another situation. These factors can aid the law enforcement officer in his/her investigation of the incident.<sup>[29]</sup>
- B. The presence of one or any combination of probable-cause factors can help a law enforcement officer establish probable cause to make an arrest in a domestic violence case.<sup>[30]</sup>

- C. The following are some factors that a law enforcement officer should consider in building probable cause in a domestic violence case:
- (1) Visible injuries, and whether they are of an offensive or defensive nature;<sup>[31]</sup>
  - (2) Evidence of victim's pain from nonvisible injuries, such as a blow to the stomach causing the victim to wince and hold the affected area;
  - (3) Furniture in disarray;
  - (4) Torn clothing;
  - (5) Need for medical attention;
  - (6) Corroborating statements of witnesses who can verify violence or threats of violence;<sup>[32]</sup>
  - (7) Threats made in officer's presence;
  - (8) Presence of weapons;
  - (9) Demeanor of complainant (upset, angry, confused because he/she may have been assaulted);<sup>[33]</sup>
  - (10) Demeanor of suspect (agitated, or calm and composed because he/she may have relieved his/her tension by striking the complainant);<sup>[34]</sup>
  - (11) Upset children;
  - (12) Information derived from the call-taker's record;<sup>[35]</sup>
  - (13) History of violence or repeat calls for service at location;
  - (14) Existence of a civil protective order;
  - (15) Refusal of the suspect to allow the victim to be interviewed out of the suspect's presence even when the victim complies; and<sup>[36]</sup>
  - (16) Dynamics of domestic violence being exhibited by the parties, as articulated in this policy.<sup>[37]</sup>

**Commentary:** *Establishing probable cause in domestic violence cases is often difficult because frequently there seems so little with which to work. Domestic violence cases often involve one person's word against another's. The listing of the factors in Section 4.3.2 is an effort to provide law enforcement officers with tools for conducting an investigation and trying to build probable cause.*

### 4.3.3 Factors a Law Enforcement Officer Must Disregard in Determining Probable Cause

- A. In domestic violence cases, there are some factors that a law enforcement officer must **disregard** in determining probable cause, although historically these factors may have influenced an officer in deciding not to arrest a suspect. <sup>[38]</sup>
- B. Accordingly, the following are factors that a law enforcement officer must **disregard** in determining probable cause:
- (1) A law enforcement officer must disregard the marital status of the parties. Although an officer must consider the relationship of a couple in determining probable cause, the fact that a couple is married should not serve to indicate to an officer that no crime has occurred, or that it is not the responsibility of law enforcement to intervene. <sup>[39]</sup>
  - (2) A law enforcement officer must disregard the race or ethnic background of the complainant or suspect. Domestic violence occurs among people of all races and ethnic backgrounds; moreover, the fact that striking a person is acceptable in another culture does not excuse its occurrence in the State of Maryland.
  - (3) A law enforcement officer must disregard the sexual orientation of the complainant or suspect. In this policy, heterosexual and homosexual relationships alike are included in the definition of domestic violence. <sup>[40]</sup>
  - (4) A law enforcement officer must disregard the existence (or lack) of a civil protective order. The officer should not consider, when an order has been issued, that since the problem has been handled by the court there is nothing further that he/she can or should do. When no order exists, the officer should not consider that the only solution to the problem is to advise the victim to petition for a civil protective order. A civil protective order is a legal certification of a problem and is thus a factor to consider in building probable cause. The existence of a civil protective order may contain an order of the court for which the respondent may be in violation and which requires that he/she be arrested.
  - (5) A law enforcement officer must disregard the location of the incident, whether on public or private property. There is a tendency by law enforcement officers to settle altercations between individuals who know one another, especially if they occur in the home, but also on the street, by advising one or both of the parties to obtain a warrant, or by mediating the dispute and referring the parties for other services.

- (6) A law enforcement officer must disregard the presence of a lease. There is a tendency by law enforcement officers to settle disputes by removing the person whose name is not on the lease. This action does not take into account what occurred in the incident.
- (7) A law enforcement officer must exercise care in considering the history of complaints at a location. Although a history of complaints at a location helps an officer to build probable cause, because officers respond to a location frequently they may tend to treat the situation lightly, dismiss it, and not take, or continue to take, positive action to stop the violence in the relationship. They may feel that earlier positive intervention efforts were fruitless.
- (8) A law enforcement officer must disregard the verbal assurances of the suspect that the violence will stop. Such a statement is an admission that there is a problem and that perhaps violence did recently occur. It is also a statement on which a professional law enforcement officer cannot rely.
- (9) A law enforcement officer must disregard the potential financial consequences of arrest to the suspect and/or the victim. An officer may sincerely feel that if he/she arrests the abuser that action will negatively affect the family's ability to bring money into the household. That may be a correct assessment; however, the focus for the officer should be on the fact that a crime occurred for which the Maryland law enforcement community holds that an arrest, based on probable cause, is the appropriate action.
- (10) A law enforcement officer must disregard the belief that the complainant will not want to prosecute and will not appear in court. This will occur in many domestic violence cases, although some jurisdictions in the State of Maryland have a "no-drop" policy. In addition, Maryland State law [CP § 9-106 (a) (2)] limits the right to refuse to testify in cases where the victim and the abuser are married.<sup>[41]</sup>
- (11) A law enforcement officer must disregard the complainant's statement that he/she does not want the suspect arrested. This will occur in many domestic violence cases. In fact, the victim may have only wanted for the police to intervene and stop the violence or potential violence. However, the Maryland law enforcement community's advocates domestic violence policies that call for an arrest based on probable cause as the appropriate action in response to domestic violence calls for service in order to stop the violence. Such a policy also relieves the complainant of the problem wherein the abuser blames the victim for being arrested.
- (12) A law enforcement officer must disregard the denial by either party that abuse occurred, despite evidence to the contrary. This is often done in domestic violence cases. Obviously, the abuser has his/her interests at stake and may even believe he/she has not been abusive; the victim may also be in denial, but may also be afraid to say that he/she has been injured by the abuser. The officer must consider the evidence, not the words of denial, and consider that the victim may be in fear of the abuser.

- (13) A law enforcement officer must disregard claims by the suspect that the complainant provoked the violence. This is a frequent claim and may even be true; however, the officer must not allow himself/herself to be influenced by claims of provocation. The officer must examine the evidence and determine whether a crime has been committed. Verbal provocation, if indeed there was provocation, does not justify an act of criminal conduct in response.
- (14) A law enforcement officer must disregard the fact that the suspect is a fellow law enforcement officer or supervisor, a public official, or a person of stature in the community. The officer should handle this situation according to the policy established by this document.
- (15) A law enforcement officer must disregard evidence that the suspect is under the influence of drugs or alcohol. This will frequently be the case; however, the use of alcohol or drugs by an abuser does not mitigate the criminal acts he/she committed.<sup>[42]</sup>

*Commentary:* In Section 4.3.3, the listing of factors that a law enforcement officer must not consider when trying to build probable cause is a "historic necessity." In the past law enforcement officers would not consider arrest for one or more of these reasons. Accordingly, to ensure that an historic factor does not enter into an officer's decision-making, it is necessary to list these considerations. There will come a time when it will not be necessary to list them. The notes following each statement are intended to be instructional, because the factors are negative in their scope, and to explain why an officer should not consider these factors as reasons for not making an arrest for a domestic violence offense.

## 4.4 Dual Arrest

### 4.4.1 Investigative Guidelines

#### A. Definition of dual arrest

- (1) "Dual arrest" is the term used to describe the arrest of both parties involved in a domestic violence situation, usually a mutual battery.<sup>[43]</sup>
- (2) Dual arrests may occur in cases where:
  - (a) Both parties commit a crime, most often a battery, against each other. In such cases, dual arrest is appropriate;
  - (b) A victim strikes an aggressor in self-defense, and the officer decides to arrest both parties. [In such cases, a law enforcement officer in the State of Maryland has the authority not to arrest a person who acts in self-defense – CR § 2-204 (b)];<sup>[44]</sup>

- (c) The assailant lies about his/her or the victim's actions. In such cases, the investigation was inadequate to discount the assailant's allegations; or
- (d) There is no probable cause to believe that the victim committed a battery, but the victim is arrested anyway. In such cases, the issue of false arrest arises.<sup>[45]</sup>

B. Consideration of the law:

The State of Maryland guides law enforcement officers legislatively through CP § 2-204 (b) of the warrantless arrest statute when a mutual battery has occurred:

“If the officer has probable cause to believe that mutual battery occurred and arrest is necessary under subsection (a) of this section, the police officer shall consider whether one of the persons acted in self-defense when determining whether to arrest the person whom the police officer believes to be the primary aggressor.”<sup>[46]</sup>

C. Investigation and evaluation of injuries:

When a mutual battery has occurred, the responding officers will:

- (1) Investigate and interview the parties as in any domestic violence case;
- (2) While investigating, pay particular attention to the history of violence, including any previous or current protective orders;
- (3) Evaluate injuries sustained by the parties, considering:
  - (a) The degree and type of injury, determining whether injuries are offensive or defensive;
  - (b) The relative strength, size, and capability to inflict injury of each person; and
  - (c) The relative fear displayed by each of the parties;
- (4) Consider whether one of the parties acted in self-defense; and
- (5) Determine whether one of the parties was the primary aggressor.<sup>[47]</sup>

D. Maryland law requires that the law enforcement officer "consider whether one of the parties acted in self-defense." According to the Maryland Pattern Jury Instructions [MPJI- Cr 5:07], a person may act in self-defense when:

- (1) The person actually believed that he/she was in immediate and imminent danger of bodily harm,



- (2) The person's belief was reasonable, and
  - (3) The person used no more force than was reasonably necessary to defend himself/herself in light of the threatened or actual harm [even if a weapon is used in self-defense].<sup>[48]</sup>
    - (A) In cases where a person's injuries are severe enough to demonstrate an intent to do great bodily harm and the officer has probable cause to believe that the suspect committed the offense, the officer should consider that the extent of the victim's injuries do not substantiate the suspect's claim of self-defense.<sup>[49]</sup>
    - (B) The investigating officers will consider the self-defense factors and decide whether one of the parties' actions constituted an act of self-defense.
- E. Determination of primary aggressor:
- (1) In determining if one of the parties is a primary aggressor, the investigating officers will ascertain whether one of the parties:
    - (a) Has a history of committing crimes of violence;
    - (b) Is or has been a respondent in a protective order;
    - (c) Has threatened the other individual involved;
    - (d) Has carried out his/her threats; and/or
    - (e) Is more capable than the other party of being assaultive.<sup>[50]</sup>
  - (2) A determination as to who the primary aggressor is should not necessarily include who started a verbal argument, because verbal provocation is not cause for assaultive behavior.<sup>[51]</sup> Likewise, the primary aggressor is not necessarily the person who strikes the other person first, but the party that presents the most ongoing danger and who has the greatest ability and inclination to inflict physical injury, i.e. generally the abuser in the relationship.<sup>[52]</sup>
  - (3) The investigating officers will consider the primary-aggressor factors and decide whether one of the parties' actions constituted an act of primary aggression.

**Commentary:** *The purpose of Section 4.4.1 is to ensure that law enforcement officers have an understanding of the concept of dual arrest and how it relates to CP § 2-204(b). To do that, it was necessary to define dual arrest, develop an understanding of how it occurs, explain the concepts of self-defense and primary aggressor, and demonstrate how one can properly investigate mutual battery.*

*In considering the issue of self-defense, law enforcement officers should be mindful that victims will often pick up a weapon to defend themselves.*

#### 4.4.2 Basic Arrest Policy in Cases of Mutual Battery

- A. Law enforcement officers should avoid dual arrest whenever investigation reveals that a person acted in self-defense.
- B. If one party was the primary aggressor, that person should be arrested. The party who was defending himself/herself from a battery should not be arrested.
- C. If both parties committed domestic offenses and neither was acting in self-defense both parties should be arrested.
- D. Because of the recognition of the dynamics of domestic violence and because Maryland law seeks to hold the primary aggressor accountable, cases of dual arrest should not be a frequent occurrence.

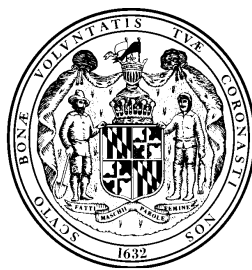
**Commentary:** *Section 4.4.2 is a set of simple policy statements governing mutual battery and dual arrest. It captures both the intent and the letter of the law.*

*Although Subsection 4.4.1-A seems to restate Subsection 4.4.1-B, its inclusion was intentional. The developers wanted to emphasize that the issue of dual arrest is an important one and that law enforcement officers should exercise great care and properly investigate cases of alleged mutual battery. Where evidence of self-defense exists, officers should not arrest both parties.*

*The terminology used in Subsection 4.4.2-B, regarding the policy for one who is defending himself/herself – i.e., that the person "should" not be arrested – is intentional and is distinguished from the mandatory term "will." The intention in the case of a person acting in self-defense is that the person not be arrested. However, it was considered that there will be rare cases when the officer will decide that such a person must be arrested. An example of such a case would be a homicide where the person's roots to the community cannot be ascertained. In the interest of being able to properly prosecute the case, the person's preliminary incarceration might be necessary.*

*Concerning Subsection 4.4.2-B, the law states that the officer "shall consider" the act of self-defense. Therefore, the officer is required to consider self-defense. And although the statute does not say that the party who acted in self-defense should not be arrested, the interpretation of the language is that the party who acted in self-defense should not be arrested on-scene (see Endnote 43 in Subsection 4.4.1-a-(2)-(b)).*

*Subsection 4.4.2-D was incorporated as a result of a comment from a Maryland State Police law enforcement officer who suggested the main language. The developers agreed to the inclusion because it captured the spirit of this section on dual arrest.*



- 5.0 Investigation**
  - 5.1 Emergency Communications**
  - 5.2 Investigating Calls**
  - 5.2.1 Basic Policy**
  - 5.2.2 The Investigation**
  - 5.2.3 Domestic Stand-By**
  - 5.2.4 Recognition and Investigation of Stalking Cases**
  - 5.2.5 Recognition and Investigation of Strangulation Cases**
  - 5.3 Report Writing**
- 

## **5.1 Emergency Communications**

- 5.1.1** All domestic violence calls will be dispatched and assigned the same priority as any other crime of violence according to the degree of danger.
- 5.1.2** Priority will be given to victim and law enforcement officer safety.
- 5.1.3** Should the caller hang up and not answer the call back, notification will be made to the responding units immediately.
- 5.1.4** Calls will not be canceled based on the request of the caller. Law enforcement officers will continue to respond to the caller's location to check on his/her safety and investigate the complaint.
- 5.1.5** Emergency Communication Specialists will not ask the victim about his/her intention to prosecute or proceed in any other manner with the case. Such questions or statements, which seek to place the responsibility for enforcement action with the victim, are inappropriate.<sup>[53]</sup>
- 5.1.6** Because of the volatility of domestic violence calls, two law enforcement officers should respond whenever possible. However, because the availability of two officers is not always an immediate or a practical option, individual agencies should establish their own policies and procedures for one- and two-officer responses to domestic violence calls.

**5.1.7** Gathering the following information is of particular importance in domestic violence cases:

- A. Whether the caller is calling from the same location as the incident;
- B. When the incident occurred;
- C. Whether the assailant is on the scene;
- D. Whether there is a weapon involved, whether anyone is armed with a weapon, or whether a weapon is in the residence;
- E. Whether the assailant is under the influence of drugs/alcohol;
- F. A brief description of the assailant;
- G. Whether there are any injuries;
- H. The number of people, including children, who are on the scene;
- I. Whether the police have responded to the home on domestic violence calls before;
- J. Whether the caller/victim has a protective order against the assailant; and
- K. Whether the victim has been sexually assaulted. If the victim responds affirmatively, the Emergency Communication Specialist will treat the call as he/she would any other rape or sexual assault call that has just occurred by interjecting information that would assist in ensuring the preservation of potential evidence and the crime scene. The victim should always be advised to refrain from:
  - (1) Using the bathroom,
  - (2) Bathing or showering, and
  - (3) Changing his/her clothing.

**Commentary:** Section 5.1.1 is the primary policy statement in Section 5.1. It is intended to provide for the safety of victims in every instance of a call for service, and it seeks to ensure that domestic violence calls are accorded the same gravity as other violent crimes. The term "according to the degree of danger" is intended to ensure that the policies of the individual agencies are uniformly and consistently applied to domestic violence calls as they are to other crimes of violence.

Section 5.1.2 highlights the importance of both victim and officer safety, and it allows for distinct recognition of each of the elements of the domestic violence call. It is the intention of this section that Emergency Communications Specialists should evaluate victim safety and provide appropriate guidance. Questions that help evaluate officer safety should also be asked because domestic violence calls are recognized as presenting a risk of assault and injury to the responding officer.

*Section 5.1.3 is included for reasons similar to those that support not canceling calls based on the request of the caller. Because it is not uncommon for batterers to disable the telephone or force the victim to hang up, and because these types of calls generally suggest a heightened degree of danger, a response should be made to all hang-up calls.*

*Section 5.1.4 is intended to protect the safety of callers who apparently were in need of help when they initially called, but, perhaps because the assailant intervened, are now fearful. Or the caller may have simply had a "change of heart," because he/she has reconsidered and does not want to get the assailant in trouble. The fact remains for the law enforcement agency that a caller involved in a domestic situation has called for help, and the agency must consider that, because of the potential for further violence, it must investigate and ensure the safety of the caller.*

*Section 5.1.5 specifically and effectively addresses a concern that arose during the development of the policy that some agencies were reportedly not dispatching units to domestic calls when the callers responded negatively to an inquiry from the dispatchers about whether the callers were going to prosecute.*

*Section 5.1.6 adopts the obvious preference for two-officer responses to domestic violence calls. However, the availability of two officers is not always an option, particularly in rural regions of the State and at times of lower staffing. It is, therefore, necessary to accept that many domestic calls will be handled by one officer. During development of this policy, it was the prevailing view that the policy should not recommend procedures instructing law enforcement officers how to respond to domestic calls, because that is a function of training and of the policies of individual agencies.*

*Section 5.1.7 is a list of questions of particular importance in domestic violence situations. Subsection 5.1.7-B recognizes the need to know the immediacy of the call. Subsection 5.1.7-D recognizes that, in an effort to defend him/herself, the victim, as well as the assailant, may be armed. Subsection 5.1.7-E identifies the existence of drugs and alcohol, factors that can intensify the situation and lead to a greater chance of serious assault and weapons use. Subsection 5.1.7-F is important if the officer needs to look for the assailant. Subsection 5.1.7-G is to determine whether medical attention is required. Subsection 5.1.7-J considers whether a protective order is outstanding.*

*Subsection 5.1.7-K is included because rape and sexual assault are common forms of domestic violence. Advising the victim will help to protect the crime scene for investigation.*

## 5.2 Investigating Calls

### 5.2.1 Basic Policy

Responding law enforcement officers will treat domestic violence calls as any other criminal investigation.

*Commentary: Section 5.2.1 is the basic policy, the intent of which is to ensure that the law enforcement community understands the potential seriousness of each domestic violence call and treats domestic violence as any other crime of violence.*

### 5.2.2 The Investigation

After verifying that a domestic violence incident has occurred, law enforcement officers will conduct a thorough investigation which will include the following steps and responses:

- A. They will physically approach and handle the scene of a domestic violence call using appropriate safety, intervention, and investigative techniques.
- B. They will interview all parties separately, if possible, taking into consideration the dynamics of domestic violence.
- C. They will be thorough in the collection of evidence. They will pay particular attention to the need for:
  - (1) Collecting the "911" tape of the call;
  - (2) Taking photographs of injuries, according to agency policy, 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;
  - (3) Documenting "excited utterances" made in the presence of the officers; and
  - (4) Interviewing witnesses, including children.
- D. Law enforcement officers will determine whether probable cause exists that a crime has been committed, and who committed it.
- E. Observe whether there are any firearms are present at the scene of the incident: 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) have observed the firearm on the scene during the response.

- (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, per agency policy and procedures, while any proceeding related to the alleged act of domestic violence is pending; and
    - (c) Advise the owner that he/she 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.<sup>[54]</sup>
- F. In cases where probable cause exists and an on-scene, warrantless arrest is authorized:
- (1) Law enforcement officers should make the arrest.
  - (2) Law enforcement officers should take a statement from the defendant, after he/she has been given *Miranda* warnings.
  - (3) In cases of mutual battery under CP § 2-203 (b), if the investigation reveals that:
    - (a) One party was the primary aggressor and the other acted in self-defense, law enforcement officers should arrest the primary aggressor and should not arrest the person who acted in self-defense; or
    - (b) Both parties committed crimes against the other, and neither was acting in self-defense, law enforcement officers should arrest both parties.
  - (4) Where a violation of a protective order under § 4-509 of the Family Law Article has occurred, law enforcement officers will make the arrest.
  - (5) For an offense committed in their presence or view under CP § 2-202, law enforcement officers should make the arrest. Most commonly, officers will hear threats made in their presence. In deciding whether to arrest the party(ies) making the threats, they will consider:
    - (a) The nature of the threat,
    - (b) The capability of the person making the threat to carry it out, and
    - (c) Whether threats have been carried out in the past.<sup>[55]</sup>

- G. Where probable cause exists, but an on-scene arrest cannot be made either because the assailant is not on the scene or because the law does not authorize a warrantless arrest, law enforcement officers:
  - (1) Will actively assist the victim in obtaining a warrant; or,
  - (2) Should apply for the warrant on behalf of the victim in cases where the victim will be best served.
- H. Where probable cause does not exist, law enforcement officers will assure themselves that the environment is safe and that the potential for danger is unlikely before they leave. The officers should recommend that one or both of the parties temporarily leave the residence and stay with third parties to at least allow the immediate dispute to "cool down" in order to prevent the possibility of violence erupting.
- I. Conduct a Lethality Assessment Screen or similar lethality assessment tool as described in section 3.8 of this model policy. Once completed, the officer conducting the Lethality Assessment Screen should follow the protocol referral by contacting the appropriate domestic violence hotline and conferring with a counselor as described in section 3.7.1 [pages 26 – 28] of this model policy.
- J. Law enforcement officers may transport the victim to a safe location or a location where he/she can obtain assistance.
  - (1) When they believe that the victim will be best served by removing the victim from the premises,
  - (2) When the victim has no reasonable means of transportation, and
  - (3) According to the agency's policy.
- K. When the assailant has left the scene and there is probable cause to arrest him/her, law enforcement officers will broadcast a look-out and conduct an active search for the assailant.
- L. In all cases of domestic violence, law enforcement officers will provide the victim with written notice of his/her rights in accordance with FL § 4-503 (a) [supp.], and verbally explain the victim's rights to him/her. In addition, they will explain that Maryland law allows victims, at their own request, to obtain a copy of the field report, and will advise the victim of the procedures to do so.
- M. Law enforcement officers will document the call for service by preparing a written field report.



- N. When preparing the application for statement of charges, law enforcement officers should check the domestic violence box.
- O. In cases where the officer determines that an arrested person is under the supervision of the Department of Public Safety and Correctional Services - Community Supervision [formerly referred to as the Division of Parole and Probation], the officer will notify that agency of the arrest.

**Commentary:** *Section 5.2.2 describes basic steps in a domestic violence investigation. There are several aspects of the section that warrant discussion.*

*The first three particular evidence items were included in Subsection 5.2.2-C because they are considered three special types of domestic violence evidence that a prosecutor needs for an effective prosecution.<sup>[56]</sup> Subsection 5.2.2-C-(2) provides that the burden is not necessarily on the law enforcement officer to actually take the photos, but that he/she would at least arrange for additional photos to be taken. The developers were concerned that the policy not place an undue burden on small law enforcement agencies, and suggested that such agencies look to or establish agreements with other agencies, such as the state's attorney's office, or even the local provider, for assistance in this regard. Subsection 5.2.2-C-(4) stresses the importance of witness statements, especially the statements of children.*

*Subsection 5.2.2-F-(2) bolsters the concept that a domestic violence situation should be fundamentally treated as a criminal investigation.*

*The intention of Subsection 5.2.2-G is that law enforcement officers should attempt to be helpful to victims. The term "actively" was used to underscore the importance of being helpful. However, it was felt that this policy statement and the term "actively" should not be amplified in the interest of allowing agencies and individual law enforcement officers to pursue their assistance to victims in ways they are able and want to. In this vein, it is recommended to officers that they actually apply for the warrant themselves when the victim would be "best served." Here, the focus of the Preamble ("...so that citizens...can uniformly expect to receive the 'best services'...") and the statement of Goals ("...to provide the highest level of service..." and to "[p]rovide a safe, problem-solving approach during the delivery of services") is being reflected. Examples of when victims might be best served is if they are handicapped and have no reasonable means of transportation or if they have been admitted to a hospital as a result of the injuries sustained from the domestic violence situation. The examples provided above as to when a victim may be "best served" are not intended to limit law enforcement officers, but to allow them to assess a situation and, if they believe they can do so, to help the victim within the boundaries of their own agency's policies. "Best served" does not necessarily mean where a victim is physically incapacitated; it could mean a situation where an officer realizes that, by his/her taking a constructive step such as personally obtaining a warrant, he/she might begin the arduous process of helping to lead the victim toward seeking help.*

*In Subsection 5.2.2-H, the issue of advising the couple to leave the residence to allow for a period of cooling down is considered an acceptable suggestion for a law enforcement officer to make, as distinct from giving the couple advice that the officer is not qualified to give. It is also a concern that a law enforcement officer not tell couples to "separate." Although the officer means for them to leave the residence for a period of cooling down, the couple may interpret that the officer is advising them to separate in the legal sense of the word.*

*Section 5.2.2-I refers to the Lethality Assessment Screen for First Responders provided by the Maryland Network Against Domestic Violence or similar screening tools. The use of those screening tools was previously described in Section 3.7.1 of this model policy. While the use of a screening instrument is not required by law its usefulness as an intervention protocol is well-established. Law enforcement agencies are strongly urged to adopt and use such a screening instrument if they are not already doing so.*

*Concerning the transportation of victims in Subsection 5.2.2-J, it is strongly recommended that agencies not having one adopt a policy that authorizes the transportation of domestic violence victims when appropriate or necessary. Other victims and complainants are often transported because of police necessity or for assistance. Agencies should not hesitate to adopt a policy for domestic violence victims out of a consideration for insurance and liability concerns, because so many other civilians are routinely transported. A victim's safety is a compelling reason to transport a person. Agency policy might reflect that approval by a supervisor is needed before transport can be authorized; that beginning and ending mileage are recorded either over the air or on the officer's vehicle activity log; that beginning and ending times are recorded; and what kind of calls would take precedence over a victim transport, particularly in locales with or at times when few law enforcement officers are on the road.*

*Subsection 5.2.2-K, about the need for a look-out broadcast and a reasonable search, reminds law enforcement officers that domestic violence should be treated "...as any other criminal investigation." (Section 5.2.1)*

*Subsection 5.2.2-L reinforces the legal requirement in the law (FL § 4-503). However, the requirement for a verbal explanation of the notice of rights has been added to ensure that people, especially victims who may not be paying attention to a piece of paper the officer gives them, have a better and reinforced opportunity to understand the services that are available to them. The Policy Advisory Group concluded that providing and explaining an agency's victim/witness pamphlet at the conclusion of the call for service will help fulfill the commitment to provide full police service during such calls.*

*The requirement for a field report in Subsection 5.2.2-M is explained in Section 5.3. Subsection 5.2.2-N ensures that domestic violence situations are properly tracked through the criminal justice system.*

*Subsection 5.2.2-O provides an additional way, through the support of the Department of Public Safety and Correctional Services – Community Supervision [formerly referred to as the Division of Parole and Probation] to hold the abuser accountable.*

### **5.2.3 Domestic Stand-by**

- A. Law enforcement officers will conduct domestic a stand-by in accordance with FL § 4- 502 (2) (ii).
- B. When responding to a request for a domestic stand-by an officer shall protect the person making the request from harm.
- C. The officer will accompany the complainant to the family home, as necessary, so that he/she can remove his/her clothing and that of children in his/her 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.<sup>[57]</sup>
  - (1) If the couple is unmarried and the victim's name is on the lease, he/she has the right to enter the premises to collect his/her effects.

- (2) If the couple is unmarried and the victim's name is not on the lease, he/she does not have a right to enter the premises, and the responding officer does not have the authority to force entry. If the officer is unable to gain entry in such cases, in the interest of enabling the complainant to gather his/her personal effects, the officer will:
  - (a) suggest that the complainant respond to the appropriate court to petition the court for an order of protection if the complainant is eligible to petition the court for an order of protection;<sup>[58]</sup>
  - (b) if the complainant is not eligible to petition the court for an order of protection, direct the complainant to the appropriate court for relief;
  - (c) if feasible, seek another legal means to enable the complainant to obtain his/her personal effects; or
  - (d) refer the complainant to the local service provider for assistance.

**Commentary:** *Subsections 5.2.3-C-(2)-(a-c) are intended as suggested ways for the officer to break the impasse that this situation presents, to problem-solve, and to convey to the law enforcement officer that he/she should do what is possible to help the complainant. The complainant should not be told there is "nothing we can do." At the very least, the complainant should be advised of available options.*

- D. "Personal effects" includes such property as a person might carry, or items having a more or less intimate relation to the person.<sup>[59]</sup>
  - (1) What is necessary to meet the needs of each person will vary according to circumstances.
    - (a) The law specifically provides for certain needs:  
FL § 4-502 (a) (2) (ii-2) requires the law enforcement officer to accompany the complainant to the home so personal clothing, medicine, and medical devices of the complainant or any child of the complainant, regardless of who paid for the items, may be removed.<sup>[60]</sup>
    - (b) In most cases, toiletries can be considered personal effects to meet the needs of the complainant and children.<sup>[61]</sup>
  - (2) Items such as a stereo or VCR usually would not be considered personal effects to meet the immediate needs of a person.<sup>[62]</sup>
  - (3) Because the law is not entirely specific as to what might constitute personal effects, and what a person's immediate needs might be, law enforcement officers should carefully consider each situation they encounter and use good judgment in deciding what a person's personal effects and immediate needs are.<sup>[63]</sup>
- E. Law enforcement officers responding to a domestic stand-by are generally immune from civil liability.<sup>[64]</sup>

**Commentary:** *Conducting a domestic stand-by is addressed because it is a procedural aspect of a law enforcement officer's job that is specifically legislated (FL § 4-502).*

*Subsections 5.2.3-C and D are derived from an opinion of Assistant Attorney General Kimberly Smith Ward, to Shari L. Heise, Victim-Witness Specialist, Office of the United States Attorney, Northern District, Baltimore, Maryland, August 7, 1995, and from "Domestic Stand-by" in The Law Enforcement Officer's Guide to Maryland Domestic Violence Law.*

#### 5.2.4 Recognition and Investigation of STALKING Cases

##### A. "Course of Conduct" Crime That Places One in Fear

**Stalking** is a "course of conduct" crime that encompasses a broad range of behavior directed at one person, even though acts may be perpetrated against other individuals who have a connection to the victim.

- (1) Under Maryland law, CR, § 3-801, "course of conduct" is defined as a "persistent pattern of conduct, composed of a series of acts over time, that shows continuity of purpose."
- (2) Under Maryland law, CR, § 3-802, **stalking** is a "malicious course of conduct that includes approaching or pursuing another where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear of serious bodily injury, an assault in any degree, rape or sexual offense as defined by §§ 3-303 through 3-308 or attempted rape or sexual offense in any degree, false imprisonment, or death, or that a third person likely will suffer any of the above described acts."<sup>[65]</sup>
- (3) The acts may be either criminal or non-criminal so long as they place the stalking target in fear of one of the described acts. Accordingly, some non-criminal acts could constitute the crime of **stalking**. The acts that cause fear in the stalking target may be perpetrated against either the victim or even against third parties.<sup>[66]</sup>

##### C. Significant Statistical Information about Stalking

In a nationwide survey conducted by the National Institute of Justice, the Department of Justice reported the following statistics about **stalking**:

- (1) partner stalking makes up the largest category of stalking cases;
- (2) approximately 5.2 million women reported being stalked during a 12 month period prior to the survey; Two-thirds (66%) of the female stalking victims reported stalking by a current or former intimate partner;
- (3) more than 1.4 million men reported that they were stalked during the 12 months prior to survey;
- (4) 74% of those stalked by a former intimate partner reported violence or coercive control during the relationship;
- (5) 81% of women stalked by a former or current partner were also physically assaulted by that partner;

- (6) 60% of victims are stalked for longer than 6 months; 11% are stalked for 5+ years;<sup>[67]</sup>
- (7) 79% of women who had been murdered by their intimate partner reported abuse at the same time they reported stalking.
- (8) 54% of women who had been murdered by their intimate partner reported stalking to police before being killed.
- (9) The average duration of stalking is 1.8 years; 2.2 years in domestic situations.<sup>[68]</sup>

### C. **No One Profile of Stalkers**

Stalkers can be male or female; they come from different backgrounds and have different personalities. They may use drugs and alcohol, or avoid these substances altogether. They may or may not have prior criminal records. Their victims may be current or past intimate partners, acquaintances or strangers. They may be driven by fantasy or delusion or by anger, revenge, jealousy and a desire for power and control over a current or former intimate partner. They may have dependent and controlling personalities (as is true of many domestic violence stalkers) or have a mental illness or condition that needs treatment. There is no one profile of stalkers. It is, therefore, dangerous for police officers to generalize what a victim should do to protect her/himself in every case because stalkers are not predictable.

### D. **Common Stalking Behaviors**

Common **stalking** behaviors include information gathering from various sources; repeated non-threatening mail, email, beeper codes, phone calls; persistent physical approaches and/or requests for dates or meetings; notes or flowers left on a car; following and “coincidentally” showing up whenever the victim does; showing up and sitting outside of victim’s home or workplace, waiting next to a victim’s car in a parking lot; false reports to authorities, spreading rumors, giving misinformation; vandalism or destruction of property; breaking into victim’s home when a victim is or is not present; leaving dead animals in a victim’s home or car; rape or attempted rape; murder or attempted murder. Cyber-stalking by way of electronic mechanisms (phone, GPS, computers, spyware, hidden cameras, etc.) is an increasingly common stalker strategy.

### E. **Recognition of Stalking**

#### (1) **Signs and Responses:**

- (a) Whenever a victim reports any type of harassing, threatening, or menacing behavior, inquiry should be made as to whether the incident is isolated or it is part of repeated conduct. Often victims will tolerate harassing behavior for a period of time before calling the police.
- (b) Whenever a victim expresses fear of the suspect or of what is occurring, officers should take these fears seriously and ask about the origins of the fear.
- (c) When asking about prior behavior, officers should ask about police reports and from what jurisdictions, even reports made by other family members or friends against the perpetrator.

- (d) When officers respond to certain types of calls, they should consider that stalking may be a component: crimes such as domestic violence, vandalism/destruction of property, burglary, theft, identity theft, utility theft, wiretapping, assault, child abuse, hate crimes, harassment, threats, excessive texting, social media posts, cyber-stalking, etc. may have a stalking component.

(2) **Why Stalking May Be Difficult to Recognize and Investigate**

Stalking cases are often difficult for officers to recognize and investigate for the following reasons:

- (a) Stalking cases often appear as relatively minor/less significant acts: a violation of a protective or peace order; no violence; perhaps a crime has not even occurred; the complainant will often not know that she/he is being stalked only that there is a problem in her/his life.
- (b) The victim's fear is overwhelming; often the victim is not believed; nothing in the way of a crime has yet to occur for the victim to report; and the victim feels isolated and believes that no one can help him/her.
- (c) Stalkers may commit acts in multiple jurisdictions; however, there is no communication among law enforcement agencies concerning the occurrence of these acts and no key case strategy that would connect the acts to the one victim.
- (d) Stalking is a crime that is committed over the average span of about two years, with periods of decreased and increased activity. Investigative policies and procedures are usually ill-equipped to handle this type of prolonged investigation.
- (e) Arrest and prosecution and/or obtaining a protective or peace order does not necessarily mean that the stalker will stop his/her activities toward the victim. In fact, these actions against the stalker may aggravate the situation and drive the stalker to violence. This does not mean that these actions should not be taken, only that they must be taken in conjunction with safety planning for and with the victim.

**F. Investigation**

There are two basic components to a stalking investigation: (1) assessing the complaint and the threat level, (2) and corroborating the complaint through evidence collection.

(1) **Assessment**

- (a) In order to assess the complaint, the officer must gather such basic information about the stalker such as personal data, prior threats or stalking behaviors, access to weapons, criminal and mental history, homicidal and suicidal tendencies, presence of any social inhibitors, proximity to significant dates.

- (b) Once a stalking offense is confirmed or suspected, the officer must gather such pertinent information as what other suspicious incidents have occurred; were police reports taken; is a protective or peace order in place; has the suspect violated any protective or peace order; has the suspect threatened the victim; is the victim afraid of the suspect; how has the victim reacted to the stalking or harassing behavior (for example, has the victim moved, bought a security alarm system, changed work schedule and route to work)?
- (c) As the officer interviews the victim, he/she should try to ascertain how much the suspect actually knows about the victim and the degree of their relationship.
- (d) As part of the assessment phase, the officer should conduct a threat assessment to seek to prevent future harm to the victim. The threat assessment includes basic and pertinent information about the stalker, and should take into account factors that suggest a high risk of danger, such as if there are current threats to kill the victim; use and possession of lethal weapons, especially firearms; the degree of obsession, possessiveness, and/or jealousy regarding the victim; violation of protective or peace order with little or no concern for the consequences; access to the victim and/or victim's family; hostage-taking, history of prior stalking; etc.
- (e) In evaluating the threat, the following questions should be answered:
  - (i) Does the victim believe the threat?
  - (ii) Was the threat made in the presence of other people? Was it made in writing? Was it recorded in a telephone conversation? Was it sent by electronic device such as computer, cell phone, etc.? Was some form of social media involved?

*Note: Willingness to leave evidence or not caring who knows may indicate a more serious intention to follow through.*

- (iii) Is the threat detailed and specific?

*Note: The more thought that has gone into the plan, the more likely it is to be acted on.*

- (iv) Is the threatened act consistent with past behavior?
- (v) Does the stalker have the means to carry out the threat?

*Note: Where the means are at hand, there is more risk.*

- (vi) Have there been “rehearsals” of the threatened act, even perhaps a verbal run-through: “Let me tell you what I’m going to do”?
- (vii) Does the threat extend to others?
- (viii) Does the threat involve murder, suicide, or both?

*Note: If the stalker and the victim are involved in a domestic situation, remember that a large percentage of domestic homicides are multiple-victim murders or murder-suicides.*

(2) **Corroboration**

As part of the corroboration phase of the investigation, officers should collect physical evidence such as any taped telephone messages, paper copies of e-mail messages, correspondence/notes left or sent by the suspect and any postings on social media sites made by the suspect. Likewise, any objects given to the victim that have been left by the stalking suspect should be collected as potential evidence.

- (a) In gathering stalking-related evidence officers should photograph any evidentiary items, vandalized, damaged, or written on, such as walls, vehicles, etc., and process for fingerprints; collect all physical evidence; if appropriate, initiate arrangements to obtain records for victim’s telephone, such as the \*57 feature; if appropriate, canvass the crime scene which may be the victim’s home, work site, telephone, computer, vehicle, mailbox, or any other location or instrumentality where the suspect has contacted, confronted, or otherwise harassed the victim; if the victim has the use of a Stalking Kit, ask the victim whether she/he has taken any photographs, prepared a Stalking Incident Log, gathered names of witnesses on a witness information sheet, and/or collected and bagged any evidentiary items.<sup>[69]</sup> If a victim has done so, recover the evidence and note clearly in the report how the evidence was gathered.
- (b) Officers should attempt to locate witnesses, particularly family members, friends, or co-workers who might be willing to corroborate or offer additional information.



G. **Follow-up Investigation**

(1) **Frequent Contact with the Victim**

Contact the victim frequently to better assure her/his continued safety and to ascertain whether any additional incidents have taken place and whether the victim has any additional information to offer.

(2) **Contacting the Suspect**

(a) Sometimes, a face-to-face visit at the suspect's workplace or residence, or a scheduled interview at the police station, may have a deterrent effect on the inappropriate behavior.

(b) However, before an officer contacts a stalking suspect he/she should consider that such contact by an authority figure may only intensify his/her interest and obsession with the victim. In fact, some suspects may be "pushed" into violent action by police contact. This can occur with a desperate or suicidal ex-spouse or estranged intimate partner who feels spurned and abandoned by the victim and may sense that time is running out and can be provoked into more extreme action

(c) Precautions such as safety planning with the victim must always be taken **before** officers decide to personally contact a stalker suspect. Some stalkers may cease their activity when confronted by police intervention. However, intervention in other cases may trigger more problems.

(d) Stalker-suspect interviews can be helpful and important in assessing the danger posed by the suspect and in obtaining information that may help prove a stalking offense in court. Don't forget: stalking suspects can be intelligent, cunning, and manipulative. They are often good liars and will attempt to deny or otherwise rationalize their behavior.

(3) **Use of Protective/Peace Orders**

**Protective orders or peace orders** can be effective limit-setting devices. The advantages, as well as the limitations, of these court orders should be frankly explained to victims of stalking prior to a victim seeking an order. Domestic violence counselors may be best suited to provide stalking victims with insight into the benefits and limitations of court orders. Officers responding to stalking calls for service should consider referring the victims to such domestic violence support groups. Victims should understand that such a court order is part of an overall intervention plan in which law enforcement officers will be able to intervene when and if a violation of the court order occurs. An arrest for violation of a peace or protective order places the violator before the court to answer for his/her actions.

H. **Cyber-stalking**

(1) **General Information**

- (a) Cyber-stalking is the criminal offense of stalking using a computer (e. g., the internet or e-mail), telephone, or other electronic devices as a means of attack.
- (b) Under Maryland law, cyber-stalking using electronic mail is a criminal offense under CR, § 3-805.
- (c) In many instances, the cyber-stalker and the target victim have had a prior relationship and the cyber-stalking begins when the victim attempts to end the relationship.
- (d) The anonymity of electronic communication gives the cyber-stalker a unique advantage and position of control, in that the suspect could be almost anyone and located anywhere. Any cyber-stalker's real identity can be concealed through the anonymity of electronic communications, either by using different service providers or by using different chat names. More sophisticated and dedicated cyber-stalkers will utilize anonymous re-mailers.
- (e) Most victims will not initially report incidents of cyber-stalking to law enforcement, usually because they do not consider it to be a criminal or police matter, or because they are afraid that the police will not take them seriously.
- (f) In those cases where a police investigation is begun, it is sometimes difficult to obtain full cooperation from out-of-state agencies when the cyber-stalker's conduct is restricted solely to e-mail messages and no overt contact or confrontation has taken place.
- (g) The psychological profile of a cyber-stalker reveals a sophisticated individual, i.e., someone who is computer-literate and is often financially able to support subscriptions to on-line services. The typical cyber-stalker is an emotionally disturbed loner who seeks attention and companionship in cyberspace and often becomes obsessed with someone he met in a chat room.

(2) **What Should a Person Do If He/She is Being Cyber-stalked?**

Officers contacted by cyber-stalking victims may advise victims to:

- (a) Make it clear to a person who is making unwanted contact that the victim does not want to be contacted again.
- (b) Save (print) all communications for evidence and not edit or alter them. Also, the victim should keep a record of contacts with internet system administrators or law enforcement officials.
- (c) Consider blocking or filtering messages from the harasser.
- (d) If harassment continues after the victim has asked the person to stop, contact the Internet Service Provider (ISP). Often an ISP can try to stop the conduct by direct contact with the stalker or by closing their account.
- (e) Contact the local law enforcement agency and inform them of the situation. Those agencies that do not have the capability to investigate cyber-crimes should contact the Maryland State Police for assistance. The Maryland State Police and several other larger police departments in Maryland have computer crimes units.

I. **Providing for Victim Safety**

(1) **Guiding Principles**

- (a) **The victim must be responsible for her/his own safety.** Stalking, as defined in the law, requires a series of acts and a pattern of conduct. It is not a one-time only event. The “series of acts” cause fear that can lead to violence. Therefore, it is necessary that law enforcement officers establish a safety net for victims that is regulated by the reality that law enforcement cannot be with the victim around-the-clock and thus cannot guarantee the safety of the victim. The victim must be responsible for her/his own safety.

- (b) **Law enforcement must provide the victim with the tools necessary to protect her/himself.** Law enforcement must be responsible to provide the victim with the tools to protect her/himself. For all of its repugnancy and because of its repetitive requirements in the law and its behavioral characteristics, stalking is a “paper crime” that provides both the victim and law enforcement with the means to create the “paper trail.”
- (c) **The victim must be proactive in planning for her/his safety.** Accordingly, law enforcement must make the victim aware that she/he must take charge and be proactive in every aspect of the stalking case. The officer must advise the victim of certain steps the victim can take to protect her/himself, and place certain tools in the hands of the victim so that the victim can gather evidence to help her/himself in the eventual arrest and prosecution of the stalker.
- (d) **Safety Planning Is Case Specific.**
  - (i) In establishing this safety net for the victim, the officer must be aware that as stalkers are not necessarily predictable, safety steps are not always going to be the same in every case. Each stalking case is different and must be managed individually. Because of its individual characteristics, the victim must be actively involved in safety planning, in helping to determine what might work and what might not work to better ensure the victim’s safety.
  - (ii) Officers must be careful about the advice they give to victims because of the risk that the stalker poses for a victim, and because not every piece of advice given to stalking victims will work in every case.
  - (iii) In domestic cases, officers should refer victims to the local domestic violence program so that advocates can assist them with safety planning.<sup>[70]</sup>

(2) **Safety Planning**

The following safety measures can be generally recommended to victims. However, officers should explore each measure with the victim to assess its feasibility and risks in terms of a stalker’s potential reaction. An officer should work with the victim to initiate the recommended measures or to put them into effect. Working with the victim in this manner will enable the officer to know that steps are actually in place and will allow the victim to have the peace of mind to know that the recommended measures have been properly and professionally put in place.

The recommended safety measures include but are not limited to:

- (a) Stop all contact with the stalker.
- (b) Contact law enforcement to report all incidents.
- (c) Keep a log of all activities that are directly and clearly stalking related or activities or incidents that are unusual or not readily explainable and may be related to the stalking. Have victims document “everything.”
- (d) Save all evidence, such as notes, letters, cards, gifts, phone messages, e-mail messages.
- (e) Do not have a third party, except for the law enforcement officer, attempt to intervene with the stalker.
- (f) Obtain a protective or peace order, if appropriate for the specific case.
- (g) Change the home phone and cellular number, or keep the current phone number and have an answering machine screen calls.
- (h) Alter routines, by not using the same route to and from work or other places, not parking in the same location, etc.
- (i) Advise family, friends, neighbors, co-workers of the problem - advise “everyone.” They can even assist by recording contact information with the stalker.
- (j) Contact the phone company about having a trap installed on the phone or activate \*57.
- (k) Avoid places/events the stalker knows the victim frequents.
- (l) If the victim and stalker have children in common, arrange for a third party to make custody exchanges or arrange for the exchanges to be made at a police station or location where a law enforcement officer can be present.
- (m) If the victim moves, try to have a roommate or relative put the bills in their name, not that of the victim. Utility, phone, and other service providers should be notified of the problem, and be requested to place a code word on the account for the victim.

- (n) Develop safety scenarios, or advance scripting, for different situations in which the stalker might make contact with the victim. For example, “If I am driving to work and see the stalker following me, I will get on the cell phone, call 911, and drive to the nearest police station which is located at \_\_\_\_\_.”
- (o) Develop for the victim a stalking kit or refer the victim to one of the domestic violence websites that have produced and distribute informational brochures on the crime of stalking and a recommended victim’s response to it in order to enhance the victim’s personal security and to help in the collection of evidence.<sup>[71]</sup>

#### J. A Team Approach

Law enforcement officers investigating stalking cases should use a team approach in bringing a stalking case to a successful conclusion. Because of the nature of stalking, in that it is comprised of a “series of acts,” and the real possibility that the case may last a long time, officers should work with a prosecutor, mental health professional, domestic violence advocate, and the victim. The victim should be viewed as the “team leader.” Without the victim being proactive for her/his own safety and in terms of documenting events and gathering evidence, the stalking case will be extremely difficult to make. A proactive victim, with the assistance of a committed team that understands that stalking is a different type of crime, is key to a successful investigation and prosecution.<sup>[72]</sup>

*Commentary:* The protocols on stalking that are cited in the endnote are all recent developments, since the first state law in the nation about stalking did not appear until 1990. Because of the average duration of a stalking case (nearly two years), most law enforcement agencies are not readily equipped to deal effectively with a stalking case. It is easy to recognize that the whole issue of dealing with stalking cases is a dynamic one in which the criminal justice system and advocates must learn more. The information presented in this section is highly beneficial and serves as a useful guideline, but the experience of an investigating officer may well reveal other more effective and perhaps new ways of handling such cases.

Several victims’ advocacy groups including the Department of Justice - Office for Victims of Crime, the National Center for Victims of Crime produce and distribute brochures or other informational packets that recommend responses to individuals who are victims of stalking. These brochures include suggestions for self-protection as well as for gathering evidence to prosecute individuals who engage in stalking.

### 5.2.5 Recognition and Investigation of Strangulation Cases

#### A. The Problem

- (1) A study of 300 strangulation cases in San Diego, California., over a five-year period found that the victims’ prior history revealed that they had experienced repeated violence over a long period of time and it had escalated to the point of attempted strangulation. Nationally 10% of homicides are by strangulation. Yet, the study indicated that limited visible injuries, a lack of understanding of the medical significance of symptoms, victims’ failure to report symptoms, and an unwillingness to seek medical attention “may have caused police and prosecutors to unintentionally minimize or trivialize the seriousness of the actual violence.”

- (2) The study revealed:
  - (a) A history of domestic violence in 89% of cases;
  - (b) Victims were virtually all women (99%) who reported being strangled by their male partners with bare hands, arms, or objects;
  - (c) Most cases lacked sufficient evidence of strangulation (85%) because there were no visible injuries on the victim (50%) or the injuries were too minor or insufficient to photograph (35%); These minor injuries were usually redness and small cuts or scratches on the victim's neck.
  - (d) Children were present in at least 41% of cases;
  - (e) Medical attention was sought in only 5% of cases.

**B. Correct Use of Terms**

- (1) "Choking" is accidental and is caused by an object. It implies a lesser degree of harm or distress and tends to minimize that a violent act against a person has occurred. If the victim uses the term "choke" and she/he was actually strangled, officers should put the victim's use of the word "choke" in quotes in the report.
- (2) "Strangulation" is intentional violence on another person. Officers should recognize and use the correct term when a victim claims to have been strangled. In speaking to a victim, however, officers would not use the terms "choke" or "strangle" for clarification. They should have the victim specifically describe the actions/behavior of their assailant during the assault. The terms "choke" and "strangle" may not be understood or may be used interchangeably by the victim.

**C. Medical Perspective:**

- (1) Strangulation is a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. The three forms of strangulation are hanging, ligature, and manual (97%).
- (2) The general clinical sequence of a person who is being strangled is severe pain, followed by unconsciousness, then brain death.
- (3) A victim loses consciousness by any one or all of the following: blocking of the carotid arteries or the jugular veins, and closing off the airway causing the victim to be unable to breathe.

- (4) Only 11 pounds of pressure placed on both carotid arteries for 10 seconds is necessary to cause unconsciousness. To completely close off the trachea, 33 pounds of pressure is required. If strangulation persists, brain death will occur within four to five minutes.

**D. Investigation**

- (1) Treat reports seriously, because of the seriousness of the action and because of the indication of an escalation in the type of violence being used.
- (2) Initial signs include such identifiable conditions as changes in the voice from hoarseness to complete loss of voice, wheezing, difficulty swallowing and breathing, scratches, abrasions and discoloration to the neck, impressions in the skin which might indicate use of a ligature or object, swelling of the tongue, ruptured capillaries in the eyes, under the eyelids, on the face or neck (petechiae), victim's defensive fingernail marks on her own face, neck or chest.
- (3) Medical Alert: Strangulation victims may have no visible injuries with only temporary symptoms. However, because of brain damage due to lack of oxygen during the assault they can suffer stroke, miscarriage, or death up to several weeks later. Accordingly, it is recommended that investigating officers always take the time and effort to encourage, persuade, and convince strangulation victims to proceed to a medical facility for examination and treatment since symptoms may not develop for several hours or even days after the event. In all cases, the EMS system should be activated.
- (4) Log and Voice Recording: Consider having the victim keep a log or record the victim's voice initially and several days later to capture changes in voice. Voice changes occur in up to 50% of victims from hoarseness to loss of voice.
- (5) Interview Questions: When interviewing victims, officers should ask simple, direct questions, that will enable them to develop evidence, indicate the attacker's intentions, possibly indicate the extent of injury, and assess the level of existing and continuing danger to the victim, such as: any current pain or discomfort? Where, and to what extent? Have you noticed any change in voice or speech? Are you having difficulty speaking or breathing? Did the attacker use one or both hands? Did the attacker use his forearm? Was the attacker wearing rings or a watch? How long did the throat-grab or strangulation last? Did the victim feel faint, dizzy or pass out? Have there been any previous attempts at strangulation? Do you have any pre-existing injuries? Are you pregnant? What did the assailant say prior to, during, and after he was strangling victim? What caused the assailant to stop the assault? Were you able to inflict an injury on your assailant? How and where?



- (6) Injuries on the Assailant: Look for bite marks on the arm, from the assailant attacking from the rear; scratches on the face, hands, or arms, or hair having been pulled out, from the assailant attacking from the front.
- (7) Charge: Consider First Degree Assault (CR, § 3-202). Consult with the assistant state's attorney handling the case.<sup>[73]</sup>

**Commentary:** *Section 5.2.5 is based on the work of Gael B. Strack, Assistant City Attorney for the City of San Diego, CA.; and Dr. George E. McClane, emergency room physician in the City of San Diego.*

### **5.3 Report Writing**

#### **5.3.1 Report to Be Prepared in All Domestic Cases**

- A. Law enforcement officers will prepare a written field report of all domestic situations, criminal and non-criminal.
- B. When a crime of domestic violence has occurred, the "Maryland Domestic Violence Supplemental" form will be prepared, in addition to the primary field report. For domestic reports not involving a crime, the supplemental form is not necessary.<sup>[74]</sup>

**Commentary:** *Concerning Subsection 5.3.1-A, three elements were considered on the issue of documentation. First, the documentation should be written by the officer, not left to computerized dispatch information. Second, the documentation should be in the form of a field report prepared by the officer. These first two elements ensure that an appropriate record of the contact will be available and that the information will be retrievable for historic purposes and data collection. Third, it is believed that all domestic situations, whether they are criminal or merely verbal disputes, should be documented on the field report, because this is the only way a true historic record can be developed concerning domestic violence cases and general prevalence.*

*Concerning Subsection 5.3.1-B, the developers of the original language were of the unanimous view that one unified domestic violence report should be established statewide. It would serve as the primary reporting instrument in all domestic violence cases. Ideally, it would include all necessary requirements of the Uniform Crime Reports (UCR) and add the evidence collection information that is currently contained in the Maryland Domestic Violence Supplemental form initiated by the Maryland Network Against Domestic Violence under a grant that created the "Pro-prosecution Initiative" in the State of Maryland. Toward development of a unified report, the developers of the original policy language recommended that the policy development organizations – the Maryland Chiefs of Police Association, the Maryland Sheriffs' Association, the Maryland State Police, and the Baltimore Police Department – be joined to the current efforts of the State's Family Violence Council to devise a unified reporting form for domestic violence. Until a singular form is created, however, the Maryland Domestic Violence Supplemental form should be utilized as a statewide reporting form for the sake of complete reporting and effective evidence collection and prosecutions.*

### 5.3.2 Report Classification

- A. Field reports not involving a crime will be classified as "domestic incident."
- B. Regarding field reports classified according to the crime that was committed, the first line of the narrative will state that "This case involves domestic violence," unless a space denoting domestic violence is already provided in the report.

**Commentary:** *The purpose of Section 5.3.2 is to ensure that data will be fully available and properly collected.*

### 5.3.3 Report Content

In all domestic field reports, the law enforcement officer will ensure that:

- A. The parties are identified by name; and
- B. The relationship of the parties is included.

**Commentary:** *Concerning Section 5.3.3, necessary information will be collected through regular field reports and the supplemental form. However, it is necessary for proper data collection that the relationships are made clear, and it is critical for introduction into the system and continued monitoring and action that the identities of both parties are documented.*

### 5.3.4 Confidentiality of Reports

The following information contained in a report of domestic violence or a domestic incident will not be released to any person other than an authorized law enforcement officer or other officer of the court for the conduct of official business:

- A. The site of, and any revealing information about, the temporary relocation of a victim away from the residence; and
- B. The names, addresses, and phone numbers of witnesses, as well as statements they made concerning a domestic situation.<sup>[75]</sup>

**Commentary:** *The developers were concerned in Section 5.3.4 about how to keep temporary relocation information out of the hands of the abuser. Currently, portions of Maryland's Public Information Act, State Government Article, §10-611, et seq., generally permits the denial of a request for the inspection of a police report for reasons that would endanger the life or physical safety of an individual, constitute an unwarranted invasion of privacy, or for law-enforcement-related reasons. The developers considered that temporary relocation information fits into the above two categories, and they incorporated it into the policy. They added the information concerning witnesses, because such sensitive information could obviously compromise an investigation or right to a fair trial, as well as other possible reasons for which the law allows permissible denials.*

- 6.0 Protective Orders and Peace Orders**
- 6.1 Protective Orders – Authority**
- 6.2 Types of Protective Orders**
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## 6.1 Protective Orders – Authority

- 6.1.1 Protective orders are recognized as a positive civil remedy in protecting victims from their abusers.
- 6.1.2 They are provided for by the Maryland Family Law Article, Title 4, Subtitle 5, "Domestic Violence."

*Commentary:* The purpose of Section 6.1 is to recognize the validity and legal authority for civil protective orders. We use the term "protective order" throughout this document to identify **Interim**, **Temporary**, and **Final Protective Orders** when we are not distinguishing among the three types of orders defined in Maryland law and in discussing other jurisdictions' protective orders. The term generically identifies the area of civil protective orders common to all state jurisdictions in the United States.

## 6.2 Types of Protective Orders

6.2.1 Law enforcement officers in the State of Maryland are called upon to enforce and take other police action on the basis of *three* types of protective orders:

- A. **Interim** Protective Order;
- B. **Temporary** Protective Order;
- C. **Final** Protective Order.<sup>[76]</sup>

*Commentary:* The three types of protective orders listed in Section 6.2 became effective on December 18, 2002, as a result of legislation enacted in 2002 and a constitutional amendment approved by the electorate in November 2002. The new legislation made it possible for victims of abuse to obtain a protective order on a 24-hour-a-day basis, seven days a week. The constitutional amendment gave District Court commissioners the authority to issue “Interim” Protective Orders when court is not in session.

All further references to Interim Protective Orders and the new names given to Temporary and Final Protective Orders relate to the 2002 legislation and constitutional amendment that went into effect on December 18, 2002. Family Law Article of the Annotated Code of Maryland Criminal Laws applies – FL § 4 – 504 et al. Effective December 31, 2013 portions of FL § 4 – 504 are amended; these changes will be noted as appropriate in this model Policy.

6.2.2 **Protective orders** are issued in either a two or three-step process:

- A. A **Final Protective Order** cannot be issued without a **Temporary Protective Order** having first been issued. However, a **Temporary Protective Order** may be issued even if an **Interim Protective Order** was not.
- B. A **Final Protective Order** will not be issued unless the petitioner proceeds to the **Final Protective Order** phase of the process. Likewise, if an **Interim Protective Order** was issued, a **Temporary Protective Order** cannot be issued unless the petitioner proceeds to the **Temporary Protective Order** phase.<sup>[77]</sup>

*Commentary:* The purpose of Section 6.2 is to advise law enforcement officers of the kinds, and names, of protective orders in Maryland and that they are issued as part of a process. The first part of this chapter is intended to be largely instructional. Because law enforcement officers need to be in a position to properly and more fully educate and guide victims as to their rights and available resources they need to know more about the process involved in obtaining a protective order than simply what they are responsible for.

Subsections 6.2.2-A and B are intended to emphasize that one order must precede the other, and that a **Final Protective Order** will not be issued simply because a **Temporary Protective Order** has been issued. The petitioner must *actively* proceed with the process in order to obtain a **Final Protective Order**. The same holds true in the case of a **Temporary Protective Order** if an **Interim Protective Order** was issued.

### 6.3 Eligibility for a Protective Order

6.3.1 The following persons are eligible to petition for relief from abuse [FL § 4-501 (m)]:

- A. Current or former spouse of the respondent [person against whom the protective order is sought];
- B. Cohabitant of the respondent [defined by law [FL § 4-501(d)] as a person who has had a sexual relationship with the respondent and who has resided with the respondent in the home for a period of at least 90 days within one year before filing of the petition];
- C. A person related to the respondent by blood, marriage, or adoption;
- D. An individual who has a child in common with the respondent;
- E. A parent, stepparent, child, or stepchild 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 of the petition; or
- F. A vulnerable adult. <sup>[78]</sup>

6.3.2 Such persons must be able to show that abuse has occurred. "Abuse" is defined by law [FL § 4 -501 (b) (1)] as:

- A. An act that causes serious bodily harm;
- B. An act that places a person eligible for relief in fear of imminent serious bodily harm;
- C. Assault in any degree;
- C. Rape or sexual offense, or attempted rape or sexual offense; or
- D. False imprisonment; or
- E. **Stalking under CR § 3-802.** <sup>[79]</sup>

*Commentary:* The purpose of Section 6.3 is to instruct law enforcement officers on what relationships and reasons qualify to make a person eligible to be issued a protective order.

### 6.4 Interim and Temporary Protective Orders

#### 6.4.1 Interim Protective Order:

- A. Persons eligible for relief may file a petition with the commissioner, when neither the District or circuit court clerk's office is open for business, usually in the county in which they reside. This person is referred to as the "petitioner." If the commissioner finds "reasonable grounds to believe" that the petitioner has been abused by the person known as the "respondent," the commissioner may issue an **Interim Protective Order**. The commissioner immediately forwards a copy of the petition and the **Interim Protective Order** to the appropriate law enforcement agency responsible for service, and, on receipt, the law enforcement agency shall immediately serve the order and make a return of service to the commissioner's office or, if the Office of the District Court is open for business, to the Clerk.

The **Interim Protective Order** becomes effective when it is served on the respondent by a law enforcement officer. The **Interim Protective Order** will remain in effect until the **Temporary Protective Order** hearing or the end of the second business date the clerk of the District Court's office is open, whichever occurs first.<sup>[80]</sup>

- B. If the court is closed on the day on which the **Interim Protective Order** is due to expire, the **Interim Protective Order** shall be effective until the next day on which the court is open at which time the court shall hold a **Temporary Protective Order** hearing.

#### 6.4.2 **Temporary Protective Order**

- A. Petitioners who have already received an **Interim Protective Order** may continue to the second step of the process by responding to court for the **Temporary Protective Order** hearing. However, even if an **Interim Protective Order** has been issued, persons eligible for relief may, as a first step, 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.
- B. The petitioner will meet with the judge on the day the petition is filed. If an **Interim Protective Order** has been issued, the respondent may appear for the **Temporary Protective Order** hearing.
- C. If the judge finds "reasonable grounds to believe" that the petitioner has been abused, the judge may issue a **Temporary Protective Order**.
- D. This order becomes effective when it is served on the respondent by a law enforcement officer. However, if an **Interim Protective Order** has already been served by a law enforcement officer in the case, the **Temporary Protective Order** may be served in open court, or, if the respondent is not present for the **Temporary Protective Order** hearing, by first class mail at the respondent's last known address.
- E. The **Temporary Protective Order** will remain in effect for not more than seven days after service, and can be extended for up to 30 days to effect service.<sup>[81]</sup>
- F. If an **Interim Protective Order** has been issued and both parties are present for the **Temporary Protective Order** hearing and both parties consent, the judge may proceed with a **Final Protective Order** hearing instead of a **Temporary Protective Order** hearing.<sup>[82]</sup>
- F. If the court is closed on the day on which the **Temporary Protective Order** is due to expire, the **Temporary Protective Order** shall be effective until the second day on which the court is open, at which time the court shall hold a **Final Protective Order** hearing.

*Commentary:* The purpose of Section 6.4 is to instruct law enforcement officers about the process used to seek a Protective Order so that they will be able to educate the victims of domestic violence.

## 6.5 **Final Protective Order**

6.5.1 A **Final Protective Order** hearing is usually held within the seven days after a **Temporary Protective Order** goes into effect/is served on a respondent.

6.5.2 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**.

6.5.3 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.

6.5.4 The relief granted in a **Final Protective Order** shall be effective for the period stated in the order, not to exceed 1 year except as provided by law [FL § 4-506 (j) (1) & (2) (i) (ii)].

Relief granted in a **Final Protective Order** shall be effective for the period stated in the order, not to exceed 2 years if:

- (i) the court issues a **Final Protective Order** against a respondent on behalf of a person eligible for relief for an act of abuse committed within 1 year after the date that a prior **Final Protective Order** issued against the same respondent on behalf of the same person eligible for relief expires; and
- (ii) the prior **Final Protective Order** was issued for a period of at least 6 months.

6.5.5 The court may issue **mutual Final Protective Orders** if both parties have filed a petition under FL § 4 - 504 and the judge finds by clear and convincing evidence that mutual abuse has occurred and makes a detailed finding of fact that:

- A. both parties acted primarily as aggressors and
- B. neither party acted primarily in self-defense. <sup>[83]</sup>

6.5.6 Unless terminated at the request of the victim a **Final Protective Order** becomes **Permanent** if:

- A. the individual was previously a respondent against whom a **Final Protective order** was issued;
- B. the individual was convicted and served a term of imprisonment of at least 5 years under § 2-205, § 2-206, § 3-202, § 3-303, § 3-304, § 3-306, § 3-309, § 3-310, § 3-311, § 3-312 of the Criminal Law Article for the act of abuse that led to the issuance of the Final Protective Order; and,
- C. the victim of the abuse who was the person eligible for relief in the original **Final Protective Order** requests the issuance of a new **Final Protective Order**.

*Commentary:* The purpose of Section 6.5 is to instruct law enforcement officers about the process used to seek a **Final Protective Order** so that they will be able to educate the victims of domestic violence.



## 6.6 What Protective Orders Accomplish

### 6.6.1 Conditions of Protective Orders – **Arrest Required**

Maryland Law – FL § 4-509 states “a person who fails to comply with the relief granted in an **Interim Protective Order** under § 4-504.1 (c) (1), (2), (3), (4) (i), (7) or (8), a **Temporary Protective Order** under § 4-505 (2) (i), (ii), (iii), (iv), (v) or (viii) or a **Final Protective Order** under § 5-506 (d) (1), (2), (3), (4) or (5) or (f) is guilty of a **misdemeanor**.”

An officer **shall** arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an **Interim, Temporary, or Final** Protective Order in effect at the time of the violation.

A. § 4-504.1 (c) An **Interim Protective Order** may...order the respondent to:

- (1) refrain from further abuse or threats of abuse of person eligible for relief;
- (2) refrain from contacting, attempting to contact, or harassing a person eligible for relief;
- (3) refrain from entering the residence of a person eligible for relief;
- (4) if a person is eligible for relief and the respondent are residing together at the time of the alleged abuse:
  - (i) vacate the home immediately;
- (7) remain away from the place of employment, school or temporary residence of the person eligible for relief;
- (8) remain away from the residence of any family member of person eligible for relief.

B. In addition to the offenses listed in section “A” above, a **Temporary Protective Order** under § 4-505 (2) may... order the respondent to:

where the person eligible for relief and the respondent are residing together at the time of the alleged abuse, vacate the home immediately and award temporary use and possession of the home to the person eligible for relief or in the case of alleged abuse of a child or alleged abuse of a vulnerable adult, award temporary use and possession of the home to an adult living in the home provided that the court may not grant an order to vacate and award temporary use and possession of the home to a non-spouse person eligible for relief unless the name of the person eligible for relief appears on the lease or deed to the home or the person eligible for relief has resided in the home with the respondent for a period of at least 90 days within 1 year before filing the petition.<sup>[84]</sup>

(viii) surrender to law enforcement authorities any firearm in the respondent’s possession, and refrain from possession of any firearm, for the duration of the Temporary Protective Order if the abuse consisted of:

1. the use of a firearm by the respondent against a person eligible for relief;
2. a threat by the respondent to use a firearm against a person eligible for relief;
3. serious bodily harm to a person eligible for relief caused by the respondent;
4. a threat by the respondent to cause serious bodily harm to a person eligible relief ;

C. In addition to the offenses listed in sections “A” & “B” above, a **Final Protective Order** under FL § 5-506 (f) **shall** order the respondent to surrender to law enforcement authorities any firearm in the respondent’s possession and to refrain from possession of any firearm for the duration of the protective order.<sup>[85]</sup>

**Commentary:** *The purpose of Section 6.6.1 is to identify for law enforcement officers those violations for which they are required to make an arrest. This is an important section (1) because of the mandate that officers arrest a violator, for such a requirement does not exist in any other Maryland criminal statute, and (2) because there are conditions in a protective order for which officers are not permitted to make an arrest. Law enforcement officers must recognize the violations that warrant an arrest.*<sup>[86]</sup>

#### **6.6.2 Conditions of Protective Orders – No Arrest**<sup>[87]</sup>

- A. 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. They also may require the respondent to stay away from the petitioner's child care provider while the children are being cared for.<sup>[88]</sup>
- B. In addition, in the case of **Final** Protective Orders, the court **shall** order the respondent to surrender to a law enforcement officer any firearm in the respondent's possession for the duration of the Final Protective Order.<sup>[89]</sup>
- C. Violation of these conditions does not constitute a criminal offense and is therefore not subject to arrest, but, in the case of violations of **Temporary** and **Final** Protective Orders, they could result in a finding of contempt by the court.<sup>89</sup>

**Commentary:** *The purpose of Section 6.6.2 is to identify for law enforcement officers those violations for which they may not make an arrest, and to draw attention to the provision, effective October 1, 1996, about the authority of the judge to order the surrender of firearms when Final Protective Orders – not Temporary or Interim Protective Orders – are issued.*

### **6.7 Restrictions Concerning Firearms**

#### **6.7.1 FL, § 4-511 – Removal of a Firearm from the Scene by a Law Enforcement Officer**

See Subsection 5.2.2-E of this document [pages 45-46] for an explanation of the requirements of the law.

**Commentary:** *Section 6.7.1 identifies the authority and responsibilities of the responding officer in removing a firearm from a premise. The requirements of the law are fully treated in Subsection 5.2.2-E, because Chapter 5 deals with investigations of domestic violence, and the removal of a weapon from the scene is properly an investigative matter. The law is referenced only in Section 6.7.1 because Section 6.7 treats the whole subject of firearms restrictions.*

#### **6.7.2 PS, § 5-136 – Prohibition against Straw Purchase of a Firearm by a Respondent**

PS, § 5-136 prohibits a respondent in a **Protective Order** from participating in the straw purchase of a regulated firearm.<sup>[91]</sup>

### 6.7.3 PS, § 5-133(b) (8) – Prohibition against Possession of a Firearm by a Respondent

PS, § 5-133(b) (8) prohibits a respondent subject to a **Final Protective Order** from possessing a regulated firearm.<sup>[92]</sup>

*Commentary:* Sections 6.7.2 and 6.7.3 are intended to instruct law enforcement officers on laws that they will need to enforce. Both laws apply to **Final Protective Orders**. FL § 4-505(2) (viii) states that a **Temporary Protective Order** may order a respondent to surrender any firearms in his/her possession to law enforcement authorities; there is no provision for the surrender of firearms by a respondent in FL § 4-504.1 which deals with **Interim Protective Orders**.

Officers should be aware that FL § 4-506.1 (c) and PS § 5-133(e) permit a respondent who is carrying a civil protective order that requires the surrender of a regulated firearm to transport a regulated firearm for the purpose of surrendering it to a law enforcement agency if:

- a) The regulated firearm is unloaded;
- b) The respondent has notified the law enforcement unit, barracks or station that the regulated firearm is being transported in accordance with the civil protective order;
- c) The respondent transports the regulated firearm directly to the law enforcement unit, barracks or station.

### 6.7.4 Respondents Who Are Law Enforcement Officers

The service weapon and any authorized off-duty firearm of any law enforcement officer who has jurisdiction in the State of Maryland and who is a respondent subject to a **Final Protective Order** will be removed from the officer during the period of time in which the **Final Protective Order** is in effect.<sup>[93]</sup>

*Commentary:* Section 6.7.4 is intended to address two issues: safety and liability. A **Final protective order** is issued because a judge has "clear and convincing evidence that the alleged abuse has occurred" (FL§ 4-506(c)). The **Protective Order** is aimed at protecting the safety of the victim. The ability of the respondent-officer to carry a firearm, even while on duty, increases the possibility that the victim's safety will be jeopardized. It also increases the liability of the law enforcement officer's agency. Accordingly, and in spite of the exemption given to Maryland law enforcement officers in PS § 5-102(4) to permit them to keep their service weapons "while... acting within the scope of their official duties," the developers considered that these two issues should be addressed and resolved by advising agencies that they must remove the service weapon and any authorized off-duty weapon of a member who is a respondent in a **Final Protective Order**. The off-duty weapon was included as a firearm to be removed because the agency authorizes the officer to carry it.

## 6.8 Consequences of Violating a Protective Order

### 6.8.1 Sanctions for Violating a Protective Order

- A. A violation of an **Interim**, **Temporary**, or **Final Protective Order** may result in:
- (1) Arrest;
  - (2) Criminal prosecution; and
  - (3) Imprisonment or fine or both.
- B. A violation of a **Temporary** or **Final Protective Order** may also result in a finding of contempt of court.<sup>[94]</sup>

*Commentary:* Section 6.8.1 is intended to demonstrate that protective orders can be effective if the criminal justice system adjudicates violations.

### 6.8.2 Enforcement of Criminal Violations

FL § 4-509 (b) states “An officer **shall** arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an **Interim**, **Temporary** or **Final Protective Order** in effect at the time of the violation.”<sup>[95]</sup>

*Commentary:* Section 6.8.2 directs law enforcement officers to make a custodial arrest for violations of an **Interim**, **Temporary**, or **Final Protective Order**. This – and that dealing with peace orders – is the only criminal provision in the Maryland Code to mandate an arrest for a violation. Therefore, it is imperative that law enforcement officers know their duty concerning protective orders.

### 6.8.3 Enforcement of Out-of-State Protective Orders

Out-of-state protective orders are civil protective orders that are issued by a court of another state or an Indian tribe. FL § 4-508.1 (a) states “order for protection means a **Temporary** or **Final** order or injunction that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to another person; is issued by a civil court in response to a complaint, petition, motion filed by or on behalf of a person seeking protection or by a criminal court; and is obtained by filing an independent action or as a *pedente lite* order in another proceeding.”

FL § 4-408.1 (b) states “an order for protection by a court of another state or a Native American tribe shall be accorded full faith and credit by a court of this state and shall be enforced.”

- A. Out of state protective orders shall be enforced:
- (1) To the same extent that a Maryland **Temporary** or **Final Protective Order** would be enforced;
  - (2) In the case of **Temporary** out-of-state orders, for not more than seven days after service of the order; and
  - (3) In the case of **Final** out-of-state protective orders, for as long as they are effective in the particular state.

- B. 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 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 the order with the District or circuit court for the jurisdiction in which the person seeks assistance; or
  - (2) Displays or presents to the officer a copy of an out-of-state order that appears valid on its face.
- C. A law enforcement officer acting in good faith and in a reasonable manner concerning the enforcement of out-of-state orders shall be immune from civil liability.<sup>[96]</sup>

*Commentary:* Section 6.8.3 authorizes the enforcement of out-of-state civil protective orders, although the particular name of the order will change from state to state. The National Crime Information Center (NCIC) has a registry of out-of-state orders that law enforcement officers are able to check, although not all states participate in the registry.

## **6.9 Service of Interim and Temporary Protective Orders**

### **6.9.1 Authority**

Title 4, Subtitle 5, of the Maryland Family Law Article requires law enforcement officers to serve both Interim and Temporary Protective Orders on respondents.<sup>[97]</sup>

*Commentary:* Section 6.9.1 is intended to convey to law enforcement officers that service of civil protective orders is their responsibility. The duty to serve protective orders is important because it is prescribed by law, because the conditions for relief cannot take effect until service has been accomplished, and because the safety of the victim has greater assurance when service is accomplished.

### **6.9.2 Responsibility**

Throughout the State, this function is usually performed by sheriffs' offices, but other law enforcement agencies also may be called upon to serve protective orders.<sup>[98]</sup>

*Commentary:* Section 6.9.2 is intended to convey the practice in Maryland. Individual jurisdictions determine whose duty it is to serve protective orders. This does not, however, preclude any law enforcement officer from serving a protective order if immediate service is required.

### 6.9.3 Suggested Procedures

The following are suggested procedures for the service of protective orders:

- A. The serving law enforcement agency receives service papers from a District Court Commissioner in the case of an **Interim Protective Order**, or from the issuing court in the case of a **Temporary Protective Order**.
- B. Service papers will consist of copies of the:
  - DV-1 ("Petition for Protection")<sup>[99]</sup>
  - DV-1A ("Protective Order Addendum")<sup>[100]</sup>
  - DV-2 ("Temporary Protective Order")<sup>[101]</sup> or
  - DV-14 ("Interim Protective Order")<sup>[102]</sup> and
  - DV-9 ("Return of Service").<sup>[103]</sup>
- C. Service must be accomplished **personally**.
  - (1) The law enforcement officer must actually give the respondent a copy of the DV-1 (the Petition) and DV-2 (the Temporary Protective Order) or DV-14 (the Interim Protective Order), whichever he/she is serving.
  - (2) Service is accomplished even if the person being served refuses to accept or discards the order.
- D. After serving the order, the law enforcement officer will explain that the document is an order by the court requiring him/her to do or refrain from doing certain actions. Those actions that apply to the respondent should be reviewed with the respondent.
  - (1) The officer should advise the respondent that each violation of the misdemeanor conditions constitutes a separate criminal violation and will result in his/her arrest.
  - (2) The officer should also advise the respondent that failure to comply with the misdemeanor conditions, as well as other remedies prescribed in the order, could result in his/her being found in contempt by the court or in being arrested.
- E. The serving officer completes the DV-9 ("Return of Service" form) as follows:
  - (1) In the case of **successful** service, by checking the appropriate box indicating which form was served, and placing the name of the respondent, address of service, and the date of service, as provided on the form.
  - (2) In the case of **unsuccessful** service, by filling in the date and time of attempted service, the location of the attempt, and any remarks about the unsuccessful service attempt, such as "not at home-1830 hours," "not at work-1400 hours," "unable to locate," or "due home after 1800 hours." The remarks are not necessary, but should be included to help the next officer who might try to serve the papers.

- (3) At the bottom of the form in the spaces provided, by dating (with the date on which the form is being completed) and signing the "Return of Service" form, inserting the name and telephone number of his/her agency, and printing his/her name and ID number.
- F. The officer will then either return the "Return of Service" form to his/her agency, in cases of unsuccessful service, or to the issuing court.<sup>[104]</sup>

*Commentary:* Section 6.9.3 reflects standard procedure based on the use of standard forms throughout the State and based on discussions with several jurisdictions that seem to follow the same basic procedures for service. Subsection 6.9.3-d was included by the developers to ensure that the respondent fully understands the consequences for violating the various conditions of relief.

## **6.10 Responding to Calls for Service – Protective Orders – Suggested Procedures**

*Commentary:* The below-suggested procedures address the most common situations law enforcement officers will find themselves in concerning protective orders. The suggested procedures offer them a way of properly, effectively, and efficiently handling the situations.

### **6.10.1 Where an Interim, Temporary, or Final Protective Order is Presented to the Responding Officer by a complaint [petitioner] during a Call for Service**

When a law enforcement officer is given an Interim, Temporary, or Final Protective Order by a complainant during a call for service, the officer will verify its validity and take whatever action is required by the remedies ordered by the court.

*Commentary:* Section 6.10.1 presents the most common scenario, and presents a simple, uncomplicated way for the officer to handle the situation.

### **6.10.2 Where a Person Claims the Existence of an Interim, Temporary, or Final Protective Order during a Call for Service**

When told of the existence of an Interim, Temporary, or Final Protective Order during a call for service and no document is presented, the law enforcement officer will query the Maryland Interagency Law Enforcement System (MILES) and verify with the originating sheriff's office whether a protective order is outstanding and has been served, and, if verified, the conditions of the order.

- A. If verified, the officer will make an arrest for any violations that call for an arrest.
- B. If the existence of an order cannot be verified, the officer may not take action based on the possibility that a protective order exists. However, the officer should advise:
  - (1) The alleged respondent of the possible consequences if a protective order is outstanding, and
  - (2) The alleged petitioner to seek safety, confirm the existence of the protective order, and refer the complainant to court to initiate contempt proceedings for any violations of non-arrest conditions.
- C. Law enforcement officers should be mindful that the service of a protective order on a respondent must be completed before enforcement action can be taken.

**Commentary:** Section 6.10.2 conveys to the law enforcement officer the requirement that a document – either to view or on file, as verified through MILES and the originating sheriff's office – is necessary before any kind of enforcement action can occur. Subsection 6.10.2-B is intended to guide the officer in light of the possibility of the existence of a protective order. The officer takes the safety of the complainant into account and addresses both parties regarding the possibility of the existence of an order. Subsection 6.10.2-C is intended to alert the law enforcement officer that service must be made before any enforcement action can be taken against the person.

### **6.10.3 Where the Responding Officer Must Serve a "Vacate" Order**

- A. When serving a "vacate" order, the law enforcement officer will ensure that the respondent vacates the premises and takes only those personal belongings he/she might need to live and work during the seven-day period before the hearing. If the respondent refuses to vacate after being served, the officer will arrest him/her for "**Violation of Interim/Temporary/Final Protective Order.**"

**Commentary:** Subsection 6.10.3-A presents a simple, uncomplicated way to handle a "vacate" situation.

- B. If conflicting vacate orders have been issued by different courts, the law enforcement officer will first attempt to reconcile the conflicting orders before service.

- (1) If the officer is unable to reconcile the conflicting orders, he/she will serve both orders, and enforce them as necessary.
- (2) After service, the officer will refer both parties to the issuing courts for resolution.
- (3) The officer also will notify both courts of the conflict.

**Commentary:** Subsection 6.10.3-B addresses a problem where both parties apply for protective orders in different courts. Usually, this is a case when the assailant is attempting to counter the actions of the victim.

### **6.10.4 Where a Respondent Has Been "Invited" Back by the Petitioner**

- A. When a law enforcement officer is called to the scene where a respondent has been "invited" back into the residence by the petitioner, the officer will:
- (1) Arrest the respondent, if he/she is in violation of an arrest condition; or
  - (2) If the violation is of a non-arrest condition, inform the respondent that he/she is in violation of the protective order and that the court can find the respondent in contempt.



- B. In addition, the officer will inform both parties that:
- (1) The two parties cannot mutually consent to change the conditions of the protective order;
  - (2) Only the issuing court can modify or rescind an **Interim, Temporary, or Final Protective Order**; and
  - (3) If the victim/petitioner wants to change the conditions of the protective order, he/she should go to the issuing court to seek a modification or rescission of the order.<sup>[105]</sup>

**Commentary:** *Section 6.10.4 presents a common occurrence concerning protective orders. The two ways to handle it are simple and depend on whether the violation is an arrest offense.*

#### **6.10.5 Where No Protective Order Exists**

- A. In situations where no protective order exists, and no probable cause exists for an arrest, yet the officer believes that abuse or the threat of abuse has occurred or is a possibility, he/she should give to the perceived abused person the agency's written notice of rights, explain those rights to him/her, recommend that he/she call a hotline number, and explain the availability and process of a protective order as a civil remedy.
- B. The officer should also document the incident on the agency's field report form as a matter of record.

**Commentary:** *Section 6.10.5 is a scenario involving a non-criminal domestic incident, and it is included in this list of suggested procedures concerning protective order situations to emphasize the importance of recommending that the perceived victim pursue this civil course of action to help himself/herself. Although a report is required for any domestic situation, it is included in Subsection 6.10.5-B to remind the law enforcement officer to document the incident as a precautionary measure, as a historic record, and as a potential record of evidence.*

#### **6.10.6 Service of Protective Orders on a Military Base**

Sheriffs and Chiefs of Police who are responsible to serve protective orders should contact the commanding officer of the military bases in their jurisdictions to establish protocols for service.

**Commentary:** *Section 6.10.6 is intended to convey to law enforcement officers that military bases are possible exceptions to their enforcement powers regarding protective orders, because the authority of Maryland law enforcement officers in such cases on military bases is an unresolved issue. There is no established protocol for dealing with the service of protective orders on military bases in the State of Maryland. Indeed, it is unlikely that a standard operating procedure could be established statewide. Accordingly, each jurisdiction that has a military base within its boundaries is best served by contacting the base commander and seeking to establish a protocol with the commander.*

## 6.11 Benefits of a Protective Order

### 6.11.1 Protective orders provide a victim of abuse with a number of benefits:

- A. They offer prompt and temporary relief for up to 12 months, with the possibility of an extension for up to six months;
- B. They establish monitoring by law enforcement and the criminal justice system;
- C. They mandate the arrest of the violator of the order;
- D. They offer legal recourse in the event of further violence;
- E. Especially in the early stages of abuse, they provide protection from abuse which may be of "borderline criminality," such as harassment, threats, or shoving;
- F. They "[p]rotect the integrity of the judicial process by helping to prevent the opportunity for retaliation, intimidation, or undue influence on the complaining witness"; and
- G. They sometimes offer a "satisfactory form of protection" over criminal prosecution because of the needs of the victim.<sup>[106]</sup>

*Commentary:* Section 6.11.1 is intended to demonstrate to law enforcement officers that a protective order does offer some substantive benefits to a victim of domestic violence; that it is not necessarily just "a piece of paper." Although a protective order cannot stop a respondent who is bent on injuring or killing the victim, in most cases it offers a form and degree of protection and security that the victim did not previously have and effectively stops the violence in the relationship.

## 6.12 Peace Orders – Authority

**6.12.1** A **peace order** is a form of civil relief for anyone who is not eligible for a protective order and who alleges the commission of certain specified acts within 30 days of filing for the peace order.

**6.12.2** **Peace orders** are provided for by the Maryland Courts and Judicial Proceedings Article, CJ §§3-1501- 3-1509.

**6.12.3** While the process to obtain a **peace order** closely parallels the one to be followed to obtain a protective order, only the District court has jurisdiction over **peace orders**. Procedures for application, process, and service of **peace orders** are the same as for protective orders.<sup>[107]</sup>

*Commentary:* The purpose of Section 6.12 is to recognize the validity and legal authority for **peace orders**. We use the term "**peace order**" throughout this document to identify **Interim**, **Temporary**, and **Final Peace Orders** when we are not distinguishing among the three types of orders defined in Maryland law.

## 6.13 Types of Peace Orders

**6.13.1** Law enforcement officers in the State of Maryland are called upon to enforce and take other police action based on three types of **peace orders**:

- A. **Interim** Peace Order;
- B. **Temporary** Peace Order; and
- C. **Final** Peace Orders. <sup>[108]</sup>

*Commentary:* The three types of **peace orders** listed in Section 6.13.1 became effective on December 18, 2002, as a result of legislation enacted in 2002 and a constitutional amendment approved by the electorate in November 2002. The new legislation made it possible for victims of abuse to obtain a **peace order** on a 24-hour-a-day basis, seven days a week. The constitutional amendment gave District Court commissioners the authority to issue "**Interim**" **Peace Orders** when court is not in session. All further references to **Interim Peace Orders** and the new names given to **Temporary** and **Final Peace Orders** relate to the 2002 legislation and constitutional amendment that went into effect on December 18, 2002.

**6.13.2** Peace orders are issued in a two- or three-step process:

- A. A **Final Peace Order** cannot be issued without a **Temporary Peace Order** having first been issued. However, a **Temporary Peace Order** may be issued if an **Interim Peace Order** was not.
- B. A **Final Peace Order** also will not be issued unless the petitioner proceeds to the **Final Peace Order** phase of the process.

Likewise, if an **Interim Peace Order** was issued, a **Temporary Peace Order** cannot be issued unless the petitioner proceeds to the **Temporary Peace Order** phase. <sup>[109]</sup>

*Commentary:* The purpose of Section 6.13 is to advise law enforcement officers of the kinds, and names, of **peace orders** in Maryland and that they are issued as part of a process. This chapter is intended to be largely instructional. Law enforcement officers need to know more about the process of **peace orders** than just what they are responsible for. That is so because they need to be in a position to properly and more fully educate and guide victims as to their rights and available resources.

Subsections 6.13.2-A and B are intended to emphasize that the one order must precede the other, and that a **Final Peace Order** will not be issued simply because a **Temporary Peace Order** has been issued. The petitioner must actively proceed to obtain the **Final Peace Order**.

## 6.14 Eligibility to Petition for a Peace Order

**6.14.1** Anyone who is not eligible for relief under a protective order as defined in FL § 4-501 may petition for a peace order.<sup>[110]</sup>

**6.14.2** The peace order provision does not apply to respondents who are children at the time of the alleged commission of the below specified acts.<sup>[111]</sup>

**6.14.3** A petitioner may seek relief by filing a petition with the court 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 filing of the petition:

- A. An act that causes serious bodily harm,
- B. An act that places petitioner in fear of imminent serious bodily harm,
- C. Assault in any degree,
- D. Rape or sexual offense, or their attempts (CR, §§ 3-303 through 308),
- E. False imprisonment,
- F. Harassment (CR, § 3-803),
- G. Stalking (CR, § 3-802),
- H. Trespass (CR, Title 6, Subtitle 4), or
- I. Malicious destruction of property (CR, § 6-301).<sup>[112]</sup>

*Commentary:* The purpose of Section 6.14 is to instruct law enforcement officers on what relationships and reasons qualify to make a person eligible to be issued a peace order.

## 6.15 Two- or Three-Step Process for Filing for a Peace Order

The process to obtain a peace order occurs in either two or three steps similar to that used to obtain a protective order.

### 6.15.1 Interim Peace Order

- A. Persons eligible for relief may file a petition with a District court commissioner when the Office of the District Court Clerk is not open for business [CJ § 1503]. The petition shall be made under oath and include:
  - 1. Contain the address of the petitioner unless disclosure would risk further harm;
  - 2. Nature and extent of act for which relief is being sought including information known to the petitioner concerning previous harm or injury from an act by the respondent;
  - 3. Each previous and pending action between the parties in any court;
  - 4. The whereabouts of the respondent.

- B. If the commissioner finds reasonable grounds to believe that the respondent has committed and is likely to commit in the future any of the nine specified acts, the commissioner may issue an **Interim Peace Order**.
- C. Once the commissioner has issued the **Interim Peace Order**, he/she shall immediately forward the order to the serving law enforcement agency for service on the respondent.
- D. Upon receipt of the order, the law enforcement agency shall immediately serve the order on the respondent and, immediately after service, make a return of service to the commissioner's office or the District Court clerk, if the clerk's office is open for business. The **Interim Peace Order** becomes effective upon service.
- E. An **Interim Peace Order** shall be effective until the **Temporary Peace Order** hearing, or the end of the second court business day. <sup>[113]</sup>
- F. The **Interim Peace Order** shall set the date, time, and location of the **Temporary Peace Order** hearing. The **Temporary Peace Order** hearing shall be scheduled for the first or second day on which a district court judge is sitting after the **Interim Peace Order** has been issued. A tentative date, time, and location for the **Final Peace Order** hearing will also be set. <sup>[114]</sup>

*Commentary:* The purpose of Section 6.15.1 is to instruct law enforcement officers about the process so that they will be able to educate the victims of domestic violence.

#### 6.15.2 **Temporary Peace Order**

- A. If an **Interim** Peace Order has not already been issued, persons eligible for relief may file a petition with the office of the District Court clerk in the county usually in which they reside for a **Temporary Peace Order**. If an **Interim Peace Order** has been issued, the **Temporary Peace Order** hearing will be set for the first or second court business day.
- B. The petitioner will meet with the judge on the day the petitioner files, if the petition for a **Temporary Peace Order** is the first action that the petitioner has taken, or on the date of the scheduled hearing, if an **Interim Peace Order** has already been issued.
- C. If the court finds that there are reasonable grounds to believe that a respondent has committed and is likely to commit in the future any of the nine specified acts, it may issue a **Temporary Peace Order**.

- D. This order becomes effective upon service in one of two ways: If the **Temporary Peace Order** is the first order issued (i.e., an **Interim Peace Order** has not already been issued and served), it must be served by a law enforcement officer.

If an **Interim Peace Order** has already been issued and served, the **Temporary Peace Order** shall be served personally at the **Temporary Peace Order** hearing, if the respondent is present. If the respondent is not present, the **Temporary Peace Order** shall be served by first-class mail at the respondent's last known address.

- E. At the **Temporary Peace Order** hearing, the judge may proceed with a **Final Peace Order** hearing instead of the **Temporary Peace Order** hearing, if:
- (1) The respondent has been served with the **Interim Peace Order** and appears at the **Temporary Peace Order** hearing; and
  - (2) Both the petitioner and the respondent expressly consent to waive the **Temporary Peace Order** hearing.
- F. If the **Temporary Peace Order** hearing is waived, the **Temporary Peace Order** will remain in effect for up to seven (7) days after the **Temporary Peace Order** hearing, and can be extended for up to 30 days to effect service or for good cause.<sup>[115]</sup>

*Commentary:* The purpose of Section 6.15.2 is to instruct law enforcement officers about the process so that they will be able to educate the victims of domestic violence.

### 6.15.3 **Final Peace Order**

A **Final Peace Order** hearing is held within the 7 days that the **Temporary Peace Order** is in effect, unless extended. If the respondent consents to the issuance of **Final Peace Order**, or if the judge finds "clear and convincing evidence" that the respondent has committed and is likely to commit in the future any of the nine specified acts, the judge may issue a **Final Peace Order**. The respondent is not required to be present for the **Final Peace Order** hearing, and the hearing will usually proceed without the respondent if he/she fails to appear.

**Final Peace Orders** may remain in effect for up to 6 months. There is no provision in the law to extend **Final Peace Orders**.

**Final Peace Orders** are served personally or, in the absence of the respondent, by first class mail to the respondent's last known address. Service is complete upon mailing.<sup>[116]</sup>

*Commentary:* The purpose of Section 6.15.3 is to instruct law enforcement officers about the process so that they will be able to educate the victims of domestic violence.

## 6.16 What Peace Orders Accomplish

### 6.16.1 Conditions of Peace Orders – Arrest Required

Maryland Law – CJ § -1508 states “An individual who fails to comply with the relief granted in an **Interim peace order** under § 3-1503.1 of this subtitle, a **Temporary peace order** under § 3 – 1504 (a) (2) of this subtitle or a **Final peace order** under § 3-1505 (d) (1) (i), (ii), (iii), or (iv) of this subtitle is guilty of a **misdemeanor**...”

CJ § 3 – 1508 (b) states “a law enforcement officer **shall** arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of an **Interim peace order**, a **Temporary peace order** or a **Final peace order** in effect at the time of the violation.” Provisions within the **peace order** that warrant the respondent’s arrest may order the respondent to:

- A. CJ § 3-1503.1 (c) (2) An **Interim Peace Order**, a **Temporary Peace Order** under § 3-1504 (a) (2) and a **Final Peace Order** under § 3-1505 (d) (1) (i), (ii), (iii), or (iv) may...order the respondent to:
- (1) refrain from committing or threatening to commit an act specified in § 3-1503 (a) against the petitioner:
    - (a) An act that causes serious bodily injury;
    - (b) An act that places the petitioner in fear of imminent serious bodily harm;
    - (c) Assault in any degree;
    - (d) Rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
    - (e) False imprisonment;
    - (f) Harassment under § 3-803 of the Criminal Law Article;
    - (g) Stalking under § 3-802 of the Criminal Law Article;
    - (h) Trespass under Title 6, Subtitle 4 of the Criminal Law Article;
    - (i) Malicious destruction of property under § 6 – 301 of the Criminal Law Article.
  - (2) refrain from contacting, attempting to contact, or harassing the petitioner;
  - (3) refrain from entering the residence of the petitioner;
  - (4) remain away from the place of employment, school or temporary residence of the petitioner;
- B. A respondent who violates one of these orders is guilty of a **misdemeanor** for which the law enforcement **officer is required to make an arrest.** <sup>[117]</sup>

**Commentary:** The purpose of Section 6.16.1 is to identify for law enforcement officers those violations for which they are required to make an arrest. This is an important section (1) because of the mandate that officers arrest a violator, for such a requirement does not exist in any other Maryland criminal statute except for protective orders, and (2) because there are conditions in a peace order for which officers are not permitted to make an arrest. Law enforcement officers must recognize those violations that call for an arrest.

## 6.16.2 Conditions of Peace Orders – No Arrest

**Peace orders** also provide relief by directing the respondent or petitioner to participate in counseling or mediation, and by ordering either party to pay filing fees and costs of the peace order proceeding. Violation of these conditions does **not** constitute a criminal offense and, therefore, does not warrant an arrest. In the case of violations of **Temporary** and **Final Peace Orders**, violations of these conditions could result in a finding of contempt by the court. <sup>[118]</sup>

*Commentary:* The purpose of Section 6.16.2 is to identify for law enforcement officers those violations for which they may not make an arrest.

## 6.17 Consequences of Violating a Peace Order

### 6.17.1 Sanctions for Violating a Peace Order

Violations of **Interim**, **Temporary**, and **Final Peace Orders** may result in arrest, criminal prosecution, imprisonment or fine or both. In addition, violations of **Temporary** and **Final Peace Orders** may also result in findings of contempt.

### 6.17.2 Enforcement of Criminal Violations

CJ § 3 – 1508 (b) states “a law enforcement officer shall arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of an **Interim**, **Temporary**, or **Final Peace Order** in effect at the time of the violation. <sup>[119]</sup>

*Commentary:* Section 6.17.2 directs law enforcement officers to make a custodial arrest for violations of an **Interim**, **Temporary**, or **Final Peace Order**. This - and that dealing with protective orders – is the only criminal provision in Maryland Law to mandate an arrest for a violation. Therefore, it is imperative that law enforcement officers know their duty concerning **peace orders**.

## 6.18 Service of Interim and Temporary Peace Orders

### 6.18.1 Authority

The Maryland Courts and Judicial Proceedings Article requires law enforcement officers to serve **Interim**, **Temporary**, and **Final Peace Orders** on respondents. <sup>[120]</sup>

*Commentary:* Section 6.18.1 is intended to convey to law enforcement officers that service of **peace orders** is their responsibility. The duty to serve **peace orders** is important because it is prescribed by law, because the conditions for relief cannot take effect until service has been accomplished, and because the safety of the victim has greater assurance when service is accomplished.

### 6.18.2 Responsibility

Throughout the State, this function is performed by sheriffs' offices, but other law enforcement agencies also may be called upon to serve **peace orders**. <sup>[121]</sup>

*Commentary:* Section 6.18.2 is intended to convey the practice in Maryland that, in all 24 state jurisdictions, it is the sheriff's office that primarily performs the function of **peace order** service. This does not preclude any law enforcement officer from serving a **peace order** if immediate service is required.



## 6.19 Miscellaneous Items Related to Peace Orders

### 6.19.1 Authorization to Modify or Rescind a Peace Order

Only the court may modify or rescind a **peace order**.<sup>[122]</sup>

### 6.19.2 Firearms

There are **no** firearms restrictions related to **peace orders**.<sup>[123]</sup>

### 6.19.3 Verification of Peace Orders

There is **no** statutory authorization for the placement of **peace orders** into the Maryland Interagency Law Enforcement System (MILES), as there is for protective orders. Accordingly, verification of **peace orders** must be made directly to the agency that is responsible for serving and maintaining them.

### 6.19.4 Fees

There are a \$20.00 application fee and a \$30.00 service fee. The court may waive the application fee.<sup>[124]</sup>

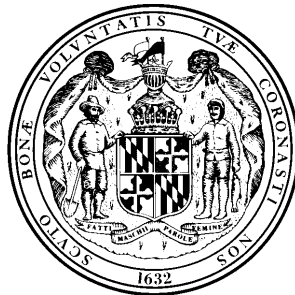
### 6.19.5 Peace Orders - Juvenile Respondents

The following procedures pertain to juvenile respondents:

- A. CJ § 3-8A-08 (c) states “a **peace order** request shall be filed in the county where the alleged act occurred” subject to transfer to the county of the juvenile’s residence by the court under CJ § 3-8A-09.<sup>[125]</sup>
- B. CJ § 3 – 8A -10 [amended - effective June 30, 2013] defines, in detail, the steps by which a complaint involving a juvenile is processed. The following summarizes those steps:
  1. Upon receipt of a complaint from a person or agency, which can be a police officer, an intake officer from the Department of Juvenile Services (DJS) has 25 days to investigate the complaint, in which time the intake officer may authorize the filing of a petition or **Peace Order** request, propose an informal adjustment, or refuse authorization to file a petition or **Peace Order** request.
  2. If a complaint is filed that alleges the commission of an act which would be a felony if committed by an adult or alleges a violation of Criminal Law Art. §§4-202 - 4-205, and if the DJS intake officer denies authorization to file a petition or proposes an informal adjustment, the intake officer shall immediately forward the complaint to the State’s Attorney. The State’s Attorney has up to 30 days, unless the court extends the time, to review the complaint.
  3. The State’s Attorney may file a petition or **Peace Order** request, refer the case to the DJS for informal disposition, or dismiss the complaint.

4. If the DJS intake officer decides to file a **Peace Order** request or denies authorization to file a request, the DJS intake officer is required to notify the victim, the arresting officer and the person or agency that filed the complaint. The victim, the arresting officer and the person or agency that filed the complaint may appeal a denial to the State's Attorney within 30 days of being mailed the notification of the decision, if the complaint alleged a "delinquent act" - an act that would be a crime if committed by an adult. The notification will be on a form specified by § 3-8A-11 of the Courts and Judicial Proceedings Article. The appeal may be filed on this same form. <sup>[126]</sup>
  
5. CJ § 3 – 8A – 19.1 (b) (1) states "after an inquiry conducted in accordance with CJ § 3 – 8A - 10 [summarized above] an intake officer may file with the court a **Peace Order** request that alleges the commission of any of the following acts against a victim by the respondent, if the act occurred within 30 days before the filing of the complaint under CJ 3 – 8A – 10:
  - i) An act that causes serious bodily harm;
  - ii) An act that places the victim in fear of imminent serious bodily harm;
  - iii) Assault in any degree;
  - iv) Rape or sexual offense under §§ 3- 303 through 3 – 308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
  - v) False imprisonment;
  - vi) Harassment under § 3 – 803 of the Criminal Law Article;
  - vii) Stalking under § 3 - 803 of the Criminal Law Article;
  - viii) Trespass under Title 6, Subtitle 4 of the Criminal Law Article;
  - ix) Malicious destruction of property under § 6 – 301 of the Criminal Law Article."
  
- (2) After a review conducted in accordance with CJ § 3 – 8A – 10 (c) (4) (ii) [summarized above] the State's Attorney may file with the court a **Peace Order** request that meets the requirements of paragraph (1) of this subsection. <sup>[127]</sup>
  
6. CJ § 3 – 8A – 19.2 (b) (1) states "if a **Peace Order** is filed under CJ § 3-8A-19.1 (b) the respondent shall have an opportunity to be heard on the question of whether the court should issue a **Peace Order**.
  - (2) if the court finds by clear and convincing evidence that the respondent has committed and is likely to commit in the future an act specified in CJ § 3-8A-19.1 (b) [listed above] or if the respondent consents to the entry of a **Peace Order**, the court may issue a **Peace Order** to protect the victim.

7. CJ § 3-8A-19.2(c) (1) states “The **Peace Order** may include any or all of the following relief:
- (i) order the respondent to refrain from committing or threatening to commit an act specified in CJ § 3-8A-19.1(b) against the victim;
  - (ii) order the respondent to refrain from contacting, attempting to contact or harassing the victim;
  - (iii) order the respondent to refrain from entering the residence of the victim;
  - (iv) order the respondent to remain away from the place of employment, school or temporary residence of the victim;
  - (v) direct the respondent or the victim to participate in professionally supervised counseling.
- (2) If the court issues an order under this section, the order shall contain only the relief that is minimally necessary to protect the victim.
- (3) All relief granted in a **Peace Order** shall be effective for the period stated in the order not to exceed 6 months.
8. CJ § 3-8A-19.5 (a) states “a violation of any of the provisions of a **Peace Order** specified in CJ § 3-8A-19.2 (c) (1) (i), (ii), (iii) or (iv) is a delinquent act.  
(b) A law enforcement officer shall take into custody a child whom the officer has probable cause to believe is in violation of a **Peace Order** in effect at the time of the violation.



- 7.0 Victim Assistance
  - 7.1 General Policy
  - 7.2 Legal Requirements
  - 7.2.1 Written Notification of Rights (FL § 4-503)
  - 7.2.2 Providing the Victim with a Copy of the Field Report (FL § 4-503.1)
  - 7.3 Non-criminal Domestic Incidents
  - 7.4 Assisting a Victim When No Arrest Is Made
  - 7.4.1 When the Assailant Is Not on the Scene
  - 7.4.2 When the Assailant Is on the Scene
  - 7.5 Assisting a Victim When an Arrest Is Made
  - 7.6 About the Safety Procedures
  - 7.6.1 Reviewing Safety Procedures with the Victim
  - 7.6.2 Exercising Caution in Devising Safety Procedures
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## 7.1 General Policy

- 7.1.1 Law enforcement officers will assist victims of domestic violence by ensuring their safety, listening to them, referring them for additional services, and providing other means of assistance and problem-solving so as to stop the violence if it has already begun and to prevent it from occurring if it has not.

*Commentary:* Section 7.1.1 is taken from the policy statement that was included in the November 1996 report of the Attorney General's and Lt. Governor's Family Violence Council, entitled "Stop the Violence – A Call to Action: Recommendations & Action Plan." <sup>[128]</sup>

## 7.2 Legal Requirements

### 7.2.1 Written Notification of Rights (FL § 4-503)

- A. When a law enforcement officer responds to a domestic violence situation, Family Law Article § 4-503 of the Maryland Annotated Code requires that the officer give the victim a copy of a **written** notice of rights which:
  - (1) states that the victim may:
    - (a) Request that a district court commissioner file a criminal charging document against the alleged abuser;
    - (b) If the commissioner declines to charge the alleged abuser, request that the state's attorney file a criminal charging document against the alleged abuser;
    - (c) File a petition for relief from abuse in the district court or circuit court or with a commissioner when neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open;
    - (d) Obtain a copy of the incident report as provided under FL § 4-503.1; and,
  - (2) includes the telephone number of a local domestic violence program.

- B. The officer will also explain the information contained in the notice of rights to the victim.

*Commentary:* Section 7.2.1 was included to ensure compliance with FL § 4-503, entitled “Notification of Victim’s Rights When Responding to Spousal Assault.” Subsection 7.2.1-B is taken from the November 1996 Family Violence Council report. The developers wanted to ensure that victims are properly advised. They felt that leaving it up to the victim to read the statement is not a proactive approach. <sup>[129]</sup>

### **7.2.2 Providing the Victim with a Copy of the Field Report (FL §4-503.1)**

- A. When a law enforcement officer responds to a domestic violence incident, he/she will advise the victim of the availability of a copy of the report that he/she will prepare concerning the incident.
- B. However, the officer on the scene is not required to give the victim the copy. The officer should direct the victim to the office in his/her agency that provides reports to the public, and inform the victim if there is a fee for the copy of the report.

*Commentary:* Section 7.2.2 was included to ensure compliance with FL § 4-503.1, Report of Domestic Abuse to State Police and Victim." The requirement of the law is that the "agency" provide the victim with a copy on request. Accordingly, the officer on the scene is obligated to inform the victim how to obtain a copy of the report through the officer's agency.

## **7.3 Non-criminal Domestic Incidents**

**7.3.1** In **non-criminal** domestic incidents, when a law enforcement officer is not required to make an arrest, he/she will be required to take other action to ensure the peace, protect and assist the parties, and provide information about services that are available to people involved in domestic situations.

**7.3.2** In situations where the law enforcement officer establishes that one of the parties has been or is a potential victim of domestic violence, the officer will:

- A. Refer the victim or potential victim to the local service provider for assistance, and
- B. Warn the abuser or potential abuser that acts of domestic violence are criminal acts for which he/she can be arrested and that he/she should also seek assistance from the local service provider.

**7.3.3** In situations where the law enforcement officer establishes that both parties are mutually aggressive, the officer will warn both parties that acts of domestic violence are criminal acts for which both can be arrested and that they should seek assistance from the local service provider.

*Commentary:* Concerning Sections 7.3.1 and 7.3.2, because most calls for service involving domestic situations will not require the law enforcement officer to make an arrest, officers should be able to make the parties, primarily the perceived victim, aware of the availability of services. Officers also should be able to properly refer the parties for assistance so as to perhaps prevent violence early and introduce the victim and abuser to services that might also aid in preventing violence. This section was included to reinforce the basic policy in **non-criminal** incidents.

Section 7.3.3 addresses mutually aggressive disputants, and the necessity to warn them of the consequences of their potential acts, and to advise them both to seek assistance from the local service provider.

## **7.4 Assisting a Victim When No Arrest Is Made**

### **7.4.1 When the Assailant Is Not on the Scene**

When the abuser is not present on the scene, the law enforcement officer should:

- A. Assist the victim in contacting the local service provider;
- B. Inform the victim about the civil protective order process and where he/she can go to petition for either an **Interim** or **Temporary Protective Order**;
- C. Review some procedures with the victim, intended to ensure his/her immediate safety;
- D. Encourage the victim to leave if the victim feels it is unsafe for him/her to remain in the home, or if the officer assesses that the situation is unsafe;
- E. If the victim decides to leave, assist him/her in arranging for transportation to a shelter or other location, or transport the victim to safety according to the policy and procedures of the officer's agency;
- F. If the victim decides not to leave, ensure:
  - (1) the victim is safe at the time the officer leaves;
  - (2) the victim knows to call the police if the abuser returns;
  - (3) the officer has assisted the victim to contact the local service provider; and
  - (4) the officer has discussed safety procedures with the victim; and
- G. The victim is given the agency's **written** notification of rights and that the contents of the notice have been explained; and
- H. Complete a written report of the incident as required.

**Commentary:** Section 7.4.1 affords a law enforcement officer ample time and opportunity to inform the victim about the range of available services, to discuss some safety procedures that will ensure the victim's immediate safety, and generally to help the victim understand the need for the assistance of the local service provider. This is also a good time to directly put the victim in touch with the local service provider, so that a domestic violence counselor can speak with the victim. The officer should remain on the scene until the conversation between the victim and counselor is over. The officer should speak with the counselor to see whether there is any further reasonable assistance he/she can provide, and finally, should speak with the victim to determine what the victim wants to do and whether the officer can help.

Discussion in this policy about "safety procedures" is intended to ensure the immediate safety of the victim. The officer should be aware that the local service provider will help the victim to develop a comprehensive safety plan, which is one reason it is important that the victim make contact with the provider.

#### **7.4.2 When the Assailant Is on the Scene**

If the assailant is on the scene, and the law enforcement officer assesses that domestic violence likely occurs in the household, the officer should:

- A. If possible, out of the presence and hearing of the assailant, carry out the same steps as when the assailant is not on the scene [listed in section 7.4.1];
- B. Assess the lethality of the situation, advise the victim of this assessment and encourage the victim to leave if the officer believes there will be a threat to the victim's safety once the officer leaves; [Conduct a Lethality Assessment Screen or similar lethality assessment tool as described in section 3.8 of this model policy ( Pages 26-28).]
- C. If the victim decides to leave, stand-by until he/she gathers clothing and personal effects, and ensure his/her safe departure; and
- D. Once the victim is safe, advise the victim's partner:
  - (1) His/her pursuit of the victim could result in his/her being arrested for stalking;
  - (2) It is the officer's assessment that domestic violence exists in the relationship;
  - (3) Such conduct is criminal; and
  - (4) The partner should seek help from the local service provider before he/she commits a crime against the victim.

**Commentary:** Section 7.4.2 does not offer the same time and opportunity to a law enforcement officer to speak with the likely victim as when the assailant is not on the scene. In effect, the officer has more to do in that he/she must deal with two parties and the dynamics that are present in such a situation. The officer must basically inform the victim of all the services that are available to him/her and must determine the danger of the situation. If the officer assesses that a potentially dangerous situation exists, he/she must alert the victim and warn the assailant that domestic violence is a crime for which a person is arrested. In order to ensure the victim's safety, the officer should encourage him/her to leave, and assist the victim if requested.

## **7.5 Assisting a Victim When an Arrest Is Made**

**7.5.1** When an assailant is arrested for committing a crime of domestic violence, the law enforcement officer should:

- A. Obtain medical attention for the victim, if required:
  - (1) If the victim has injuries and is not inclined to seek medical attention, the officer should encourage him/her to do so.
  - (2) Medical care may reveal other injuries and the documentation of such injuries helps to build evidence.
- B. Assist the victim in contacting the local service provider;
- C. Inform the victim of the civil protective order process and where he/she can go to petition for either an **Interim** or **Temporary Protective Order**;
- D. Explain the bail process to the victim and the likelihood that his/her partner may be released from custody in a short period of time; and
- E. Encourage the victim to find a safe location away from home.

***Commentary:** Section 7.5 still requires the law enforcement officer to provide assistance to the victim. However, because of the time constraints posed by the fact that he/she has made an arrest, the officer must provide the victim with information in fairly quick order, and especially advise him/her that the assailant may soon be released from custody and that the victim should try to find a safe location away from home. If the officer is unable to assist the victim any further, he/she should encourage the victim to contact the local service provider and, if necessary, arrange for the further assistance of another law enforcement officer, if one is available.*

## **7.6 About the Safety Procedures**

### **7.6.1 Reviewing Safety Procedures with the Victim**

The law enforcement officer must remember that often a victim of domestic violence, as any victim, is not in a position to properly think his/her situation through.

- A. The victim needs guidance, and the officer should provide it in a simple, direct, and repetitive way.
- B. The officer should review safety procedures with the victim to ensure that it is clear in the victim's mind what actions he/she will take if it becomes necessary to escape.
  - (1) The officer should ask questions to help the victim focus on ways that will make him/her safer and to help him/her make decisions: "Where will you go if you have to run from here quickly?" "Do you have a key to the car?"



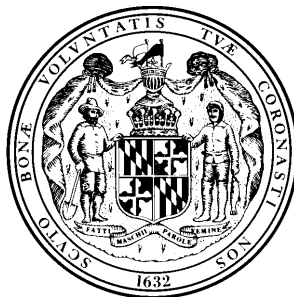
- (2) The officer should ask questions to ensure that the victim has made safe, workable decisions to implement the safety procedures. As in the case of the above question about where the victim will go, the officer might ask clarifying questions: "Will they take you in there?" "Does your husband know you would go there?" "Will you be safe there until you can call the police?" "Will elderly people, children, or others who cannot defend themselves be endangered by going there?" "Might there be a better, safer place for you to go?"
- (3) The officer should offer guidance for safety procedures that the victim does not seem to be able to work out in his/her mind.
- (4) The officer must ensure that actions he/she is advising a victim to consider are legal.

**Commentary:** *The developers wanted to convey to law enforcement officers that helping a victim of domestic violence is not always a simple task; however, it requires a simple approach of understanding that victims need to be carefully guided so that they will clearly comprehend what they are being told.*

#### **7.6.2 Exercising Caution in Devising Safety Procedures**

- A. Although safety procedures can be new information for a victim – ways and means the victim has never before thought about – they may have drawbacks that can cause repercussions for the victim, and the victim must be made aware of this possibility.
- B. The law enforcement officer should advise the victim to be as cautious as possible in devising or carrying out safety procedures, because if the assailant learns that the victim has made plans to escape violence, that in itself could trigger a violent episode.

**Commentary:** *Safety procedures offer benefits and potentially severe drawbacks for a victim. Although safety procedures give the victim ways to escape violence, they can backfire on the victim as well, particularly if the assailant finds out that the victim is making plans to escape. In situations where the potential for danger is high, the assailant's learning of the victim's plans can quite possibly lead to death. The victim must be cautioned about this and encouraged to seek help through the local service provider. The officer should encourage the victim to leave the home if the potential for danger is high.*



**8.0 Supervision**

**8.1 Monitoring Cases for Compliance**

**8.2 Cases Involving Members of the Criminal Justice System**

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**8.1 Monitoring Cases for Compliance**

**8.1.1** Supervisors should monitor responses to domestic cases to ensure compliance with the model policy and their agency's policies and procedures.

**8.1.2** Supervisors should pay particular attention to officers' problem-solving techniques/methods, to dual arrests, when they occur, to report-writing, and to what actions officers take to ensure victims' or potential victims' safety.

*Commentary:* Section 8.1 is designed to ensure that supervisors pay particular attention to the areas of domestic violence that warrant the closest supervision: How law enforcement officers are addressing situations; how they are handling demonstrated or alleged mutual battery cases; whether they properly document incidents; and what they do to ensure victims' safety.

**8.2 Cases Involving Members of the Criminal Justice System**

**8.2.1** If either party in a domestic situation is a member of a criminal justice agency – particularly the responding officer's own agency – a supervisor should be called to the scene either to monitor or to take charge of the situation.

**8.2.2** If either party in a domestic situation is a law enforcement officer, a supervisor, preferably of higher rank, will respond to the scene to take charge, and will report the incident to the chief executive of the agency.

**8.2.3** If a law enforcement officer from another jurisdiction is involved in a domestic situation as the alleged assailant, the responding supervisor will notify the alleged assailant's agency of the incident.

**8.2.4** If an issued service weapon is confiscated from a law enforcement officer, and it is not being held as evidence, it will be returned to the issuing agency.

*Commentary:* Section 8.2 is designed to ensure that domestic violence cases involving individuals who work in the criminal justice system, especially law enforcement officers, are properly handled, even to the extent in Section 8.2.2 of calling in an officer of higher rank to the scene to deal with an officer who is involved either as an assailant or a victim. Moreover, it is designed to ensure that criminal justice workers do not "fall through the cracks." Accordingly, Sections 8.2.2 and 8.2.3 contain provisions for notification of the involved officer's chief executive. In terms of the assailant, this is important information because of the policy provision that calls for the removal of a law enforcement officer's service weapon during the life of a Protective Order and because of federal law, which requires the permanent removal of the firearm of a law enforcement officer who has been convicted of a domestic violence offense. <sup>[130]</sup>

## 9.0 Training

### 9.1 Entry-Level Training

#### 9.2 In-Service Training

#### 9.3 Curriculum Review

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### 9.1 Entry-Level Training

**9.1.1** All entry-level law enforcement officers will receive domestic violence training to meet the objectives of the Maryland Police Training Commission (MPTC).

**9.1.2** Entry-level domestic violence training should include information in the following areas:

- A. The dynamics of domestic violence;
- B. Maryland criminal law relating to domestic violence;
- C. The model policy as well as any agency policy and procedures;
- D. Conducting domestic violence investigations;
- E. Interviewing parties of domestic violence;
- F. The arrest decision;
- G. Liability;
- H. Protective orders and peace orders;
- I. Evidence collection and report writing; and,
- J. Victim assistance.

**Commentary:** *Although a domestic violence curriculum has been developed by the Maryland Network Against Domestic Violence for use by all of Maryland's law enforcement training academies, Section 9.1 is designed to address all types of entry-level situations, especially those involving lateral entry personnel. Sections 9.1.1 and 9.1.2 cover the curriculum, but they allow room for the abbreviated or specialized training of lateral entry law enforcement officers sufficiently "... to meet the objectives of the Maryland Police Training Commission."*

## **9.2 In-Service Training**

- 9.2.1** All law enforcement officers should be given appropriate domestic violence in-service training and will be given in-service training on changes in laws related to domestic violence and the model policy whenever such changes occur.
- 9.2.2** In-service training should include segments on changes in the law or policy, on new methods or technologies that the agency plans to utilize, and on refresher courses in one or more of the nine training areas.

*Commentary:* The MPTC requires 18 hours of in-service training and does not generally mandate training in specific areas - COMAR 12.04.01.12. In Section 9.2.1, the policy attempts not to conflict with the MPTC requirements, but the developers were concerned that changes in the law and the policy itself must be brought to the attention of law enforcement officers, and the section requires that such training be provided "...whenever such changes occur." Section 9.2.2 provides a framework for domestic violence in-service training, when it is conducted, that will keep law enforcement officers current with the law, the policy, and new ideas and technologies.

## **9.3 Curriculum Review**

- 9.3.1** Academies should review their entry-level domestic violence training curriculum annually and should consult with the MPTC and those agencies and organizations that work in conjunction with the law enforcement agency in coordinating a response to domestic violence in the jurisdiction.
- 9.3.2** Similarly, in response to changes in Maryland law relating to domestic violence issues as well as recommended best practices changes from professionally recognized law enforcement sources or suggestions from umbrella organizations/service providers that coordinate a response to domestic violence, MPTC will forward these changes to its various client law enforcement agencies in the State by way of professional organizations such as the Maryland Training Directors' Association, the Maryland Chiefs of Police Association or the Maryland Sheriff's Association, etc. with a view of including them in both entry-level and in-service training programs. Likewise, MPCTC will also post the latest version of the Model Domestic Violence Policy on [www.mdle.net](http://www.mdle.net)

*Commentary:* Although Section 9.3.1 recognizes the independence of the State's training academies and the differences within various jurisdictions, the developers also recognized the need to ensure that individual academy curriculum reviews and changes are coordinated with the MPTC and with "...agencies and organizations that work in conjunction with the law enforcement agency in coordinating a response to domestic violence in the jurisdiction." The intent of this section is to encourage communication and coordination among all the agencies that work with domestic violence so that training can be accurate, specific, and supportive of law enforcement officers who are initial responders.

*In the same vein, Section 9.3.2 urges MPTC to communicate any changes to the law, recommended best practices or suggestions from domestic violence service providers or advocacy groups to its client agencies in order to be incorporated into entry-level and in-service training programs. Domestic violence laws will be in a state of transition for years to come as more is learned about the subject of domestic violence. New laws and amendments to existing laws are being legislated every year. The Maryland law enforcement policy will also require revision to incorporate legislative and other changes. To ensure that the law enforcement community remains current, an annual review of both the entry-level and the in-service training curricula is urged.*

## 10.0 Policy Review

### 10.1 Policy Review Board

### 10.2 Changing the Model Policy

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#### 10.1 Policy Review Board

**10.1.1** The model law enforcement policy should be reviewed **annually** by a **Policy Review Board** consisting of representatives of the Maryland State Police, the Maryland Chiefs of Police Association, the Maryland Sheriffs' Association, the Baltimore Police Department, and the Maryland Police Training Commission.

**10.1.2** The Maryland Police Training Commission representative will serve as chair to the **Policy Review Board** and will also be responsible for administering and disseminating any changes to the Maryland law enforcement community.

*Commentary:* Section 10.1.1 recognizes the need for an annual policy review, primarily because of legislative changes, but also because of new ways of dealing with domestic violence that will be learned, as noted in the commentary in Section 9.3. The four representative organizations are the reasonable choice to sit on a **Policy Review Board**. The **Board** is necessary to ensure that there is a centralized, statewide law enforcement body that is dealing with the policy.

In deciding who the chair and administrator should be, in Section 10.1.2, the developers judged that it should be an organization that had a centralized or umbrella relationship with State law enforcement, i.e. the Maryland Police Training Commission. The MPTC's role as chair and administrator is additionally important given the fact that the Commission would be in the best position to implement the training changes that would be necessary when the policy would be changed.

As a practical matter, the **Policy Review Board** should meet as soon as practical after each year's Maryland Legislative session so as to make certain that any changes to existing law are reviewed, incorporated into the model policy and disseminated to law enforcement agencies so that necessary training can occur. The model policy review and update should be completed no later than 1 July of each year. MPCTC will also post the latest version of the Model Domestic Violence Policy on [www.mdle.net](http://www.mdle.net)

#### 10.2 Changing the Model Policy

**10.2.1** In making changes to the model policy, the **Policy Review Board** should consult with the Maryland Network Against Domestic Violence, the Maryland State's Attorneys' Association, and the Attorney General's and Lieutenant Governor's Family Violence Council.

**10.2.2** The model policy can be changed only upon the approval of four of the five member organizations.

*Commentary:* Section 10.2.1 parallels the method employed for changing the training curriculum in Section 9.3 through consultation with umbrella organizations. The work performed by representatives of the three listed organizations has a direct effect on law enforcement efforts.

Section 10.2.2 reflects the notion that changes in policy must have the significant endorsement of the law enforcement community.

## **11.0 Implementation of Model Policy by Law Enforcement Agencies**

### **11.1 Endorsement of the Model Policy**

#### **11.2 Application of the Model Policy**

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### **11.1 Endorsement of the Model Policy**

**11.1.1** Each law enforcement agency in the State should endorse the model policy.

*Commentary:* Section 11.1.1 is a statement urging all law enforcement agencies to support the model policy. Without broad, statewide support and application, the model policy cannot be effective. This policy was developed by law enforcement to standardize the law enforcement response. Moreover, the policies contained in the document reflect what law enforcement developers considered the most effective response for law enforcement and the most supportive of the citizens of the State.

### **11.2 Application of the Model Policy**

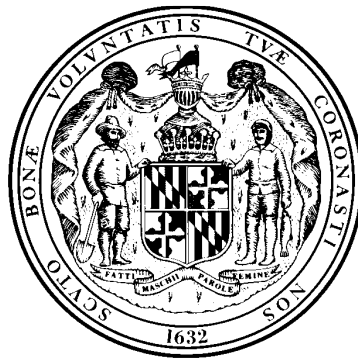
**11.2.1** Each law enforcement agency in the State should have a written domestic violence directive, with standard operating procedures pertaining to the individual jurisdictions.

**11.2.2** Each agency should employ the model policy in its written directive and develop its own operating procedures as necessary.

**11.2.3** An agency's written directive should include:

- A. The purpose and goals of the policy,
- B. A definition of domestic violence,
- C. Instruction on the dynamics of domestic violence,
- D. An arrest policy, including probable-cause factors and the issue of dual arrests,
- E. Investigation and a report-writing policy,
- F. How to handle protective and peace orders,
- G. Victim assistance and services,
- H. The responsibilities of supervisors,
- I. Training requirements, and
- J. How the agency's policy will be reviewed.

**Commentary:** Section 11.2 reflects how law enforcement agencies should implement the policy: with a written directive (Section 11.2.1), using the philosophy of the policy document (Section 11.2.2), and incorporating the listed topics in its directive (Section 11.2.3).



**Endnotes**

1. Annotated Code of Maryland, Family Law Article, FL § 4-514(3)
2. *Id.*, FL § 515(a).
3. "Domestic Violence Protocol for Law Enforcement – 1994," Police Chiefs' Association of Santa Clara County, California (February 17, 1994), in "Appendices to the Model Code on Domestic and Family Violence," National Council of Juvenile and Family Court Judges (Appendix 1, Reno, Nevada: 1994).
4. "Domestic Violence," International Association of Chiefs of Police, Training Key #411 (1991).
5. U.S. Department of Justice, Bureau of Justice Statistics, *Female Victims of Violent Crime*, "Caroline W. Harlow, Ph.D. (BJS Statistician), NCJ-126826 (Washington, D.C.: U.S. Department of Justice, January 1991), p. 2. "Three out of four offenders committing domestic violence against women were spouses [9%], ex-spouses [35%], and boyfriends or ex-boyfriends [32%]."
6. U.S. Department of Justice, Bureau of Justice Statistics: Special Report "*Intimate Partner Violence, 1993-2010*" (U.S. Department of Justice, November 2012) p.3 "About 4 in 5 victims of intimate partner violence were female from 1994 to 2010." "Most intimate partner violence was perpetrated against females. In 1994, 85% of intimate partner violence victims were female and the remaining 15% were male. These distributions remained relatively stable over time."
7. Office for Victims of Crime – Training and Technical Assistance Center - U.S. Department of Justice – Office of Justice Programs: "*Intimate Partner Violence*" (reviewed/updated/published 2012) p. 1 "In 2010 violent crimes (against both males and females) by intimate partners totaled 509,230 and accounted for 13.4% of violent crimes." "Of female murder victims in 2010, 37.5% were killed by a husband or boyfriend." "The percentage of female victims (22%) of intimate partner violence was around 4 times that of male victims (5%)."  
  
Bureau of Justice Statistics – U.S. Department of Justice - "*Female Victims of Violence*" (September, 2009 – revised 10/23/09) p.1 "In 2008 females age 12 or older experienced about 552,000 nonfatal violent victimizations (rape/sexual assault, robbery, or aggravated or simple assault) by an intimate partner (a current or former spouse, boyfriend or girlfriend)." "In the same year, men experienced 101,000 nonfatal violent victimizations by an intimate partner."
8. *Female Victims of Violence*, p.2 "In 2008, 72% of the intimate partner violence against males and **49% of the intimate violence against females was reported to police.**"



9. *Statistics Packet*, "How Many Women Are Battered Each Year," (3d ed., Philadelphia, Pennsylvania: National Clearinghouse for the Defense of Battered Women, 125 South 9th Street, Suite 302, 19107, (215) 351-0010, September 19, 1995), pp. 90-93. Also, *Female Victims of Violent Crime*, p. 1. Concerning the interpretation of data, the report notes that "...[t]he estimates of [family violence]...should not be used as estimates of the level of family violence in the United States. Rather, they are estimates of the amount of family violence that people considered to be criminal and that victims chose to and were able to relate to survey interviewers."
10. U.S. Department of Justice, Bureau of Justice Statistics "*Violence against Women: A National Crime Victimization Survey Report*," (1994) p. 7. "Women living in central cities, suburban areas and rural locations experienced similar rates of violence committed by intimates."
11. *Id.*, table 14, p. 8. "Women suffering violent victimizations were almost twice as likely to be injured if the offender was an intimate (59%) compared to offenders who were strangers (27%). Women were also more likely to receive injuries requiring medical care if the attacker was an intimate (27%) compared to a stranger (14%)."  
  
"*Violence Related Injuries Treated in Hospital Emergency Departments*," Michael R. Rand, U.S. Department of Justice, NCJ 156921 (1997) "The U.S. Department of Justice reported that 37% of all women who sought care in hospital emergency rooms for violence-related injuries were injured by a current or former spouse, boyfriend or girlfriend."
12. *Female Victims of Violent Crime*, table 5, p. 3. "About 1 in 5 women victimized by their spouse or ex-spouse reported that they had been the victim of a series of similar crimes. They had sustained at least three assaults within 6 months of the interview, and the assaults were so similar that they could not remember them distinctly."
13. *Id.*, table 6, page 3. 56% of victimizations by intimates, compared to 57% by strangers, were reported to the police by female victims.
14. *Statistics Packet*, pp. 139-149.
15. Anne Ganley, "Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client," in Lemon, *Domestic Violence: A Bench guide for the Criminal Courts* (San Francisco, California: Family Violence Project, 1989).
16. Domestic Violence Intervention Project, "Power and Control Wheel" (Duluth, Minnesota). The first eight tactics listed are from the Power and Control Wheel. The last tactic listed was incorporated by *Sargent & Edwards*, consultants to the Maryland Network Against Domestic Violence.
17. *The Michigan Law Enforcement Response to Domestic Violence: Instructor Resource Guide*, produced by the State of Michigan, Department of State Police, Michigan Law Enforcement Officers Training Council, and the Department of Social Services, Domestic Violence Prevention and Treatment Board (Lansing, Michigan: 1993), Objective I.H.1.3, p. 45.

18. Lenore Walker, *The Battered Woman* (New York, New York: Harper and Row, 1980). Dr. Walker is a renowned domestic violence expert who first used the term "cycle of violence" to demonstrate that domestic violence is like a revolving door.
19. *The Michigan Law Enforcement Response to Domestic Violence*, by Hermina Kramp and Cherryllee Finney (Lansing, Michigan: 1993), Objective I.H1.4 ("on-Scene Assailant Behavior).
20. *The Michigan Law Enforcement Response to Domestic Violence* , Objective I.H.1.5 ("Victim Behaviors").
21. *The Michigan Law Enforcement Response to Domestic Violence*, Objective I.H.1.8 ("Indicators When an Assailant Might Kill"); and *Confronting Domestic Violence: Effective Police Response*, Barbara Hart, Pennsylvania Coalition Against Domestic Violence, 1990, pp. 103 and 104. See also, *Assessing Dangerousness: Violence by sexual Offenders, Batterers, and Child Abusers*, edited by Jacquelyn C. Campbell, Interpersonal Violence: The Practice Series, Thousand Oaks, CA: Sage Publications, 1995).
22. *Gift of Fear: survival Signals That Protect Us from Violence*, Gavin De Becker, Dell Publishing Co., 1999.
23. "Lethality Assessment Program – Maryland Model for First Responders – Learning to Read the Danger Signs" Maryland Network Against Domestic Violence, 2005.
24. Information concerning § 2-203 in this section of the policy is taken from Annotated Code of Maryland, Criminal Procedure Article § 2-203.
25. Information concerning § 4-509 in this section of the policy is taken from the Annotated Code of Maryland, Family Law, § 4-509.
26. *Stacy v. Emery*, 97 U.S. 642 (1878).
27. *Wescott v. State* , 11 Md.App. 305, (1971), cert. den., 262 Md. 750 (1971), declarative of common law rules of warrantless arrest); Crim. Proc., §§2-201 - 2-210 (pertaining to warrantless arrest).
28. *Id.*
29. The exact origin of this list of factors is unknown, except as endnoted. The developers of the policy used a list that was compiled by the D.C. Coalition Against Domestic Violence for lesson plans used in the training of police officers of the Metropolitan Police Department (MPD) in Washington, D.C., from November 1991 through February 1993.
30. This statement is derived from a lesson plan used in the training of police officers of the MPD in Washington, D.C., from November 1991 through February 1993. However, it has been adopted as policy by the Maryland law enforcement community.
31. The statement about offensive and defensive injuries is a statement of policy by the Maryland law enforcement community.

32. The term "corroborating statements" is an amendment of the Maryland law enforcement community to the original list.
33. This factor was incorporated into the original list by David M. Sargent, the D.C. Coalition Against Domestic Violence coordinator for the training of MPD officers from January 1992 through February 1993.
34. *Id.*
35. This factor was incorporated by the Maryland law enforcement community in the development of its domestic violence policy.
36. This factor was incorporated on a recommendation of Lieutenant Louis Oertly of the Prince George's County Sheriff's Office Domestic Violence Unit. Lieutenant Oertly's suggestion was made in his capacity as a member of the Model Policies, Implementation and Training for Police, Sheriffs, and State's Attorney Subcommittee of the Criminal Justice Action Team of the Family Violence Council. The subcommittee commented on the policy document. The comments were received by the Policy Development Committee on April 22, 1997.
37. This factor was incorporated by the Maryland law enforcement community in the development of its domestic violence policy.
38. The exact origin of this list of factors is unknown, except as endnoted. The developers of the policy used a list that was compiled by the D.C. Coalition Against Domestic Violence for lesson plans used in the training of police officers of the MPD in Washington, D.C., from November 1991 through February 1993. The notes within each of the factors were incorporated by the developers of the Maryland law enforcement policy.
39. The law does not exclude married couples in its application. To the contrary, new domestic-violence-related laws, such as CP § 2-204, address the spousal relationship specifically.
40. The developers of the policy chose to include heterosexual and homosexual relationships alike, consistent with practice in Maryland. However, homosexual relationships are not recognized as spousal relationships by Maryland law.
41. Annotated Code of Maryland, Courts & Judicial Proceedings Article (CJP), Md., § 9-106 (a) (2)
42. *Statistics Packet* , pp. 125 and 126.
43. "Dual arrest" is a term commonly used to describe the arrest of both parties involved in a domestic violence incident. Other less commonly used terms are "mutual arrest" and "criss-cross." "Dual arrest" seems to be the term used in Maryland when the concept is being discussed.

44. Michael R. Cogan, Assistant State's Attorney for Anne Arundel County, telephone interview, October 21, 1996. Mr. Cogan advised that the meaning of the subsection is that law enforcement officers should not arrest a party who has acted in self-defense, and that the aggressor should be arrested, if the decision to arrest has been made.
45. Steven D. Epstein, *The Problem of Dual Arrest in Family Violence Cases* (Meriden, Connecticut: Connecticut Legal Services, Inc., October 1, 1987). This discussion paper addresses the four circumstances.
46. Annotated Code of Maryland, Criminal Procedure Article CP § 2-204.
47. The investigative steps for a mutual battery complaint were developed by *Sargent & Edwards*, with items such as a person's size and the relative fear of the parties taken from *The Michigan Law Enforcement Response to Domestic Violence: Instructor Resource Guide*, Lesson Plan I.H.3.8., p. 141.
48. *Maryland Pattern Jury Instructions*, MPJI-Cr 5:07, "Self-defense" (2003)(handbook supplement). In addition, members of the Model Policies, Implementation and Training for Police, Sheriffs, and State's Attorney Subcommittee of the Criminal Justice Action Team of the Family Violence Council, commenting on the policy document noted that a comment should be included in the commentary that law enforcement officers should be mindful that victims will often pick up a weapon to defend themselves. The comments of the subcommittee were received by the Policy Development Committee on April 22, 1997.
49. Sergeant Mark W. Howes, J.D. (retired, Anne Arundel County Police Department), *The Law Enforcement Officer's Guide to Maryland Domestic Violence Laws*, "Dual Arrest" (Silver Spring, Maryland: Maryland Community Crime Prevention Institute, September 1995).
50. The section on the primary aggressor was developed by *Sargent & Edwards* to offer a guideline on how an officer can investigate to determine who is the primary aggressor.
51. Lawrence P. Sherman, with Janell D. Schmidt and Dennis P. Rogan, *Policing Domestic Violence: Experiments and Dilemmas* (New York, New York: Free Press, 1992), p. 255. In the Colorado Springs replication study, a man was locked up after the woman said she had hit him but he had not hit her. The man was arrested because, since he had started the verbal argument, the police considered him the primary aggressor.
52. *Domestic Violence Handbook for Maryland Law Enforcement Officers*, Maryland Network Against Domestic Violence, 2012. [www.mnadv.org](http://www.mnadv.org)
53. Montgomery County Communication Division SOP, OPNS 2.38, "Domestic Violence," amended February 28, 1996.
54. Annotated Code of Maryland, Family Law, FL § 4-511 (c).
55. These three criteria for evaluating threats were developed as part of the domestic violence curriculum for the training of the MPD from November 1991 through February 1993.

56. Steven Bailey, Vera White, and Michael Cogan, Assistant State's Attorneys from Baltimore, Montgomery, and Anne Arundel Counties, respectively, in separate interviews held in Towson, Silver Spring, and Annapolis, respectively, April 1996.
57. Md. Ann. Code, Article 27, ' 798 (1957, 1996 Repl. Vol. & Supp. 1997). Provisions in the law concerning medicine and medical devices became effective October 1, 1997. See FL § 4-502 (a) (2) (ii).
58. Opinion of Assistant Attorney General Kimberly Smith Ward, to Shari L. Heise, Victim-Witness Specialist, Office of the United States Attorney, Northern District (Baltimore, Maryland: August 7, 1995), pp. 6 and 7.
59. *Id.* p. 7.
60. Md. Ann. Code, Article 27, § 798 (1957, 1996 Repl. Vol. & Supp. 1997). Provisions in the law concerning medicine and medical devices became effective October 1, 1997.
61. See, Letter from Assistant Attorney General Kimberly Smith Ward to Shari Heise, Victim-Witness Specialist, United States Attorney's Office (August 7, 1995).
62. *Id.*
63. *The Law Enforcement Officer's Guide to Maryland Domestic Violence Laws .*
64. Md. Ann. Code, Art. 27, § 798(c) (1957, 1996 Repl. Vol. & Supp. 1997).
65. The stalking statute was amended effective October 1, 2003, to remove the specific intent provision and to incorporate a general intent provision, and to incorporate additional acts of which a person could be in fear: serious bodily injury, assault in any degree, rape or sexual offense in any degree or their attempts, false imprisonment, or death. Those additional acts consistent with acts that establish "abuse" under FL, § 4-501 (b) (1), for which a person may seek a protective order. The amended law also allowed for a "reasonable person" standard, i.e., if the victim is reasonably in fear of the conduct being used by the perpetrator, that establishes the necessary element that stalking is occurring.
66. *Domestic Violence Handbook for Maryland Law Enforcement Officers*, Maryland Network Against Domestic Violence, July 2003, pp. 20 and 21.
67. "Intimate Partner Stalking" and "Research on Partner Stalking: Putting the Pieces Together" prepared by T. K. Logan, National Institute of Justice, U.S. Department of Justice, website created October, 2012.
68. *Stalking in America: Findings From the National Violence Against Women Survey*, Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice (National Institute of Justice, Washington, DC.: 1998).
69. "Stalking: A Guide for Victims" Maryland Coalition against Sexual Assault [Maryland Network against Domestic Violence], 2009 and "Legal Resource Kit: Stalking" published by Legal Momentum: Advancing Women's Rights, 2005.

70. The “Principles” were organized as such by David M. Sargent, Law Enforcement Trainer for the Maryland Network Against Domestic Violence, but the information is from the various sources on stalking cited herein.
71. Department of Justice – Office for Victims of Crimes. [www.ovc.gov](http://www.ovc.gov)
72. *Investigation of Stalking Cases: A Model Protocol for Maryland Law Enforcement Officers*, developed in September 2002 by the Protocol Development Committee, established by the Maryland Network Against Domestic Violence (MNADV) as part of the development of the conference on domestic violence stalking cases held on September 18-19, 2002, in Timonium, Maryland; and *Creating an Effective Stalking Protocol*, developed by the National Center for Victims of Crime and supported by the Office of Community Oriented Policing Services, U.S. Department of Justice, April 2002. The publication notes that much of the information in the protocol was developed by police departments in San Diego, California.
73. *Investigation of Strangulation Cases: A Model Protocol for Maryland Law Enforcement Officers*, developed in June 2002 by the Protocol Development Committee in anticipation of conference entitled “Detecting Strangulation Cases: Investigation through Prosecution” held on June 5, 2002, in Timonium, MD., based on *How to Improve Your Investigation and Prosecution of Strangulation Cases*, Gael B. Strack, Assistant City Attorney for the City of San Diego, CA.; and Dr. George E. McClane, emergency room physician in the City of San Diego, National College of District Attorneys, October 1998, updated September 2001.
74. The Maryland Domestic Violence Supplemental form was developed under the *Prosecution, Investigation Initiative*, Maryland Network Against Domestic Violence (1996).
75. Annotated Code of Maryland, State Government Article (“SG”), §§ 10-611 to 10-630.
76. Annotated Code of Maryland, Family Law, §§ 4-504.1, 505, and 506. The three types of protective orders reflect a change in the law that went into effect on December 18, 2002, as a result of a constitutional amendment ratified by Maryland voters granting district court commissioners the authority to issue a new Interim Protective Order when court is not in session. The names of the Temporary Ex Parte Order and Protective Order were changed to Temporary Protective Order and Final Protective Order, respectively.
77. Annotated Code of Maryland, Family Law, §§ 4-504, 504.1, 505, and 506. These sections identify the processes used in issuing the various types of protective orders.
78. *Id.*, § 4-501(m). This subsection identifies those individuals who are eligible to petition the court for relief provided by a protective order.
79. *Id.*, § 4-501(b)(1). This subsection identifies those acts that constitute "abuse."

80. *Id.*, FL § 4-504.1. This subsection explains the procedures used in the issuance, processing, service, and duration of an **Interim** Protective Order.
81. *Id.*, FL § 4-505(a) (1), and telephone interview with Hannah Sassoon of the Montgomery County Abused Persons Program, September 30, 1996. Ms. Sassoon provided specific information about the **Temporary** Ex Parte Order process that the section does not include, such as meeting with the judge on the day the petitioner applies for the order, and that the petitioner should report to the civil clerk at the court.
82. *Id.*, FL § 4-505. This subsection explains the procedures used in the issuance, processing, service, and duration of a **Temporary** Protective Order.
83. *Id.*, FL §§ 4-506(a), (b), (c), (f), and (g). These subsections identify the **Final** Protective Order hearing process, the standard for issuing mutual **Final** Protective Orders, the service of **Final** Protective Orders, and the duration of **Final** Protective Orders. Changes concerning service and duration went into effect on October 1, 1997.
84. *Id.*, § 4-501(n). This subsection, concerning the definition of "residence," was added to the law effective October 1, 1997.
85. *Id.*, FL §§ 4-504.1(c)(1) through (4)(i) and (7) and (8), 4-505(2)(i) through (v), and 4-506(d)(1) through (5). These references cite the same conditions of relief for the **Interim**, **Temporary**, and **Final** Protective Orders, respectively.
86. *Id.*, FL § 4-509.
87. *Id.*, FL §§ 4-504.1(c)(4)(ii & iii), (5) and (6), 4-505(2)(vi) and (vii), and 4-506(d)(6) through (13). These are non-arrest conditions of relief because FL § 4-509, "Penalties," does not cite these as misdemeanor offenses.
88. This provision ordering a respondent to stay away from the child care provider while the child is in the care of the provider was enacted on October 1, 1998. It was intended to be a misdemeanor violation but was not incorporated into § 4-509(a) as a misdemeanor by oversight. As a result of that technical omission, this provision is a civil condition the violation of which does not subject the respondent to arrest.
89. *Id.*, FL § 4-506(d) (12). The surrender of a firearm is a relief element that went into effect in 1996. In addition, because it is a different type of relief that directly affects a responding officer and because it deals with a firearm, the developers decided to highlight it by placing it in its own subsection.
90. *Id.*, FL § 4-508. This citation refers only to the contempt portion of subsection 6.6.2-c. As a result of legislative changes effective December 18, 2002, contempt does not apply to violations of Interim Protective Orders. These elements constitute noncriminal relief because FL § 4-509, "Penalties," does not cite them as misdemeanor offenses.
91. This section became effective October 1, 1996.

92. This section became effective October 1, 1996.
93. PS §5-102(4) specifies that Maryland's regulated firearms laws are inapplicable to "...law enforcement personnel of the State or any local agency in the State, while those personnel or members are acting within the scope of their official duties..." from the laws concerning "regulated firearms."
94. Annotated Code of Maryland, Family Law, § 4-508 and 4-509(b). As a result of legislative changes effective December 18, 2002, contempt does not apply to violations of Interim Protective Orders.
95. *Id.*
96. *Id.* This section became effective October 1, 1996, and was amended effective October 1, 2001, to authorize enforcement of an order that "appears valid on its face" and to include the immunity provision for officers who act in good faith and in a reasonable manner.
97. *Id.*
98. The practice in Maryland is that the service of civil actions is usually the duty of sheriffs' offices. However, in some cases other law enforcement agencies carry out the duty. It is important to note that other law enforcement agencies are not precluded from serving civil protective orders when sheriffs' offices primarily handle the duty and immediate service is required.
99. The DV-1 ("Petition for Protection") was revised and went into effect February 2003.
100. The DV-1A ("Protective Order Addendum") was revised and went into effect February 2003. This form, prepared by the petitioner, is designed to help the serving officer locate and identify the respondent.
101. The DV-2 ("Temporary Protective Order") was revised and went into effect February 2003.
102. The DV-14 ("Interim Protective Order") was revised and went into effect February 2003.
103. The DV-9 ("Return of Service") was revised September 1994.
104. Discussions about service were held with Lieutenant Louis Oertly of the Prince George's County Sheriff's Office Domestic Violence Unit, Lieutenant Roy Mitchell of the Harford County Sheriff's Office, and Lieutenant Brian Williar of the Frederick County Sheriff's Office, and updated by *Sargent & Edwards* to account for changes in the preparation of the DV-9, which was revised September 1994.
105. Annotated Code of Maryland, Family Law, § 4-507(a). This subsection directs that "...[t]he court that issued the protective order may modify or rescind the protective order during the term of the protective order...."



106. Sarah Colson and Peter Finn, "Civil Protection Orders: Legislation, Current Court Practice, and Enforcement," *Issues and Practices in Criminal Justice* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, March 1990), pp. 2 and 3.
107. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), §§ 3-1503(a) and 1501(c).
108. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), §§ 1503.1, 1504, and 1505. The three types of peace orders reflect a change in the law that went into effect on December 18, 2002, as a result of a constitutional amendment ratified by Maryland voters granting district court commissioners the authority to issue a new Interim Protective Order when court is not in session. The names of the Peace Order was changed to Final Peace Order.
109. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), §§ 3-1503, 1503.1, 1504, and 1505. These sections identify the processes used in issuing the Interim, Temporary, and Final Peace Orders, respectively.
110. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), § 3-1502(b)(1).
111. *Id.*, § 3-1502(b)(2). Children who are respondents are covered under the Courts and Judicial Proceedings Article, § 3-8A. See Section 6.20.4 for treatment of the issue of child respondents.
112. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), § 3-1502(b)(2) and § 3-1503(a).
113. A distinction must be made between when the office of the clerk is open, usually from about 0800 (8:00 a.m.) to about 1700 hours (5:00 p.m.), and the court business day. A court business day runs for 24 hours and therefore ends at 2400 hours (midnight).
114. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), §§ 3-1503.1.
115. *Id.*, § 3-1504
116. *Id.*, § 3-1505
117. *Id.*, § 3-1508
118. *Id.*, § 3-1505(d)(1)(v) & (vi). These elements constitute noncriminal relief because § 3-1508, "Penalties," does not cite them as misdemeanor offenses.
119. *Id.*, §§ 3-1507 & 3-1508

120. § 3-1503.1; 3-1504; 3-1506.
121. *Id.*, §§ 3-1503.1(f) and 3-1504(b)
122. The practice in Maryland is that the service of peace orders is the duty of sheriffs' offices in all of the state's 24 jurisdictions. However, in some cases other law enforcement agencies may be called upon to carry out the duty. It is important to note that agencies which do not have as a responsibility the service of peace orders are not precluded from serving them when immediate service is required. This is especially the case in some jurisdictions where the sheriff's office does not provide 24-hour service and an interim peace order needs to be served.
123. Title 3, Subtitle 15, does not address the matter of firearms. Accordingly, a respondent to a peace order who otherwise legally possesses a firearm may continue to possess that weapon for the duration of the peace order.
124. Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJP"), § 3-1509(a). The court may waive the application fee, but the law appears to be silent on the serving law enforcement agency's authority to waive the service fee.
125. *Id.*, §§ 3-8A-08 and 3-8A-09
126. *Id.*, §§ 3-8A-10 and 3-8A-11
127. *Id.*, §§ 3-8A-19.1 through 19.5
128. *Stop the Violence – A Call to Action: Recommendations & Action Plan*, The Maryland Attorney General's & Lt. Governor's Family Violence Council (Baltimore, Maryland: November 1996), p. 14.
129. *Id.*
130. 18 U.S.C. § 922(g)(9) (September 30, 1996). Also, Maryland Chiefs of Police Association, Legal Advisors Committee, *A Guide to the 1996 Amendments to the Federal Gun Control Act*, "Amendments to the Federal Gun Control Act of 1968, As Amended by the Omnibus Consolidated Appropriations Act of 1997 (Lautenberg Amendment)" (February 1997).

