
	GAITHERSBURG POLICE DEPARTMENT			
	Response to Domestic Disputes & Standbys			
	GENERAL ORDER	603.3		Related CALEA Standards:
	Effective Date	02/24/2016		55.1.3, 55.2.2, 55.2.3
Authorized by: Mark P. Sroka CHIEF OF POLICE		SIGNATURE	DATE	

I. PURPOSE

Calls and other situations that are related to domestic disputes are often volatile and can create dangerous situations for all parties involved. Because these matters often involve factors such as domestic violence, child custody issues and disagreements over property rights, procedures must be followed that protect the rights and safety of the parties involved, as well as satisfy necessary legal requirements. The purpose of this directive is to outline legal requirements, communicate Department policy and establish procedures that achieve these goals and provide the best service possible to persons eligible for relief under domestic violence statutes.

II. POLICY

The Department will ensure through ongoing training that officers are prepared to effectively respond to calls for service involving domestic violence and that victims are provided with information and assistance to protect themselves and their rights. The Department strives to educate victims of their legal rights, advise them of available resources and encourage them to seek legal and social assistance.

Response to domestic disputes by officers is inherently dangerous, both while responding to, and after arriving at, the scene. The primary responsibilities of responding officers are to protect themselves from the parties involved, protect the parties from each other, preserve peace and order, and remain objective and impartial throughout the dispute. Officers will provide all reasonable assistance pursuant to applicable provisions of law and Department procedures.

III. DEFINITIONS

A. Ex Parte

Within the context of this directive, the term “ex parte” refers to situations in which only one party appears before a judge. A judge may issue temporary orders ‘ex parte’ until the court can hold a proceeding in which the respondent may be heard.

B. Final Protective Order

Within the context of this directive, the term “final protective order” refers to an order issued by a judge, following a proceeding that offers both parties the opportunity to be heard, that protects the petitioner from specified actions by the respondent. All final protective orders contain a provision requiring the respondent to refrain from possessing firearms for the duration of the order and to surrender all firearms in the respondent’s possession to a law enforcement agency. Some final protective orders may be effective for up to two (2) years.

C. Firearm

Within the context of this directive, the term “firearm” refers to any weapon that expels, is designed to expel, or may be readily converted to expel a projectile by the action of an explosive; or the frame or receiver of such a weapon and includes a starter gun (Public Safety Article, § 5-101 (h) (1&2)). This includes long guns, such as rifles and shotguns.

D. Interim Protective Order

Within the context of this directive, the term “interim protective order” refers to an emergency order, issued by a District Court commissioner during times when the court is closed, which protects the petitioner from specified actions by the respondent. The order goes into effect when the respondent is served by a law enforcement officer and continues until the temporary hearing is held before a judge.

E. Temporary Protective Order

Within the context of this directive, the term “temporary protective order” refers to an order issued ‘ex parte’ by a judge, following a hearing, which protects the petitioner from specified actions by the respondent. Some temporary protective orders, at the discretion of the issuing judge, contain a provision requiring the respondent to refrain from possessing firearms for the duration of the order and to surrender all firearms in the respondent’s possession to a law enforcement agency. Temporary protective orders may be extended as needed, but not to exceed six (6) months, to effectuate service of the order or for other good cause.

IV. PROCEDURE

A. Officer Responsibilities

1. The actions of responding officers are governed by the Criminal Law, Family Law and Criminal Procedure Articles of the Annotated Code of Maryland.

2. Pursuant to the provisions of §4-502 of the Family Law Article, any person who alleges to have been a victim of abuse and believes there is a danger of serious and immediate injury to himself or herself may request the assistance of local law enforcement. This statute requires the responding officers to protect the victim from harm when responding to the request and to accompany the victim to the family home and allow the victim to remove:
 - a) The personal clothing of the victim and of any child in the care of the victim; and
 - b) The personal effects of the victim, and of any child in the care of the victim, required for the immediate needs of the victim or child.
3. Officers are not authorized to make decisions regarding the disposition of personal property. Officers will not assist with the removal of any items from the residence except under the direction of an on-scene supervisor.
4. Officers responding to calls alleging domestic violence shall provide the victim with a victim information packet, which lists available services and resources for victims, pursuant to § 4-503 of the Family Law Article.

B. Response to Scene

1. Whenever possible, at least two officers will respond to calls for domestic disputes, in accordance with the response code designated by the PSCC or as directed by a supervisor.
2. If an officer has knowledge of the scene, situation, or participants that would justify altering the response code assigned by the PSCC, the officer will advise of same and the on duty supervisor may alter the response code accordingly.
3. Domestic related calls may be received in which a complainant requests that police be present for the purpose of keeping the peace while the complainant retrieves property from the residence.
 - a) Officers will not act as arbitrators nor make decisions as to who is entitled access to the family home or possession of personal property. The parties involved should be advised to consult their respective attorneys in these situations.
 - b) For all cases with current protective orders in effect, the parties will be advised to contact the Sheriff's Office to schedule an appointment to retrieve belongings.

C. Police Reporting of Incidents

1. A Domestic Violence Supplemental, form MCP 535, must be thoroughly completed on all domestic violence calls in which an event report is written and the victim and aggressor are intimate partners. Support staff will forward the original form to the State's Attorney's Office to assist in prosecution of the case.
2. A Domestic Violence Lethality Screen, form MCP 536, will be completed for all domestic violence incidents when an intimate relationship is involved and:
 - a) The officer believes an assault has occurred; or
 - b) The officer believes the victim faces danger once the officer leaves; or
 - c) The parties have been involved in prior domestic violence incidents; or
 - d) There have been prior domestic violence incidents at that address; or
 - e) The officer simply believes one should be conducted.
3. Officers shall contact the Abused Persons Program (APP) counselor at (240) 777-4673 to relay high danger lethality assessment findings. If an APP counselor is not available, the Crisis Center will be contacted at (240) 777-4000.
 - a) Explain the situation to the counselor and attempt to have the victim speak with the counselor.
 - b) The APP/Crisis Center is designed to provide the victim with information on shelter, counseling and safety planning.
 - c) If the victim refuses to speak with the counselor, the refusal will be documented in the related incident report.
4. It is imperative that the patrol officer's preliminary investigation be as thorough as possible. Officers should photograph the victim's injuries and the crime scene. All photographs shall be appropriately labeled and include the date and time the photograph was taken and the identity of the photographer.
5. A member of the Montgomery County Police Domestic Violence (DVS) will be notified of all domestic related first degree assaults. The DVS investigator will then fulfill the investigative

requirements of the case. The DVS investigator will have the option to request a GPD investigator respond for additional support or to determine the domestic violence case has any bearing on other cases currently under investigation by the GPD Investigative Section.

If a DVS investigator is not available to respond or does not respond when the patrol supervisor determines an investigator is required, the supervisor will contact the on call GPD investigator.

6. When a domestic violence call results in the arrest of an offender, officers will complete CPU's Domestic Violence Victim Notification, form DCA 720, and attach to the CPU 513 as part of arrest processing. If the defendant is released within 12 hours of arrest, this step will enable a timely notification of the victim by Montgomery County Detention Center (MCDC) personnel. In the event MCDC is unable to contact the victim, MCDC will notify the Crisis Center.
7. In cases of alleged domestic violence where no arrest is made, victims will be advised of the procedure to apply for a charging document. Officers will complete an incident report and provide the report number to victim as required by the District Court commissioner.
8. Officers will advise victims of the process for obtaining other orders of the court intended to protect the petitioner. Officers should also refer victims to the County's 6th District Victim Advocate.
9. Reporting officers investigating incidents involving repeat victim/suspect cases of domestic assault and/or harassment will note the repetitive pattern in the incident report. The approving supervisor will ensure a copy of the report is forwarded to the Domestic Violence Section reporting system for monitoring.
10. A copy of additional required forms, such as the MCP 535 and MCP 536, will be retained with the Department's record of the incident report.

D. On-view Domestic Violence Arrests

1. An officer may arrest without a warrant if there is probable cause to believe that:
 - a) The person battered the person's spouse or other individual with whom the person resides; and

- b) There is evidence of physical injury; and
 - c) A report was made to police within 48 hours of the alleged assault; and
 - d) Unless the person is immediately arrested, the person may:
 - 1) Not be apprehended; or
 - 2) Cause physical injury or property damage to another; or
 - 3) Tamper with, dispose of, or destroy evidence.
2. If an officer has probable cause to believe that a mutual battery has occurred, the officer shall consider whether one of the parties acted in self-defense when identifying the primary aggressor for arrest purposes.

E. Service of Court Orders

- 1. If one of the parties from a domestic dispute applies for and obtains a protective order, the primary responsibility for service rests with the Montgomery County Sheriff's Office. A copy of the order may also be served by any law enforcement officer, after it has been determined to be a valid order and service has not already been made by the Sheriff's Office.
- 2. Since protective orders are entered into MILES by the Sheriff's Office, officers at the scene of domestic violence incidents should request a wanted check for any warrants or court orders that may be on file for any of the involved parties. If a computer check reveals the existence of an outstanding order, the officer may serve it.
- 3. If service is effected by the officer, the officer shall:
 - a) Accomplish service by personally delivering a copy of the order to the named respondent;
 - b) Indicate service of the order on the court copy, including date and time of service;
 - c) Notify the Sheriff's Office that service has been effected, indicating the date, time and identity of the officer effecting

the service.

4. If the petitioner does not have a copy of the order, officers at the scene may contact the Sheriff's Office and request that a copy of the order be faxed to the station and subsequently hand carried to officers at the scene for service. Because the order is civil in nature, the person to be served may not be detained pending the arrival of a copy of the order.
5. Officers effecting service of a protective order will explain each provision of the order to the person being served. Officers will advise that a violation of the order constitutes a criminal offense that will result in arrest.
6. If the person served has been ordered to vacate the residence, officers will allow a reasonable amount of time for the person to gather personal effects necessary to remain away from the family residence until the hearing date set forth in the order. For safety reasons, officers will accompany the person served while he or she gathers belongings and will ensure that the person leaves the premises.

F. Violations of Protective Orders

1. An officer is required to effect a custodial arrest, whether or not the violation occurs in the officer's presence or view, if the officer has probable cause to believe that an arrestable condition of a protective order has been violated. Arrestable conditions are those that order the respondent to:
 - a) Refrain from abusing or threatening the petitioner;
 - b) Refrain from contacting or harassing the petitioner;
 - c) Refrain from entering the petitioner's residence;
 - d) Vacate the residence;
 - e) Stay away from the petitioner's or other family members' place of employment, school, or temporary residence; and
 - f) Surrender any firearms in his or her possession and refrain from possessing any firearm.
2. The above conditions, except for the firearm provisions, are contained in each of the three types of protective orders: interim,

temporary and final. Only judges have the authority to order the surrender of firearms, not commissioners. Thus, interim protective orders do not have a firearm surrender provision.

3. Officers have no discretion concerning whether or not to arrest a respondent if one of the arrestable conditions of the order is violated. An arrest must be effected, whether the condition is violated in the officer's presence while on the scene with the respondent present, or a violation is called to the officer's attention as having occurred (for example - several days before) and there is probable cause to believe that the violation occurred as alleged, so long as the violation occurred while the order was in effect.
 - a) The officer shall make a full custody arrest and ensure the individual is processed through the Central Processing Unit in accordance with established procedures.
 - b) If an order is violated and the offender is not present upon the officer's arrival, the petitioner will be advised to respond to a District Court commissioner to apply for a charging document.
 - c) An individual who violates an out of state protective order in Maryland may be criminally prosecuted, under §4-509 of the Family Law Article, if it would be a criminal offense to violate such a provision of an order issued in the State of Maryland.
4. When writing charges for the violation of a protective order, officers should use the Family Law Article, Section 4-509, for the violation of an interim, temporary or final protective order.
 - a) Officers will cite, in the statement of charges, the proper section under which the protective order was issued: interim (4-504.1), temporary (4-505) or final (4-506). Officers should use CJIS code 2-0254.
 - b) The State's Attorney's Office is responsible for amending the penalty if the defendant can be prosecuted as a repeat offender.

G. Child Custody

1. The first and foremost concern for responding officers is the safety and well being of the child. If a responding officer determines that the child is in imminent danger from the child's surroundings, and removal of the child is necessary for the child's protection, the

officer shall take the child into custody pursuant to §3-814 and § 3-8A-14 of the Courts and Judicial Proceedings Article.

2. If the child is not in any danger and a citizen is requesting assistance with a valid child custody order signed by a judge, officers must carefully read the child custody section of the order to ascertain the terms and conditions specified before taking any action.
 - a) Officers may take action if authorized to do so by the terms of the order.
 - b) Since the Sheriff's Office has primary jurisdiction in serving such orders and maintains a file for each order, officers should consider contacting the Sheriff's Office prior to taking any action.
3. If the child is not in any danger and an order has not been issued, or an order has been issued but police officers are not authorized to serve it, responding officers will advise the complainant that he or she may exercise the following options:
 - a) Contact his or her attorney immediately;
 - b) Return to the court of issue and apply for a warrant for the person holding the child in violation of the order and/or request the issuing judge to issue a contempt of court warrant.
 - c) Contact the Juvenile Division of the State's Attorney's Office to obtain a child pick-up order.
4. District Court commissioners or judges may order a law enforcement officer to use reasonable and necessary force to return a minor child to the custodial parent after service of an interim, temporary or final protective order (FL, §4-504.1 (D) and FL, §4-505 (a) (3)).
 - a) Use of "reasonable and necessary force" is addressed in length in *84 Opinions of the Attorney General*, 105 (1999).
 - b) An electronic copy of *84 Opinions of the Attorney General*, 105 (1999), is available through the Governor's Office of Crime Control and Prevention (GOCCP) website's online resources at <http://www.goccp.maryland.gov/victim/FVC/84oag105.pdf>

5. If child custody is awarded in the conditions of a protective order, a violation of that provision does not constitute a criminal offense. However, the person served should be advised that a failure to comply with the order could result in a finding of contempt by the court.
6. Officers dealing with a child custody situation must carefully read the child custody section of the order before taking any related action.

H. Firearms Possession and Surrender

1. Respondents subject to a final protective order are required to refrain from possessing firearms for the duration of the protective order and to surrender all firearms in their possession to a law enforcement agency. The surrender provision automatically applies to all final protective orders; the judge has no discretion; he or she is required to order the surrender of all firearms. The box ordering surrender will be pre-checked (FL, §4-506 (E)) on the final protective order.
2. A judge may also order the respondent, under certain circumstances, to surrender all firearms under the conditions of a temporary protective order (FL, §4-505 (a) (2) (viii)). With temporary protective orders such a condition is at the discretion of the judge, not mandatory as it is in final protective orders. The judge may order the surrender of all firearms if the abuse consisted of:
 - a) The use of or threat to use a firearm by the respondent against the petitioner; or
 - b) Serious bodily harm or threat to cause serious bodily harm to the petitioner by the respondent.
3. When the conditions of a protective order require the respondent to surrender all firearms in the respondent's possession to a law enforcement agency, the serving officers will attempt to ascertain if the respondent has possession of any firearms.
 - a) The serving officer should ask the respondent if he or she possesses any firearms.
 - b) If the respondent says "no," the officer should advise the respondent that:

- 1) It is illegal to possess any firearm;
 - 2) Any firearms in his or her possession must be surrendered to a law enforcement officer immediately;
 - 3) Failure to surrender is a violation of the law; and
 - 4) The transfer of firearms to another person, with the temporary protective order in effect, is a violation of the law.
- c) If the respondent acknowledges the possession of firearms, the serving officer should seek their surrender immediately on the scene.
- d) If the officer has determined that there is probable cause to believe the respondent possesses firearms and is refusing to surrender them, the officer shall effect an on-scene arrest and, as part of the investigation, one of the avenues may be to obtain a search warrant for the firearms.
- 1) In *Georgia v. Randolph*, the Supreme Court held that consent to conduct a warrantless search of a residence given by one occupant is not valid in the face of the refusal of another occupant who is physically present at the scene.
 - i) Thus, consent to search that is given by the victim is not valid over the objection of the respondent, if present at the scene;
 - ii) The respondent may not be removed for the sole purpose of gaining consent from the victim over the respondent's objection.
 - 2) The court suggested that instead of relying on the cooperative co-occupant's disputed consent, the police could instead rely upon the co-tenant's voluntary delivery of contraband to police, or rely on such information in order to obtain a search warrant.
4. Instances may arise in which the respondent may not immediately have access to the firearms he or she is being required to surrender as a condition of the protective order. While the requirement is

“immediate” surrender, an element of reasonableness must be considered for each individual situation. The respondent must be allowed the chance to gather the firearms and turn them over to the specified law enforcement agency.

- a) The judge will enter the specific law enforcement agency to which the respondent shall surrender the firearms. This will usually be the Sheriff’s Office but the judge is not bound by that limitation.
 - b) If the respondent attempts to surrender firearms to this Department, instead of the agency designated in the protective order, the firearms shall be accepted by this Department.
 - 1) The seizing officer shall immediately notify the agency designated in the protective order that the respondent has surrendered firearms to the Department; and
 - 2) Arrangements to transfer custody of the firearms to the designated agency should be requested.
5. When a respondent surrenders a firearm to Department personnel:
- a) And requests that it be transported in a protective case, officers shall comply with the request if the respondent provides a protective case in which the firearm will fit.
 - b) Officers shall transport the firearm safely and carefully, whether the respondent provides a protective case or not.
 - c) It is the Department’s responsibility:
 - 1) To maintain the integrity of stored firearms while in Department custody;
 - 2) Prepare, retain a copy of, and submit to the court a Protective Order Schedule of Firearms Seized/Surrendered sheet as a means of recording and notifying the court of the surrender of firearms.
 - d) Notification of the firearm surrender will be made to the Sheriff’s Office.
6. When the firearm provisions apply to a protective order, a letter

entitled “Temporary or Final Protective Order Notice: Illegal Firearms Possession” will accompany the protective order when it is served. When either serving the order or taking custody of the respondent’s firearms, officers will advise of the content of this letter, which describes to the respondent:

- a) The requirements of the law;
 - b) The process for surrendering firearms;
 - c) The process for retaking possession of the firearms; and
 - d) The circumstances that prohibit the respondent from retaking possession.
7. When firearms are seized or surrendered, pursuant to the provisions of a protective order:
- a) The original event report will be supplemented with this information; and
 - b) The firearms will be handled, submitted and stored in accordance with this directive and as outlined in General Order 1105.1.