

**FAMILY VIOLENCE PROTOCOL
FOR LAW ENFORCEMENT AGENCIES OF
NEWTON COUNTY, GA**

INTRODUCTION

Family violence is abuse that occurs when one person in the relationship gains power and control over the other by using physical, sexual and/or emotional force. Family violence can occur between husbands and wives, ex-spouses, dating partners, adult children and aging or ailing parents, same-gender couples, living together as roommates, parents and children or caregivers and clients. The vast majority of victims are women.

I. POLICY STATEMENT

It shall be the policy of the Newton County Sheriff's Department, the Covington Police Department, the Oxford Police Department and the Porterdale Police Department to fully and vigorously investigate and accurately report family violence complaints coming to our attention; to arrest offenders where lawful and appropriate; to provide protection and assistance to victims of family violence; and to inform involved parties of the various services that may be available to them within the criminal justice system, from social service agencies and other community resources.

II. DEFINITIONS

- A. Family violence is defined in Official Code of Georgia Annotated §19-13-1 as one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:
1. Any felony; or
 2. Commission of the offenses of battery, simple battery, simple assault, stalking, criminal damage to property, unlawful restraint or criminal trespass. The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.
- B. A protective order, relating to acts of family violence, is described in Official Code of Georgia Annotated §19-13-4 as follows:
1. The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The orders or agreements may:
 - a. Direct a party to refrain from such acts;

- b. Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
 - c. Require a party to provide suitable alternate housing for a spouse and his or her children;
 - d. Award temporary custody of minor children and establish temporary visitation rights;
 - e. Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
 - f. Order either party to make payments for the support of a minor child as required by law;
 - g. Order either party to make payments for the support of a spouse as required by law;
 - h. Provide for possession of personal property of the parties;
 - i. Order a party to refrain from harassing or interfering with the other;
 - j. Award costs and attorney's fees to either party; and
 - k. Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.
2. A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.
 3. A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.
- C. Penalties are provided for violation of protective orders issued by the Court. According to Official Code of Georgia Annotated §19-13-6(b), "[a]ny person who violates the provisions of a domestic violence order which excludes, evicts, or excludes and evicts that person from a residence or household shall be guilty of a misdemeanor."

III. PROCEDURE FOR RESPONDING TO A FAMILY VIOLENCE INCIDENT

Covington-Newton County 911 Center

- A. Upon receipt of a call for service, the dispatcher/call taker should determine as quickly as possible whether or not the call concerns an incident of family violence. If so, the dispatcher should ascertain as much information as possible from the complainant, e.g., injuries, weapons involved, whether minor children are present/involved, exact location and other relevant information.
- B. Once the information has been received, the dispatcher shall immediately designate one primary unit and, whenever possible, a backup unit. The responding officers shall be provided with all available information by the dispatcher upon initial dispatch. The dispatcher will check the TPO Registry for a history of complaints and relay that information to officers. Each officer shall approach family violence complaints with caution and discretion. Common sense and sound judgment are the primary criteria for handling any police function.
- C. The dispatcher shall notify a supervisor whenever the in-coming call involves violence or a threat to life and/or bodily harm (such as a weapon involved). The officers will call a supervisor to the scene, if, after arriving, they find these conditions exist. Supervisors should, whenever possible, monitor the radio traffic involving the family violence complaint and proceed to the scene of the incident, whether or not they have been called by the dispatcher.
- D. Dispatchers should attempt to keep the victim on the phone during the response of law enforcement personnel and even after law enforcement arrives on the scene, allowing for any continued disturbance to possibly be recorded over the taped lines of the 911 Center.

Arrival at the Scene

- A. Each officer dispatched shall respond immediately to the location; if the disturbance is found "in progress" by an officer on patrol, he/she shall notify the dispatcher of the location, nature of disturbance, and the necessity of a back-up unit and/or supervisor. If the disturbance is not in progress, the officer should immediately attempt to contact the complainant and proceed with the investigation.
- B. Officers responding to family violence complaints will coordinate their arrival at the scene without delaying the response time. Upon arrival at the scene of family violence, the responding officers will advise the dispatcher of the location of the complainant if different from the original dispatched location. Each officer shall park his/her vehicle in a readily accessible position. All vehicles shall be locked and secured.

- C. If the disturbance is at a private residence, officers shall attempt to contact the complainant before proceeding further. Officers will not enter a private residence except on the direct invitation of the owner or resident, unless probable cause exists to make an arrest or a confrontation is in progress. In any event, the officer should make every effort to speak to every occupant of the residence before leaving.
- D. Once officers have entered the residence, they shall prudently attempt to separate the parties in conflict and calmly listen to each person to determine the cause of the conflict and to gather additional information, e.g., who was the primary aggressor.
- E. Under no circumstances shall the officers “take sides” with either party in the dispute. Family violence complaints should be handled as criminal incidents. Reconciliation or divorce and such alternatives should **never** be suggested or discussed with the parties involved. Officers should never attempt to mediate a dispute. Officers should be prepared to offer referrals to the victim concerning the location of shelters, victim-witness assistance programs, counseling, etc.

Enforcement of Laws in Family Violence Complaints

The existence of probable cause and of the elements of a crime shall be the sole factors that determine the proper method of handling the incident. Factors which **will not** influence the officer’s course of action in family violence incidents include: the relationship or marital status of the suspect and the victim; sexual orientation; speculation that the complainant may not follow through with the criminal justice process or that the arrest may not lead to a conviction; the complainant’s history or prior complaints; whether or not the suspect lives on the premises with the complainant; the complainant’s emotional state; injuries are not visible; verbal assurances that violence will cease; the location of the incident, (i.e. public or private); the potential financial consequence of arrest; or the existence or lack of a temporary restraining order or other protective orders.

- A. An arrest shall be made in the event that there is probable cause to believe that a felony has occurred. All suspects arrested should be taken into custody. A pro-arrest policy is to be implemented by all Newton County law enforcement agencies; the agencies shall engage in aggressive law enforcement with respect to crimes involving family violence. Discretion not to make an arrest should **never** be based solely on the incident being characterized as a “domestic” matter. If an officer has probable cause to believe that a felony has occurred, an arrest **shall be made** irrespective of whether the officer believes the offense may ultimately be prosecuted as a misdemeanor.

- B. The suspect should be arrested in the event that a misdemeanor family violence incident occurs in the officer's presence, or if the officer has probable cause to believe that an act of family violence has been committed. Such situations include, but are not limited to, an officer who witnesses an act of family violence, a violation of a restraining order, or illegal possession of a weapon.
- C. If there is probable cause to believe that a crime has been committed outside the officer's presence, which does not meet the requirements for a felony arrest, but does meet the requirements for a misdemeanor offense, the officer **should** make an arrest. In the event the officer does not make an arrest, he/she shall make a good faith effort to inform the complainant of his/her right to appear before a magistrate and seek a warrant for arrest. Whenever possible, such discussion should be held out of the presence of the suspect. An officer shall not dissuade complainants from attempting to obtain a warrant from a magistrate. Officers should provide information regarding available family violence shelters, victim-witness assistance programs, counseling, etc.
- D. If the officers determine the defendant is not on the scene, they should ascertain if the victim knows where the defendant went. Officers should make every effort to search for the defendant if within a reasonable period of time after the incident has taken place. If the evidence officers find at the scene would give cause for a warrant had the defendant been present, the mere fact that the defendant is no longer present should not keep the officers from taking a warrant.
- E. If the defendant cannot be found within a reasonable period of time, officers should brief the next patrol shift that a family violence incident occurred at a particular location and provide personal information on the defendant.

IV. INVESTIGATION OF FAMILY VIOLENCE CASES

Officers arriving at a family violence scene will conduct a thorough investigation and submit reports of all incidents of violence and all crimes related to family violence. The Family Violence Report **will be** completed and processed in accordance with O.C.G.A. §17-4-20.1.

The following steps should be included in an officer's investigation and subsequent report:

- A. Arrival at scene**
 - 1. Determine the location, condition and demeanor of victim and suspect;
 - 2. Determine if any weapon is involved or in the home;
 - 3. Provide appropriate level of aid to injured parties;

4. Separate suspect, victim and witnesses (suspect should be out of victim's view and should be unable to hear what is being said by the victim and/or witnesses);
5. Take photographs of the victim, suspect and scene.

B. Preliminary investigation

1. Interview everyone separately – victim, suspect, children, other witnesses;
2. Ask victim and suspect if they have pain even if there are no visible injuries;
3. Document victim's and suspect's physical condition. For example, torn clothing, disheveled appearance, evidence of injury, and disarray in house;
4. Document size relationship of victim to suspect, keeping in mind that larger is not always stronger;
5. Determine which of the parties involved was the primary aggressor, by investigating the following:
 - a. Was one party in actual fear of the other?
 - b. Did one party escalate the level of violence, i.e., did a man react to a slap by beating the woman up?
 - c. Was one party physically larger and/or stronger than the other?
 - d. Does relevant history include the following?
 - Physical violence;
 - ✓ Sexual violence;
 - ✓ Destruction of personal property;
 - ✓ Harm to pets; and
 - ✓ Violence against others.
 - e. Was one party usually the aggressor?
 - f. Did any injuries appear to be defensive wounds?
6. If victim has a restraining order or temporary protective order against suspect, obtain a copy of the order and valid proof of service. If not, inform victim how to get an order.
7. If victim has a restraining order or other protective order that has not yet been served on suspect, inform the suspect of the order and note in the report that this was done. The officer should also enforce the applicable provisions of the order (e.g. "stay away" provisions). If victim has an extra copy of the order, serve on the suspect and fill out proof of service.
8. If suspect is taken into custody:

- a. Document spontaneous statements;
 - b. Prevent communications between suspect and victim/witnesses;
 - c. Advise suspect of Miranda rights, if needed;
 - d. Take statements.
9. Evidence gathering should include:
- a. Document condition of crime scene (disarray of physical surroundings) with emphasis on what was broken or damaged;
 - b. Photograph crime scene, if applicable;
 - c. Ensure that victim's/suspect's injuries are photographed; and
 - d. Impound and/or photograph weapons and other evidence of the crime.
10. Medical treatment investigation should include:
- a. Get information from victim and children;
 - b. Obtain authorization for release of medical records from victim, if possible;
 - c. Document extent of injuries/treatment, if known;
 - d. Obtain names, addresses and phone numbers of fire, ambulance or paramedic personnel treating the victim.
11. In making a permanent record of the incident and subsequent investigation, the following should be included as part of the reporting procedure:
- a. Maintain objectivity in reporting – avoid personal opinions regarding comments from victim/suspect;
 - b. Ensure that elements of all involved crimes are included in the report;
 - c. Document any injuries victim/suspect have sustained;
 - d. Document past history of violence;
 - e. Document statements of victim, suspect and all witnesses;
 - f. Document physical evidence obtained; and
 - g. Verify and document probation/parole status of all parties involved.
12. Officers **will not** advise victims of family violence that they can “press” charges or “drop” charges. If a victim spontaneously states that prosecution is not desired, the victim should be told that the decision to prosecute is made by the Newton County District Attorney's Office. Victims should be given information regarding the availability and location of shelters, victim-witness assistance programs, etc.

V. **FOLLOW-UP INVESTIGATION**

- A. All family violence reports prepared by officers should be reviewed and given follow-up investigation as needed. Whenever possible, review should be conducted by officers with family violence training.
- B. Follow-up investigations should be geared to the requirements of the prosecuting office's family violence unit or the particular prosecutor handling the case.
 - 1. At a minimum, follow-up investigations submitted to the prosecutor for consideration should include the following:
 - a. Verify the inclusion of all investigative steps described above regarding patrol officer response/investigation;
 - b. Obtain medical records, if available;
 - c. Preserve a copy of the 911 tape involving the original call for assistance, as needed;
 - d. Interview and reinterview witnesses, as necessary;
 - e. Contact the victim to inform him/her of the status of the case and the intended referral to the District Attorney;
 - f. Obtain photographs of injuries to the victim (irrespective of whether photos were taken by the responding officer);
 - g. Record name, address, and phone number of two close friends or relatives of the victim who will know the victim's whereabouts 6-12 months from the time of the incident;
 - h. Conduct a complete criminal history of the suspect and attach it to the investigator's report.
 - 2. Follow-up investigation shall not consider the desire of the victim to "drop" charges in assessing whether the case should be submitted to the prosecuting attorney.
 - 3. Investigative personnel handling family violence cases should analyze each family violence case by asking the following questions:
 - a. Can the elements of the offense be established without the testimony of the victim?
 - 1) If the answer is "yes", the case should be submitted to the prosecutor for review irrespective of the wishes of the victim.
 - 2) If the answer is "no", the next question should be considered.
 - b. Will the victim come to court and tell the truth if subpoenaed to do so by the State?

- 1) If the answer is “yes”, the case should be submitted to the prosecutor for review.
- 2) If the answer is “no”, can further investigation locate additional witnesses or evidence which allow prosecution without a cooperative victim, such as:
 - ✓ Witness statements;
 - ✓ Prior inconsistent statements;
 - ✓ Physical evidence;
 - ✓ Content of 911 tape;
 - ✓ Circumstantial evidence; or
 - ✓ Defendant’s statements.

If so, the evidence should be obtained and the case should be submitted to the Newton County District Attorney’s Office. If not, the case need not be submitted, but should be filed with Records Division of the investigative agency.

- 3) Under no circumstances, should a victim be asked if he/she wishes to “press charges” or “drop charges”. Investigative personnel should not ask a victim if he/she wants to “prosecute” his/her partner. The focus of the investigative follow-up should be on the questions contained above in section 3 and the victim should be informed that the decision to proceed is out of his/her control.

- c. Inform probation/parole officer the next business day or call the main number and leave a message (if after regular business hours) or call at the time of the incident (if during business hours).

VI. RECORD AND REPORT KEEPING

All files containing reports, records, etc. from family violence investigations should be clearly marked on the file jacket and cover sheet as pertaining to family violence, for instance, by placing an “FV” on the jacket, by color coding, etc.

VII. VICTIM'S ASSISTANCE

In all family violence matters, regardless of the outcome, the primary investigating officer shall furnish a copy of the Family Violence Victim Assistance pamphlet to the alleged victim, and make available information concerning family violence shelters, counseling, etc.