



Cincinnati Police Department
STAFF NOTES

December 30, 2008

Colonel Thomas H. Streicher, Jr., Police Chief

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1. REVISION TO [PROCEDURE 12.410](#), CRIMINAL WARRANTS/REFERRALS AND PRIVATE COMPLAINT PROGRAM CASE REFERRALS/DISPOSITIONS; [PROCEDURE 12.120](#), LABOR DISPUTES AND STRIKES; [PROCEDURE 12.412](#), DOMESTIC VIOLENCE; AND [PROCEDURE 12.810](#), SUBPOENAS

The above named procedures have been revised to reflect a substantial change to the Private Complaint Mediation Service (PCMS) Program. On January 1, 2009, the Hamilton County Municipal Court, PCMS Program will no longer be available as an option for officers to use. Only judges will have authority to refer persons to PCMS.

Effective immediately, Department personnel are directed to **cease all issuance of referrals (Form 655R) to PCMS**. Officers having sufficient probable cause shall arrest or ensure the appropriate warrant(s) are signed on suspects. In cases of insufficient probable cause, officers shall continue to complete the appropriate report for investigative follow-up.

Referrals may still be issued by a police officer for *Domestic Violence Warrants, Juvenile Warrants, Unauthorized Use of Motor Vehicle Warrants, and Business Complaint Warrants*.

Procedure 12.410, Criminal Warrants/Referrals and Private Complaint Program case Referral/Depositions, has been renamed "**Criminal Warrants/Referrals.**"

2. OHIO FIRST DISTRICT COURT OF APPEALS REVERSES LOWER COURT CIVIL SUIT JUDGEMENT

[Attached](#) to these Staff Notes is the decision by the Ohio First District Court of Appeals reversing the judgment of the Hamilton County Court of Common Pleas in the case of Tiffanie Scott vs. Police Officer Mark Longworth.

The plaintiff's suit against the officer is based upon an incident in which Officer Longworth encountered an individual in possession of a sawed-off shotgun. The officer subsequently fired his pistol, hitting the suspect, which enabled police to take the suspect into custody. The plaintiff was inside a business near the incident and was injured in the leg by one of the officer's bullets. The plaintiff's suit in the Court of Common Pleas alleged the officer was reckless in his actions. The lower court denied the defense motion for summary judgment.

Mr. Peter Stackpole, Assistant City Solicitor, argued before the Court of Appeals on behalf of Officer Longworth. Mr. Stackpole disputed the lower court's decision denying summary judgment on the officer's claim of immunity from liability. The Ohio First District Court of Appeals decision found that Officer Longworth's actions were not reckless and the denial of the motion for summary judgment in the lower court was reversed.

3. NEW ADMINISTRATIVE/PRESIDING JUDGE OF HAMILTON COUNTY MUNICIPAL COURT

Beginning January 1, 2009, Judge Heather S. Russell will become the Administrative/Presiding Judge of the Hamilton County Municipal Court. The Judge's bailiff is Danielle Noel, who can be reached at 946-5133, and her secretary is Jessica Bostwick, who can be reached at 946-5131. If Judge Russell is unavailable, Judge Lisa Allen is the Assistant Administrative/Presiding Judge.

The Acting Administrative/Presiding Judge rotation order is: Judge L. Allen, Judge Stockdale, Judge Stautberg, Judge Mock, and Judge Powers.

12.410 CRIMINAL WARRANTS/REFERRALS

Reference:

Procedure 12.412, Domestic Violence

Procedure 12.400, Offense Reporting, Miscellaneous Reporting

Policy:

Officers will establish probable cause for successful prosecution of an offense before filing criminal complaints. If after a preliminary investigation, probable cause is not met, officers will advise citizens that there is insufficient cause to sign a criminal complaint. Reportable offenses may then be reassigned to an investigator in an attempt to gather probable cause to make an arrest.

Procedure:

- A. Private Citizen Reporting a Felony:
 - 1. Conduct a preliminary investigation.
 - 2. Complete an offense report, if required.
 - 3. Notify the responsible investigating unit.
 - a. That unit may respond immediately to pick up the complainant, or arrange for a meeting with the complainant at his home or at the unit.
 - 4. If the investigation reveals probable cause for successful prosecution, the investigating officer will:
 - a. File all appropriate criminal complaint(s).
 - b. Prepare the case for presentation through the court system.
 - 5. If the incident involves Domestic Violence, refer to Procedure 12.412.
- B. Private Citizen Reporting a Misdemeanor:
 - 1. Conduct a preliminary investigation.
 - 2. Complete an offense report, if required.
 - 3. If the investigation reveals probable cause for successful prosecution, the investigating officer will:
 - a. File all appropriate criminal complaint(s).
 - b. Prepare the case for presentation through the court system.

4. An officer making, or intending to make, an immediate arrest of the suspect, will respond to the Clerk of Courts Office with the complainant to file the appropriate complaint(s) (e.g., business owner, store security).
 5. If the investigating officer believes probable cause does not exist to file a criminal complaint, advise the citizen. In cases where further information may lead to establishing probable cause, advise the citizen that the case will be assigned to an investigator.
 6. If the incident involves domestic violence, refer to Procedure 12.412.
 7. Complete Form 655, indicating a Business Complaint Warrant Referral when a business reports an offense (e.g., employee theft, shoplifting), the suspect is known, and immediate arrest will not occur.
- C. If an offense report is made, note the action taken in the "Remarks and Explanations" section of the report:
1. "Business Complaint Referral"
 2. "Warrant Signed by Police/Complainant"
 3. "Refused Service," etc.

12.120 LABOR DISPUTES AND STRIKES

Reference:

Procedure 12.413, Enforcement of Court Orders
Procedure 19.140, Outside Employment

Policy:

In all cases of labor disputes or strikes in which there is picketing, demonstrations, or disorder, a district supervisor will confer with both labor and management officials. The supervisor will emphasize the Police Department's neutral position and its responsibility to protect life and property. The supervisor will also point out the rights and responsibilities of both labor and management toward the preservation of the peace.

Department personnel will not discuss controversial matters, or state their opinions on any issue concerning the dispute or strike.

Procedure:

A. Police Action:

1. District supervisor duties:
 - a. A district supervisor will respond to the scene of the strike or labor dispute.
 - b. Confer with both labor and management officials, and emphasize the Police Department's neutral position and its responsibility to protect life and property.
 - c. A supervisor from the district of occurrence will prepare a Form 17. FAX a copy immediately to Patrol Bureau. Send the original, through channels, to the Patrol Bureau Commander.
2. The district commander, when notified, will:
 - a. Take steps to provide sufficient police presence and supervision, if necessary.
 - 1) Form police details if conditions warrant.
 - b. Maintain close contact with both sides of the dispute in order to keep the Department informed.
 - c. Send the necessary written reports to the Patrol Bureau Commander. The reports will include incidents, complaints, or offenses related to the dispute.
 - d. Notify the Patrol Bureau Commander, via Form 17, when the involved parties settle the dispute.

3. If the dispute reaches a critical state, or the district needs extra assistance, the district OIC will request Police Communications Section (PCS) to notify the following:
 - a. Night Chief if occurring during his tour of duty.
 - b. District commander
 - c. Patrol Bureau Commander
 - d. Duty Officer if a weekend.
 4. In arranging for police presence at the scene of a labor or management conflict, and based upon a proven need, the Police Department will provide on-duty uniformed personnel up to the point where the problem requires more personnel than the Department can provide.
- B. Arrests:
1. Keep arrests resulting from minor incidents on picket lines or other demonstrations to a minimum. Exercise sound judgment and make arrests as a last resort.
 2. Try to clear minor incidents between individuals by separating and warning them. Order them to leave the area.
 3. Officers will make an immediate arrest for incidents such as assault, inciting to riot, property damage, etc.
 4. Before an arrest, the officer will:
 - a. Determine if sympathizers will interfere with the arrest.
 - 1) Make a positive identification of the person and arrest later if the arrest is not possible at the time.
 - b. If officers expect trouble, call for help before the need arises.
 - 1) A proper show of force can frequently end spontaneous acts of violence by the crowd.
 5. Immediately transport arrested persons from the scene to avoid rescue attempts or other acts by sympathizers.
 6. In the event of mass arrests, officers must be able to identify defendants at the trial.
 - a. When possible, use camera equipment to identify involved persons.

C. Court Orders:

1. If the court invokes a court order, injunction, or similar legal process, the OIC will advise the City Solicitor or prosecutor.
 - a. It is the responsibility of the City Solicitor or prosecutor to determine what impact the legal process will have upon the duties of the Police Department.
 - b. If other than normal business hours PCS will recall a solicitor.

12.412 DOMESTIC VIOLENCE

References:

Procedure 12.400, Offense Reporting, Miscellaneous Reporting
 Procedure 12.403, Victim of Crime Notification
 Procedure 12.410, Criminal Warrants/Referrals
 Procedure 12.413, Enforcement of Court Orders
 Procedure 12.555, Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders
 Procedure 12.705, Property Confiscation
 Procedure 12.900, Processing Juvenile Offenders
 ORC 2903.11 - Felonious Assault
 ORC 2903.12 - Aggravated Assault
 ORC 2919.25 - Domestic Violence
 ORC 2919.26 - Motion for Temporary Protection Order; Form
 ORC 2919.27 - Violating Protection Order or Consent Agreement
 ORC 2935.03 - Officer's Authority to arrest without warrant; pursuit outside jurisdiction
 ORC 2935.032 - Policies and procedures for responding to alleged Domestic Violence offense or violation of protection order
 ORC 3113.31 - Definitions; jurisdiction; petition; hearing; protection orders; consent agreements
 USC Title XVIII, Part 1, Chapter 110A, Section 2261 - Interstate Domestic Violence
 USC Title XVIII, Part 1, Chapter 110A, Section 2262 - Interstate Violation of Protection Order
 USC Title XVIII, Section 922 - Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse

Definitions:

Mandatory Arrest: Mandatory arrest is an immediate arrest based on probable cause that the offense of domestic violence has occurred and is supported by some evidence indicating the suspect committed the offense.

Probable Cause: Probable cause exists when facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe the offense has been or is being committed, and the accused is or has committed the offense. Completion of the Victim's Statement section of the Form 655R, Victim Assistance/Citizen Referral, by the victim is probable cause pursuant to Ohio Revised Code (ORC) 2935.03(B).

Purpose:

Provide officers with the knowledge to effectively respond to and investigate incidents of domestic violence.

Policy:

Officers will respond to the scene of reported incidents of domestic violence without delay.

Exercise extreme caution in disregarding backup officers, even if the offender is no longer present, in the interest of officer and victim safety. Give consideration to the potential of the offender returning to the scene while the officer is present or immediately thereafter.

Domestic violence is a violent crime. The involvement of family members does not lessen the use of arrest and prosecution as an effective deterrent.

Department policy regarding domestic violence is immediate arrest of the offender when probable cause exists. The formal arrest/court process is the most appropriate method of resolution.

Charge all appropriate cases with domestic violence, felonious assault, or aggravated assault in incidents arising out of a domestic violence offense, and make a mandatory arrest. If a felonious assault or aggravated assault is committed in a domestic violence offense, charge the suspect with the appropriate felony charge. Do not, in addition, charge the suspect with a misdemeanor domestic violence.

Officers will complete the Protection Order Supplemental Form for any of the following offenses in which the victim and suspect are family or household members:

2903.01 Aggravated Murder	2903.02 Murder
2903.03 Voluntary Manslaughter	2903.04 Involuntary Manslaughter
2903.11 Felonious Assault	2903.12 Aggravated Assault
2903.13 Assault	2903.15 Permitting Child Abuse
2903.21 Aggravated Menacing	2903.211 Menacing by Stalking
2903.22 Menacing	2905.01 Kidnapping
2905.02 Abduction	2905.11 Extortion
2907.02 Rape	2907.03 Sexual Battery
2907.05 Gross Sexual Imposition	2909.02 Aggravated Arson
2909.03 Arson	2909.04 Disrupting Public Services
2911.01 Aggravated Robbery	2911.02 Robbery
2911.11 Aggravated Burglary	2911.12 Burglary
2917.01 Inciting to Violence	2917.02 Aggravated Riot
2919.22 Child Endangering	2919.25 Domestic Violence
2921.03 Intimidation	2921.04 Intimidation of Attorney, Victim
2921.34 Escape	2923.161 Improperly Discharging Firearm Into a Habitation/School Zone

The Protection Order Supplemental Form must accompany the Form 527, Arrest and Investigation Report, at the time an arrested individual is admitted into the Hamilton County Justice Center. This requirement applies to the arrest of adult suspects only; juvenile suspects are exempt from this requirement.

Information:

Under the domestic violence law a fetus is **not** considered a child. If, while investigating a domestic violence incident, the victim advises she is pregnant and the offender is the father of her unborn child, and no other facts constitute domestic violence, charge with the appropriate assault charge.

If, while investigating a domestic violence incident, the victim has an infant and advises the offender is the father of the baby and they do not or have not resided together, charge with assault and domestic violence. The domestic violence is a valid charge under the Putative (supposed) Rule. The assault charge is filed in the event that test results indicate the putative father is not the biological father. If blood test results indicate the offender is not the father of the child, the domestic violence charge will be dropped because the blood test eliminates the relationship.

The mother of a child has **sole custody** if:

1. The couple is not married;
2. There is not a court order to the contrary; and
3. The child was born on or after 1/1/98.

If the child was born before 1/1/98 both parents are deemed to have equal rights to the child. Officers shall use discretion and good faith when considering the best interest of the child when confronted with this situation.

Procedure:

A. Initial Response

1. When Police Communications Section (PCS) receives a report of a domestic violence situation they will dispatch one two-person unit or two single person units and necessary emergency medical aid.

B. On Scene Investigation

1. Upon arrival, responding officers will separate the involved parties. Separation is the most efficient method of gathering the necessary details of the incident as well as protecting all parties from injury when the offender(s) and victim(s) are identified.
 - a. Determine the nature of injuries to any parties, and request the assistance of emergency medical services, if necessary.
 - b. Give primary consideration to the safety of all parties involved and the immediate cessation of any further violence.
2. Make every attempt to obtain positive identification, a description, destination, and means and direction of travel if the offender is not present upon arrival.
 - a. In an attempt to apprehend the offender, this information must be relayed to officers in the area as soon as possible.

3. If probable cause exists and an arrest cannot be made because of the offender's absence, the officers will promptly seek a warrant for the arrest of the person.
 - a. A Form 655R, Victim Assistance/Citizen Referral, will be issued to the complainant for the immediate filing of an affidavit and warrant against the offender.
 - 1) The officer will ensure the complainant completes the Domestic Violence Victim's Statement on the Form 655R and will attach it to the Form 301, Cincinnati Police Department Incident Report.
 - a) Document on the Form 301 if the complainant refuses to complete the Form 655R.
 - b) Transport complainant to sign charges.
 - c) Recommend the victim sign a Temporary Protection Order (TPO) when signing the domestic violence charge.
 - b. If the complainant is physically unable or is unwilling to file charges, the officer will sign an affidavit and warrant for the arrest of the offender.
 - c. Have the complainant fill out the top two sections of the Protection Order Supplemental Form. If the complainant is unable or unwilling to fill out the form, the officer will assist in completing the form with the information available.
 - 1) The officer will complete the "Law Enforcement Response Section" on the bottom of the page.
 - 2) The completed Protection Order Supplement must accompany the Form 527 when submitted during the intake procedure.
 - 3) If there is not an immediate arrest, fill out the Protection Order Supplemental Form when signing any applicable warrants(s) and leave the form with the Hamilton County Clerk's Office.
4. Make every attempt to identify the primary physical aggressor in the incident. Consider the following elements in this identification:
 - a. The history of domestic violence or any other violent acts committed by all parties in the incident.
 - b. Whether the violence was committed in the act of self-defense.
 - c. Each participant's reasonable fear of the other person based on the person's history of any threatened or committed acts of violence.

- d. The comparative severity of any injuries sustained by the individuals involved in the incident.
5. Base probable cause for arrest of the primary physical aggressor on the following elements:
 - a. The victim, or the parent of a child victim, completes a written allegation against the offender.
 - b. In the absence of a written statement, any personal knowledge and observation of the incident by the officer.
 - c. Any other information, including but not limited to, reasonable trustworthy information given by the alleged victim or any witness to the incident.
6. Make a mandatory arrest if the offender is identified, present, or immediately available for arrest.
7. The preferred course of action is to arrest and detain the primary physical aggressor until a warrant can be obtained once probable cause has been established.
 - a. The preferred course of action (arrest) does not apply to incidents in which the primary physical aggressor cannot be identified.
 - 1) Possible course of action would be to arrest both parties for domestic violence if the investigation warrants dual arrest.
8. Conduct the investigation and arrest the accused for the offense of felonious assault if the investigation determines serious physical harm has occurred to a victim, or physical harm has been attempted (or caused) by means of a deadly weapon or dangerous ordinance in a domestic violence offense.
 - a. When the individual committing the felonious assault is not the primary physical aggressor, arrest and charge with the appropriate state section.
 - 1) Arrest and charge the primary physical aggressor with Domestic Violence - ORC Section 2919.25.
9. Conduct the investigation and arrest the accused for the offense of aggravated assault if the investigation determines that a felonious assault was committed by the offender during a "fit of passion or rage brought about by serious provocation of the victim".
 - a. When the individual committing the aggravated assault is not the primary physical aggressor, arrest and charge with the appropriate state section.

- 1) Arrest and charge the individual in the domestic violence offense who is the primary physical aggressor with ORC Section 2919.25 - Domestic Violence.
10. If investigation determines both parties committed either aggravated assault or felonious assault, the primary physical aggressor, if identified, is subject to the "preferred course of action" provision and will be physically arrested until a warrant can be obtained. The other party will also be arrested and charged with the appropriate violation.
 - a. Arrest both individuals when both individuals committed either aggravated assault or felonious assault and the primary physical aggressor cannot be identified.
 11. Notify the Criminal Investigation Section (CIS) if death appears imminent to the victim of a domestic violence offense.
 12. Seize any deadly weapons materially involved by threat, display, use, or attempted usage in domestic violence violations as contraband and/or evidence.
 13. Do not demand or otherwise require the victim's specific consent or a signed allegation (written statement) as a prerequisite to arresting and/or charging an alleged offender with the offense of domestic violence when probable cause exists.
 14. The arresting officer will sign the appropriate affidavits and complaints for all charges when the complainant is medically unable or refuses to cooperate with the investigation and there is probable cause a domestic violence offense occurred. The arresting officer will sign all felony charges arising from a domestic violence offense.
 - a. Charge as a felony if there is a prior conviction for domestic violence and the current offense does not constitute a threat.
 - 1) Confirm the conviction with the Clerk's Office before signing the felony charge.
 - b. Charge as a misdemeanor if a prior domestic violence conviction exists and the current domestic violence offense is a threat against the victim.
 - c. The arresting officer will sign a TPO request when filing domestic violence, felonious assault, or aggravated assault charges.
 - 1) Officers signing a TPO request will not appear at arraignment.
 - d. Complete a detailed Form 527A, Case and Bond Information Sheet, to assist the judge in setting bond and TPO terms.
 15. Report on a Form 301 every incident of Domestic Violence - ORC Section 2919.25.

- a. List the offense and section number followed by (F) for felony or (M) for misdemeanor based on what degree of offense the suspect is charged with.

Example: Domestic Violence 2919.25 (F) when offense constitutes a felony as a result of prior convictions for DV or other applicable ORC violations, or Domestic Violence 2919.25 (M) when offense constitutes a misdemeanor for this violation.

- b. Make one Form 301 for domestic violence if an offender commits an offense of DV and a TPO/Civil Protection Order (CPO) violation offense at the same time.

- 1) List the facts of the TPO/CPO violation in the "Narrative" section of the Form 301.

- c. Report incidents of felonious assault and aggravated assault that occur during a domestic violence offense on a Form 301. Do not make an additional Form 301 for domestic violence.

- 1) List the offense section number followed by (DV) for domestic violence in the "Offense" section of the Form 301.

EXAMPLE: Felonious Assault 2903.11 (DV) or Aggravated Assault 2903.12 (DV)

- d. Check "Yes" in the "Hate/Bias" block, and write "88" in the "Explain: Anti:" block on the Form 301.

- 16. Complete a Form 311DV, Cincinnati Police Department Confidential Investigative Notes - Domestic Violence, for all DV offenses, violations of TPO/CPO, and felonious assault or aggravated assault offenses arising from domestic violence, in addition to the required portions of the Form 301. Obtain the following information from the separated parties involved and available witnesses:

- a. Detailed statement of the reporting officer's observation of the victim, offender, and the scene.
- b. Listing of visible injuries to the victim and offender.
- c. Identification of any weapons found at the scene.
 - 1) Detailed description of any deadly weapons seized or materially involved in the reported incident.
- d. Actions of the victim and offender in the officer's presence.
- e. Verbal and/or written statements of the victim/complainant.
- f. Verbal and/or written statements of the offender.
- g. Explanation why no arrest was affected.

- 1) This explanation may not refer to the availability of cell space at the Hamilton County Justice Center or Hamilton County Juvenile Court Youth Center. Such availability is not to be considered in determining the arrest of the alleged offender and is prohibited pursuant to ORC Section 2935.03 (3) (f).
 - h. Detailed listing of similar prior incidents, calls for assistance, and respective dispositions.
 - i. Final disposition of warrant filing, i.e., "complaint/warrant filed by reporting officer".
17. Use a camera to photograph visible injuries as soon as possible for inclusion with the Form 311DV and submit as evidence.
18. Provide the victim the following information:
- a. Ohio Attorney General's "Your Rights and Responsibilities as a Crime Victim" booklet.
 - b. Crisis Service Agency phone numbers.
 - c. Telephone numbers of the Prosecutors' Offices and Police Department.
 - d. Information regarding the availability of a TPO or CPO.
 - e. Reporting officer's name, badge number, and phone number.
- NOTE: Items b., c., and d. listed above are placed on the inside cover page of the Ohio Attorney General's booklet.
19. Advise victims they must appear at the criminal arraignment on the next court day regardless of who requested the TPO.
- a. Felony and misdemeanor charges are arraigned at 0900 hours in Room A of the Hamilton County Justice Center (HCJC).
 - b. Advise the complainant to check with the Clerk of Courts Office, Room 113, HCJC, if there is doubt about the location of the arraignment.
20. Provide assistance to the victim and/or children in obtaining transportation to a safe location when necessary.
- a. Use private or public transportation if possible.
 - b. Officers may provide transportation if other means are not available to the victim.
 - c. Obtain Fire Department transportation to the hospital for injuries.
 - d. Call the Alice Paul Shelter before transporting to their location.

21. If the elements of domestic violence are not present, refer the complainant to:
 - a. Hamilton County Domestic Relations Court, Room 346, 800 Broadway.
 - b. Rape Crisis and Abuse Center of Hamilton County.
 - c. Talbert House Victim Service Center.
 - d. Alice Paul House.
 - e. Police Clergy Team (available through Hamilton County Communications).

C. Case Preparation

1. Complete a Domestic Violence Jacket for each domestic violence incident. For all Felony Domestic Violence cases, complete a Form 527E, Case Investigation Jacket, and log it into the Form 527E logbook. The jacket will include:
 - a. A copy of the Form 301 and all applicable supplements.
 - b. A copy of the Form 311DV.
 - c. A copy of the Form 527, if applicable.
 - d. A copy of the TPO/CPO, if applicable.
 - e. A copy of the Protection Order Supplemental Form.
 - f. Photographs related to the incident.
 - 1) Take a minimum of one full frontal photograph of the victim and one of each reported injury and/or area affected.
 - g. Audio tape copies of any 911 calls to PCS, if applicable.
 - h. The original Form 527B for felony offenses.
 - 1) Immediately fax the Form 527B to the Hamilton County Grand Jury. Include the fax transmittal report in the Domestic Violence Jacket.
 - i. Copies of any related reports.
2. A supervisor will review each Domestic Violence Jacket for completeness and accuracy.

D. Follow-Up Investigation

1. Assign all reported cases of domestic violence, felonious assault and aggravated assault arising from a domestic violence offense, and violation of protection order or consent agreement for follow-up investigation.
 - a. Assign these offenses for a follow-up investigation even when an arrest is made at the scene by the reporting officer.
 - b. District commanders will determine the assignment of reported misdemeanor and felony domestic violence and TPO/CPO offenses.
 - c. Assign reported cases of felonious assault, aggravated assault, and abduction arising from a domestic violence offense per Procedure 12.400, Offense Reporting, Miscellaneous Reporting, for follow-up investigation by a district investigator.
 - 1) Felonious assault and aggravated assault cases arising from a domestic violence offense in which the victim is hospitalized and death appears imminent will be investigated by CIS, per Procedure 12.400.
2. The follow-up investigator will ensure the following tasks are accomplished:
 - a. Recontact the victim within 48 to 72 hours to obtain the following information:
 - 1) Any information the victim might be able to add.
 - 2) Additional photographs of injuries sustained in the incident, when applicable.
 - b. Provide the victim with the investigator's name, badge number, and business phone number.
 - c. Obtain audio tape copies of 911 calls from PCS, if applicable.
 - d. Obtain medical records of suspect, if applicable.

E. Providing Information of Reported Domestic Violence Offenses

1. Each day, district collators will forward the following information on reported domestic violence and violation of protection order offenses:
 - a. To the City Prosecutor's Office, hand carry a copy of all Forms 301 and 311DV reported misdemeanor domestic violence and misdemeanor violation of protection order offenses made with an adult suspect even if no arrest was made at time of report. All reports must be delivered before 0800 hours each court day.

- b. Fax to the Hamilton County Prosecutor's Office, Juvenile Division, a copy of all Forms 301 and 311DV reported misdemeanor domestic violence and misdemeanor violation of protection order offenses made with a juvenile suspect even if no arrest was made at time of report.
 - c. Fax to the Rape Crisis and Abuse Center of Hamilton County, a copy of all domestic violence Forms 301.
2. Each day, district collators will forward the following information on reported aggravated assault, felonious assault, felony domestic violence, and felony TPO/CPO violation offenses resulting from a domestic violence offense:
- a. To the Hamilton County Prosecutor's Office, Municipal Division, hand carry a copy of all Forms 301 and 311DV reported offenses with an adult suspect even if no arrest was made at time of report. All reports must be delivered before 0800 hours each court day.
 - b. Fax to the Hamilton County Prosecutor's Office, Juvenile Division, a copy of all Forms 301 and 311DV reported offenses with a juvenile suspect even if no arrest was made at time of report.
 - c. Fax to the Rape Crisis and Abuse Center of Hamilton County, a copy of all Forms 301 listed above.
- F. Temporary/Civil Protection Orders
- 1. Reference Procedure 12.413, Enforcement of Court Orders, for information regarding investigations of violations of a Temporary/Civil Protection Order, ORC 2919.27. **Out-of-state TPO and CPO court orders are enforceable.** Follow Procedure 12.413, Section A.
 - 2. TPOs may be issued in addition to any charges filed alleging domestic violence, felonious, aggravated or simple assault, menacing by stalking, or trespassing which involves a family or household member as defined in the ORC.
 - a. TPOs are only in effect until the disposition of the criminal charge, the issuance of a CPO based on the same activities, or otherwise revoked by the issuing court.
 - b. Any TPO or CPO issued by a court of record of the State of Ohio is subject to enforcement in any political jurisdiction within the State of Ohio.
 - 1) TPOs and CPOs issued by a court of record within the State of Ohio, other than Hamilton County, may be officially registered by the complainant in Hamilton County in accordance with ORC Section 3113.31.

- a) TPOs and CPOs issued by a court of record within the State of Ohio will be enforced regardless of whether or not the order was registered by the complainant in Hamilton County.

- G. Release of Medical Records of Suspect(s) Involving an Official Criminal Investigation, Criminal Action, or Proceeding
 1. A police officer can submit a written statement to a health care provider that states an official criminal investigation, criminal action, or proceeding has begun regarding a specified person to obtain information regarding the presence of alcohol, drug of abuse, or both in the person's blood, breath, or urine. This requires the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, or both in the person's blood, breath, or urine at any time relevant to the criminal offense in question.
 - a. A Form 604, Cincinnati Police Department Request for Release of Records, will be filled out by the officer and presented to the health care provider to obtain this type of records.
 - 1) The officer will keep the white copy for court.
 - 2) Give the canary copy to the health care provider.
 - 3) Turn the pink and gold copy into the collator to be filed.
 2. Contact the City Prosecutor when a medical provider refuses to comply with this request.

12.810 SUBPOENAS

Purpose:

Set a uniform procedure throughout the Department for handling subpoenas.

Procedure:

A. Receiving Subpoenas:

1. Officers picking up subpoenas at the Prosecutor's Office will:
 - a. Immediately hand deliver subpoenas to supervisor.
 - 1) If the person who normally handles subpoenas for the unit is not available, the supervisor will remove subpoenas for the next court day, enter them in the Subpoena Book, and direct an officer to serve them.
 - a) The supervisor will collect the subpoenas at the end of the shift and make the necessary entries in the Subpoena Book.

B. Recording Subpoenas:

1. Enter subpoenas not for Department employees in the unit Subpoena Book. Subpoena Books contain the following information:
 - a. Date/time received
 - b. Name and address of subject subpoenaed
 - c. Courtroom
 - d. Returnable date
 - e. Name of serving officer
 - f. Disposition: date/time and method of service (on person, residence, etc.) or reason for failure to serve
2. Enter subpoenas for Department employees in the Court Notify Book.

C. Serving Subpoenas:

1. Serve subpoenas immediately.
 - a. Serve the subpoena at least 48 hours before the court date.

2. The courts prefer personal service. "Served on Residence" is acceptable when:
 - a. The serving officer determines the subject lives at the address.
 - b. The reason for the service is on the duplicate subpoena, e.g., "Not home March 30, 1993, 1000 hours. Left under door."
 3. The serving officer will complete the reverse side of the duplicate subpoena (yellow copy), listing the service information in the space provided, and return directly to the Clerk of Courts via interdepartmental mail no later than 24 hours after the subpoena has been served.
 4. If the serving officer is unable to locate the witness, and unable to make service, the above procedure will be followed. In addition, the original subpoena (white copy) will be sent directly via interdepartmental mail to the agency that typed the subpoena, e.g., City Prosecutor's Office, etc.
 5. Officers will record the following information:
 - a. Date and time service was executed/attempted.
 - b. Name of officer(s) executing/attempting service.
 - c. Name of person on whom legal process was served/executed.
 - d. Method of service or reason for nonservice.
 - e. Address of service/attempt.
- D. Serving Subpoenas on Citizens:
1. Serve criminal and traffic court subpoenas for persons living or employed within the Cincinnati corporate limits.
 - a. The Hamilton County Municipal Court Bailiff's Office serves subpoenas in the Hamilton County area outside the Cincinnati limits.
- E. Reluctant Witnesses:
1. The Hamilton County Prosecutor's Office forwards the subpoena to the arresting officer when the Arrest and Investigation Report (Form 527) and the Grand Jury praecipe show a witness is a "Reluctant Witness."
 - a. The arresting officer will serve the subpoena "On Person." Do not serve on the witness' residence.

- F. Serving Subpoenas on Suspended Department Employees:
1. If the suspension is more than seven days, the employee's supervisor must submit a Form 17 stating the effective dates of the suspension to the Court Control Unit.
 - a. A supervisor will serve the subpoena on the employee at home.
 - 1) Get help in serving the subpoena from the suspended employee's resident district or the district closest to the residence.
 - b. The Department will not compensate for these appearances.
 2. If the suspension is for seven days or less, the employee's supervisor must forward a completed Change in Court Appearance (Form 678) to the Court Control Unit for each subpoena the employee receives. The Court Control Unit will request a continuance until the employee returns to duty.

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

TIFFANIE SCOTT,	:	APPEAL NO. C-080313
	:	TRIAL NO. A-0609594
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
MARK LONGWORTH,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: December 12, 2008

Wende C. Cross, Steven A. Nagel, and W.C. Cross & Associates Co., LLC, for Plaintiff-Appellee,

Peter J. Stackpole, Assistant City Solicitor, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

RALPH WINKLER, Judge.

{¶1} Tiffanie Scott sued the city of Cincinnati and one of its police officers, Mark Longworth, for injuries she sustained when Longworth shot at a gunman. Officer Longworth now **appeals the trial court’s decision denying summary judgment** on his claim of immunity from liability under R.C. Chapter 2744. We reverse the judgment of the trial court.

I. The Shooting

{¶2} At about 2:00 a.m., on May 26, 2005, Officer Longworth and his partner were in their police uniforms and riding on bike patrol in a high-crime area **when they encountered a fight between two men in front of Scott’s hair salon.** One of the men, Donte Williams, had a 12-gauge shotgun attached to his shoulder with a sling.

{¶3} Officer Longworth ordered Williams to drop the shotgun, but Williams did not comply. Instead, he turned toward Officer Longworth and pointed the shotgun at him. Believing that Williams was about to shoot him or his partner, Officer Longworth aimed his gun at Williams and fired until Williams fell to the ground. Williams sustained gunshot wounds to his right flank and left shoulder.

{¶4} The incident took no more than a few seconds. In his affidavit, Officer **Longworth contended that he had “used as much caution as possible”** when he fired his gun at Williams. Officer Longworth said that he had aimed at Williams as he fired, but that he was also concerned about finding cover so that if Williams fired the shotgun at him or his partner, he would not be hit. Officer Longworth also **stated, “It is challenging to have all of your shots hit the intended target when the target has a shotgun aimed at you, you are moving, and you believe you are about to be shot.”**

{¶5} Scott was with three other people in her salon at the time. One of the shots fired by Officer Longworth struck her in the leg.

{¶6} Officer Longworth was not aware that anyone was inside the salon until after the shooting was over. He had passed the salon earlier the same morning and had believed it to be closed.

{¶7} According to Scott, the lights were on inside the hair salon at the time of the shooting. She stated that the lights had been on since 8:00 p.m., the previous night.

{¶8} **Scott’s complaint against** Officer Longworth asserted claims of gross negligence and negligent infliction of emotional distress. The trial court denied Officer Longworth’s motion for summary judgment on the issue of immunity.

II. Summary Judgment

{¶9} In reviewing the trial court’s ruling on a summary-judgment motion, our standard of review is de novo.¹ Summary judgment is appropriate only where the moving party has made an affirmative showing that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.² A summary judgment must not be entered unless, after construing the **evidence most strongly in favor of the nonmoving party, “reasonable minds can come to but one conclusion and that conclusion is adverse” to the nonmoving party.**³

III. Immunity for a City Employee

{¶10} An employee of a political subdivision is generally not liable for **personal injury in connection with the employee’s performance of a governmental or proprietary function.**⁴ But the employee is stripped of immunity if (1) his acts or

¹ *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶8.

² Civ.R. 56(C).

³ Id.

⁴ R.C. 2744.02(A)(1).

omissions were manifestly outside the scope of his employment or official responsibilities; (2) his acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or (3) civil liability is expressly imposed upon him by a section of the Revised Code.⁵

IV. Longworth's Conduct Was Not Reckless

{¶11} In this case, only the second exception is relevant. In response to Officer Longworth's motion for summary judgment, Scott maintained that Officer Longworth was not entitled to immunity because he had acted in a reckless manner in shooting her.

{¶12} In a case involving a county employee's immunity, the Ohio Supreme Court recently stated that "[r]ecklessness is a perverse disregard of a known risk. Recklessness, therefore, necessarily requires something more than mere negligence. The actor must be conscious that his conduct will in all probability result in injury."⁶

{¶13} Even though the question of recklessness is typically a jury question, the standard for demonstrating recklessness is high.⁷ So summary judgment may be appropriate where the actor's conduct "does not demonstrate a disposition to perversity."⁸

{¶14} In this case, construing the facts most strongly in favor of Scott, we hold that Officer Longworth's conduct did not rise to the level of recklessness. Williams had leveled a shotgun at a uniformed police officer who had ordered him to drop it. Officer Longworth's actions were reasonably calculated to defend himself and others. There was simply no evidence that Officer Longworth had consciously

⁵ R.C. 2744.03(A)(6).

⁶ *O'Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, 889 N.E.2d 505, paragraph three of the syllabus.

⁷ *Id.* at ¶175.

⁸ *Id.*

fired his gun with the knowledge that it was substantially certain that a bystander would be injured.⁹

{¶15} Consequently, we hold that the trial court erred by denying summary judgment in favor of Officer Longworth on the issue of immunity. We sustain the assignment of error and reverse the judgment of the trial court. We remand this cause to the trial court for further proceedings consistent with this decision.

V. Scott's Failure to Appeal

{¶16} The trial court granted summary judgment in favor of the city on Scott's claims of negligent retention and supervision, concluding that the city was immune from liability under R.C. 2744.02(A)(1). Scott did not appeal that judgment, but in her brief she argues that the trial court erred by entering judgment in favor of the city.

{¶17} “[A]ssignments of error of an appellee who has not appealed from a judgment may be considered by a reviewing court only to prevent ‘a reversal of the judgment under review.’ * * * [A]n assignment of error by an appellee, where such appellee has not filed any notice of appeal from the judgment * * *, may be used by the appellee as a shield to protect the judgment of the lower court but may not be used by the appellee as a sword to destroy or modify that judgment.”¹⁰

{¶18} We may not consider Scott's assignment of error attacking the trial court's judgment in favor of the city because she failed to appeal from it. Therefore, we do not disturb that grant of summary judgment.

Judgment accordingly.

SUNDERMANN, P.J., concurs.
PAINTER, J., concurs separately.

⁹ See id.

¹⁰ Id. at ¶194, quoting *Glidden Co. v. Lumbermens Mut. Cas. Co.*, 112 Ohio St.3d 470, 2006-Ohio-6553, 861 N.E.2d 109.

PAINTER, J., concurring separately.

{¶19} I concur, of course. What else was Officer Longworth to do? A guy points a shotgun right at you at 2:00 a.m. You shoot.

{¶20} Unfortunately, Scott was in her salon a short distance away. If the alternatives were (a) to be shot almost point-blank with a shotgun, or (b) to shoot at the bad guy, knowing no one was very close, I know which one I would choose. In my view, **Officer Longworth's actions** were not even negligent, much less reckless or perverse.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

Please Note:

The court has recorded its own entry this date.