

12.412 DOMESTIC VIOLENCE

References:

Procedure 12.400, Incident and Miscellaneous Reporting
 Procedure 12.403, Crime Victim/Witness Notification and Assistance
 Procedure 12.413, Enforcement of Court Orders
 Procedure 12.555, Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders
 Procedure 12.715, Property and Evidence: Confiscation, Accountability, Procession, Storage and Release
 Procedure 12.900, Processing Juvenile Offenders
 Ohio Revised Code 2317.02 – Privileged Communications
 Ohio Revised Code 2903.11 – Felonious Assault
 Ohio Revised Code 2903.12 – Aggravated Assault
 Ohio Revised Code 2919.25 – Domestic Violence
 Ohio Revised Code 2919.26 – Motion for and Hearing on Protection Order Ohio Revised Code 2919.27 – Violating Protection Order
 Ohio Revised Code 2935.03 – Authority to Arrest Without Warrant; Pursuit Outside Jurisdiction
 Ohio Revised Code 2935.032 – Policy and Procedure for Responding to Domestic Violence Incidents or Protection Order Violations
 Ohio Revised Code 3113.31 – Domestic Violence Definitions - Hearings
 Ohio Rules of Criminal Procedure, Rule 16, Discovery and Inspection
 United States Code Title XVIII, Part 1, Chapter 110A, Section 2261 – Interstate Domestic Violence
 United States Code Title XVIII, Part 1, Chapter 110A, Section 2262 - Interstate Violation of Protection Order
 United States Code 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 evidence indicating the suspect committed the offense.

Probable Cause – Exists when facts and circumstances would cause a reasonable person to believe an offense has been, or is being committed by the person to be arrested.

Preferred Course of Action – Ohio law provides that arrest is the “preferred course of action” when an officer has reasonable cause to believe someone has committed the offense of domestic violence or violated a civil or criminal protection order. Arrest is the preferred course of action, and non-arrest measures are the exception. Sanctions may be imposed upon a peace officer who fails to comply with any provision or any other applicable Ohio law concerning domestic violence.

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.

In the interest of officer and victim safety, exercise extreme caution in disregarding backup officers even if the offender is no longer present. Give consideration to the possibility the offender may return 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.

If a victim completes the Form 311VS, Victim's Statement, **and** alleges facts and circumstances meeting the elements of Ohio Revised Code (ORC) Section 2919.25, Domestic Violence, probable cause exists to arrest or issue warrants for the suspect.

Completion of a Form 311VS alone is not sufficient to sign a warrant. The officer must review the victim's statement and determine if it alleges facts and circumstances meeting the elements of Domestic Violence. The victim can complete and sign the Form 311VS, or the investigating officer can write the form and have the victim review it for accuracy and sign.

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

Officers will complete a Motion for Temporary Protection Order 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 Motion for Temporary Protection Order must accompany the Form 527, Arrest and Investigation Report, at the time an arrested individual is admitted to the Hamilton County Justice Center. This requirement applies to the arrest of adult suspects only; juvenile suspects are exempt from this requirement.

Information:

Under domestic violence law a fetus is **not** considered a child. If the domestic violence victim advises she is pregnant and states the offender is the father of her unborn child, and no other facts constitute domestic violence, charge with the appropriate assault violation. If the domestic violence victim has an infant, advises the offender is the father and they do not or have not resided together, charge with assault **and** domestic violence. Domestic violence is a valid charge under the Putative (supposed) Rule. The assault charge is filed in the event 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 dismissed 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 no 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 have equal rights to the child. When confronted with this situation, officers shall use discretion and good faith when considering the best interest of the child.

Procedure:

A. Initial Response

1. When Emergency Communications Center (ECC) receives a report of domestic violence, they will dispatch one two-person unit or two single person units and emergency medical services (EMS), if necessary.
2. If the victim leaves the scene where the offense occurred and responds to a different district or to a hospital, an officer from the district where the offense occurred will be dispatched to the victim's location. The officer dispatched will handle the investigation and complete the Records Management System (RMS) case report.
3. Detail officers who witness or are made aware of a domestic violence offense will request a beat car respond to assist with the completion of the RMS case report, the arrest, and/or signing warrants.
 - a. The officer completing the report will ensure the detail number and detail officer's name is included in the report.

B. On Scene Investigation

1. Upon arrival, responding officers will separate the involved parties. Separation is the most effective method of gathering necessary details of the incident while protecting all parties from injury once the offender(s) and victim(s) are identified.
 - a. Determine the nature of injuries to any parties and request EMS respond, if necessary.
 - b. Give primary consideration to the safety of all parties and the immediate cessation of further violence.
2. 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.
3. 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 (Form 311VS) describing the elements of domestic violence.
 - 1) When probable cause exists, do not demand or otherwise require the victim's specific consent or a signed allegation (311VS) as a prerequisite to arresting and/or charging an alleged offender with a domestic violence offense.
 - 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, describing the elements of domestic violence.
4. Once probable cause is established the preferred course of action is to identify and arrest the primary physical aggressor.
5. If the offender is not on scene, make every attempt to obtain positive identification and immediately broadcast a description, possible destination, means and direction of travel.
6. If probable cause exists and the offender is not on scene, officers will promptly sign/file a warrant for the offender's arrest.

- a. The officer will request the victim/complainant complete the Form 311VS.
 - 1) If the victim refuses to complete and sign the Form 311VS, the officer will write VICTIM REFUSED on the form.
- b. The investigating officer will respond to the Clerk's Office to sign/file appropriate criminal charges.
 - 1) Complete a Motion for Temporary Protection Order when signing the domestic violence charge.
 - a) The completed Motion for Temporary Protection Order must accompany the Form 527 when submitted during the intake procedure.
 - b) If there is not an immediate arrest, fill out the Motion for Temporary Protection Order when signing any applicable warrants(s), make a copy and leave the original with the Hamilton County Clerk's Office.
7. Conduct a thorough investigation. If the domestic violence incident resulted in serious physical harm to the victim or physical harm was attempted /caused by a deadly weapon or dangerous ordnance, charge the primary physical aggressor with the appropriate felony offense (Felonious or Aggravated Assault).
 - a. **Do not** charge the individual with misdemeanor Domestic Violence in addition to the felony assault charge.
8. If the individual who committed the felony assault is **not** the primary physical aggressor, additional investigation may be necessary to determine if the felony assault was a result of self-defense.
 - a. If the felony assault appears to be a result of self-defense, include all pertinent information in the Investigative Note of the RMS Case Report. The follow-up investigator will determine if charges should be filed.
 - 1) Arrest and charge the primary physical aggressor with Domestic Violence.
 - b. If the felony assault does not appear to be in self-defense, arrest and charge with the appropriate felony offense (Felonious or Aggravated Assault). Arrest and charge the primary physical aggressor with Domestic Violence.
9. Notify the Criminal Investigation Section (CIS) if death appears imminent to the victim of a domestic violence offense.
10. Seize any weapons involved by threat, display, use, or attempted usage in a domestic violence offense as contraband and/or evidence.
11. 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.
12. Use a camera to photograph all visible and alleged injuries as soon as possible.
- a. This includes parts of the body the victim alleges were hit, grabbed, punched, etc., but the injury is not visible.
 - b. Take a minimum of one full frontal photograph of the victim and one of each reported injury and/or area affected.
 - 1) Ensure each photograph contains the RMS case number prior to submitting.
 - c. When taking photographs, use department issued cameras and equipment whenever possible.
 - 1) If a personal camera or cell phone is used, a search warrant could be obtained as part of evidence in the case. If the search warrant is granted and executed, privacy is lost as other personal pictures or information can be viewed.
13. Provide the victim with the following information:
- a. Ohio Attorney General's "*Your Rights and Responsibilities as a Crime Victim*" booklet. On the inside cover, include:
 - 1) Crisis Service Agency phone numbers
 - 2) Telephone numbers of the Prosecutors' Offices and Police Department.
 - 3) Information regarding the availability of a TPO or CPO.
 - b. Reporting officer's name, badge number, and phone number.

14. 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.
15. 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 YWCA Battered Women's Shelter (872-9259) before transporting to their location.
16. If the elements of domestic violence are not present, refer the complainant to:
 - a. Hamilton County Domestic Relations Court, Room 346, 800 Broadway
 - b. Women Helping Women
 - c. Talbert House Victim Service Center
 - d. YWCA Battered Women's Shelter
 - e. Police Clergy Team

C. Case Reporting and Preparation

1. Complete a Case Report (301) and Investigative Note in RMS for all domestic violence offenses, violations of TPO/CPO, and felonious assault or aggravated assault offenses arising from domestic violence.
 - a. Make one 301 for domestic violence if an offender commits a domestic violence offense and a TPO/CPO violation offense at the same time.
 - 1) List the facts of the TPO/CPO violation in the "Narrative" section of the 301.
 - b. Report incidents of felonious assault and aggravated assault that occur during a domestic violence offense on a 301. Do not make an additional 301 for domestic violence.
 - 1) Select "88 – Domestic Violence" in the hate bias section of the Administrative tab.
 - 2) Select the appropriate felony assault charge as the "Offense" and complete all related fields.

- 3) Enter "Yes" for a Non OIBR offense and select the appropriate domestic violence offense, degree and description.
2. Obtain the following information from the victim, offender and available witnesses to include in the Investigative Note:
 - 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 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 offender.
 - f. Explanation as to why no arrest was affected, if applicable.
 - 1) This explanation may not refer to the availability of cell space at the HCJC or HCJCYC. Such availability is not to be considered in determining the arrest of the alleged offender and is prohibited pursuant to ORC Section 2935.03.
 - g. Detailed listing of similar prior incidents, calls for assistance, and respective dispositions.
 - h. Final disposition of warrant filing (e.g., "complaint/warrant filed by reporting officer").
3. After completing the RMS case report, print a copy of the 301. Ensure all related photographs and documents contain the RMS case number.
 - a. Submit the copy of the 301, photographs and related documents to District Quality Assurance (DQA), who will scan and attach them to the RMS case folder.
 - b. The DQA will fax a copy of the domestic violence 301 to Women Helping Women.
4. 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. Copies of all reports
 - 1) A copy of the 301, Investigative Note, and all related documentation.
 - 2) A copy of the Form 311VS.
 - 3) A copy of the Form 527, if applicable.
 - b. A copy of the TPO/CPO, if applicable.
 - c. A copy of the Motion for Temporary Protection Order.
 - d. Copies of the photographs related to the incident.
 - e. Audio tape copies of any 911 calls to ECC, if applicable.
 - f. The original Form 527B.
 - 1) Immediately fax the Form 527B to the Hamilton County Grand Jury. Include the fax transmittal report in the 527E case jacket.
 - g. Statements
 - 1) Any written or recorded statement by the defendant or a co-defendant, including any summaries of such statements.
 - 2) Any written or recorded statement by the victim or witness.
 - h. All laboratory or hospital reports.
 - i. Results of physical or mental examinations, experiments or scientific tests.
 - j. Documentation of evidence collected.
5. A supervisor will review each 527E case jacket for completeness and accuracy.
- a. The DQA will scan and attach photographs and additional documents to the RMS case folder.

D. Follow-Up Investigation

1. 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, will be assigned for follow-up investigation even when an arrest is made at the scene by the reporting officer.
 - a. District commanders will determine the assignment of reported misdemeanor and felony domestic violence and TPO/CPO offenses.
 - b. Reported cases of felonious assault, aggravated assault, and abduction arising from a domestic violence offense will be assigned to a district investigator for follow-up investigation, per Procedure 12.400, Incident and Miscellaneous Reporting.

- 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 ECC, if applicable.
 - d. Obtain medical records of suspect, if applicable.
 - e. Conduct additional investigation, if necessary (e.g., Investigative Note indicates victim caused serious physical harm to primary physical aggressor).
- E. 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.

- F. Release of Medical Records of Suspect(s) Involving an Official Criminal Investigation, Criminal Action, or Proceeding
1. In order to obtain information regarding the presence of alcohol, drugs of abuse, or both in a person's blood, breath, or urine, a police officer can submit a written statement to a health care provider advising an official criminal investigation, criminal action, or proceeding has begun regarding a specific person. This requires the provider supply to the officer copies of records the provider possesses pertaining to any test or the results of any test administered to the specific 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, Request for Release of Records, will be filled out by the officer and presented to the health care provider to obtain this type of record.
 - 1) The officer will keep the white copy for court.
 - 2) Give the canary copy to the health care provider.
 - 3) Submit the pink and gold copy to the DQA to be filed.
 2. Contact the City Prosecutor when a medical provider refuses to comply with this request.