

STATE OF TENNESSEE

DOMESTIC VIOLENCE

LAW ENFORCEMENT MODEL POLICY STATEMENT

The Tennessee Model Policy on Domestic Violence provides law enforcement administrators with the most current, complete and accurate information on the laws and procedures related to domestic violence calls for service.

The 1995 Tennessee General Assembly enacted Public Chapter 507 (SB 774/HB 20) amending Tennessee Code Annotated, Title 36, Chapter 3, and Public Chapter 410 (SB 1337/HB 199) amending Tennessee Code Annotated, Title 40, Chapter 11, mandating procedures in responding, investigating, arresting, seizing weapons, documenting, providing assistance to victims, and notification of conditions of release when handling domestic violence calls.

The General Assembly further enacted Public Chapter 376 (SB 1251/HB 1691), codified in Tennessee Code Annotated Title 36, Chapter 3, establishing the Domestic Violence State Coordinating Council for the purpose of carrying out the legislative mandate of "designing a policy for law enforcement response to domestic violence to be made available for use on a statewide basis." The Model Policy on Domestic Violence for Tennessee was developed under the auspices of Council's Law Enforcement Subcommittee.

The Model Policy follows the outline of the legislation and incorporates all the mandates in a format that can be used by law enforcement administrators as a **guide** in the development of agency policies or amending existing policies to prevent and resolve potential problems and liability associated with response to domestic violence calls.

The portions of the Model Policy appearing in ***bold italicized print*** are either statutory language or mandatory response to domestic abuse pursuant to legislation. All other sections are optional and intended to serve as a framework from which the agency may choose to make policy more or less restrictive. Law enforcement administrators should consult their legal advisors and refer to all federal, state and municipal statutes, local ordinances and regulations, opinions of courts, judicial and administrative decisions and Attorney General opinions to insure that policies developed and implemented meet the unique needs of the jurisdiction.

The policy should be reviewed and evaluated annually at the conclusion of each session of the Tennessee General Assembly to include any updates or changes in the law.

March 1997

TENNESSEE DOMESTIC VIOLENCE LAW ENFORCEMENT MODEL POLICY

I. POLICY

A. TCA 36-3-601 to 36-3-620 (Domestic Abuse); TCA 39-17-315 (Stalking); TCA 39-17-1301 to 39-17-1322 (Weapons); and TCA 40-7- 103(7) (arrest in connection with a domestic violence call) acknowledge the seriousness of domestic abuse as a crime and assures a victim of domestic abuse enhanced protection from violent behavior. The intent of the law is that the official response shall communicate the attitude that violent behavior is not excused or tolerated. For law enforcement, the preferred response is arrest. In both arrest and non-arrest situations, officers will take all reasonable measures necessary to assist and/or assure the immediate safety of the victim(s), the children, the offender, or any other person who may be affected; and to determine what action will be most effective in preventing future violence. This effort requires a team approach. Dispatchers must input the call with the information necessary to safeguard the lives of the officers and the victims. Officers must restore order and conduct a thorough on-scene investigation in a compassionate and professional manner. Investigators must conduct a thorough follow-up investigation. Supervisors must motivate, teach and direct personnel.

B. The goals of the (agency name) domestic abuse policy are to reduce:

1. Domestic homicides
2. Domestic assaults
3. Police call-backs
4. Injuries to officers
5. Liability risks for the department

C. It is the policy of (agency name) that all personnel adhere to the provisions herein with respect to domestic abuse.

II. DEFINITIONS

A. ***"Abuse" means inflicting or attempting to inflict physical injury on an adult or minor by other than accidental means, placing and adult or minor in fear of physical harm, physical restraint, or malicious damage to the personal property of the abused party;***

B. ***"Adult" means any person 18 years of age or older, or who is otherwise emancipated;***

C. **"Bodily Injury" means substantial pain to the victim or impairment of the victim's physical condition;**

D. **"Firearm" means any weapon designed, made or adapted to expel a projectile by the actions of an explosive or any device readily convertible to that use;**

E. **"Petitioner" means the person alleging abuse in a petition for order of protection;**

F. **"Preferred Response" means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest;**

G. **"Probable Cause" means the combination of facts and circumstances which leads a law enforcement officer to believe a crime has been committed;**

H. **"Respondent" means the person alleged to have abused another in a petition for order for protection;**

I. **"Self-Defense" means a person's justifiable use of physical force when and to the degree the person reasonably believes the force is immediately necessary to protect against the use or attempted use of unlawful force against them, under the factors set out in TCA 39-11-611 and following;**

J. **"Victim" means any person who falls within the following categories and who a law enforcement officer has determined is not a primary aggressor under the factors set out in 36-3-619(c):**

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship, [as used herein "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context];

(D) Adults or minors related by blood or adoption;

(E) Adults or minors who are related or were formerly related by marriage; or

(F) Adults or minor children of a person in a relationship that is described in subitems

(A) through (E) above.

K. **"Weapon" means a firearm or device listed in TCA 39-17-1302(a)(1)-(7).**

III. APPLICATION OF PART

- A. ***Any and all who have been subjected to, or threatened with or place in fear of abuse by a present or former adult who falls into one of the categories set forth in 36-3-601 (9)(A) may seek relief under this part by filing a sworn petition alleging such abuse by the respondent.***

IV. DISPATCH PROCEDURES

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should be
- A. The Dispatcher should give a domestic abuse call the same priority as any other life threatening call and will, whenever possible, dispatch at least two officers to the scene. The decision as to the priority of the call should be based on the seriousness of the injuries or threatened harm, and whether or not the assailant is on the premises.
 - B. The Dispatcher should make every effort to relay any and all information gathered from the complainant which may be helpful to the responding officer(s) in assessing the situation, including call history.
 - C. During the initial call for assistance, the dispatcher will ask the following and any additional appropriate questions:
 1. What is the location of emergency and phone number?
 2. Who am I speaking to?
 3. Are you involved or a witness?
 4. Has anyone been injured and is an ambulance needed?
 5. Is the offender present? If not, where? Description of the offender, mode of travel and description of vehicle.
 6. Are weapons involved? What kind? Are other weapons in the house?
 7. Is the offender under the influence of alcohol or drugs? What substance?
 8. Are children present? Age?
 9. Have the police been called because of this situation before?
 10. Is there an order of protection on file?
 11. Has the offender ever threatened to hurt a police officer?
 - D. The Dispatcher, in speaking with a victim of domestic abuse, should not discuss or make any comment concerning the victim's desire to "press charges", "drop charges", or "prosecute".
 - E. The Dispatcher should advise the victim in any way possible to ensure the victim's safety, including but not limited to waiting for officers at another location or leaving the residence if the suspect may return.
 - F. If the Dispatcher receives a second call to cancel the original call, responding officers should be instructed to continue on the call to insure that all parties are safe.

V. RESPONSE PROCEDURES

- A. When responding to a domestic abuse call, officers will:
 - 1. Establish control of the scene and restore order by:
 - a. Separating the parties;
 - b. Assessing the need for medical attention; and
 - c. Protecting the crime scene.
 - 2. Interview all parties separately (victim, offender and witnesses). Interview children in a manner appropriate for their age.
 - 3. Determine if arrest is appropriate, as described in Article V.
 - 4. Communicate to the parties that domestic abuse is a crime and will not be excused or tolerated.
 - 5. Collect and record evidence. When appropriate, take color photographs of injuries and property damage.
 - 6. Prepare incident report.
 - 7. Provide victim assistance as outlined in Article VII.

- B. Officers should wait to be invited inside but should not hesitate to make a forced entry if necessary to protect the victim(s).
 - 1. A forced entry is permissible at any time there is probable cause to believe that the safety of a potential victim may be in jeopardy.
 - 2. When making an assessment regarding forced entry or continuance of investigation when there is no response from occupants, officers will base their decision to act on:
 - a. Information provided to the Dispatcher;
 - b. The urgency of the request;
 - c. The use of 911;
 - d. The Dispatcher's assessment of the seriousness of the request;
 - e. Witness information;
 - f. Everything they personally observe;
 - g. All physical evidence.
 - h. Any other pertinent factors.
 - 3. Supervisory personnel should monitor the receipt of any domestic abuse call dispatched and respond to the location whenever possible. Supervisors will provide additional safety, monitor the situation and be available for advice. A review will be made as soon as practical as to whether the responding officers followed policy.

- C. When officers respond to a domestic violence call and the victim or offender is a law enforcement officer, the officers will call the line supervisor to the scene.

- D. If the offender has left the scene and a crime has been committed, officers should:

1. Follow felony arrest procedures if a felony has been committed;
2. Conduct a search of the immediate area, if legally permissible;
3. Obtain information from the victim and witnesses as to the whereabouts of the offender;
4. When appropriate, refer the matter to the investigative unit or Victim Witness Officer for follow-up.

VI. ARREST DETERMINATION

- A. Pursuant to TCA 36-3-601 to 36-3-620 (Domestic Abuse), ***if a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or a felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.***
1. Offender(s) should be charged with appropriate violation(s) of Tennessee Code Annotated.
 2. Domestic abuse cases can either be Simple Assault or Aggravated Assault based on the facts. Pursuant to TCA 39-13-102, ***for an assault to be an Aggravated Assault, one of the following aggravating factors must be present:***
 - a. ***Serious bodily injury to the victim;***
 - b. ***Use or display of a deadly weapon by offender;***
 - c. ***Violation of Court Order of Protection, Diversion Agreement or Probation Agreement;***
 - d. ***Failure or refusal of parent or guardian of victim to protect victim from an aggravated assault or aggravated child abuse.***
 3. ***Arrest is mandatory for a violation of an Order for Protection where officers have proper jurisdiction and have reasonable cause to believe respondent has violated or is in violation of the Order and verification has been made that the Order is valid. If the Order is ex-parte, respondent must have been served or otherwise have actual knowledge of the order.***
 4. Pursuant to TCA 39-14-406, the Aggravated Criminal Trespass statute, ***an offender entering or remaining at the residence of the petitioner with knowledge of an Order of Protection may be charged with aggravated criminal trespass.***
 5. Pursuant to TCA 39-13-214, the Viable Fetus as a Victim statute, ***if the victim of domestic abuse has incurred serious bodily injury and is pregnant and carrying a viable fetus (currently recognized by courts as six months into gestation), the offender may be***

charged with assault or other crimes against persons to the viable fetus.

6. Pursuant to TCA 71-6-101 to 71-6-119 (Tennessee Adult Protection Act), ***if the victim of domestic abuse is 60 years or older or a mentally impaired adult, officers shall notify the Tennessee Department of Human Services to investigate allegations of abuse. "Abuse" is defined in this act as physical abuse, emotional abuse, neglect or exploitation.***

- B. ***If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, the officer shall exercise his or her best judgment in determining whether to arrest all, any or none of the parties.***

- C. ***To determine who is the primary aggressor, the officer shall consider:***
 1. ***The history of domestic abuse between the parties;***
 2. ***Evidence from the persons involved in the domestic abuse;***
 3. ***The likelihood of future injury to each person;***
 4. ***Whether one of the persons acted in self-defense; and***
 5. ***Evidence from witnesses of the domestic abuse.***

- D. ***An officer shall not:***
 1. ***Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel, or***
 2. ***Base the decision of whether to arrest on:***
 - a. ***The consent or request of the victim; or***
 - b. ***The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.***
 3. ***Issue a misdemeanor citation in lieu of arrest.***

- E. ***When determining primary aggressor and self-defense during an investigation of domestic abuse, the officer should consider the following:***
 1. ***Pursuant to TCA 39-11-611, the Self-Defense statute, a person is justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of force. The person must have a reasonable belief that there is an imminent threat of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be real, or honestly believed to be real at the time, and***

must be founded upon reasonable grounds. There is no duty to retreat before a person threatens or uses force.

- F. ***If a law enforcement officer decides to arrest two or more parties, the officer shall include in the report the grounds for arresting two or more parties.***

VII. SEIZURE OF WEAPONS IN DOMESTIC VIOLENCE INCIDENTS

- A. ***If an officer has probable cause to believe that a criminal offense involving abuse against a family or household member has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime.***
- B. ***Incident to an arrest for a crime involving abuse against a family or household member, an officer may seize a weapon that is in plain view or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons. Provided, however, an officer is not required to remove a weapon such officer believes is needed by the victim for self defense.***
- C. ***The provisions of TCA 39-17-1317, relative to the disposition of confiscated weapons shall govern all weapons seized pursuant to this law that were used or threatened to be used by the abuser to commit the crime. All other weapons seized shall be returned upon disposition of the case.***

VIII. NON-ARREST SITUATIONS

- A. Officers may use discretion in determining whether to leave the residence while both parties are present, or asking one party to agree to leave temporarily.
- B. Officers may have one or both parties sign an affidavit as to what happened in the alleged incident.
- C. Officers may stand by while one party gathers belongings to go to a place of safety.

IX. ORDERS OF PROTECTION

A. Administration

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1. A line of communication should be established between the court(s) regularly issuing Orders of Protection to insure copies are issued the appropriate agencies
 2. ***Appropriate agencies should serve the Order of Protection to the respondent and enter such order in the Tennessee Crime Information System's State of Tennessee Orders of Protection (S.T.O.P.) file.***
 3. All orders of protection received from issuing courts will be logged and filed in the most feasible manner to ensure their security and allow rapid verification by officers investigating incidents of domestic abuse.
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B. Enforcement

1. ***When informed that an Order of Protection is in effect, officers will verify its existence and validity by contacting the issuing court or by making inquiry to the State of Tennessee Orders of Protection (S.T.O.P.) file to determine the contents of the Order.***
2. ***In the case of an Ex-parte Order of Protection, officers should ensure that it has been "served" on the respondent or that the respondent has otherwise acquired actual knowledge of its existence before taking further action.***
 - a. ***In making a determination if the respondent does in fact have actual knowledge of an Ex-parte Order of Protection, officers may rely on the notation on the order itself showing another officer has made notification, entry in State of Tennessee Orders of Protection (S.T.O.P.) file, an admission by the respondent, or any information supplied by the petitioner or other party which may be reasonably believed.***
 - b. ***If the respondent does not have actual knowledge of the Ex-parte Order of Protection, officers should inform him/her of its existence and the substance of its contents.***
 - c. ***Officers should notify the appropriate agency that the respondent has been notified of the Order and to modify the entry in the State of Tennessee Orders of Protection (S.T.O.P.) file.***
 - d. ***If service has been previously made or officers determine that respondent had actual knowledge thereof, and there is probable cause to believe the respondent has violated the terms of the Order and officers have jurisdiction, officers shall arrest the respondent.***
 - e. If the Order has been issued in another county, officers should make every attempt to verify the order, its service or whether the respondent has actual knowledge of the order. A request may be made to the issuing county to fax a copy of the Order.

action. If
will be taken.

Upon receipt of the Order, officers will take appropriate
out-of- county Orders cannot be verified, no action

X. STALKING

- A. Incidents of domestic abuse often culminate into acts of stalking against the victim. As stated in TCA 39-17-315:
- B. **"A person commits the offense of stalking who intentionally and repeatedly follows or harasses another person in such a manner as would cause that person to be in reasonable fear of being assaulted, suffering bodily injury or death."**
1. **"Follow" means maintaining a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to have a fear of an assault, bodily injury or death.**
 2. **"Harasses" means a course of conduct directed at a specific person which would cause a reasonable person to fear an assault, bodily injury or death, including but not limited to, verbal threats, written threats, vandalism, or non-consented physical contact.**
 3. **"Repeatedly" means on two or more separate occasions.**

XI. VICTIM ASSISTANCE

- A. Pursuant to TCA 36-6-601, **the officer shall offer to transport the victim to a place of safety such as a shelter or similar location or the residence of a friend or relative, unless it is impractical for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as feasible.**
- B. **Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged abuser.**
- C. **Advise the victim of a shelter or other service in the community.**
- D. **Provide the victim notice of the legal rights available by giving the victim a copy of the following statement:**
- "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the following rights:**
1. **You may file a criminal complaint with the District Attorney General (D.A.).**
 2. **You may request a protection order. A protection order may include the following:**
 - (a) **an order preventing the abuser from committing further domestic abuse against you,**

- (b) an order requiring the abuser to leave your household,**
- (c) an order preventing the abuser from harassing you or contacting you for any reason,**
- (d) an order giving you or the other parent custody of or visitation with your minor child or children,**
- (e) an order requiring the abuser to pay money to support you and the minor children if the abuser has a legal obligation to do so, and**
- (f) an order preventing the abuser from stalking you.**

The area crisis line is _____

The following domestic abuse shelter/programs are available to you:

_____ "

- E. The victim will acknowledge receipt and understanding of these rights by signing the form.
- F. ***If the offender is arrested, inform victim that the offender may be allowed to post bail to be released.***

XII. REPORTING PROCEDURES

- A. ***When an officer investigates an allegation that domestic abuse has occurred, the officer shall make a complete report and file the report with the officer's supervisor.***
- B. ***If the officer decides not to make an arrest or decides to arrest two (2) or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two (2) or more parties.***
- C. ***If the officer seizes any weapons, an inventory of seized weapons shall be appended to the domestic abuse report.***
- D. ***The "Domestic Violence Investigations Law Enforcement Log Sheet" shall be forwarded on or before the 10th day of the month following the month of the report to the Administrative Office of the Courts.***

XIII. POST-ARREST PROCEDURES

- A. ***The law enforcement agency having custody of the defendant shall provide a copy of the conditions to the defendant upon his or her release.***

Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the defendant has notice of such conditions.

- B. **When a defendant who is arrested for or charged with a domestic abuse crime or a violation of an order for protection is released from custody, the law enforcement agency having custody shall:**
 - 1. **Use all reasonable means to immediately notify the victim of the alleged offense of the release; and**
 - 2. **Furnish the victim of the alleged offense at no cost a certified copy of any conditions of release;**
 - 3. Notify probation or parole departments if defendant is on probation or parole.

XIV. TRAINING

- A. **The Training Officer or Training Director shall be responsible for implementing a comprehensive training program for officers who are likely to encounter situations of domestic violence. The goals of the training are to inform officers of:**
 - 1. **Domestic abuse laws;**
 - 2. **Department's domestic abuse policy and procedures;**
 - 3. **Dynamics of domestic abuse;**
 - 4. **Police officer safety tactics;**
 - 5. **Response and investigation procedures;**
 - 6. **Methods of victim assistance;**
 - 7. **Community resources available such as battered women's shelters.**

XV. EVALUATION

- A. The Chief Executive Officer, or designee, should ensure the review of this policy on an annual basis and make any revisions deemed necessary.
- B. The purpose of the evaluation will include, but not be limited to:
 - 1. Determining whether policy goals have been met;
 - 2. Determining the effectiveness of the response;
 - 3. Determining the effectiveness of the data collection system;
 - 4. Measuring the community response to the department's performance;
 - 5. Determining whether all required laws are being met;
 - 6. Identifying additional training needs.

