



Newport News Police Department - Operational Manual

OPS-430 - DOMESTIC DISTURBANCE & STALKING CASES

Amends/Supersedes: OPS-430 (02/27/2017)

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I. GENERAL

- A. The Newport News Police Department shall investigate all allegations of domestic violence or stalking, and arrest those persons who have been identified as committing those acts.
- B. When responding to either situation, all officers shall provide the victim with information regarding available support services within the community. [55.1.1(a); 55.2.3(a)]
- C. The definition and/or meaning of the following terms are found in the following sections of the Code of Virginia:
 - 1. Family abuse: §16.1-228
 - 2. Stalking: §18.2-60.3
 - 3. Family or household member: §16.1-228
 - 4. Acts of violence, force or threat: §19.2-152.7:1
 - 5. Protective Orders
 - a. Cases of Domestic Disturbance
 - 1) Protective order: §16.1-279.1
 - 2) Preliminary protective order: §16.1-253.1
 - 3) Emergency protective order: §16.1-253.4
 - b. Acts Involving Violence, Force or Threat
 - 1) Protective order: §19.2-152.10
 - 2) Preliminary protective order: §19.2-152.9
 - 3) Emergency protective order: §19.2-152.8
 - 6. *Lethality Assessment Protocol (LAP)* – A series of questions used to field assess a victim of intimate partner violence for their risk of being killed by that partner, and provide appropriate referrals.

II. PRELIMINARY PROCEDURES

- A. On-Scene Investigation:
 - 1. If an officer has reasonable grounds to believe that an assault and battery against a family or household member has occurred, the officer shall take the following actions:
 - a. Stabilize the scene and render medical aid as necessary; [42.2.1(a)]
 - b. Confirm a crime has been committed and attempt to identify the suspect(s); [42.2.1(a)]
 - c. Identify and interview all witnesses and obtain their names, addresses, and telephone numbers; [42.2.1(b)]

- d. Collect and preserve all evidence, which may include: (See OPS-485 “Property and Evidence”) [42.2.1(c)]
 - 1) Photographs;
 - 2) Broken fingernails;
 - 3) Hair;
 - 4) Blood evidence;
 - 5) Torn clothing; or
 - 6) Broken jewelry (e.g. a necklace pulled from the neck).
 - e. Engage the LAP (see Section III.D.1), and ask the series of questions in the RMS domestic violence module in the narrative area.
2. In all stalking situations, the officer shall confirm that the offender’s actions constitute stalking under applicable law, and attempt to identify the suspect. Additionally, the officer shall: [42.2.1(a)]
- a. Identify and interview all witnesses, and obtain names, addresses, and telephone numbers; [42.2.1(b)]
 - b. Collect and preserve all evidence, which may include: (See OPS-485 “Property and Evidence”) [42.2.1(c)]
 - 1) Photographs;
 - 2) Documents;
 - 3) Video footage (in any format).
3. In stalking or domestic violence situations, the officer shall also:
- a. Complete all reports as required (Sections III or IV (as applicable));
 - b. Provide Victim Support Resources (See Section III. D. – Lethality Assessment Protocol (LAP))
- Give the complainant a copy of the “What Happens Next” brochure (NNPD Form #204) and any other available applicable information on referral and counseling programs, such as:
- 1) Victim witness advocacy (ADM-135, “Victim/Witness Assistance Program”);
 - 2) *Transitions* program or other domestic violence hotline numbers;
 - 3) Local and National Domestic Violence hotline numbers;
 - 4) “Sexual Assault Survivor’s Center” information (if applicable); and
 - 5) The “Address Confidentiality Program” (ACP), and contacts. [55.1.1(a); 55.2.3(a,b,c,d)]
- c. Upon request, and with approval of a supervisor, transport the abused person to a hospital, safe shelter or magistrate. [55.1.1(a)]
 - d. If children are in the household, with no parents or guardians present at the conclusion of the response, ensure the children can obtain needed proper care, to include calling Child Protective Services.
4. If a Newport News Police Department employee, is the alleged predominant aggressor or victim of domestic violence or stalking:
- a. The responding officers shall maintain neutrality and objectivity when arriving on the scene;
 - b. The responding officers shall immediately notify their on-duty supervisor, who will respond to the scene to insure proper protocol and documentation is completed; [81.2.5(f)]
 - c. The criminal investigation will be conducted in the same manner as if a regular citizen was involved in the incident, under the guidance of a police supervisor. The on-duty supervisor will notify his chain of command to include the on-call Internal Affairs Section Investigator and the employee’s Bureau/Precinct/Division Commander.

- d. When a departmental employee authorized to carry a firearm is relieved from duty, or is named as the respondent in a Protective Order (§§16.1-279.1 or 19.2-152.10), a Preliminary Protective Order (§§16.1-253.1 or 19.2-152.9) or an Emergency Protective Order (§§16.1-253.4 or 19.2-152.8), the following issued equipment (if considered non-evidentiary) will be retrieved by the responding on-duty supervisor and handled in accordance with ADM-270, “Administrative/Internal Investigations”: [26.3.7]
 - 1) Badge;
 - 2) All police identification cards;
 - 3) All issued firearms;
 - 4) Cellular telephone; and
 - 5) Tablet/MDC and/or laptop.
 - e. Personnel will also be governed by ADM-210, “Standards of Conduct/Disciplinary Action”.
5. In cases where the alleged predominant aggressor of domestic violence, act of violence, force or threat (§19.2-152.7:1), or stalking is a law enforcement officer for any other local, state, or federal agency (to include private security agencies and Special Conservators of the Peace), notification shall be made to their immediate supervisor to enable the officer’s agency to take appropriate action and/or initiate an administrative investigation.

III. DOMESTIC VIOLENCE ARREST AND REPORTING REQUIREMENTS

A. Arrest Procedures

1. The responding officer shall make every attempt to determine who the predominant aggressor is, based on the totality of the circumstances. The first disputant to use violence may be considered in this regard; however this should not be the only factor, and may not always indicate the predominant aggressor. Officers should also take into consideration:
 - a. The party posing the most serious threat;
 - b. The party possessing the most ability and inclination to inflict physical injury;
 - c. Which party has the greatest need for protection and/or safety;
 - d. The severity of the injuries inflicted and if some or all are self-inflicted;
 - e. Whether one or more of the disputants is under the influence of any substance(s);
 - f. The probability that further violence or injury will occur;
 - g. The input of any witnesses to the altercation;
 - h. Whether any injuries were inflicted in self-defense;
 - i. Prior complaints of family abuse by the one of the parties.
2. If the officer is unable to identify a predominant aggressor, and it appears that the parties have been involved in mutual combat, the officer shall consult their supervisor prior to filing assault charges against all parties. In most instances, a predominant aggressor can be established, and dual assault charges should not be filed.
3. Officers shall arrest those persons who have been identified as committing acts of violence against a family or household member when the arrest can be supported by the complaint of the victim and/or other circumstances or evidence that an act of violence has occurred.
4. In the event that the aggressor has left the scene, the investigating officer shall obtain the warrant(s) and make arrangements to have the warrants served as soon as possible.

5. Types of offenses for which an officer shall arrest/obtain warrants include, but are not limited to:
 - a. Any felony;
 - b. A victim who alleges previous assaults by the same person;
 - c. An abuser who is intoxicated or has consumed drugs;
 - d. A weapon is used to injure, threaten or intimidate the victim;
 - e. A high degree of probability that further violence or injury will occur;
 - f. A violation of a valid protective order;
 - g. Any offense that is committed in the officer's presence; or
 - h. Any assault that leaves marks on the victim (e.g. cut, bruise, swelling or abrasion) or that results in internal injuries.

6. The officer will include in the IBR how he identified the suspect as the primary physical aggressor. This may include:
 - a. The severity of the injuries inflicted on all parties and whether the injuries were offensive or defensive;
 - b. A history of violence, calls for service and/or assault convictions;
 - c. Evidence that any of the parties acted in self-defense;
 - d. Evidence from persons involved in, or witnessing, the incident;
 - e. The relative size, bulk and strength of the parties;
 - f. Current or previous protective orders filed against any of the parties;
 - g. The likelihood of future injury to any of the parties.

7. Domestic Violence Arrest - Corresponding Code of Virginia
 - a. §19.2-81.3 arrest without a warrant for an alleged violation of §18.2-57.2 (assault and battery against a family or household member).
 - b. Violation of protective orders:
 - 1) §18.2-60.4 Acts of violence force, or threats in violation of a protective order; or
 - 2) § 16.1-253.2 violation of provisions of protective orders.

8. If probable cause for arrest exists, but arrest is not made, nor a warrant obtained, the investigating officer must include the reasons and circumstances leading to another course of action in the IBR (§19.2-81.3D Code of Virginia). [1.2.7]

9. When making an arrest for assault and battery against a family or household member, the responding officer shall check for prior convictions of assault against the offender.
 - a. If the domestic assault does not involve a felony, the aggressor, shall be charged with assault and battery against a family or household member (Class 1 misdemeanor).
 - b. If the aggressor has been convicted of assault and battery against a family or household member twice within the past twenty years, and the assaults occurred on different dates, the aggressor shall be charged with a Class 6 felony, unless the offense warrants a Class 5 or higher felony charge (such as maiming).

C. Domestic Violence Reporting Requirements [82.2.1(a,b)]

1. The investigating officer shall prepare an IBR, engage the LAP, and if an arrest is made, complete an Arrest Report (RMS).
2. If a misdemeanor arrest is made on cases involving (i) spouses or ex-spouses, (ii) co-habitants (people who have lived together within the past 12 months), (iii) people who have a child together, or (iv) homosexual relationships, the officer shall complete the IBR, and add copies of

any statements, photos or supporting documents, forwarding the package to the Commonwealth's Attorney's Office, and keeping a copy for his records.

NOTE: The prosecution of all other misdemeanor cases involving family or household members will not be assisted by the Commonwealth's Attorney and the investigating officer will handle case prosecution.

3. If a felony arrest is made, a Prosecuting Attorney's Letter (See also: OPS-415 "Prosecuting Attorney's Letter") shall also be completed by the investigating officer.
4. If photographs or witness statements are obtained in addition to the IBR, they should be submitted to the prosecuting attorney. The investigating officer shall advise the victim to contact him if the victim has follow-up photographs available.
5. A letter of arrest is only required in misdemeanor domestic violence cases when the accused is a sworn member of the Police Department.

D. Lethality Assessment Protocol (LAP)

1. Officers are to initiate the LAP when an intimate relationship is involved in a domestic violence situation and the officer believes the situation could lead to serious injury or death to anyone involved. The officer should make this determination while evaluating the totality of the circumstances. Factors the officer should consider include (but are not limited to):
 - a. A high potential for serious injury/death;
 - b. An assault has occurred resulting in serious injury;
 - c. The name(s)/location(s) of the offense are repeat name(s)/location(s);
 - d. Serious threats have been made to the victim and/or the victim's children;
 - e. Noticeable fear displayed by the victim;
 - f. The call-for-service is to a household where an existing protective order has been violated;
 - g. The officer believes the LAP should be conducted based on experience, training and instinct.
2. LAP Screening – When screening the victim for the LAP, the officer should take the following steps:
 - a. Advise the victim they will be asked a series of questions to determine the immediate potential for danger to them.
 - b. Ask all of the questions in the order in which they are listed in the RMS Domestic Violence module.
 - c. The more questions the victim responds to positively, the greater the potential danger to the victim.
 - d. The form will be uploaded into the RMS report.
 - e. If the LAP referral is not triggered, or the victim does not answer the screening questions, the officer will:
 - 1) Advise the victim that domestic violence is dangerous and sometimes fatal.
 - 2) Inform the victim to watch for the signs listed in the screening assessment which may indicate an increased level of danger.
 - 3) Provide Domestic Violence Referral Information to the victim and encourage the victim to contact the Domestic Violence Hotline.
 - f. If a high danger assessment is made, or the officer believes it is appropriate, a referral will be implemented, and the officer will advise the victim:
 - 1) That the situation has shown there is an increased level of danger and that people in the victim's situation have been killed or seriously injured; and
 - 2) That he would like to call the Domestic Violence Hotline number and have the victim

- 3) speak with a counselor.
- 3) If the victim declines to speak with the counselor the officer will tell the victim:
- a) The officer will contact the hotline to receive guidance on how to proceed with the situation; and
 - b) The officer would like the victim to reconsider speaking with the hotline counselor.
 - c) After the officer concludes the conversation with the counselor, the officer will ask the victim if she has reconsidered and would now like to speak with the counselor.
- 4) The officer will be guided by the call taker if any additional assistance is needed.

NOTE: The officer will not provide vital information (i.e. name, DOB, address) of the suspect to third parties (to include the Domestic Violence Hotline).

- g. The officer will document the LAP referral steps taken in the narrative.

IV. STALKING ARREST AND REPORTING REQUIREMENTS

A. Arrest Procedures

1. Officers shall arrest those persons who have been identified as committing acts of stalking against another when the arrest can be supported by the complaint of the victim and the circumstances or evidence. An Arrest Report and an Incident Report are completed after the arrest.

NOTE: The guidelines of this policy shall not apply to law enforcement officers or private investigators as defined in §§9.2-1101, 9.1-138, and 9.1-139 of the Code of Virginia, while acting in the performance of official duties or acting in the course of legitimate business.

2. When the offender is not present, but can be identified; the investigating officer shall obtain the warrant(s), and make arrangements to have the warrant(s) served as quickly as possible.
3. When making an arrest for stalking, the officer shall check the offender for prior convictions of stalking. The offender will be charged as follows:
 - a. Stalking (§18.2-60.3, Class 1 misdemeanor).
 - b. In cases where the offender has previous stalking convictions (as set out in §18.2-60.3 of the Code of the Virginia) or a substantially similar offense under the law of any other jurisdiction, the offender shall be charged with a Class 6 felony.
4. Examples of related offenses for which the officer shall arrest the suspect or obtain warrants may include:
 - a. Any felony associated with stalking;
 - b. The victim alleges previous events by the same offender;
 - c. Use, or implied use, of a weapon to injure, threaten or intimidate the victim;
 - d. A high degrees of probability that violence, criminal sexual assault, death, or injury will occur;
 - e. Violation of a valid protective order;
 - f. Any offense committed in the officer's presence; or
 - g. Any assault resulting from the act of stalking that leaves physical marks on the victim (i.e. cuts, bruising, swelling, or abrasions) or results in internal injuries.

NOTE: All allegations of criminal sexual assault will be directed to the Special Victims Unit for investigation.

B. Stalking Reporting Requirements

1. The investigating officer shall prepare an IBR, which documents the following:
 - a. Any history of the parties involved, to include prior calls for service;
 - b. Evidence of either party's involvement, to include the existence of witnesses to the incident(s);
 - c. Physical evidence from either party's involvement;
 - d. The existence of previous or current protective orders filed against any of the involved parties;
 - e. The likelihood of future injury to any of the involved parties.

V. PROTECTIVE ORDERS

A. Emergency Protective Orders

[74.2.1]

1. *Domestic Violence Cases:* The investigating officer shall petition the magistrate or judge to obtain an emergency protective order (§16.1-253.4 of the Code of Virginia) if a warrant is obtained for violation of §19.2-81.3. If an arrest is not made and there is probable cause to believe that a danger of acts of family abuse exists by the aggressor, the officer shall assert under oath to any judge or magistrate, the evidence and circumstances to petition for an emergency protective order.
2. *Stalking Cases:* (§19.2-152.8(B) of the Code of Virginia) An emergency protective order will be issued when a law enforcement officer, or petitioner asserts under oath that the victim has been, or is being subjected to an act of violence, force, or threat, and the judge or magistrate finds:
 - a. There is probable danger of a further such offense being committed; or
 - b. A petition or warrant for the arrest of the accused has been issued.
3. Process
 - a. When completing the Emergency Protective Order Form (State Form DC-626), all respondent (aggressor) information must be completed on the form so that the order can be entered into VCIN.
 - 1) When issued through the magistrate, General District Court, or Juvenile and Domestic Relations Court, the preliminary order information will be entered into VCIN by that entity. The Records Section is responsible for ensuring that any verified changes to the preliminary identifying information are entered into VCIN.
 - 2) When issued through the Circuit Court, the preliminary order information will be entered into VCIN by the Records Section.
 - b. If the victim of the abuse, force, or threat goes directly to the magistrate to report the incident, he/she may also seek to have an emergency protective order issued. If issued, the magistrate will contact the Communications Division to have an officer respond to deliver an order copy to the victim. The officer will then proceed to the Records Section to have the information on the order verified, and any modifications entered into VCIN, and then seek to have the order served on the respondent.
 - c. If the magistrate denies the issuance of an emergency protective order in a domestic violence case, the form will remain with the magistrate to be sent to the appropriate court. The officer shall remove the "officer's copy" section of the form to keep with his records.

NOTE: As set forth in §16.1-253.4 of the Code of Virginia, when the judge/magistrate considers the issuance of an emergency protective order after a warrant has been issued, or is being issued, the presumption shall be that there is probable danger of further acts of abuse against a family or household member by the respondent unless the presumption is rebutted by the victim.

4. When a written or verbal or emergency protective order is issued by the judge/magistrate, the order shall:
 - a. (Domestic violence cases) Prohibit the aggressor from further acts of domestic abuse or criminal offenses that result in injury to person or property, contact between the two disputing parties and/or grant temporary possession of the premises to the complainant to the exclusion of the aggressor.
 - b. (Cases involving an act of violence, force, or threat) Prohibit contact with the victim or victim's family as necessary to protect their safety, and/or other conditions as necessary to prevent acts involving violence, force or threats, acts of sexual battery, or criminal offenses resulting in injury to person or property, or communication or contact of any kind.
5. Any officer securing a verbal emergency protective order shall complete the pre-printed Emergency Protective Order Form (State Form DC-626) and deliver it to the judge or magistrate who provided verbal authorization.
6. Upon issuance of an emergency protective order, the investigating officer shall ensure that the protective order is entered into the VCIN system (as set forth in Section A.3.a. above regarding initial entry and verification of information). The officer shall contact the Records Section to have the information entered.
7. The emergency protective order shall be executed as follows:
 - a. One copy served on the respondent as soon as possible;
 - b. One copy given to the petitioner with any written information regarding protective orders as provided by the judge or magistrate pursuant to §16.1-253.4 (C) or §19.2-152.8(C) of the Code of Virginia;
 - c. The original order shall be forwarded to the judge or magistrate who issued the order to be filed with the Juvenile and Domestic Relations District Court.
 - d. The Records Section will enter into VCIN the date and time the order is served when notified by the officer executing the order. The officer will personally deliver the "officer's copy" section of the form to the Records Section for record keeping, with date and time served noted on the form.
8. When the emergency protective order is issued and the respondent is present:
 - a. The order will be served and given to the respondent.
 - b. The date and time served, the serving officer and the subject served will be recorded in the appropriate areas on the back of the emergency protective order.
 - c. The victim's copy of the order will be served on him in person, by posting, or by notifying the victim to pick up his copy of the order at the Records Section. The original order remains with the magistrate.
 - d. The serving officer will deliver the "officer's copy" section of the form to the Records Section.

9. When the emergency protective order is issued and the respondent is not present:
 - a. A copy of the emergency protective order will be made and the copy will be **immediately** taken by the officer to the Records Section to have the information entered into VCIN (as set forth in section A.3.a. above).
 - b. If a warrant has been issued in association with the emergency protective order, the order will be attached to the warrant and will remain with the warrant for service.
 - c. In cases of domestic violence, if a warrant has not been issued, the emergency order will still be served.
 - d. If the warrant and/or emergency protective order are not immediately served, they will be forwarded to the VCIN Unit for later service.
 - 1) The VCIN Unit will assign a warrant number to all emergency protective orders for record keeping purposes.
 - 2) The original emergency protective order, whether served or not served, will be sent to the appropriate court within five business days of the issuance date of the order.
 - 3) No emergency protective orders will be mailed to another jurisdiction for service.
10. The availability of an emergency protective order shall not be affected by the fact that the victim left the premises to avoid the danger of an assault and battery, or conduct imposed by the alleged stalker.
11. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the alleged abuser.

B. Preliminary Protective Order for Spousal Abuse

The responding officer will:

1. Advise the alleged victim to contact the 7th District Court Services Unit - Intake Office to arrange for a preliminary protective order. Convey this information to the alleged victim when an arrest is made, or when probable cause necessary for an arrest cannot be established.

NOTE: Avoid advising the alleged victim to seek a preliminary protective order in the presence of the alleged suspect or abuser.
2. Inform the alleged victim that a preliminary protective order, not to exceed 15 days, can be issued without the offender being present or represented, when an immediate and present danger of spouse abuse, or acts of violence, force, or threat (or criminal offenses that may result in injury to person or property, or communication or other contact of any kind by the respondent as set forth in §19.2-152.9 Code of Virginia) exist, and that there does not have to be a prior Emergency Protective Order.
3. Upon receipt of a preliminary protective order by the Department, the name of the person subject to the protective order, and other appropriate information from the order, shall be entered into the VCIN system.

C. Protective Orders in Cases of Abuse

1. A court may issue a protective order in cases of family abuse (§§16.1-279.1 or 19.2-152.10 of the Code of Virginia). When issued through the magistrate, Circuit Court, General District Court, or Juvenile and Domestic Relations court, the preliminary order information will be entered into VCIN by that entity. The Records Section shall be responsible for ensuring that any verified changes to the preliminary identifying information are entered into VCIN.

2. The clerk of the court issuing the order shall forward an attested copy of the order to the Police Department. Upon receipt of the order, the Police Department will ensure (§16.1-253.4 Code of Virginia) the name of the person subject to the protective order, and other appropriate verified information from the order, is entered into VCIN by the Records Section.

D. Violation of the Provisions of Protective Orders

1. Officers shall enforce the provisions of §§16.1-253.2 and 18.2-60.4 of the Code of Virginia (violating the provisions of protective orders) and arrest any person who violates any provision of a protective order issued pursuant to: [74.2.1]
 - a. §16.1-253: Preliminary protective orders
 - b. §16.1-253.1: Preliminary protective orders in cases of family abuse
§19.2-152.9: Preliminary protective orders in cases of violence, force or threat
 - c. §16.1-253.4: Emergency protective orders in cases of family abuse
§19.2-152.8: Emergency protective orders in cases of violence, force or threat
 - d. §16.1-278.14: Criminal jurisdiction of protective orders in family offenses
 - e. §16.1-279.1: Protective orders in cases of family abuse
§19.2-152.10: Protective orders in cases of violence, force or threat
 - f. §20-103 B: Court orders pending suit for divorce, custody or visitation, etc.
2. Officers shall enforce protective orders to protect the health and safety of a petitioner.
3. The responding officer shall verify the following information to determine probable cause for arrest in violation of any protective order:
 - a. An unexpired protective order;
 - b. Successful service of the protective order on the alleged abuser; and
 - c. An accusation of the complainant, and/or statements from creditable witnesses, confirm that the protective order has been violated.
4. The officer shall place the person subject to the protective order under arrest at the scene or upon subsequent apprehension. Arrest without a warrant is authorized under §19.2-81.3 of the Code of Virginia. [1.2.5]

NOTE: Copies of valid protective orders issued by a Newport News magistrate or a Newport News court will be kept on file with the Records Section.

5. If the alleged abuser has left the scene and probable cause exists that a protective order was violated, the investigating officer shall obtain a warrant for the alleged abuser.
 6. In addition to any other penalty provided by law, any person who violates any provision of a protective order (which the court deems appropriate) shall be guilty of a Class 1 misdemeanor.
- E. If, during the trial of the abuser or stalker, the victim recants his or her original statement made to an officer, the officer **shall not** obtain a warrant for perjury or false information to a police officer without first discussing the case with the Commonwealth's Attorney who is prosecuting the case.
- F. Non-Violent Domestic Disturbances
1. Officers shall respond to non-violent/non-criminal domestic disputes.
 2. After ensuring that no criminal/violent activity has transpired, the officer should attempt to mediate the dispute.

- a. The officer shall remain impartial.
 - b. Advice as to referral services and possible civil remedies shall be offered.
3. If the dispute involves the removal of personal property the officer shall:
- a. Advise the complainant that he is only on scene to provide security while the individual retrieves clothing, medicines, eyeglasses and the like;
 - b. Only remain on scene as long as reasonably necessary for the individual to remove personal items necessary for immediate needs; and
 - c. Stay outside of the entrance to the residence unless:
 - 1) Invited inside by both parties; or
 - 2) If needed to preserve the peace and protect either of the involved parties.
4. The officer may, at his discretion, notify the involved parties that he is leaving the scene if adequate efforts are not being made to retrieve the necessary items.

Steven R. Drew
Chief of Police