

# General Order

## Houston Police Department



ISSUE DATE:

March 7, 2018

NO.

600-06

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 600-06, dated January 31, 2011

SUBJECT: FAMILY VIOLENCE

### POLICY

Pursuant to Article 5.04 (a) of the Texas Code of Criminal Procedure, "The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law of this state,...and make lawful arrests of violators."

Additionally, Article 14.03(a)(4) of the Texas Code of Criminal Procedure provides, "Any peace officer may arrest, without warrant...persons who the peace officer has probable cause to believe have committed an offense involving family violence."

Accordingly, officers shall enforce criminal laws to the maximum extent in the protection of potential or actual victims of family violence.

This General Order applies to all employees.

### GENERAL PROVISIONS

#### Family Violence

Section 71.004 of the Texas Family Code defines *Family Violence* as:

- a. An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;
- b. Child abuse as defined by law when that abuse is committed by a member of the family or household toward a child of the family or household; or
- c. Dating violence as defined in the Texas Family Code section 71.0021.

#### Offenses Related to Family Violence

When a warrantless arrest is not made for family violence, officers shall evaluate whether any other criminal offense related to family violence has been committed. The following is a non-exhaustive list of offenses that may be related to family violence: terroristic threat, harassment, unlawful restraint, injury to elderly, violation of protective order or certain court orders, burglary with intent to commit assault, criminal trespass, interfering with an emergency request for assistance.

## **DEFINITIONS**

**Assault.** A person commits an offense if the person: (1) intentionally, knowingly, or recklessly causes *bodily injury* to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. (Texas Penal Code section 22.01(a)).

**Bodily Injury.** Physical pain, illness, or any impairment of physical condition. (Texas Penal Code section 1.07(8)).

**Dating Relationship.** A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of: (1) the length of the relationship; (2) the nature of the relationship; and (3) the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship. (Texas Family Code section 71.0021 (b and c)).

**Family or Family Member.** Individuals who are related by blood or marriage, former spouses, or biological parents of the same child without regard to marriage. Family also includes foster children and foster parents regardless of residency. Family members may also include spouses, parents, grandparents, children, siblings, aunts, uncles, nephews, nieces, adopted children, cousins, and current in-laws.

**Family Violence Unit.** The unit in the Special Victims Division responsible for investigating family violence situations.

**Household Members.** Individuals who live together in the same dwelling whether or not they are related to each other. This definition also includes any former household members, regardless of the time of separation.

If it is unclear whether an individual is considered a family or household member, the investigating officer shall contact the Family Violence Unit or the appropriate District Attorney's Office for clarification.

## **1 OFFICER'S RESPONSIBILITIES**

When family violence occurs or is alleged, officers shall remain at the scene and conduct an investigation to verify the allegations and to prevent any further commission of family violence. Victims and suspects should be interviewed separately to determine what offense occurred.

When an officer makes contact with a victim away from the victim's residence, the officer may return to the residence to investigate a complaint of family violence and verify the safety of any other persons involved. The officer shall not participate in the division of property, but may escort the victim into the home to secure items of immediate necessity (e.g., clothes, medication, identification, baby items, food). Any person asking questions regarding the division of property should be advised to seek private legal counsel.

Upon arrival at the scene, responding officers shall, as officer safety permits, do all of the following:

- a. Identify and secure potential weapons in the surroundings.
- b. Attempt to determine whether any parties at the scene possess a firearm in violation of state or federal law. If the officer determines any person is in violation of such firearms prohibitions, the officer shall seize the firearm(s) and tag the firearm(s) in the HPD Property Division on hold for the Special Victims Division. The officer shall also contact the District Attorney's Office for approval of charges against the person in violation of the firearms prohibition.
- c. Encourage the voluntary surrender of any firearm at the scene (even if the person is not prohibited by law from possessing it) because of the danger a firearm poses to the complainant. The officer may take custody of firearms voluntarily surrendered and tag the firearm(s) in the Property Division.
- d. Separate the parties.
- e. Restrain or remove the suspect, if necessary.
- f. Assess and ask the parties about injuries, including those that may be concealed by clothing or otherwise not readily apparent including strangulation or internal injuries. An officer of the same sex as the victim may be needed as further visual investigation continues.

Officers shall ask the victim if he or she felt pain when a suspect made physical contact with the victim especially when there are no visible injuries. The definition of bodily injury includes physical pain, which is a low threshold. When the victim does not complain of pain, officers should consider the manner in which the suspect made contact with the victim or observable physical marks on the victim in determining if there is bodily injury.

- g. Request medical services as necessary.
- h. Identify all persons or witnesses on the premises.
- i. Separate occupants and witnesses from the victim and the accused, keeping them out of sight and hearing range of one another, as safety permits.
- j. Obtain a comprehensive account of the events from all parties including witnesses.
- k. Officers should not rely solely on the images captured on their body worn cameras but should, whenever possible, take digital photographs of the victim's injuries and any disarray or destruction at the scene. If the suspect is present, photographs of the suspect should be taken, especially if the suspect has suffered any injuries. Digital photographs that are taken shall be uploaded into the department's digital photograph storage database (i.e., Dataworks).
- l. Notify the Special Victims Division via established department procedures whenever an officer is on a call involving family violence and the suspect is on the scene but an arrest is

not made because a Harris County Assistant District Attorney (ADA) declined charges. The notification shall include the incident number, ADA's name, and reason charges were declined.

- m. Complete an incident report as set forth in section 3, *Family Violence Incident Reports*.
- n. Complete requirements provided in section 4, *Other Requirements*.

## **2 SUSPECT ON SCENE**

When a suspect is present on a scene involving family violence, officers with probable cause to believe an assault that meets the definition of family violence has occurred should arrest the suspect without a warrant.

There is no requirement that the officer witness the assault. Officers are to file the highest family violence charge possible when filing criminal charges.

The willingness of the victim to prosecute is *not* a factor as to whether an arrest should be made if there is probable cause to make an arrest for family violence as defined in section 71.004 of the Texas Family Code.

Pleas from any family or household member stating the violence will not occur again or an arrest may cause financial hardship should not impact an officer's decision to arrest the suspect. The victim shall be listed as the complainant and the officer may act as the affiant.

In situations involving family violence, officers are discouraged from arresting *both* parties involved in the altercation for assaulting each other. Officers shall make reasonable efforts to identify the primary aggressor.

Arrests of *both* parties should be avoided unless warranted and authorized by an on-duty supervisor.

Before filing any charges with the Harris County District Attorney's Office, an assistant district attorney shall be contacted to ensure that the charges will be accepted.

### **Request On-Duty Supervisor To The Scene**

When an officer is on a call involving family violence and the suspect is on the scene, the officer shall request the presence of an on-duty supervisor when the below applies:

- a. A warrantless arrest is *NOT* made for:
  - 1. family violence *or*
  - 2. an offense related to family violence

**AND**

b. There is:

1. bodily injury *or*
2. a threat of imminent bodily injury *or*
3. physical contact regarded as offensive or provocative.

#### **On-Duty Supervisor Responsibilities**

The on-duty supervisor who is notified shall respond and proceed immediately to the scene. Once at the scene, the supervisor shall review all facts and make a decision on the best course of action consistent with the below procedures.

When the supervisor determines there is probable cause for a warrantless arrest for family violence or an offense related to family violence,

#### **In Harris County:**

If the ADA was not previously contacted by the officer, the supervisor shall call and speak with the ADA at Intake to discuss the facts of the case.

If the officer previously spoke with an ADA at Intake who declined charges, the supervisor shall call and speak with the Intake Chief on Duty to discuss the facts of the case.

If the ADA or Intake Chief, as applicable, declines charges, an arrest will not be made, unless the facts support an arrest for Class C Assault (FV) (i.e., when there is a threat of imminent bodily injury or physical contact regarded as offensive or provocative).

#### **In Montgomery County and Fort Bend County:**

Since an ADA is not contacted in these counties, when a supervisor is required to make the scene because the primary officer does not believe there is probable cause for an arrest, an arrest will be based on the supervisor's determination as to whether or not there is probable cause to make a warrantless arrest for a family violence offense or an offense related to family violence.

In felony incidents involving family violence or when a scene is complex, the supervisor may contact the Special Victims Division for assistance.

### **3 FAMILY VIOLENCE INCIDENT REPORTS**

As mandated by the Texas Code of Criminal Procedure, a complete and thorough incident report shall be completed by the responding officer for every family violence situation or allegation of family violence. Complainants shall not be referred to a police station or to the Family Violence Unit to make an original report. The requirement to complete an incident report also applies to situations involving violence between persons in a dating relationship, regardless of gender or sexual orientation. District supervisors shall ensure their officers generate incident reports when family violence offenses occur.

When a victim leaves a suspect, the suspect may begin to *stalk* the victim. This offense includes behavior such as shadowing or following the victim. It also includes making threats against the victim, the victim's property or family, or a member of the victim's household. Officers shall make a written incident report documenting such behavior.

Officers should encourage victims to continue documenting any stalking behavior.

When writing the incident report, officers shall include all of the following:

- a. The relationship of the suspect to the victim.
- b. Descriptions of the demeanor of the victim and suspect (when the suspect is present).
- c. Any spontaneous or excited utterances (*res gestæ*) statements made by either party or any witnesses.
- d. Documentation of the interview with all children in the household who were witnesses to the assault.
- e. Description of any destruction or disarray (or lack of) at the scene.
- f. Documentation of any and all injuries as well as the location and description of the injury.
- g. Any prior history of family violence, when known.
- h. Disposition of the incident including, as applicable, facts leading to the decision not to make an arrest.
- i. The on-duty supervisor's name and employee number who authorized both parties to be arrested, when applicable.
- j. An alternate telephone number of a close relative that will remain in contact with the victim.
- k. The presence of any firearm in the household.
- l. The on-duty supervisor's name and employee number who responded to the scene at the request of the officer pursuant to this policy, when applicable.

If an arrest is not made due to charges being declined by the Harris County District Attorney's Office, the following shall also be included in the incident report:

- m. The Harris County ADA's name or Intake Chief's name, as applicable.
- n. Time and date the ADA or Intake Chief was contacted about filing charges.
- o. Reason given for charges being declined.

Officers shall select "yes" in the family violence field choice box on the laptop software program for family violence and other incidents related to family violence such as stalking or terroristic threats that involve family or household members or persons in a dating relationship.

See section 4, *Other Requirements*, for additional incident report requirements.

#### 4 OTHER REQUIREMENTS

Officers shall give adult victims the department issued *Victim's Referral Card (Blue Card)*, which contains written notice of their legal rights, possible remedies, and the availability of social services and community resources. Officers shall make every reasonable effort to help victims understand all their options, including the availability of a Magistrate's Order of Emergency Protection (MOEP). **Officers shall document in their incident reports that a copy of the Blue Card was provided to the victim.**

After completing the investigation, the victim may be referred to the Family Violence Unit to speak with a counselor or an investigator (if the officer feels the victim needs additional guidance or assistance).

If the suspect is gone upon the officer's arrival, the officer shall make a written incident report, provide a Blue Card, and refer the victim to the Family Violence Unit's office assigned to that area.

When an arrest is made for any family violence or stalking offense (including a Class C misdemeanor), an officer shall obtain the name and telephone number of the victim or a responsible person designated by the victim. **Information regarding the telephone number and the person to be notified shall be included in the incident report. The information shall also be placed on the jail booking blotter so victim notification can occur prior to the suspect's release from jail.** Jail Division personnel are not responsible for obtaining this information.

#### Incidents at Foster Homes

An officer investigating a family violence allegation or responding to a disturbance call that may involve violence is required to determine if the address where the disturbance took place is a licensed foster home or a verified agency foster home listed in the Texas Crime Information Center (TCIC).

To determine if the residence is a foster home, officers may contact the Texas Department of Family and Protective Services at 1-800-877-5300, which is a 24-hour telephone number for law enforcement. Upon determining that the location is a foster care facility, officers should ask to see the required license that should be displayed in the home.

Officers must then call and report the information to the Family Violence Unit main office. After hours or on weekends, officers must contact the Homicide Division and provide the information to an investigator. The Family Violence Unit or Homicide investigator shall then contact the Texas Department of Family and Protective Services, within 24 hours, to file a report. All officers must document incidents involving foster care facilities by completing an incident report.

**5 RELEASE OF SUSPECT**

The law provides persons charged in family violence cases may be held an additional four hours after bond has been posted if there is probable cause to believe the violence will continue when the suspect is released. When the facts indicate the four-hour hold is necessary, the investigating officer must document the reasons for the hold in the incident report and secure approval from the Homicide Division.

An additional 48-hour hold order (after bond is posted) may be obtained from a magistrate in writing. Should the facts gathered by the investigating officer indicate a need for this measure, the same procedure as the four-hour hold shall be followed.

State law requires victims be notified prior to the release of a suspect charged with a family violence crime or with stalking. Jail Division or police station desk personnel, in accordance with the Jail Division's standard operating procedures, shall make the notification.

**6 FAMILY VIOLENCE UNIT RESPONSIBILITIES**

The Family Violence Unit is responsible for:

- a. Follow-up investigation and filing criminal charges on incidents of family violence when the suspect is gone upon the officer's arrival.
- b. Follow-up on incidents requiring additional investigation of facts not available to the responding officer at the time of the incident.

The Family Violence Unit's main office is also responsible for:

- c. Receiving temporary and permanent protective orders from the courts.
- d. Entering permanent protective orders and Magistrate's Orders of Emergency Protection (MOEPs) into TCIC.

Hard copies of the protective order and MOEP shall be filed in Homicide Division and be available 24 hours a day. Any officer seeking information about protective orders or MOEPs may contact the Family Violence Unit during business hours or Homicide Division after hours.

- e. Directing victims to the Victims Services Unit counselor when seeking financial reparation from the Texas Crime Victims' Compensation Fund for direct, unreimbursed, or out-of-pocket expenses incurred as a family violence victim.

**7 PROTECTIVE ORDERS**

When a valid protective order violation occurs in an officer's presence, the officer shall arrest the person. When the violation does not occur in the officer's presence, the officer may make a warrantless arrest if sufficient probable cause exists.



Protective orders are civil judicial orders with criminal penalties that help prevent family violence. Protective orders filed in any county in Texas are valid in the city of Houston. A protective order from another jurisdiction is presumed to be valid if it appears valid on the order's face. Orders of protection from other states' courts, military courts, tribes, or territories shall be enforced as if a Texas state court issued the protective order.

Temporary and *ex parte* protective orders are enforceable. However, before a suspect can be arrested for violating a temporary or *ex parte* protective order, the investigating officer shall verify that the suspect has been served with the temporary or *ex parte* protective order. The clerk of the court that issued the temporary or *ex parte* order may be able to provide this information. If an officer has any questions, the District Attorney's Office should be contacted for clarification.

Officers shall accept a certified copy of a protective order as proof of its existence and it shall be presumed the order is valid for two years, unless:

- a. The order contains a termination date that has expired.
- b. The clerk of the court notifies the officer the order has been vacated or modified.

If the complainant does not have a certified copy of the order, the investigating officer shall verify the order's existence by contacting the Family Violence Unit's main office or Homicide Division. The officer may also check TCIC for evidence of the existence of a protective order since all protective orders are entered into TCIC. Victims desiring permanent protective orders should be referred to the district or county attorney's office in the county where the victim resides.

## **8 MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (MOEP)**

When a person is arrested for an offense involving family violence or stalking, the officer may offer the victim (or the victim's guardian) the option of obtaining a MOEP. MOEPs provide a temporary means of protection until a permanent protective order can be issued.

The purpose of a MOEP is to give a victim immediate, short-term protection from the suspect. These orders are similar to protective orders in wording and criminal penalty except that they are issued by a judge following the suspect's arrest. All MOEPs, as with protective orders, have an expiration date indicated on the form. Victims with a MOEP should be encouraged to seek a protective order.

Officers may request a MOEP through the District Attorney's Office when filing criminal charges on a Class B or higher family violence offense (this includes child abuse when the alleged perpetrator is a family or household member) or stalking violation. There is no prerequisite that a relationship ever existed between the victim and the suspect for a MOEP to be issued in stalking offenses.

Magistrate's Order of Emergency Protection request forms should be available on file at the Family Violence Unit, police station, or the district or county attorney's office in the county where the victim resides.

When a victim requests a MOEP, the officer shall complete the MOEP form and have the victim sign it. The completed form shall be faxed or hand delivered to the district or county attorney's office in the county where the victim resides at the same time the criminal charges are submitted.

Under unusual circumstances (e.g., the victim is seriously hurt or unconscious) and the victim is unable to request a MOEP, the officer may request the MOEP on the victim's behalf. The officer should clearly state the reasons why the victim is unable to ask for the MOEP on the Magistrate's Order of Emergency Protection request form and in the incident report.

A MOEP may also be obtained when the offense is a Class C assault. Such MOEPs must be requested from a municipal court judge.

## **9 PROTECTIVE ORDER ENFORCEMENT**

A person is in violation of a protective order or MOEP if that person knowingly or intentionally violates any one of the specifically listed conditions of the order. Officers should read the order carefully as it may contain prohibitions that are civil in nature (e.g., orders to pay child support or alimony) and not criminally enforceable. Criminal acts that are specifically prohibited may include, but are not limited to:

- a. Possessing a firearm in violation of section 46.04(c) of the Texas Penal Code.
- b. Acts of family violence or an assault on the person protected under the order.
- c. Any act in furtherance of stalking (MOEP only).
- d. Communications, either directly with or through a third party, to a member of the family or household in a threatening or harassing manner. The protective order may also include prohibition of communications of any nature when not conducted through the protected person's attorney.
- e. Going to or near any of the following places (the address and distance the suspect must stay away should be specifically described in the order unless it is listed as confidential):
  1. Residences, places of employment, or businesses of any member of the family or household.
  2. Childcare facilities, residences, or schools where protected children normally reside or attend.

Persons violating a protective order or MOEP may be arrested for the violation and any other criminal offenses they have committed. Normally, a violation of a protective order or MOEP is a Class A misdemeanor. However, if a person violates a protective order or MOEP by assault or stalking, it is a third degree felony.

No person (including the protected person) may give any other person permission to violate a protective order or MOEP. Only the issuing court may change a protective order or MOEP. Reconciliatory actions or agreements made by persons affected by a protective order or MOEP

do not affect the validity of the protective order or MOEP and do not diminish the officer's duty to enforce the protective order or MOEP.

An officer investigating a protective order or MOEP violation shall not arrest persons protected by the order for a violation of that order.

#### 10 RELATED GENERAL ORDER

600-33, **Social Services Assistance and Referrals**



**Art Acevedo**  
**Chief of Police**