

MEDINA POLICE DEPARTMENT GENERAL ORDER

ORDER NO: 2017-013

SUBJECT: Domestic Disputes/Offenses

EFFECTIVE DATE: March 1, 2017

RESCINDS ORDER NO: 98-10-02

DISTRIBUTION: All Department Personnel

PURPOSE: The purpose of this policy is to establish a standardized procedure for the handling of domestic violence incidents.

I. POLICY

- A. It is the policy of the Medina Police Department to consider domestic offenses as criminal conduct to be treated pursuant to current directives on criminal investigations.
- B. The resolution strategies of mediation, referral, or the physical separation of the involved parties may be used by officers handling domestic disputes. These resolution strategies will not be used as a substitute for appropriate criminal proceedings in domestic offenses when probable cause exists for prosecution.
- C. Medina Police Department employees are responsible for the safety of victims of domestic violence and their children by providing information on obtaining Orders of Protection, medical attention, assisting in obtaining essential personal effects, locating and transporting victims and their children to a safe place, including, but not limited to, a domestic violence program, a family member's or friend's residence, or a similar place of safety.
- D. When an Order of Protection exists, and its contents are verifiable at the scene (by examining the Order), or upon inquiry to the Order of Protection Register, members will arrest any person whom they reasonably believe has violated the Order.
- E. Employees will not make any promise or assurance to any person that attention or protection will be provided to any complainant, victim, or family member.

II. DEFINITIONS

- A. Domestic violence occurs when any member of a domestic relationship, as defined in II.B. below, commits or attempts to commit bodily injury or fear of bodily injury; sexual assault; interference or freedom of movement; a property crime directed at the victim; a violation of an Order of Protection; or criminal trespass against another member of a domestic relationship.

Additionally, members of domestic relationship may be charged with the following designated Family Offenses (New York State Family Court Act Article 8, 812-1) when directed at another member of that domestic relationship:

1. Harassment, First or Second Degree
2. Aggravated Harassment, Second Degree
3. Assault, Second or Third; or any Attempted Assault
4. Disorderly Conduct (the subdivisions of which may be applied to non-public areas)
5. Reckless Endangerment, First or Second Degree
6. Menacing, Second or Third Degree

- B. Domestic relationships include persons who:

1. are legally married to one another;
2. were formerly married to one another;
3. are related by blood;
4. are related by marriage;
5. have a child in common;
6. are living together, who have lived together, or who have a dating relationship (including same sex couples); and/or
7. are specified such by law(e.g., foster families and step-families).

- C. Concurrent jurisdiction exists when different courts have jurisdiction over same incident. A victim of a Family Court offense may elect to proceed in either a civil or criminal court or both. Criminal Court and Family Court have concurrent jurisdiction when:

1. a designated Family Offense, as listed in II.A. above, is alleged to have been committed; and
2. a relationship exists as defined in II.B. above (with the exception of II.B.6.); and
3. the offender is 16 years of age or older.

NOTE: In cases where either of the first two elements are not met, or II.B.6. above exists, the victim does not have the option of going to Family Court, but must go to Criminal Court for legal relief. If the first two elements are met, but the alleged offender is less than 16 years of age, the case MUST be heard in Family Court.

- D. Domestic incidents are arguments or disagreements between persons who share or have shared a relationship as described above, in which no violence or threat of violence is involved.
- E. Primary Physical Aggressor is the main participant in a domestic incident between two or more persons engaged in violent behavior.
- F. Resolution Strategies
(Items 1-4 will only be used when no arrest situation exists)
 - 1. Mediation – the process of helping people agree upon a specific course of action that will have a positive effect on their problem(s).
 - 2. Referral – the process of getting a commitment from disputants to go to a community resource for help in managing specific problems.
 - 3. Separation – facilitation the departure of one or more of the disputants.
 - 4. In some situations officer may be asked for advice only.
 - 5. Arrest – for the purpose of this Order, when there is probable cause to believe that a person committed a crime or if an offense is committed in an officer’s presence (see Section III).
- G. Respondent – for the purposes for an Order of Protection, this term refers to the party who is restricted by the Order.

III. PROCEDURES

- A. All reports and allegation of domestic violence will be investigated in person by a member of the Medina Police Department.
- B. Misdemeanors and Violations
 - 1. Victim Desires Prosecution
Members will accept turnover arrest whenever a violation has occurred.
 - 2. Arrest Procedures
 - a. Members will not inquire if the complainant seeks an arrest.
 - b. Members will make arrest whenever an offense has been committed in their presence. Members will make an arrest when there is probable cause to believe that a suspect has committed a misdemeanor out of their presence, based on, but not limited to:

- a signed statement from a witness, or
 - a statement from a suspect, or
 - physical evidence which indicated that the suspect committed the crime.
- c. Additionally, probable cause may include, but is not limited to, the following factors:
- history of incidents involving the household and/or combatants, including past violence;
 - knowledge of participant's criminal history;
 - victim's level of fear;
 - threat to children that may be present and their level of fear;
 - condition of the premises indication violence has taken place.
- d. The primary physical aggressor shall be determined by the officer after evaluating the following criteria:
- The relative severity of any injuries inflicted by and between parties,
 - whether any such person is threatening or has been threatened future harm against another party or another family or household member,
 - whether any such person has a prior history of domestic violence that the officer can reasonably ascertain, and
 - whether any such person acted defensively to protect himself or herself from injury.

C. Felonies and Misdemeanors

Members will investigate and arrest the suspect when there is probable cause to believe that a felony has been committed by the suspect, regardless or whether the victim desires prosecution of the suspect.

Members will file the accusatory instrument themselves if an offense occurred in their presence, or if there is probable cause to believe that the suspect committed a misdemeanor in or out of their presence.

When an officer has reasonable cause to believe that more than one family or household member (or any domestic relationship described) has committed such a misdemeanor, the officer is not required to arrest each person. In such circumstance the officer shall attempt to identify and arrest the primary physical aggressor using the criteria outlined in section III, B2d of this order. The officer shall evaluate each complaint separately to determine who is the primary physical aggressor and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding. An officer is not required to make an arrest of any person when the officer reasonably believes the person's conduct is justifiable under Article 35 of the New York State Penal Law.

D. Orders of Protection

1. Section 153-b of the Family Court Act requires members to assist with the serving of any Order of Protection when requested to do so by any court or the petitioner at any time of the day or night.
2. Family court will instruct petitioner of **ORDERS REQUIRING IMMEDIATE SERVICE** to take the Order to Medina Police Department where a uniformed car will be dispatched to provide an escort and service of the Order. These "immediate service" orders include:
 - a. residency of the respondent with the petitioner; AND
 - b. an assault or other physical abuse; AND
 - c. immediate removal of the respondent as requested by the court.

NOTE: Members WILL ALSO assist with ANY OTHER service of an Order of Protection when asked to do so at any other time.
3. Upon completion of service of the Order, officers are required to complete the Affirmation of Personal Service form which is attached to the Order and to forward this form to the appropriate court as indicated. If the Order cannot be served, the package will be returned to the petitioner for further attempts. Unsuccessful service will be recorded on the Affirmation of Personal Service form on the line(s) provided.
4. When members respond to a complaint of a violation of an Order of protection, they will:
 - a. read the Order to see what behavior is prohibited and to be sure that it has been signed and is still in effect;
 - b. check with the Order of Protection register to verify the above if the complainant does not have his/her copy of the Order;
 - c. arrest the violator and include in the arrest report the date of the Order, identity of the issuing court and judge, and the nature of conduct prohibited by the Order;
 - d. charge the violator with Criminal Contempt in the First or Second Degree or Aggravated Criminal Contempt, and complete the accusatory instrument;
 - e. return all violation of Orders of Protection, including Family Court Orders, to Criminal Court;

NOTE: Members will make an arrest on a violation of an Order of Protection, although the victim may not wish prosecution, in accordance with the criteria outlined in Section III of this order.

 - f. advise the complainant that the action may be pursued in both Family and Criminal Court, with the exception of those relationships as defined in Section II.B.6. which are only returnable to Criminal Court.

5. When the suspect has committed additional offenses during the incident, he/she will be charged accordingly. The victim may petition for another Order of Protection based on those additional charges.
6. Members will treat Supreme Court Show Cause Orders which have appropriate protection language as temporary Orders of Protection. Members must check the date by which the Show Cause Order must be answered and these are enforceable until that date. These may be long involved documents with much material not of police concern. As with all court orders, these must be signed by a judge before they are in force.

NOTE: Supreme Court Mutual Orders of Protection sometimes restrict both parties' conduct. As usual, if one party has committed a crime, an officer should make an arrest for the criminal act. However, if each party claims that the other one has committed some non-criminal violation of a Mutual Order, an officer should advise both to contact their civil attorney.

7. Members will tell the complainant to bring the Order of Protection to Court. Members will not take the complainant's copy of any Order of Protection.

- E. In all arrest situations involving a domestic offense, members will:
 1. write "DOMESTIC OFFENSE" in the remarks section of the Arrest report;
 2. write the letters "FO" in the upper right-hand corner of any family offense accusatory instrument completed;
 3. NOT issue an appearance ticket unless instructed to do so by the member's commanding officer. Such issuance will ONLY be made when illness or injury of the prisoner requires hospitalization and a prisoner guard and immediate arraignment is not possible;
 4. advise the victim that the suspect may be released after arraignment, although the suspect will not be able to post bail until then;
 5. make a reasonable attempt to locate the offender if the offender has left the scene prior to police arrival;
 6. handle juvenile suspects per current Juvenile Procedure General Order
- F. The Standard Domestic Violence Incident Report (DIR) **will be completed** when any family offense or crime occurs, **whether an arrest is made or not**, or when there is an allegation or history of violence and the participants are member of a domestic relationship.
- G. Upon arresting an individual who is licensed to carry, possess, repair, and dispose of firearms pursuant to Article 400 of the NYSPL, the arresting member will indicate on the accusatory instrument that the defendant is so licensed, and list the licensing authority and county of issuance, when the following conditions exist:

1. The arrest is for a willful failure to obey an Order of Protection issued under Article 8 of the Family Court Act that involves violent behavior constituting the crime of menacing, reckless endangerment, assault or attempted assault; or
2. The arrest is a willful failure to obey a lawful Order of Protection issued under Article 8 of the Family Court Act or CPL 530.12 where such willful failure involves:
 - a. the infliction of serious physical injury, or
 - b. the use or threatened use of a deadly weapon or dangerous instrument.

IV. SUPPORT SERVICES

- A. The Domestic Violence Target Response Team consist of counseling specialists that are available to respond to a scene as soon as possible when a member requests their assistance. They can provide crisis intervention, mediation and/or referral, short-term counseling, transportation, and assist the victim with the decision-making process that follows an arrest.

NOTE: A copy of every Domestic Incident Report completed by the Police Department will be forwarded to the Domestic Violence Target Response Team for evaluation.

- B. The Domestic Violence Program through the Orleans County Department of Social Services provides continued services to victims after Target's initial contact. If the victim has a counselor through the Domestic Violence Program, they are to be contacted from the scene and advised of the incident at hand. Members will make every available effort to work with the Domestic Violence counselor to provide services to the victim.

By Order Of:

Chad D. Kenward
Chief of Police