

# Law Enforcement Domestic Incident Model Policy

*December 2010*



**Municipal Police  
Training Council**

New York State Division of Criminal Justice Services  
80 South Swan Street, Albany, New York 12210

[www.criminaljustice.ny.gov](http://www.criminaljustice.ny.gov)



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Training Council**

Law Enforcement Domestic Incident  
Model Policy

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# MUNICIPAL POLICE TRAINING COUNCIL

## MODEL DOMESTIC INCIDENT POLICY FOR LAW ENFORCEMENT

### I. Purpose

The purpose of this policy will be to prescribe a course of action for responding to domestic incidents that shall be fully adopted and implemented by this department.

### II. Policy

It shall be the policy of this Department to respond to every domestic incident as a serious call for service. Department members shall consistently seek to enhance the safety of victims and their children through a combination of law enforcement and referral to domestic violence service providers. The Department will further promote officer safety by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence calls for service.

It is the policy of this department that members will:

- A. Respond to every domestic incident as a serious call for service.
- B. Enhance the safety of victims and their children through a combination of law enforcement and referral to domestic violence service providers.
- C. Promote officer safety by ensuring that officers are fully prepared to respond to, and effectively deal with, domestic violence calls.
- D. Follow this policy regardless of the perceived nature of the relationship between the alleged victim and perpetrator.
- E. Not utilize dispute mediation and/or reconciliation as methods of resolving domestic disputes whenever criminal prosecution is possible.

### III. References

- A. Criminal Procedure Law
- B. Family Court Act
- C. Penal Law

### IV. Definitions

- A. Domestic Incident: Means any dispute, act of violence, or report of an offense between individuals within a family or household where police intervention is requested. A domestic incident is not necessarily a violation of law.
- B. Members of the same family or household: Defined as such by the Family Court

Act and the Criminal Procedure Law in that they:

1. Are related by consanguinity or affinity.
    - a. Consanguinity – related by blood.
    - b. Affinity – familial relation resulting from a marriage.
  2. Are legally married to one another.
  3. Were formerly married to one another regardless of whether they still reside in the same household.
  4. Have a child in common regardless of whether such persons have been married or have lived together at any time.
  5. Are not related by consanguinity or affinity but who are or have been in an “intimate relationship” regardless of whether such persons have lived together at any time.
- C. Intimate relationship: People who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. A court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship."

Note: As of July 2008 with the passage of (CPL) §530.11 (1) amendment police shall apply mandatory arrest provisions of CPL sections 140.10 (4) and 140.10 (5) to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

- D. Domestic Violence: For the purposes of this policy, the term “domestic violence” shall include all designated family offenses as defined in **CPL § 530.11 (1) and FCA § 812 (1) (See Appendix “A”)**.

Additionally, for purposes of this policy, the term “domestic violence” shall also include the following acts or offenses between members of the same family or household, as defined in section B of this policy:

1. Acts that violate the terms of a valid order of protection issued by the Family, Criminal, or Supreme Courts of New York State, or any valid order of protection or restraining order issued by a court in any other state, commonwealth, territory, or possession of the United States, or by any tribal governments located within the United States; or

2. Coercion 1<sup>st</sup> degree (P.L. § 135.65), Coercion 2<sup>nd</sup> degree (P.L. 135.60), Tampering with a witness (P.L. § 215.10, 11, 12, 13), Intimidating a witness (P.L. §215.15, 16, or 17), Endangering the welfare of a child (P.L. § 260.10), Endangering the welfare of an incompetent or physically disabled person (P.L. § 260.25), and/or Endangering the welfare of a vulnerable elderly person (P.L. § 260.32, 34); or
3. Any conduct specifically intended to prevent or delay a person from communicating a request for emergency assistance by intentionally disabling or removing communication equipment, such as a telephone or teletypewriter service (TTY) (P.L. §145(4)).

E. **Concurrent Jurisdiction:** Where two or more courts from different systems simultaneously have jurisdiction over a specific case. A victim of a Family Offense may elect to proceed in either a civil or criminal court or in both. Criminal courts and the Family Court have concurrent jurisdiction when:

1. A designated Family Offense is alleged to have been committed; **and**
2. A family/household relationship exists; **and**
3. The alleged offender is 16 years of age or older.

F. **Order of Protection:** A civil or criminal order that provides protections to a person from another person that they are married to, separated from, divorced from, have a child in common with, are/were in an intimate/dating relationship with (including same sex and teen couples) or are related to by blood or marriage.

An Order of Protection may only be issued by a court, and can likewise only be modified or terminated by that same court or a court of competent jurisdiction, and shall be considered valid under the following conditions:

1. Any order of protection, including an order on consent, from the Family, Criminal, or Supreme Courts of New York State, and/or
2. Any foreign order of protection, defined as a court order that is issued by a court other than a court located within New York State, including:
  - a. Any state, county, or local court of other states;
  - b. Any Indian tribal court located within the United States;
  - c. Any court within the District of Columbia; and
  - d. Any court of a commonwealth, territory, or possession or the United States (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands).

G. **Officer:** State, Local, Federal and Tribal law enforcement officers.

H. **Registry:** Statewide computerized database of Orders of Protection.

- I. Victim's Rights Notice: As used in this policy shall mean the notice or form described in Criminal Procedure Law section 530.11 (6).
- J. Domestic Incident Report: The state issued form described in Executive Law § 837 (15) and mandated by CPL 140.10 (5) for officers to complete for all calls for service where police intervention is requested for a domestic incident.
- K. Duty Weapon: For the purpose of this policy, a duty weapon is defined as those weapons owned by the agency or by the officer and approved by the agency for use by the officer on duty or off duty in the performance of the officer's duties.
- L. Note: Anytime a "Note" appears, it will be provided as ancillary to the policy. Examples might be where a law has changed a "Note" may be added for some period of time without a vote of the Council being required for the amendment.

## **V. Communications Procedures**

- A. Call Priority: All domestic incident calls shall be handled as high priority.
- B. Staff assigned to communications functions will, where practicable, dispatch at least two responding officers to domestic incidents.
- C. Dispatchers shall not cancel the law enforcement response to a domestic incident call regardless of whether such a request is made by someone at the scene during the initial call or a follow up call. However, the dispatcher shall advise the responding officer(s) of the request.
- D. A domestic incident call shall not be reclassified or recoded without a supervisor's review.

## **VI. Responding Officer Procedures**

- A. A domestic incident call signifies that violence or abuse has potentially occurred, and that people are in need of law enforcement assistance.
- B. Arrival on scene is part of the investigation, therefore, officers should be alert to the sights and sounds coming from the location, and that anything or anyone present may serve as evidence. As always, officers should wait for backup to arrive, when appropriate, and should always put officer safety first in order to be most helpful to the victim(s) and most able to hold any offenders accountable by taking control of the scene.
- C. The responding on-scene officer shall:
  - 1. Take control of the situation by first separating the involved parties.
  - 2. Take control of all weapons used or threatened to be used in the incident.
  - 3. Locate and visually check all occupants of the location to verify their safety and well-being, including children.

4. Assess the need for medical attention and request that any required assistance be dispatched.
5. Interview all available witnesses, separately including victim, suspect and children.
6. If the victim, children or other witnesses do not speak English or require accommodations such as a sign language interpreter, contact the local domestic violence service provider or seek other methods (i.e. Language Line) for assistance in obtaining a translator/interpreters as soon as possible.
  - a. Never use the children to translate or interpret. It can compromise the children's safety and expose them to details of the abuse that are inappropriate and is not an accurate way to obtain information. Terminology and language may be too advanced for young children.
  - b. Officers should also discourage the use of witnesses as translators because of their potential for bias.
7. After all interviews have been conducted, determine whether an offense has been committed, whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release of the suspect can occur at any time so that the victim may take desired safety precautions. If you have not already, provide the victim with the phone number of the local domestic violence service provider and offer to facilitate that communication by whatever means your department has available (a phone call, an advocate arriving on scene, etc).
8. Provide the victim with the NYS Domestic and Sexual Violence Hotline: English: 1-800-942-6906 (TTY: 1-800-818-0656). Spanish: 1-800-942-6908 (TTY: 1-800-780-7660).
9. Highlight and provide the victim with a copy of the Victim Rights Notice and if necessary or requested, read the Victim Rights Notice to the victim.
10. Collect and record all potential evidence, including excited utterances and spontaneous admissions by all parties and witnesses. Make every effort to locate all potential witnesses, take photographs of injuries and/or property damage or, in accordance with department policies, request the response of appropriate crime scene investigators.
11. Complete the NYS Domestic Incident Report Form and any other reports necessary to fully document the officer's response, whether or not an offense was committed or an arrest is made. Provide the victim with the victim's copy of the NYS Domestic Incident Report/Victim Rights Notice Form immediately upon its completion at the scene.
12. If the officer has reasonable cause to believe a crime has been committed, the officer will attempt to locate and arrest a suspect who has



left the scene without delay by:

- a. Conducting a search of the immediate area; and
- b. Obtaining information from the victim and witnesses that will aid in apprehending the suspect; and
- c. Continuing the investigation as necessary, or referring the matter to the proper unit for follow-up investigation and arrest or warrant application. If the search for the offender is unsuccessful and the victim has elected to remain at the scene, advise the victim to call the department if the offender returns. Prior to leaving the scene, officers should attempt to obtain a signed information, complaint, or deposition from the victim.

13. If the officer is advised or becomes aware the offender is under probation or parole supervision, a copy of the DIR shall be sent to the local supervising probation office or the State Division of Parole pursuant to their protocol. When possible, the officer should confirm receipt.

D. Responding officers at the scene of a domestic incident shall provide the following assistance to victims and, where appropriate, the children or other family or household members:

1. Advise all parties present about the serious nature of domestic violence, its potential for escalation, and of legal and human services assistance available; and
2. Assess the immediate safety and welfare of the children; and
3. Remain at the scene until the immediate threat of violence appears to have passed and all appropriate safety precautions have been taken; and
4. Provide the victim with referral information regarding domestic violence shelters, services and a local hotline number; and
5. When appropriate, officers must arrange for the transport of the victim to a shelter and assist with accommodation for victims of domestic violence and their children at available shelters or other places of safety.

## **VII. Arrest Policy**

A. Primary Physical Aggressor misdemeanor offenses must be determined when an officer has reasonable cause to believe that more than one family or household member has committed a family offense. In such circumstances, the officer is not required to arrest each person, instead, the officer shall attempt to identify and arrest the primary physical aggressor after considering:

1. The comparative extent of any injuries inflicted by and between the parties.

2. Whether any such person is threatening or has threatened future harm against another party or another family or household member.
3. Whether such person has a prior history of domestic violence that the officer can reasonably ascertain.
4. Whether any such person acted defensively to protect himself or herself or a third party from injury.

**Note** - When investigating this factor at the scene, the following sources of information may be available: agency records, NYSPIN Services, Registry of Orders of Protection, criminal history, prior DIR's, prior acts of violence against others, reports of other officer(s) responding to address for past incidents and statements of neighbors or others in the residence.

- B. All warrantless arrests shall be made in conformance with § 140.10 of the Criminal Procedure Law and applicable department policy and procedure.
- C. The victim shall *not* be required to make a civilian arrest when the officer is able to make a lawful warrantless arrest.
- D. Officers will file the accusatory instrument themselves if an offense occurred in their presence, or if there is reasonable cause to believe that the suspect committed a crime in or out of their presence.
- E. Officers will file an accusatory instrument and apply for a warrant themselves for all mandatory arrest crimes when the suspect is not at the scene or has not been arrested.
- F. Even if the victim actively intercedes and requests that no arrest be made, a lawful warrantless arrest based on reasonable cause shall be made in accordance with CPL §140.10. and documentation of the victim's requests should be made, with attention to the possibility that such an arrest could lead to subsequent increased violence.
- G. Victims have the right to go to family court and family court is a civil court not a criminal court.
- H. Cross Complaints /Primary Physical Aggressor – every effort shall be made to determine the primary aggressor. The arrest of both parties will require supervisory approval.

## **VIII. Family Offense Arrest Processing**

- A. Officers will provide victims of a Family Offense the information that:
  1. There is concurrent jurisdiction with respect to family offenses in both Family Court and the criminal courts. Victims of family offenses may proceed in either Family and/or criminal court or both;

2. A Family Court proceeding is a civil proceeding.
  3. A proceeding in the criminal courts is for the purpose of prosecuting the alleged offender and can result in a criminal conviction of the offender;
  4. A proceeding subject to the provisions of section 812 of the Family Court Act is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest or request for arrest (when Family Court is not in session a criminal court may issue a Family Court order of protection); and
  5. An arrest may precede the initiation of a Family Court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding. The arrest of an alleged offender shall be made under circumstances described in §140.10 (4) of the Criminal Procedure Law.
- B. Inform victims that they are not required to be present at arraignment. If an order of protection is desired, the court should be advised of such request.
  - C. Booking procedures, fingerprinting and photographing shall conform to current departmental procedures and section 160.10 of the Criminal Procedure Law.

#### **IX. Non-Family Offenses Arrest Processing**

- A. Offenses that are not designated Family Offenses, but which occur in domestic incident situations cannot be handled in Family Court. Criminal courts have exclusive jurisdiction over these acts (e.g., murder or attempted murder, criminal possession of a weapon, rape, unlawful imprisonment).
- B. Booking procedures, fingerprinting and photographing shall conform to current department procedures and section 160.10 of the Criminal Procedure Law.
- C. Although the violation of an order of protection is not a designated Family Offense, the Family Court has concurrent jurisdiction to enforce these orders when it issues them.

#### **X. Orders of Protection**

- A. When an Order of Protection has been served by the department, the department shall provide the court with proof of service, and update the statewide Order of Protection computer registry, as pursuant to law (**See Appendix "C"**).
- B. Enforcement: The following procedures shall be followed in the enforcement of an Order of Protection:
  1. The on-scene officer shall make an evaluation of the facts and circumstances surrounding the incident.

2. A lawful warrantless arrest may be made based on reasonable cause even though the protected person may be unable to present a valid copy of the order. In such case, the officer shall attempt to verify the existence and terms of the order through department records or NYSPIN Services.
  3. Where an officer receives a complaint from a protected person or has an independent basis to believe that an order of protection has been violated, and has reasonable cause to believe that the terms of such order have been violated, an arrest shall be made for the appropriate degree of criminal contempt regardless of whether the prohibited conduct occurred in the officer's presence. A copy of the Order of Protection shall be attached to the court accusatory instrument. Stalking charges should always be considered when Orders of Protection are violated.
  4. If an arrest is made for violating an Order of Protection and the protected person does not verify (sign) the accusatory instrument, the officer should attempt to obtain a deposition and/or prepare his or her own accusatory instrument which shall include a statement that the terms of the order were violated and a description of the behavior constituting the alleged offense.
  5. In instances where the conduct prohibited by the Order of Protection is also conduct constituting another offense, the offender shall be charged with violation of the Order of Protection (e.g. Criminal Contempt) and the additional offense (e.g. Criminal Mischief, Aggravated Harassment, etc.).
- C. Out-of-State Orders: Orders of Protection issued in another State shall be given full-faith and credit in New York State. When an officer is presented with an Order of Protection issued in a state other than New York State or by a Tribal Court, the officer shall determine its validity, similar to assessment of a New York State Order. Unless clearly invalid, an out-of-state order will be presumed to be valid, and shall be enforced according to the conditions set forth in that order, by the criminal court with jurisdiction over the acts constituting the immediate offense.

## **XI. Firearms**

- A. Upon arresting an individual who is licensed to carry, possess, repair, or dispose of firearms, pursuant to Article 400 of the Penal Law, the arresting officer should, whenever practicable, notify the arraignment court that the alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.
- B. The arresting officer shall confiscate all firearms, including long guns, when the domestic incident results in an arrest, and any weapon was either used or threatened to be used during the commission of such crime. If licensed, the arresting officer shall indicate, on the accusatory instrument, that the defendant is so licensed.
- C. The arresting officer shall provide the offender's name to any/all local agency/agencies issuing firearm permits, with notification of the arrest and

firearms confiscation.

- D. This notification will also be made on the accusatory instrument when the following conditions are met:
1. The arrest is for a willful failure to obey an Order of Protection issued under Article 8 of the FCA that involves violent behavior constituting the crime of Menacing, Reckless Endangerment, Assault or Attempted Assault.
  2. The arrest is a willful failure to obey a lawful Order of Protection issued under Article 8 of the FCA or Section 530.12 of the Criminal Procedure Law where such willful failure involves the infliction of serious physical injury or the use or threatened use of a deadly weapon or dangerous instrument.

## **XII. Appearance Tickets and Bail**

- A. Following an on-scene arrest for a crime arising from a domestic incident, an appearance ticket shall not be issued. Instead, and where possible, the officer shall remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with department policy and §160.10 of the Criminal Procedure Law.
- B. Any deviation from this procedure must be approved by the shift supervisor, and the reasons for such deviation must be documented in the case file.
- C. Officers shall not assure victims that an arrested individual will remain in custody for any period of time because of the provisions of this policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

## **XIII. Additional Functions**

- A. The department will maintain a current listing of agencies that provide aid to victims of domestic violence. Officers shall refer victims to these agencies when appropriate.
- B. Where victims of domestic violence are incapacitated by physical, mental or emotional impairments, and/or language barriers, officers will consult with the county adult protective services and assist, where appropriate, in supportive interventions.
- C. Officers and communications personnel should be trained on an ongoing basis with regard to this policy, domestic violence, the applicable statutes concerning domestic violence, and the roles, responsibilities, and limitations of law enforcement in responding to and intervening in domestic violence cases.
- D. The department shall designate specific personnel to periodically review the adequacy of this policy, assess and enforce compliance with its provisions by

department personnel, and make recommendations to the head of the department regarding any revisions deemed necessary to improve or enhance the implementation of this policy, including but not limited to changes in legislation and departmental practice that will impact the department's ability to fully comply with this policy.

#### **XIV. Officer-involved Incidents**

- A. Purpose: To acknowledge the special nature of officer-involved domestic incidents and to establish departmental policy and procedure in handling such calls.
- B. Definition: An officer-involved domestic incident, under this policy, shall include:
  - 1. Any domestic incident in which a police officer is identified as a suspect on a DIR or otherwise;
  - 2. Domestic violence perpetrated by a police officer upon a member or members of his/her family or household; and/or
  - 3. Any domestic incident or domestic violence in which the identified victim, witness, or suspect are police officers.
- C. Communications procedures should be followed according to this policy, along with the following additional commands:
  - 1. Notify the responding officer of an officer-involved domestic incident, regardless of jurisdiction.
  - 2. Notify both patrol and communications supervisors on duty of the officer-involved domestic incident.
- D. Responding officer
  - 1. Upon arrival on the scene of a domestic incident involving an alleged offender who is a police officer, the primary responding officer shall immediately notify communications and request that a supervisor of higher rank than the alleged offender report to the scene, regardless of the alleged offending officer's jurisdiction;
  - 2. In responding to a domestic incident where the victim is a police officer, standard domestic violence response and investigation procedures should be followed. In addition to being provided with the local domestic violence service provider's contact information, the victim should be referred to the department's domestic violence officer/EAP or other appropriate personnel and given the choice to make contact at any point.
  - 3. In the event that a reported domestic incident involves the chief of police or commissioner as the perpetrator, the supervisor shall immediately

notify the district attorney and the individual in government who has direct oversight for the chief (example, the Mayor).

- E. Notifications: All of the following notifications will be made without unnecessary delay. The particulars of the notification attempts shall be recorded and noted in the case folder or dispatch logs.
1. When the officer-involved is employed by the responding agency the supervisor on duty shall be notified by the responding officer. The supervisor shall respond to the scene without unnecessary delay.
  2. When the officer-involved is employed by another jurisdiction, an attempt to notify the highest ranking supervisor on duty in that agency shall be made by the responding officer.
  3. If the officer-involved is an executive level officer, such as Chief or Sheriff of the responding agency, the highest ranking supervisor on duty shall be notified by the responding officer. The highest ranking member on duty in the responding officer's agency will also be notified.
  4. If the officer-involved is an executive level officer such as Chief or Sheriff of another jurisdiction, the highest ranking supervisor of that agency, on duty, shall be notified by the responding officer.
  5. Notification to the prosecutor's office shall be made as soon as practicable by the responding officer or other agency member pursuant to that agency's arrest and prosecution notification procedures.
  6. Whenever notification to any official in another agency is required, notification efforts will be recorded by the responding officer and anyone else who provides notification.
  7. Records of all notifications and contacts will be maintained in writing.
  8. If the other agency requests any efforts of your agency beyond notification, advise the on-duty supervisor of your agency and document your subsequent actions.
  9. If an arrest is made, applicable departmental policies related to duty status/assignment, suspension, etc. will be followed.
  10. If a criminal investigation is required, applicable departmental policy shall be followed. In the absence of departmental policy, this investigation should be completed before the officer can be interviewed by departmental personnel for any administrative investigation associated with the event.
  11. Any deviation from such Arrest Procedures in Sections VIII or IX of this policy shall be made only in exigent circumstances, and may only be approved by the highest ranking person available. Any such deviation



and its justification shall be documented in writing. If no supervisor is available, there shall be no deviation from these procedures.

12. An agency which makes a domestic incident/domestic violence-related arrest of a law enforcement officer from another agency shall notify the employing agency of the arrest, the specific charge and the time of the arrest, prior to the end of the working shift during which the arrest was made.
13. A domestic incident which involves a police officer as an offender must comply with the notification procedures cited in this policy regardless of arrest status, and the on-scene supervisor shall submit a written report explaining any and all reasons why an arrest was not made or a warrant was not sought.
14. Any officer who has been arrested or who has been involved in a domestic incident requiring police assistance will notify the designated departmental officer of this incident immediately, or as soon as practicable.
15. Whenever an officer has been served with an Order of Protection, including service of modifications of existing orders of protection, the officer will make a copy available to the chief executive officer or designee immediately or as soon as practicable.
16. Whenever the department serves an Order of Protection and where the protected party is an officer in the department, the protected party will be notified as soon as practicable.

F. Victim Assistance

1. When the victim is a police officer, she/he shall be informed of and provided access to all the services and protections set forth for all domestic violence victims covered under this policy, **and her/his name and pedigree information shall remain confidential** within the department.
2. The department will publish the designated domestic violence victim assistance personnel that provide officer-involved victim assistance and services to family members of the department.

G. Criminal Investigations

1. A criminal investigation shall be set in motion by the police chief or sheriff with jurisdiction over the case. This may include assistance from an outside agency.
2. The criminal investigation shall be handled the same as any domestic incident investigation not involving a police officer.



3. Internal investigation processes shall be followed the same as other internal investigations of officers, unless a conflict in procedures with domestic incidents is evident.
4. When both parties in an alleged domestic incident are officers, the department shall proceed with the investigation and prosecution whether or not the victim chooses to participate.

#### H. Administrative Investigation

1. An administrative investigation shall take place regardless of whether an arrest has been made, and shall apply to all officer-involved domestic incidents.
2. Administrative Order of Protection: The Department may issue an Order directing the officer offender to stay away from or refrain from engaging in behavior directed at a specific person. This Order shall include provisions stating that violation shall be cause for disciplinary action.
3. Based upon the evidence found in the investigation, administrative actions and discipline of the offending officer shall be enforced.
4. Administrative discipline shall be handled according to agency policy and labor agreement.
5. Officers who are victims in an officer-involved domestic incident will be provided with information during and after the Administrative Investigation, with as much advance notice of outcomes as possible, given that they may have to adjust their own personal safety plan and make other arrangements for themselves in response to the potential for escalating violence that typically accompanies the enforcement of domestic violence offender accountability.

#### I. Duty Weapons

1. Whenever a chief executive officer is given a copy of an Order of Protection by an officer, an officer of the court, or a party to the order, or when a chief executive officer has reason to believe an officer is under a qualifying Order of Protection, the department will implement a procedure that attempts to verify the officer is in compliance with 18 U.S.C. § 922(g)(8) and or 922(g)(9), both of which describe when it is prohibited for an officer to possess pistols, rifles, shot guns or ammunition (**See Appendix "B"**).
2. A police officer's "duty" weapon is generally exempt from this prohibition.

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Municipal Police Training Council**

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## APPENDIX A

The following offenses are designated as a family offense by Criminal Procedure Law §530.11(1) and family Court Act §812(1):

1. Aggravated harassment 2<sup>nd</sup> degree;
2. Assault 2<sup>nd</sup> and 3<sup>rd</sup> degree;
3. Attempted Assault (any degree);
4. Criminal Obstruction of Breathing or Blood Circulation;
5. Criminal Mischief (any degree);

**Note:** This includes damage to property of another in which a person has some type of joint ownership (e.g., marital property). Intentional damaging such property is subject to a criminal offense when the person has no right to do so, nor any reasonable ground to believe that he or she has such right.

6. Disorderly Conduct – To charge a person in Family court this need not be committed in a public place;
7. Forcible Touching;
8. Harassment 1<sup>st</sup> and 2<sup>nd</sup> degree;
9. Menacing 2<sup>nd</sup> and 3<sup>rd</sup> degree;
10. Reckless Endangerment (any degree);
11. Sexual Abuse 3<sup>rd</sup> degree;
12. Sexual Abuse 2<sup>nd</sup> degree subdivision (1);
13. Sexual Misconduct;
14. Stalking 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degree; and
15. Strangulation 1<sup>st</sup> and 2<sup>nd</sup> degree.

Note: Persons less than 16 years of age who commit acts that would otherwise be family offenses may only be prosecuted in Family Court.

## APPENDIX B

### Sections of Crimes and Criminal Procedure - 18 USC Title 18 Relevant to XIV I (1) Duty Weapons

#### § 922. Unlawful acts

(g) It shall be unlawful for any person -

(8) Who is subject to a court order that -

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) Who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

#### § 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

## APPENDIX C

### **Family Court Act § 153-b and Executive Law §221-a**

Parts relevant to orders of protection and updating the computerized database of orders.

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#### **Family Court Act – Part 5 – General Powers**

**§ 153-b. Service of process request for order of protection. Whenever a petitioner requests an order of protection or temporary order of protection or files for an extension of such order or a petition or motion for modification or a violation of such an order under any article of this act:**

- (a) the summons and the petition and, if one has been issued, the temporary order of protection, order of protection issued upon a default, or a copy or copies thereof, may be served on any day of the week, and at any hour of the day or night;
- (b) a peace officer, acting pursuant to his or her special duties, or a police officer shall, upon receipt, serve or provide for the service of the summons and the petition together with any associated papers and, if one has been issued, the temporary order of protection, or order of protection issued upon a default and shall not charge a fee for such service, including, but not limited to, fees as provided under section eight thousand eleven of the civil practice law and rules;
- (c) if a temporary order of protection has been issued, or an order of protection has been issued upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection together with any associated papers that may be served simultaneously including the summons and petition, to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or to any other county or municipal officer who may be directed to effect service under section two hundred fifty-five of this act, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided in this section shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition if not previously served. Service of such temporary order of protection, or order of protection, and associated papers, shall insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this section, and his or her employer, shall not be liable for damages resulting from the failure to achieve service where, having made a reasonable effort, such officer is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order;
- (d) where the temporary order of protection or order of protection and papers, if any, have been served, such officer or designated person shall provide the court with an

affirmation, certificate or affidavit of service when the temporary order of protection or order of protection has been served, and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law. A statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of the service of the summons, petition and temporary order of protection or order of protection;

(e)\* Notwithstanding any other provision of law, all orders of protection and temporary orders of protection issued pursuant to this act along with any associated papers that may be served simultaneously may, for the purposes of section one hundred sixty-eight of this article, be transmitted by facsimile transmission or electronic means and may be transmitted by facsimile transmission or electronic means for expedited service in accordance with the provisions of this section. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

(e)\* where an officer or designated person obliged to perform service pursuant to this section is unable to complete service of the temporary order of protection or order of protection such officer or designated person shall provide the court with proof of attempted service of the temporary order of protection or order of protection with information regarding the dates, times, locations and manner of attempted service. An affirmation, certificate or affidavit of service with a statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the name of the party and the papers attempted to be served on said person, and for each attempted service, the date, time, address or in the event there is no address, place, and manner of attempted service, shall be proof of attempted service.

\* There are 2 subdivision (e)'s in the statute as passed by the legislature.

## **Executive Law – Article 11 – Division of State Police**

### **§ 221-a. Computer system to carry information of orders of protection and warrants of arrest.**

3. Whenever any court issues an order of protection or special order of conditions, the sheriff's office or appropriate municipal police department in the county in which the complainant or petitioner resides, or if he or she resides within a city, the police department of such city, which receives a copy of the order of protection or special order of conditions from the clerk of the court or otherwise pursuant to law, shall promptly transmit such information on the order of protection or special order of conditions as required by rule and regulation over the law enforcement communication system, including but not limited to: the names of the parties to the proceeding giving rise to such order, the date such order becomes effective, the date such order was served or whether the defendant or respondent had actual knowledge of such order because he or she was present in court when such order was issued, the date such order is to expire, and the terms and conditions of such

order. When any peace officer, acting pursuant to his or her special duties, or police officer receives a warrant issued by family court, supreme court or by a criminal court pertaining to an order of protection or special order of conditions, as described in subdivision one of this section, the officer shall cause specific information on the warrant as required by rule and regulation to be promptly dispatched over the law enforcement communication system. For purposes of this subdivision, municipal shall have the same meaning as municipality, as defined in subdivision six of section eight hundred thirty-five of this chapter. Notwithstanding the provisions of article fifty-four of the civil practice law and rules, a person entitled to protection under an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, may file such order without fee with the clerk of a court in this state having jurisdiction over family, criminal or matrimonial proceedings; such order shall be accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified. Upon such filing, information regarding such order shall be transmitted to the statewide computerized registry in accordance with this section, provided, however, that such filing and registry entry shall not be required for enforcement of such order.

4. Courts and law enforcement officials, including probation officers, shall have the ability to disclose and share information with respect to such orders and warrants consistent with the purposes of this section, subject to applicable provisions of the family court act, domestic relations law and criminal procedure law concerning the confidentiality, sealing and expungement of records.