

Law Enforcement Domestic Incident Model Policy

September 2023



**Municipal Police
Training Council**

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

www.criminaljustice.ny.gov



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Law Enforcement Domestic Incident Model Policy

The Law Enforcement Domestic Incident Model Policy was developed to provide law enforcement agencies with guidance to assist them in developing their own policy and training. The use of this policy is not mandatory.

The Municipal Police Training Council (MPTC) approved the model policy in September 2023.

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Empire Justice Center

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New York State Police

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I. Purpose

The purpose of this policy is to provide guidance to law enforcement agencies on recognizing, responding to and assisting victims of domestic violence; when and how to complete domestic incident reports; and enforcement of orders of protection.

Assisting those experiencing domestic violence will help connect victims to essential services that may improve safety and may aid in holding domestic violence offenders accountable for the harm they have inflicted.

II. Policy

Domestic violence is a pattern of behavior used by someone to control their intimate partner and other family and household members. The behaviors may include physical, emotional, psychological, financial, technological, and sexual abuse. A key component of domestic violence is coercive control: controlling someone else's behavior by using force, threats, or causing fear. These behaviors may or may not be criminal. Police are the system that often has initial contact with domestic violence victims, therefore, officers should respond to every domestic incident as a serious call for service, and an opportunity to provide life-saving engagement with victims and connection to domestic violence service providers. Officers shall respond to victims and their children through a survivor-centered¹, trauma-informed² and culturally responsive³ approach.

III. Definitions

A. **Domestic Incident:** Any dispute, act of violence, or report of an alleged offense between members of the same family or household where police intervention occurs. A domestic incident is not necessarily a violation of law.

B. **Members of the same family or household⁴** are those who:

1. Are related by consanguinity or affinity.
 - a. Consanguinity – related by blood
 - b. Affinity – familial relation resulting from a marriage

1.A victim or survivor-centered approach recognizes survivors' rights to make decisions about their safety and future. It is strengths-based and recognizes that survivors with different backgrounds have different needs and experiences.

2 Trauma is an event or set of circumstances that is physically or emotionally harmful or life threatening and has long lasting adverse effects on an individual's functioning and well-being. Being trauma-informed is realizing that trauma is common, recognizing the signs, triggers, and symptoms of trauma, and using this knowledge in practices, policies, and procedures to provide effective survivor-centered responses. It promotes compassion and healing instead of retraumatizing individuals.

3 Culturally Responsive: Survivors' experiences and needs are different depending on their class, race/ethnicity, culture, age, sexual orientation, gender identity or expression, geography, and many other lived experiences and identities. Culturally responsive services respond to these differences to actively meet the needs of all survivors and communities.

4 See Family Court Act (FCA) § 812(1) and Criminal Procedure Law (CPL) § 530.11(1).

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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; or
 5. 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.
- C. **Intimate relationship:** The following factors are used in determining whether an "intimate relationship" exists, including:
1. The nature or type of relationship, regardless of whether the relationship is sexual in nature;
 2. The frequency of interaction between the persons; and
 3. 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."
- 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)**⁵, acts that violate any Family, Supreme, or Criminal Court or other jurisdiction order of protection, or any other offense or criminal act committed or threatened against a member of the same family or household.
- E. **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.
- F. **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**

⁵ See Appendix A for a full list of all designated family offenses.

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3. The alleged offender is of age of criminal responsibility.
- G. **Order of Protection:** A civil or criminal order that provides protections to a person from another person. An Order of Protection may only be issued by a court, and can only be modified or terminated by that same court or a court of competent jurisdiction, and is not enforceable against the protected party⁶, 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).
- H. **Victim's Rights Notice:** As used in this policy shall mean the notice or form described in CPL § 530.11 (6).

IV. 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. A domestic incident call shall not be cancelled, reclassified or recoded without a supervisor's review and approval.
- D. If a request is made to cancel the law enforcement response to a domestic incident call, the dispatcher shall advise the responding officer(s) of the request and explain to the caller that the call must be responded to.

NOTE: Dispatchers should consider that calls that appear to be a wrong number (i.e., asking for a taxicab pickup or food delivery) may be a covert call to a domestic incident and should dispatch an officer where practicable.

⁶ FCA § 846(a-1)

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V. Responding Officer On-Scene Procedures:

- A. Prior to arrival on scene, officers should attempt to obtain information on a location and persons involved including checks for prior DIRS or orders of protection by accessing available technology or resources (i.e., department issued cellphones, computers in patrol car), or information available through dispatch.
- 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. Officers should wait for backup to arrive, when appropriate, and should always put officer safety and scene safety as the top two initial priorities 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. For the safety of the parties and all first responders, take control of all weapons used or threatened to be used in the incident.
 3. Identify the presence of any firearms in the household. Officers should immediately take possession of firearms in plain sight or discovered pursuant to a consensual or lawful search⁷.
 4. Assess the immediate safety and welfare of all occupants of the location, including children, to verify their safety and well-being.
 5. Assess for physical injuries, including inquiry about strangulation or possible internal, nonvisible injuries, and sexual violence; administer first aid and request medical services as necessary. If sexual violence is suspected or alleged, advise victim about the availability of receiving a sexual assault forensic exam and the ability of law enforcement to assist victim in obtaining exam⁸.
 6. If the victim, children or other witnesses do not speak English or require accommodations such as a sign language interpreter, seek other methods (i.e., Language Line) or follow protocols for providing language access. Do not use family members or other witnesses for interpretation services.
 7. Determine the relationship of the victim to the suspect.

⁷ See CPL § 140.10(6)

⁸ See [MPTC Sexual Offense Evidence Kit Model Policy](#).

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8. Assess the well-being and health of any domestic pets or companion animals and document the signs of potential animal abuse.
9. Body Worn Cameras:
 - a. Officers shall consider requests from victims not to be recorded in non-confrontational situations⁹ and recognize that the use of body cameras may impact a victim's willingness to provide information. If the request cannot be fulfilled, officers shall explain reasoning to the victim.
 - b. Any requests to deactivate or end recordings by victims should be documented on camera prior to deactivation for the record.
10. Offer to contact a local advocate to provide support to the victim and provide a list of current contact information for local domestic violence victim advocacy organizations.

VI. On-Scene Investigations:

A. **Procedures for Interviewing Domestic Violence Victims.** Domestic violence victims have often experienced trauma, may be unfamiliar with legal system processes, fear authority figures, and/or fear that the suspect will cause future harm to the victim. As a result, a victim may be confused, hesitant or list events in illogical order. Below are some examples of how officers may prepare for and conduct interviews with victims.

1. Conduct victim interviews in a location away from others at the scene.
2. Allow the victim a chance to tell the story in their own words, and then ask for details with open-ended questions.
3. Follow up with specific and direct questions asked in a supportive and matter-of fact tone of voice.
4. Ask specific questions about a victim's injuries.
5. Ask the victim if the suspect has access to guns or other weapons.
6. Ask about other forms of violence or abuse they may be experiencing¹⁰.

⁹ See [MPTC Body-Worn Camera Model Policy March 2021](#).

¹⁰ Those experiencing domestic violence often experience multiple forms of violence. In cases where an officer believes a victim may be experiencing human trafficking or other intersectional crimes, all attempts should be made to engage the victim in a trauma informed and victim centered manner to provide safety planning, resources, and services immediately and attempt to connect the victim with services from the scene or as soon as possible. Follow your human trafficking policy for additional information and response.

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7. Document the complete history of the abuser's tactics and/or course of conduct of control against the victim. Be specific and detailed.
 - a. Ask the victim about the most recent incident, the first incident and the worst incident to gain a full understanding of the abuse¹¹.
 - b. Assess for and document all actual and suspected incidents of violence, including physical and sexual abuse, elder or child abuse, property damage, and animal cruelty.
8. Provide victim with information on:
 - a. How to obtain a family court order of protection and advise the victim that the local domestic violence service provider may be able to assist with the preparation of a family court petition for an Order of Protection, regardless of whether an arrest was made.
 - b. The NYS Domestic and Sexual Violence Hotline number, 1-800-942-6906, or contact information for a local domestic violence service provider.
 - c. Release dates and notification services that provide this information are available, such as Victim Information and Notification Everyday (VINE) and advise the victim that release of the suspect can occur at any time.
 - d. The availability of victim compensation.
 - i. The NYS Crime Victims Legal Help website- crimevictimshelpny.org, can assist victims with finding an attorney to help them with any civil legal needs, including obtaining an order of protection in Family Court.

B. Process for interviewing Additional Witnesses

1. Make every effort to locate all potential witnesses, including the 911 caller. Interview all available witnesses separately, including the victim, suspect and children. Be sure to document ALL statements made by all parties and witnesses to ensure you capture excited utterances and spontaneous admissions.

¹¹ -See Prior History Section, page 2 NYS Domestic Incident Report

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C. Additional Evidence Collection:

1. Digital, Video, and Photographic Evidence:

- a. Inquire about any potential recording devices that may have captured any portion of the described event either on audio or video.
- b. Bodycam footage should note any statements by any parties present to document as potential evidence and for purposes of any potential CPL §710.30 notices.
- c. Take photographs of all visible or alleged injuries, especially when there is an allegation of Criminal Obstruction of Breathing or Strangulation and/or property damage.
- d. Collect all digital evidence, including but not limited to surveillance footage, audio recordings, voicemails, screen shots of social media pages and relevant text message communications.

2. Determine Past History of Domestic Violence by reviewing agency records, Orders of Protection Registry, criminal history, and prior DIR's, including a search of the Domestic Incident Report Repository.

3. Request the response of crime scene or special victims' investigators or any other specialty unit when appropriate.

D. Documentation of Investigation

1. 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.

- a. Write in the Domestic Incident Report what words the victim used. For example: Victim states, "I can't sign this or he'll kill me." Avoid using conclusions such as "refused to cooperate" or "refused medical attention."
- b. Record your observations of the physical and emotional condition of the victim.
- c. Lethality Assessment Questions: There are several questions¹² within the NYS Domestic Incident Report Form (DIR) that are

¹² See Victim Interview and Prior history questions on the DIR. These include questions on access to guns, suspect threats to harm self or others, strangulation, harm during pregnancy, jealousy, and increasing violence.

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designed to assess potential lethality of domestic violence victims. These include the questions in the victim interview and prior history sections of the DIR. If lethality assessment questions are answered in the affirmative, the officer shall:

- i. Offer to immediately connect the victim with access to an advocate either by calling the New York State or a local domestic violence provider hotline to conduct immediate safety planning for the victim or arranging for an advocate to arrive on scene.
 - ii. Consult with the District Attorney's Office prior to arraignment.
 - iii. Consider utilizing all evidentiary tools to build your case during the investigation: Crime Analysis Centers, LPRS, Phone records, video etc. Do not rely solely on the victim.
2. Provide the victim with the victim's copy of the NYS Domestic Incident Report and the Victim Rights Notice Form immediately upon its completion at the scene and offer to provide the victim with transportation to a safe, alternate location.

VII. Role of the Supervisor:

A. Supervisors shall do the following:

1. Respond to assist officers investigating incidents of domestic violence when requested by an officer or victim or whenever the incident appears to involve a law enforcement officer, prominent community member, or public official, or involves a violent crime.
2. Supervise the on-scene investigation, if not already completed, to ensure that appropriate action is taken.
3. Review all DIRs for accuracy and consistency and conduct after action reviews or case audits to ensure officers and investigators are conducting comprehensive, victim-centered, perpetrator-focused investigations.
4. Assess for co-occurring and interconnected crimes when responding to domestic violence, to include but not be limited to stalking, sexual violence, strangulation, firearms prohibitions, protection order violations, intimidation and threats, and abuse of children, elders, and animals.

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VIII. Arrest Policy:

- A. After a thorough investigation is conducted, consider ALL appropriate offenses that may apply.
- B. Felony Offenses or violations of orders of protections against family or household members: If it is determined that a felony offense¹³ or a violation of an order of protection¹⁴ has occurred, pursue a mandatory arrest.
- C. Misdemeanor Offenses:
 1. When an officer has reasonable cause to believe that more than one family or household member has committed a misdemeanor family offense the officer must conduct a Primary Physical Aggressor determination and attempt to identify and arrest the primary physical aggressor after considering:
 - a. The comparative extent of any injuries inflicted by and between the parties.
 - b. Whether any such person is threatening or has threatened future harm against another party or another family or household member.
 - c. Whether such person has a prior history of domestic violence that the officer can reasonably ascertain.¹⁵
 - d. Whether any such person acted defensively to protect himself or herself or a third party from injury.
 - e. The arrest of both parties shall require supervisory approval.
 2. Mandatory arrest applies if it is determined that a misdemeanor family offense was committed against a family or household member.
 3. If the victim of a misdemeanor offense requests that no arrest be made, an officer shall strongly consider the victim's request in making an arrest determination¹⁶. Document the victim's request and include any expressed concerns from victim(s). Explain to the victim the arrest determination.

13 CPL §140.10(4)(a).

14 CPL §140.10(4)(b).

15 When investigating this factor at the scene, the following sources of information may be available: agency records, E-Justice portal, 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.

16 CPL§140.10

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- D. Family Court:
1. Inform victims of a family offense that 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, however, mandatory arrest applies to felony cases regardless. A Family Court proceeding is a civil proceeding with a lesser burden of proof than the criminal justice system. Family Court also has concurrent jurisdiction of violation of Family Court Orders of Protection to enforce these orders when it issues them.
 2. 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).
- E. Ask victim if an order of protection is desired and explain the order of protection process and the various types of orders (stay away / refrain from/ no contact) and conditions available. Ensure the court or district attorney's office is provided with this information. Inform the victim of the opportunity to register for order of protection notification information through [NY-ALERT Order of Protection Notification System](#).
- F. Following an on-scene arrest for a crime arising from a domestic incident, an appearance ticket shall not be issued.¹⁷
- G. Arrested persons in all incidents involving domestic violence shall be arraigned in a local criminal court having jurisdiction over such arraignment.

IX. 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.
- B. Enforcement Procedures:
1. Upon the report of a violation, or suspicion that an order of protection may be in effect, the officer shall attempt to verify the existence and terms of the order through department records or the E-Justice portal, by contacting the issuing court (if during business hours), or through all means possible, including contact with other local law enforcement agencies if the order is from another jurisdiction.

¹⁷ CPL §150.20(b)(iv).

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2. Where an officer has reasonable cause to believe that the terms of an order of protection 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 or if a victim is able to produce a copy of the order of protection.
 3. If 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.**¹⁸

X. Firearms

- A. If it is believed that an individual possesses a firearm or long gun, ensure the court and district attorney are informed of the firearm or long gun possession.
- B. 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. Determine whether it is necessary to obtain an Extreme Risk Protection Order¹⁹ to remove any firearms from the home if the alleged abuser has a history of mental health with a risk of suicide **or** is a danger to themselves or others including the victim.

XI. Law Enforcement Training

- A. Officers and communications personnel should complete training on: recognizing, responding to and assisting victims of domestic violence in a trauma-informed, survivor-centered, and culturally responsive manner; the applicable statutes concerning domestic violence; and the roles, responsibilities, and limitations of law enforcement in responding to and intervening in domestic violence cases. Where practicable, a dual instruction method including law enforcement and victim advocates is preferred.

¹⁸ 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.

¹⁹ [MPTC Extreme Risk Protection Order Model Policy](#)

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APPENDIX A

Family Court and Criminal Court have Concurrent Jurisdiction of Designated Family Offenses in CPL § 530.11(1) and FCA § 812(1).

The following offenses, when they occur between spouses or former spouses, or between parent and child, or between members of the same family or household as defined in CPL § 530.11 and FCA § 812 are designated family offenses:

- Aggravated Harassment in the 2nd Degree (PL § 240.30, A Misdemeanor)
- Assault in the 2nd Degree (PL § 120.05, D Felony)
- Assault in the 3rd Degree (PL §120.00, A Misdemeanor)
- Attempted Assault 2nd (PL § 110.00/120.05 - Class E felony)
- Attempted Assault 3rd (PL § 110.00/120.00 - Class B misdemeanor)
- Coercion 2nd (PL §135.61 - Class E felony)
- Coercion 3rd, subs. 1, 2, and 3 (PL § 135.60 - Class A misdemeanor)
- Criminal mischief 1st (PL§ 145.12 -Class B felony)
- Criminal mischief 2nd (PL § 145.10 -Class D felony)
- Criminal mischief 3rd (PL § 145.05 - Class E felony)
- Criminal mischief 4th (PL § 145.00 - Class A misdemeanor)
- Criminal obstruction of breathing or blood circulation (PL §121.11 - Class A misd)
- Disorderly conduct (PL § 240.20 -Violation)
- Forcible touching (PL § 130.52- Class A misdemeanor)
- Grand larceny 3rd (PL § 155.35 -Class D felony)
- Grand larceny 4th (PL § 155.30 -Class E felony)
- Harassment in the 1st Degree (PL § 240.25, B Misdemeanor)
- Harassment in the 2nd Degree (PL § 240.26, Violation)
- Identity Theft in the 1st Degree (PL § 190.80, D Felony)
- Identity Theft in the 2nd Degree (PL § 190.79, E Felony)
- Identity Theft in the 3rd Degree (PL § 190.78, A Misdemeanor)
- Menacing in the 2nd Degree (PL § 120.14, A Misdemeanor)
- Menacing in the 3rd Degree (PL § 120.15, B Misdemeanor)
- Reckless Endangerment in the 1st Degree (PL § 120.25, D Felony)
- Reckless Endangerment in the 2nd Degree (PL § 120.20, A Misdemeanor)
- Sexual Abuse in the 2nd Degree (PL § 130.60(1), A Misdemeanor)
- Sexual Abuse in the 3rd Degree (PL § 130.55, B Misdemeanor)
- Sexual Misconduct (PL §130.20, A Misdemeanor)
- Stalking in the 1st Degree (PL § 120.60, D Felony)
- Stalking in the 2nd Degree (PL § 120.55, E Felony)
- Stalking in the 3rd Degree (PL § 120.50, A Misdemeanor)
- Stalking in the 4th Degree (PL § 120.45, B Misdemeanor)
- Strangulation in the 1st Degree (PL § 121.13, C Felony)
- Strangulation in the 2nd Degree (PL § 121.12, D Felony)
- Unlawful dissemination or publication of an intimate image (PL § 245.15 - Class A Misdemeanor)