



**DEPARTMENT OF PUBLIC SAFETY  
POLICIES & PROCEDURES**



<b>POLICY NUMBER</b>	
<b>OPR: 03</b>	
<b>EFFECTIVE DATE:</b> 02/12/2009	<b>ORIGINAL ISSUED ON:</b> 02/12/2009
<b>REVISION NO:</b>  ORIGINAL	

**SUBJECT: DOMESTIC VIOLENCE INVESTIGATIONS**

**1.0 PURPOSE**

The purpose of this policy is to provide guidance for Department of Public Safety (DPS) employees in the investigation, reporting, and documentation of domestic violence incidents.

**2.0 POLICY**

It is the policy of the DPS to conduct criminal investigations into all allegations of domestic violence. Officers should combine enforcement action with the use of appropriate community resources to prevent future incidents, protect victims of domestic violence, provide victims with support, and promote officer safety when dealing with domestic violence situations. This includes assisting victim(s) with obtaining Orders of Protection as well as complying with court orders and/or mandates issued by the courts.

**3.0 APPLICABILITY**

This policy applies to all commissioned personnel and telecommunications specialists of the Department of Public Safety.

**4.0 REFERENCE**

- A. Family Violence Protection Act 40-13-1 to 40-8 NMSA 1978**
- B. Victims of Crime Act 31-26-1 NMSA 1978**
- C. IACP National Law Enforcement Policy Center: "Domestic Violence" Model Policy, Published October 1996.**

**5.0 DEFINITIONS**

- A. Court** – Any jurisdiction having the right or authority to interpret and apply the law.
- B. Family Violence Protection Act** – As defined in 40-13-1 to 40-13-8 NMSA 1978 and any other definitions as indicated in the Family Violence Protection Act concerning Domestic Affairs.
- C. Victim of Crime Act** - As defined in 31-26-1 to 31-26-14 NMSA 1978 and any other definitions as indicated in the Victims of Crime Act concerning victims.

**6.0 PROCEDURE**

**A. Telecommunications Procedures**

1. Telecommunications personnel shall give a domestic violence/disturbance call the same priority as any other life-threatening call. They should also take into consideration the seriousness of the injuries or threatened harm, whether weapons are involved, and whether or not the suspect is on the premises.
2. Telecommunications personnel shall, whenever possible, dispatch at least two (2) officers to the scene. If only one officer is available then telecommunications shall attempt to get another agency to provide back-up.

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3. Telecommunications personnel shall notify the on-duty or on-call supervisor that officers are en route to a domestic incident.
4. Telecommunication personnel shall make every effort to gather information from the complainant, which may be helpful to the investigating officers in assessing the situation. This should include, but not be limited to the following:
  - a. Location of suspect.
  - b. If weapons are present and/or involved.
  - c. If anyone is injured and if so, type of injuries.
  - d. If suspect is under the influence of alcohol or drugs.
  - e. If children are present.
  - f. If the victim has a current Order of Protection.
  - g. If there is a history of domestic violence calls at that location.
5. If telecommunication personnel receive a second call to cancel the original call, they will advise the responding officers of the second call. However, the responding officers will continue the investigation to ensure that all parties are safe.

### **B. Responding Officer(s) Procedures**

1. Whenever an officer is notified of, or has reason to believe that, a family or household member has been abused, or is in danger of being abused, the officer shall use all reasonable means to prevent further abuse. The officer shall continue to the scene and investigate the incident in accordance with this policy even if there is a request for the cancellation of the domestic-related call from a citizen.
2. Upon arrival at the scene officers shall:
  - a. Separate all parties involved in the domestic dispute.
  - b. Take control of the situation and restore order.
  - c. Take control of any weapons used or threatened to be used in the incident.
  - d. Determine if medical assistance is needed and call for it if necessary.
  - e. Conduct interviews of all parties involved and any witnesses/reporting parties.
  - f. Document and collect any and all evidence pursuant to department policy, including photographs of injuries and property damage.
  - g. Obtain all information necessary to complete report and criminal paperwork, if charges are filed.
  - h. Determine if there is probable cause for an arrest, and proceed appropriately. If an arrest is made officers should emphasize to both the victim and the offender that the criminal charges are being initiated by the state and not the victim.
  - i. Remain at the scene as long as any party involved would be in immediate danger.
  - j. Provide the victim with assistance requested, pursuant to 40-13-7 NMSA 1978. These actions shall be documented in the officer's offense/incident report. For further information refer to *PRS:28 Victim/Witness Assistance*.

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- k. Determine if there is a need for an Emergency Order of Protection and assist in obtaining the order.
  - l. In all cases where allegations of domestic violence are made, an offense/incident report shall be completed. If no arrest is made, the offense/incident report shall clearly explain why no arrest was made.
  - m. All officers responding to a domestic violence call will record all conversations throughout the response. Recordings will be maintained in accordance with department policy *OPR:19 Use of Recording Equipment*.
  - n. Officers should attempt to obtain follow-up photographs, when applicable, in order to document any injuries not visible at the time of the incident.
3. If a suspect leaves the scene and there is probable cause for arrest the following procedure will be followed:
- a. Pursuant to state statute 31-1-7 NMSA 1978 officers have the authority to arrest a suspect for the offense of assault or battery on a household member when the misdemeanor is committed out of the presence of the officer.
  - b. There is also a requirement to take whatever steps are necessary to protect the victim from further abuse, including arrest when appropriate per state statute 40-13-7(B)(5) NMSA 1978.
  - c. Per Attorney General's Opinion 05-05 the "at the scene" language in statute 31-1-7 NMSA 1978 is not to be read as contradicting public policy. The public policy interest in cases where the suspect leaves the scene, is to make the victim safe. This should be interpreted to mean that arrest authority extends beyond the immediate physical scene of the domestic violence and extends to a reasonable passage of time and geographic distance from the location of a domestic disturbance. Officers shall use the following criteria to make arrest decisions when the suspect has left the scene:
    1. Officers shall arrest suspected domestic violence offenders when there is probable cause to believe a crime of domestic violence has occurred. This extends to instances where the offender has left or fled the physical scene where the domestic occurred.
    2. Such arrests must be reasonable, taking into consideration the safety of the victim.
    3. Officers shall use their judgment when determining whether the separation from the scene in time and distance does or does not justify an arrest. Officers should consult with supervisors and/or the local district attorney's office when making this decision.
    4. If a situation arises where the officer can articulate exigency, but is unable to obtain an arrest warrant, the officer may still make the arrest. However, it is presumed that when the court is open and if manpower, officer, and victim safety allow, an arrest warrant will be obtained.

### **C. Victim Notification Upon Offender Release**

1. Pursuant to state statute 40-13-7 NMSA 1978, when an arrest is made in incidents of domestic violence, the following applies:
  - a. The detention facility is required to make reasonable attempts to notify the arresting officer or agency when the abusing household member is being released from custody.

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- b. In most cases, the detention center will contact the district telecommunications center to make notification. When this occurs, telecommunication personnel shall notify the officer (if he/she is on duty) so that the officer can make a reasonable attempt to notify the victim that the abusing household member is being released. If the arresting officer is not on duty, telecommunications personnel shall notify the on-duty supervisor, who will assign an officer to notify the victim. Any attempts by the arresting officer or assisting officer to notify the victim, whether successful or not, shall be documented on the CAD, offense/incident report and/or supplemental report.

### **D. Ex Parte Emergency Order of Protection**

1. If the investigating officer determines that the victim or child is in immediate danger following an incident of domestic abuse by a household member, the officer will assist the victim with the completion of an Ex Parte Emergency Order of Protection, pursuant to 40-13-3.2 NMSA 1978.
2. Service of the Ex Parte Emergency Order of Protection will be made to both parties, if possible.
3. The original order shall be provided to the court by the close of business on the next judicial day.

### **7.0 ATTACHMENTS**

**None**

### **8.0 APPROVAL**

APPROVED BY: s/ John Denko  
DPS Cabinet Secretary

DATE: February 12, 2009