




**WINCHESTER POLICE DEPARTMENT OPERATION ORDER**

**NOTE:** This policy is for internal use only, and does not enlarge an employee’s civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

<b>Number</b> 2-26		<b>Effective Date</b> August 30, 2023	<b>Review Date</b> July 13, 2023	<b>Reviewing Division</b> Administration
<b>Subject</b> <b>DOMESTIC VIOLENCE</b>	<input type="checkbox"/> New Policy  <input checked="" type="checkbox"/> Revised  <input type="checkbox"/> Replaces		This policy shall apply to personnel assigned to the following divisions:  <input type="checkbox"/> All Personnel <input checked="" type="checkbox"/> Patrol Division <input checked="" type="checkbox"/> Administration Division <input checked="" type="checkbox"/> Investigation Division	
<b>References</b>  VLEPSC  CALEA				
 <hr/> Chief of Police or Designee		August 30, 2023 <hr/> Date		

**I. PURPOSE**

The purpose of this policy is to establish procedure and to outline the duties and responsibilities for personnel of the Winchester Police Department when handling domestic disputes.

**II. POLICY**

The Winchester Police Department assigns domestic violence or domestic disturbance calls as a high priority. The nature and seriousness of crimes committed between family or household members are not mitigated because of the relationships or living arrangements of those involved. Therefore, law enforcement personnel must exercise leadership in the community in responding to domestic violence. An immediate law enforcement response can make a major difference in the disputants’ lives. With all due consideration for their own safety, Department personnel responding to domestic disturbance calls shall restore order, arrest persons when probable cause exists that a crime has occurred, provide safety and security for the crime victim(s), and assist participants in contacting appropriate agencies to help prevent future occurrences.

### III. DEFINITIONS

#### A. Domestic Violence

The use, or threatened use of physical force to inflict physical harm, bodily injury or assault, intimidation, or forceful detention (interference with personal liberty) by one family or household member upon another.

#### B. Intimidation

To compel or deter another person or to make fearful through the use of threats, force, and/or menacing annoyances (harassment).

#### C. Family Abuse

Any act involving violence, force, or threat, including, but not limited to, any forceful detention which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member. Family or household member includes (See 16.1-228):

1. Spouses, whether or not residing in the same home;
2. Former spouses, whether or not residing in the same home;
3. The person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the offender;
4. The person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the same home with the offender;
5. Persons who have a child in common, whether or not they have ever been married or resided together at any time; and
6. Persons who cohabit or who, within the previous twelve (12) months cohabited with the offender, and any children of either who then resided in the same home as the offender.

#### D. Domestic Violence Shelter

Services that are provided, usually twenty-four (24) hours a day for women and their children who have been physically or emotionally abused, or who have been threatened with abuse by their spouses or partners. Services include crisis intervention, counseling, shelter, escort to court, food, clothing, and transportation.

E. Protective Order

A court order of protection on behalf of an abused family or household member, that restrains the abuser from further acts of violence and may order the abuser to refrain from further contact, vacate the residence, relinquish custody of a vehicle, provide temporary child support, plus other measures.

- **Emergency protective order** is obtained from a magistrate by an officer or victim.
- **Preliminary protective order** is obtained by a victim through the court pending a court hearing. At the hearing, the court can issue a protective order which are typically valid for up to two (2) years, however can have no expiration date.

F. Stalking

Any person, except a law enforcement officer acting in performance of his or her official duties, and a registered private investigator, who is regulated in accordance with Virginia Code and acting in the course of his or her legitimate business, who on more than one occasion, engages in conduct directed at another person with the intent to place, or when he or she knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household members. Stalking behaviors include following a person to their home, work, and other places, parking outside their home or office, threatening notes or telephone calls, computer based on-line threats, or other threats.

G. Strangulation

As defined by VA Code Section 18.2-51.6-is knowingly, intentionally, and unlawfully (without consent) stopping the blood circulation or respiration by applying pressure to someone's neck, causing a wound or bodily injury. Officers shall question the victim in accordance with the domestic violence supplemental report form. Focusing specifically on whether or not the victim felt as though they could breathe, any loss of consciousness, or bodily functions. Furthermore, if a victim states that they were choked, strangled, etc., Officers should encourage the victim to seek medical treatment and an evaluation by the Forensic Nurse Examiner.

H. Victim

A person who has suffered physical, psychological, or economic harm as a direct result of the commission of a felony or of assault and battery, stalking, sexual battery, attempted sexual battery, or maiming, or a spouse or child of such a person, a parent or legal guardian of such a person who is a minor, or a spouse, parent, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide.

## IV. PROCEDURES

### A. General

1. Department personnel shall refer victims of domestic violence, stalking, or serious bodily injury crimes to appropriate community resources including mental health agencies, medical doctors, legal assistance agencies, victim/witness assistance programs, and domestic violence shelters. Where possible, officers should help victims directly access referral agencies.
2. Department personnel shall provide the victim with victim/witness rights information listing the specific rights afforded to crime victims. The information will include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

### B. Officer Responsibilities

1. Prior to arriving at the location of any reported domestic violence incident, officers will be provided with as much information available from the Emergency Communications Center (ECC) regarding the incident.
2. When approaching the reported domestic violence location, officers should practice the following officer safety tactics:
  - a. When possible, wait for additional officer assistance, discuss a strategy, and approach the incident location in pairs;
  - b. Avoid the use of sirens and other alarms in the vicinity of the incident location that would alert possible suspects;
  - c. Observe the location of the incident before contacting the complainant. Consider the surroundings and park the Department vehicle a short distance from the incident location. Each officer should follow a separate approach to the incident location, maintaining maximum cover and an escape route. Officers should remain within sight of one another, if possible;
  - d. Before knocking on the door, listen and look in any nearby window to collect additional information about the situation such as layout of the house, number of people present, weapons, evidence of violence or damage; and
  - e. Officers must be concerned for their own safety as well as the safety of the persons involved. To minimize the possibility of injury, officers should stand to the side of the door and not in front of windows when knocking.

3. Officers shall identify themselves as police officers by name, give an explanation of their presence, and request entry into the premises (when conditions permit).
4. Officers should determine the identity of the complainant and ask to see him or her and any other person at the premises. Officers should not accept statements from any person that the call was a mistake, without investigating further. Officers shall not leave the premises without attempting to interview the complainant.
5. Once inside the premise, officers should:
  - a. Inquire about the nature of the dispute;
  - b. Identify the persons involved;
  - c. Be aware of potential weapons. If weapons are present, whether firearms, knives, or any other object which could be used as a weapon, secure the weapon, if practical, while the disputants are being interviewed. If appropriate, seize weapons as evidence;
  - d. Determine if persons are in other rooms, whether they are children or adults, and the extent of any injuries. These persons should be separated from the parties involved and kept out of hearing range so their status as possible witnesses are not compromised;
  - e. Protect the victim from further abuse by separating the victim from the suspect;
  - f. Arrange for medical attention if the victim is injured. If the victim appears injured but refuses medical assistance, document any observed injuries, as well as the refusal of medical treatment; and
  - g. Determine if a protective order has been violated.
6. Officers will assist the victim in obtaining or provide, if requested, transportation to a medical facility, domestic violence shelter, or a magistrate.
7. If the complainant has asked for law enforcement assistance in retrieving essential personal property from his or her residence, the officer must first determine if the complainant has lawful authority to retrieve the property. If so, the officer should stand by to preserve the peace and will notify all parties that officers are accompanying the complainant to collect items for immediate personal or children's use. Officers may notify the persons involved that rights to any disputed property can only be determined by the courts.

## V. PROTECTIVE ORDERS

### A. Emergency Protective Orders (EPO) for Domestic Violence

1. The EPO aims to protect the health or safety of any person. Regardless of a decision to arrest, if an officer has at least a reasonable belief that family abuse has occurred and there exists probable danger of further abuse, the officer shall petition a judge or magistrate to issue an EPO. Officers shall also notify the victim that they can request an EPO directly from a magistrate or the juvenile and domestic relations court. An officer can petition for an EPO by telephone or in person.
2. The victim does not need to prosecute or swear to a warrant. The presence of the victim or suspect is immaterial in obtaining an EPO.
3. An EPO may order a stop to abusive behavior, prohibit contact between parties, order the abuser out of a shared home, and provide other relief.
4. Officers shall complete an EPO form and serve a copy to the respondent as soon as possible. The following information must be collected, if possible, at the time of issue: name, sex, race, date of birth, height, weight, eye color, hair color, and social security number. The EPO shall immediately be entered into the Virginia Criminal Information Network (VCIN) and the VCIN entry updated upon service of the EPO. The EPO cannot be enforced until the EPO has been served on the accused.
5. The EPO expires seventy-two (72) hours after issuance. If the expiration would occur when court is not in session, then the EPO shall be extended until 5:00 p.m. of the next business day. An officer may request an extension of an EPO if the person in need of protection is mentally or physically incapable of requesting an extension. The victim can petition for a preliminary protective order before the expiration of an EPO.
6. Once the EPO is served on the accused, the officer shall give to the ECC to have the VCIN entry modified to show the date and time of service. The original EPO and entry modification shall be sent through proper Department procedures to the appropriate court.
7. Neither the Department, the commonwealth's attorney office, a court, or the court clerk's office, or any of their employees, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the EPO or that of the family of such person, except to the extent that disclosure is required by law, necessary for law enforcement purposes, or permitted by the court for good cause.

B. Emergency Protective Order (EPO) for Stalking or Serious Bodily Injury

1. The victim of stalking or a violent crime resulting in serious bodily injury may obtain an EPO. The accused can be anyone, not necessarily a family or household member.
2. An EPO for stalking or serious bodily injury crimes may order the accused to stop the threatening behavior, prohibit the accused from contacting the victim in any way, and provide other relief.
3. An officer can request a warrant and an EPO in person, under a reasonable belief that stalking or a violent crime resulting in serious bodily injury has occurred and will occur in the future. The victim can request an EPO in person at the office of a magistrate or the general district court clerk's office.
4. The EPO expires seventy-two (72) hours after issuance. If the expiration period occurs at a time that the court is not in session, the EPO shall be extended until 5:00 p.m. of the next business day. An officer may request an extension of an EPO if the person in need of protection is mentally and physically incapable of requesting the extension. The victim can petition for a preliminary protective order before the expiration of an EPO.
5. Officers shall complete an EPO form and serve a copy to the respondent as soon as possible. The following information must be collected, if possible, at the time of issue: name, sex, race, date of birth, height, weight, eye color, hair color, and social security number. The EPO shall immediately be entered by the ECC into VCIN and the VCIN entry updated upon service of the EPO. The EPO cannot be enforced until the suspect has been served.
6. Once service of the EPO is made, the officer shall have the VCIN entry modified by ECC to show the date and time of service. The served EPO form original and the entry modification will be sent through proper Department procedures to the appropriate court.

C. Preliminary Protective Order (PPO) for Domestic Violence, Stalking, Serious Bodily Injury

1. An abused family or household member may petition the juvenile and domestic relations court for a PPO. After an ex parte hearing and based on immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred, the court may issue a PPO. At the hearing where the PPO is issued, a hearing date for a permanent or full protective order will be set. The PPO is valid for up to fifteen (15) days.
2. The PPO protects the petitioner or his or her family, or both. The PPO may order the accused to stop the abusive behavior, prohibit contact

between parties, order the abuser out of a shared home, grant exclusive possession over a home or car, and award temporary custody of children.

3. An EPO is not required in order for a victim to petition for a PPO.
4. Officers shall serve the PPO on the accused as soon as possible. The PPO must be entered into VCIN and the VCIN record updated upon service of the PPO by the ECC.
5. To petition for a PPO for stalking or serious bodily injury cases, the victim must appear before the General District Court of the jurisdiction where the stalking or serious bodily injury crime occurred. A PPO may order the respondent to stop stalking, stop violent behavior, prohibit contact between parties, and provide other relief as necessary.

D. Order of Protection (OOP) for Domestic Violence, Stalking, Serious Bodily Injury

1. In domestic violence cases, in addition to the restrictions and prohibitions placed in a PPO, an OOP may require an abuser to pay for the victim and any children to live elsewhere, and for the abuser to receive treatment or counseling. The victim must attend a protective order hearing at the juvenile and domestic relations court and the accused must have notice and opportunity to attend the hearing. The OOP is normally valid for up to two (2) years.
2. For stalking or serious bodily injury cases, an OOP observes the same general restrictions and prohibitions of a protective order for domestic violence. The victim must attend a protective order hearing at the general district court and the abuser must have notice and opportunity to attend the hearing. The OOP is normally valid for up to two (2) years.

E. Protection Orders from Other States

1. Officers shall enforce protective orders from other states or territories of the United States as if they were issued in Virginia. This applies to all orders in which the respondent has received notice and opportunity to attend a protective order hearing.
2. Enforcement of out of state protective orders does not require that the protective order be registered in Virginia.
3. Officers cannot arrest for a violation of a protective order if the violator has not been served with the protective order.



## VI. PROCEDURES - ARRESTS

### A. General

1. Officers may make an arrest without a warrant if they have probable cause to believe that a felony has been committed in or out of the officer's presence. Virginia Code specifies the misdemeanors for which officers can arrest for offenses not committed in their presence. The Department promotes a policy of arrest when the elements of an appropriate offense are present. In cases of domestic violence, officers cannot release the accused on a summons, but must take the accused before a magistrate.
2. Officers who develop probable cause that a person was the predominant physical aggressor, shall arrest and take him or her into custody. Officers who develop probable cause that a person has violated a stalking or serious bodily injury protective order may arrest and take him or her into custody. If the "no contact," "no trespass," or "no further abuse" provision of a protective order is violated, then the violation is treated as a separate Class 1 misdemeanor offense.
3. When the safety of the complainant or victim probably will be compromised by an arrest, and recognizing that circumstances may preclude physical arrest, the officer must decide, within his or her discretion, whether to arrest. Officers will not instruct victims to obtain warrants for applicable offenses, but officers themselves will obtain the warrants if circumstances so require.
4. If officers cannot identify a predominant physical aggressor and do not make an arrest, they will nevertheless thoroughly document the incident. Officers will not threaten to arrest all parties involved for the purpose of discouraging future requests for law enforcement intervention.
5. If an arrest is made, the victim should be notified that the case may be prosecuted even if the victim later declines to testify.
6. In cases where the conditions of a protective order have been violated, officers will review the victim's copy of the order, checking it for validity. If a protective order exists and the terms "no contact," "no trespass," or "no further abuse" are violated, then the officer shall arrest the violator if probable cause exists. When the respondent is convicted of a protective order violation, the court is required to issue a new protective order.
7. Officers making arrests for stalking or serious bodily injury shall petition for an EPO. If the officer does not arrest, but a danger of family abuse, stalking, or serious bodily injury still exists, the officer shall petition for an EPO.
8. If children are involved in the incident and a child is abused or neither parent can reasonably look after the child's safety and well-being (neglect is a separate, reportable offense) officers shall contact the on-call social

services worker. If children are simply present during the incident, the officer will obtain all necessary information to include them in the report and request the Records Department to forward a copy of the report to the Department of Social Services the following business day.

9. If the accused is not present, officers will attempt to serve the protective order as soon as possible and will notify the victim once service has been made. Entry of the protective order shall be made into VCIN by ECC upon receipt and updated upon service of the protective order.
10. Virginia Code prohibits any person subject to a protective order for domestic violence, stalking, or serious bodily injury from purchasing or transporting a firearm while the order is in effect. Firearms transported or purchased in violation of Virginia Code shall be confiscated and subject to forfeiture.
11. If an arrest must be made because a protective order has been violated, officers shall verify the validity of the protective order by examining the victim's copy, if available, and search VCIN or contact the jurisdiction that issued the order to confirm its validity.

B. Probable Cause to Arrest

1. In determining probable cause to arrest, the officer will not consider:
  - a. Whether the complainant has not sought or obtained a protective order;
  - b. The officer's own preference to reconcile the persons involved despite the complainant's insistence that an arrest be made;
  - c. That the complainant has not initiated divorce proceedings;
  - d. That the complainant has called for law enforcement protection previously and has not pursued or has withdrawn the criminal complaint against the accused;
  - e. Assurances from either involved persons that violence will stop;
  - f. The lack of visible bruises or injuries; and
  - g. Denial by either person that violence occurred.
2. Officers will be alert to the elements of a stalking or serious bodily injury arrest (i.e. strangulation, malicious wounding).
3. An officer having probable cause to believe that a violation has occurred, shall arrest and take into custody that person he or she has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor, unless there are special circumstances which would dictate a course of action other than arrest.

4. The standards for determining who the predominant physical aggressor is based on the following considerations:
  - a. Who was the first aggressor;
  - b. The protection of the health and safety of family and household members;
  - c. Prior complaints on the accused of abuse involving family or household members;
  - d. The relative severity of the injuries inflicted on persons involved in the incident;
  - e. Whether any injuries were inflicted in self-defense;
  - f. Witness statements; and
  - g. Other observations.

C. No Arrest Made

1. If no arrest is made for domestic violence, stalking, or serious bodily injury cases, officers shall complete an incident report including an explanation for no arrest being made.
2. If no arrest is made, the victim will be notified that he or she can begin criminal proceedings at a later time. The victim will be provided information on how to file a criminal charge and how to obtain a protective order. Officers will offer to assist the victim in filing criminal charges or obtaining a protective order at a later time.
3. If the victim wants to leave the premises to ensure safety, officers shall remain at the scene while the victim packs essential property, which including only personal items and important papers.
4. Officers shall provide the victim with a victim/witness rights form listing the specific rights afforded to crime victims. Victims must also be informed of the provisions of law that allow their name and address to be confidential. The victim will be given telephone numbers of domestic violence shelters in the area and the Department's emergency contact number.
5. Officers should assure the victim that the Department will assist in future emergencies and explain measures for enhancing his or her own safety.

D. Gathering Evidence

1. Physical evidence takes three forms in domestic violence cases: the injuries of the victim, evidentiary articles that substantiate an attack, and the crime scene itself. While the scene itself may not be collected in its entirety, officers should make note of the scene and identify things that may be indicators of an assault (i.e. broken furniture, blood, etc).
2. All evidence should be collected according to the same principles applied to any crime scene. At the conclusion of legal proceedings, evidentiary property should be returned to the victim, if appropriate.
3. The victim's statement to include account of injuries which may be corroborated by a physician or a forensic nurse examiner. When feasible, officers will take photographs of injuries and photograph the crime scene to show that a struggle occurred. If photography is not possible, details should be documented.
4. Any weapon that the predominant physical aggressor used or threatened to use in the commission of any crime is evidence. If the accused is under a domestic violence, stalking, or serious bodily injury protective order and appears to have purchased or transported a firearm, the firearm shall be confiscated as evidence.

E. Documenting the Incident

1. All incident reports on domestic violence, stalking, and serious bodily injury cases will follow general reporting procedures with special attention to the victims' services crime report procedure.
2. The following will be included in all reports of domestic violence:
  - a. Facts and circumstances of domestic violence including a description of why one person was deemed the predominant physical aggressor;
  - b. Whether any arrests were made, and if so, the number of arrests, specifically including any incident in which there is probable cause to believe family abuse occurred;
  - c. The presence of children: and
  - d. The disposition of the investigation.
3. If an arrest is not made for domestic violence, stalking, or serious bodily injury, the incident must still be documented. In such cases the officers will document:

- a. That referral information was given. The victim received victim/witness information listing the specific rights afforded to crime victims and the victim be informed of the provisions of law that allow their name and address to be confidential;
  - b. Why no arrest was made or warrant issued; and
  - c. The existence of or lack of probable cause.
4. Officers shall document statements from all persons, particularly noting any excited utterances that bear on the incident.
  5. Officers shall have completed a Department domestic violence supplemental report form

F. Arrests of Law Enforcement Personnel

1. If an employee of this Department is involved in a domestic violence incident, the responding officer shall summon the on-duty supervisor, who shall notify their division captain, who will report the facts of the incident to the Chief of Police or designee as soon as possible. The remainder of this section will be applicable if the predominant physical aggressor or abuser is a sworn employee of this Department.
2. The incident scene shall be secured and medical attention summoned, if required. The accused personnel shall be disarmed or removed from access to weapons, especially if the accused's Department issued weapon may be evidence of the offense.
3. The on-duty supervisor or when appropriate, a detective, will begin a criminal investigation. If probable cause to arrest exists, the supervisor shall arrest consistent with this policy.
4. The assigned supervisor or detective will work with the responding officer to ensure that the victim receives medical attention, if necessary, is transported to a hospital or domestic violence shelter, and that all reports are completed, evidence gathered, and photographs taken. The responding officer shall assist in obtaining an EPO.
5. The on-duty supervisor will consult with the Commonwealth's Attorney, as necessary.
6. During or at the conclusion of the criminal investigation, the Chief of Police or designee may assign an internal administrative investigation into the incident, consistent with Department policy. The Chief of Police may suspend the employee pending the outcome of the investigation. Suspended employees shall immediately surrender all Department issued weapons, vehicles, badges, and identification to the Chief of Police or his/her designee.

7. If the internal administrative investigation supports a violation of Department policy, the Chief of Police or designee shall take appropriate action consistent with personnel policy. If the investigation confirms that domestic violence occurred, the Chief of Police or designee may require counseling, psychological evaluation, and any other justifiable action up to and including termination of employment.
8. Federal law states that any person (including a law enforcement officer) convicted under any state or federal law for a misdemeanor involving the use of physical force, attempted use of physical force, or the threatened use of a deadly weapon when committed by a current or former spouse, parent, or guardian of the victim, a person sharing a child in common, or a cohabitant of the victim past or present, is prohibited from shipping, transporting, possessing, or receiving firearms or ammunition. The offense may have occurred at any time.
9. Law enforcement officers convicted of offenses involving weapons or threats of force may therefore be unable to maintain their law enforcement certification. Officers who are the subject of a protective order shall not carry firearms and shall surrender all issued Department weapons.
10. The Chief of Police or designee shall ensure that any court orders, summonses, or warrants are served on Department personnel. The Chief of Police shall ensure that legal papers are served in a private setting so that supervisory personnel can coordinate the legal paper service with counseling or psychological services. The supervisor shall stay alert to behavior that may be unseemly or indicative of problems requiring professional intervention.
11. If the predominant physical aggressor or suspect of any domestic violence, stalking, or serious bodily injury crimes, or the respondent of a protective order is an employee of another law enforcement agency, the responding officer shall notify the on-duty supervisor. The on-duty supervisor shall notify the on-duty supervisor of the accused's law enforcement agency and relay all pertinent information.