



# TOWN OF MACEDON POLICE DEPARTMENT

<b>General Order:</b> 442	<b>Effective Date:</b> November 1, 2020
<b>Subject:</b> Domestic Violence-Disputes & Offenses — Orders of Protection	
<b>Reference Standards:</b> 8.13, 29.3, 29.4, 44.1	
<b>Rescinds:</b>	
Page 1 of 11	Attachments: Domestic Incident Report, Statement of Allegations

## I. PURPOSE

- A. To establish procedural guidelines for officers responding to complaints arising from Domestic Violence.

## II. POLICY

- A. It is the policy of the Macedon Police Department to consider domestic offenses as criminal conduct.
- B. The resolution strategies of mediation, referral, or physical separation of the involved parties may be used by officers handling domestic disputes.
1. These resolution strategies **will not** be used as a substitute for appropriate criminal proceedings in DOMESTIC OFFENSES when probable cause exists for prosecution.
- C. Macedon Police Department employees are responsible for the safety of victims of domestic violence, and their children, by providing information on obtaining Orders of Protection, medical attention, assisting in obtaining essential personal effects, locating and transporting victims and their children to a safe place, including, but not limited to, a domestic violence program, a family member's or friends residence, or a similar place of safety.
- D. When an Order of Protection exists and its content is verifiable at the scene (**by examining the Order**), or upon inquiry through NYSPIN, the local criminal court of issuance, or Family Court, Police Officers will arrest any person whom they reasonably believe has violated the Order of Protection.

Note: The NYSPIN "Order of Protection Registry" is located in NYSPIN under "OINQ". The registry will only report an "Order of Protection" filed after October 1, 1995. Confirmation of the "Order" should be made by telephone or NYSPIN free form

message to the originator.

- E. Officers will not make any promise of assurance to any person that special attention or protection will be provided to any complainant, victim, or family member.

### III. DEFINITIONS

A. **Domestic Relationship** includes persons who:

1. Are legally married to one another
2. Were formerly married to one another
3. Are related by blood
4. Are related by marriage
5. Have a child in common
6. Are living together, who have lived together, including same sex couples or have a past or present dating relationship
7. Are specified as such by law (e.g. foster families or stepfamilies)
8. Are in an intimate partner relationship or were formally in an intimate partner relationship regardless of whether they have engaged in sexual relations.

B. **Domestic Violence:**

1. Occurs when any member of a domestic relationship, as defined in Section III A above, commits or attempts to commit bodily injury or fear of bodily injury; sexual assault; interference of freedom of movement; a property crime directed at the victim; a violation of an Order of Protection; or criminal trespass against another member of the domestic relationship.
  - a) Members of a domestic relationship may be charged with the following designated **Family Offenses** (New York State Family Court Act Article 8, § 812-1) when directed at another member of that domestic relationship:
    - (1) Aggravated Family Offense
    - (2) Harassment, 1st or 2nd Degree \*
    - (3) Aggravated Harassment, Second Degree (effective 11/3/95)
    - (4) Assault, 2<sup>nd</sup> or 3<sup>rd</sup> Degree; or any Attempted Assault

- (5) Criminal Mischief 1st, 2nd, 3rd, or 4<sup>th</sup> Degree
- (6) Criminal Obstruction of Breathing or Blood Circulation
- (7) Disorderly Conduct (subdivisions of which may be applied to non public areas)\*
- (8) Forcible Touching
- (9) Harassment 1<sup>st</sup> or 2<sup>nd</sup> Degree
- (10) Menacing, 2<sup>nd</sup> or 3<sup>rd</sup> Degree
- (11) Reckless Endangerment, 1st or 2nd Degree
- (12) Sexual Abuse 2<sup>nd</sup> or 3<sup>rd</sup> Degree
- (13) Sexual Misconduct
- (14) Stalking 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> Degree
- (15) Strangulation 1<sup>st</sup> or 2<sup>nd</sup> Degree
- (16) Coercion 2<sup>nd</sup> degree (NYSPL 135.60(1)(2)(3))
- (17) Grand Larceny 3<sup>rd</sup> or 4<sup>th</sup> Degree
- (18) Identity Theft 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Degree

Note: Harassment in the 2nd Degree and Disorderly Conduct are violations under the Penal Law; therefore, Juveniles cannot be petitioned as "Juvenile Delinquents". Juveniles can be petitioned in Family Court for the violation of the Family Offense of Harassment 2nd Degree and Disorderly Conduct.

### **C. Concurrent Jurisdiction:**

1. Exists when different courts have jurisdiction over the same incident.
2. A victim of a Family Court offense may elect to proceed in either a civil or criminal court **or** both.
3. Criminal Court and Family Court have concurrent jurisdiction and when an arrest is made, the officer must advise the victim that they have the right to address the matter in family court if:

- a) A designated Family Offense, as listed in Section III B of this General Order, is alleged to have been committed; **and**
- b) A relationship exists as defined in Section III A of this General Order (with the exception of III.A.6); **and**
- c) The offender is 18 years of age or older who has been charged with a violation; or
- d) The offender is an adult charged with any offense.

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

#### **D. Domestic Incidents**

- 1. Are arguments or disagreements between persons who share or have shared a relationship as described in Section III.A of this General Order, in which no violence or threat of violence is involved.

#### **E. Resolution Strategies:** (Items 1-4 will only be used when a NO ARREST situation exists)

- 1. Mediation - the process of helping people agree upon a specific course of action that will have a positive effect on their problem(s).
- 2. Referral - the process of getting a commitment from the disputants to go to a community resource for help in managing their specific problems.
- 3. Separation - facilitating the departure of one or more of the disputants.
- 4. In some situations officers may be asked for advice only.
- 5. Arrest - for the purposes of this General Order, when there is probable cause to believe that a person committed a crime or if an offense is committed in an officer's presence.

#### **F. Respondent**

- 1. For the purpose of an Order of Protection, this term refers to the party who is restricted by the Order of Protection.

### **IV. PROCEDURES**

- A. All reports and allegations of Domestic Violence will be investigated by a member of the Macedon Police Department.
- B. Officers dispatched to a reported domestic disturbance shall respond as quickly and safely

as circumstances permit.

C. Upon arrival at the scene the first officer to arrive will await the arrival of assisting officers unless the officer's personal assessment of the situation calls for immediate intervention.

D. Upon entering the scene of the Domestic Violence, the officers will:

1. Restore order by gaining control of the situation, and separating parties
2. Take control of all weapons used or threatened to be used in the crime
3. Locate and visibly check all occupants of the residence to verify their safety and well being
4. Assess the need for medical attention and request such assistance be dispatched, when appropriate
5. Interview all parties involved separately
6. After all persons have been interviewed, determine if an arrest should be made or whether other action should be taken
7. If an arrest is made, advise the victim that the release of the suspect may occur at any time, and provide the victim with information on victim shelters and other safety services
8. Collect (or cause to be collected) and record all evidence and where appropriate, ensure that photographs of injuries and property damage are taken.

E. All incidents dispatched as a domestic disturbance will be cleared with the appropriate codes.

1. Under no circumstances will the nature of the call be re-coded unless a thorough investigation clearly proves no domestic incident has occurred.

## V. ARREST POLICY

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

B. Probable cause can be based on, but is not limited to:

1. A signed statement from a witness, or
2. A statement from a suspect, or
3. Physical evidence which indicates that the suspect committed the crime including but

not limited to physical injury, property damage, signs of serious visible disruption, and/or statements by victims, children, or witnesses.

C. Additionally, the development of probable cause may include, but is not limited to, the following factors:

1. History of incidents involving the household and/or combatants, including past violence
2. Knowledge of participant's criminal history;
3. Victim's level of fear;
4. Threat to children that may be present and their level of fear;
5. Condition of the premises indicating violence has taken place.

D. All arrests will be made in conformance with the NYS CPL § 140.10. The following policies will be adhered to in all Domestic Violence cases:

**1. FELONY**

- a) Where a Police Officer has probable cause to believe that an individual has committed a Felony the Officer will **NOT** attempt to reconcile or mediate the parties, but **WILL ARREST** the offender, CPL §140.10 (1) a and b.

**2. MISDEMEANOR**

- a) Where a Police Officer has probable cause to believe that an individual has committed a misdemeanor against a victim whether or not the victim wants to press charges the Officer will **NOT** attempt to reconcile or mediate the parties, but **WILL ARREST** the offender, CPL §140.10(1)b, §140.30 and §140.40(1).

**3. VIOLATION - (COMMITTED IN OFFICER'S PRESENCE)**

- a) Where a Police Officer has probable cause to believe that an individual has committed a violation in the OFFICER'S PRESENCE against the victim, the Officer will **NOT** attempt to reconcile or mediate the parties but **WILL ARREST** the offender, with or without the consent of the victim, CPL §140.10(1) a and b.

**4. VIOLATION - (NOT COMMITTED IN OFFICER'S PRESENCE)**

- a) When a violation has been committed outside of the presence of a Police Officer the Officer will, outside the presence of the offender, make the victim aware of their right to initiate a citizen's turnover arrest. With the consent of the victim and reasonable cause to believe a violation occurred, the officer **will** accept a citizen's turnover arrest, CPL §140.30, §140.40.

## VI. ORDERS OF PROTECTION

A. Orders of Protection and Temporary Orders of Protection may be issued by a Local Criminal Court, Family Court, or State Supreme Court.

1. When advising the public as to which forum may be of assistance the following distinctions should be used as a guideline.

B. Local Criminal Court requires the commencement of a criminal action before it will issue a Temporary Order of Protection to the victim.

1. Upon conviction of the accused the court may enter an Order of Protection, the duration of which will be determined by the court. (CPL §530.12)
2. Local Criminal Court has the authority to issue a Family Court Order of Protection when the Family Court is not in session. (CPL § 530.11-2 (j))

C. Family Court may issue an Order of Protection upon application of either party with no requirement that a criminal action has been previously commenced, but a Family Court action must have been initiated (Family Court Act § 430).

1. The parties must be subject to the jurisdiction of the Family Court as per Section III- A (with the exception of Sect. III-A-6) of this General Order.
2. Section 153-b of the Family Court Act requires Police Officers to assist with the serving of any Order of Protection when requested to do so by any court or the petitioner at any time of the day or night.
3. Family Court will instruct petitioners of ORDERS REQUIRING IMMEDIATE SERVICE to take the Order to the Police Department who has jurisdiction where the Order is to be served.
4. Family Court may deliver an Order of Protection to the MPD via fax.
  - a) Upon receipt of a faxed Family Court order of protection, the Wayne County E-911 will be contacted, a job card created, and an officer will be dispatched to serve the OOP.
  - b) Once served, the completed affirmation of service must be placed in the Police Clerk's tray. The Police Clerk will return the affidavit of service to Family Court. Family Court will enter the served OOP into the NYSPIN system.
  - c) If an officer is unavailable to serve the faxed order of protection, the officer will forward the OOP to the oncoming shift for service.

D. Employees of the Macedon Police Department will assist the petitioners who are instructed

to respond to the Macedon Police Department for service of an Order Requiring Immediate Service.

E. When no Police Officer is available at the Police Department, the Emergency Communications Department (911) will be requested to dispatch an Officer to the Macedon Police Department to assist the petitioner.

F. The Police Officer assigned to assist the petitioner will provide escort and\or service of the Order of Protection.

1. These "Immediate Service Orders" include:

- a) Residency of the respondent with the petitioner;
- b) An assault or other physical abuse;
- c) Immediate removal of the respondent as requested by the court.

Note: Officers **WILL ALSO** assist with **ANY OTHER** service of an Order of Protection when asked to do so at any time.

G. Upon completion of service of an Order of Protection, Officers are required to complete the **Affirmation of Personal Service Form** which is attached to the Order and to forward this form to the Police Clerk.

1. Additional affirmation forms will be available in the event the original is misplaced.

2. If the Order cannot be served, the package will be returned to the petitioner for further attempts.

3. Unsuccessful service will be recorded on the Affirmation of Personal Service Form on the line(s) provided.

4. NYS Supreme Court may issue an Order of Protection upon the commencement of an action for divorce, separation or annulment (Domestic Relations Law § 252).

H. Where an Officer has reasonable cause to believe that the terms of an Order of Protection have been violated, the Officer will not attempt to reconcile or mediate the parties but **WILL ARREST** the offender with or without the consent of the victim.

I. Officers investigating violations of Orders of Protection will verify that the Order is signed and still in effect by reading the Order to see what behavior is prohibited and to be sure that it has been signed and is still in effect.

1. Check through NYSPIN, the local criminal court of issuance, or Family Court to verify what behavior is prohibited if the complainant does not have his/her copy.



2. Arrest the offender and include in the Standardized Domestic Incident Report (and Crime Report) the date of the Order, identity of the issuing court and judge, and the nature of the conduct prohibited by the Order.

Note: The NYSPIN "Order of Protection Registry" is located in NYSPIN under "OINQ". The registry will only report an "Order of Protection" filed after October 1, 1995. Confirmation of the "Order" should be made by telephone or NYSPIN free form message to the originator.

3. The offender found to be in violation of the Order of Protection will be charged with **CRIMINAL CONTEMPT IN THE SECOND DEGREE** pursuant N.Y.S. Penal Law §215.50(3), a copy of the Order of Protection must be attached to the accusatory instrument and will be included in the arrest package.

- a) Arrests resulting from the violation of an Order of Protection may result from conduct which is independently unlawful. In such cases the offender will be charged with both the violation of the Order of Protection and the underlying unlawful act.

4. Return all violations of Order of Protection, including Family Court Orders, to the local Criminal Court.

5. Advise the complainant that the action may be pursued in both Family Court and Criminal Court, with the exception of those relationships defined in Section III.A.6 which are only returnable to Criminal Court.

J. Officers will treat **Supreme Court Show Cause Orders** which have appropriate protection language as a Temporary Orders of Protection.

1. Officers must check the date by which the Show Cause Order must be answered and these are enforceable until that date.

2. As with all court orders, these must be signed by a judge before they are in force.

3. **Supreme Court Mutual Orders of Protection** sometimes restricts both parties conduct.

- a) If one party has committed a crime, an officer should make an arrest for the criminal act.

- b) If each party claims that the other one has committed some non-criminal violation of the Mutual Order, an officer should advise both to contact their civil attorney.

K. Where a violation of an Order has occurred and an arrest has been made for that violation, Officers will make a copy of the Order and inform the complainant to bring the original Order of Protection to court.

1. Officers will not take the complainant's copy of any Order of Protection.

## VII. US CODE TITLE 18-1 CHAPTER 110A, SEC. 2265- FULL FAITH AND CREDIT GIVEN TO ORDERS OF PROTECTION

A. Any Order of Protection that is issued by any State or Tribal Court and meets the following criteria is sufficient and enforceable in New York State:

1. The issuing court has jurisdiction over the parties; and
2. There has been given reasonable notice and opportunity to be heard has been given to the person against whom the order has been sought has been given;
3. Therefore the order is enforceable in New York State
4. No prior registration or filing of the order is a prerequisite for enforcement of the order.

## VIII. REPORTING PROCEDURES

A. The **New York State Standardized Domestic Incident Report Form (SDI)** will be completed when any Family Offense or crime occurs (as defined in this General Order) as well as a Standardized Crime Report.

B. The SDI Report will be completed as well as the Standardized Crime Report in all cases where a Family Offense, crime, or **a written report is viewed as necessary on a Domestic Incident** that has occurred whether an arrest is made or not, or when there is an allegation or history of violence and the participants are members of a domestic relationship.

C. The standard "Addendum Report" will be utilized for additional information needed to support the SDI Report.

D. Witness information will be listed at the top of the of the first addendum report page. Information will include their name, address, telephone numbers, and relation to investigation.

E. Additional narrative will be included on the Addendum Report below the witness information and on subsequent pages.

F. Statement of Allegations/Supporting Deposition may be recorded by the officer or the individual may write his or her own statement (to be written in 1<sup>st</sup> person).

G. When a Police Officer is investigating a Family Offense, as described in Section III-B of this Order, the investigating Officer will:

1. Upon completing the SDI Report, immediately give the victim(s) written notice of the legal rights and remedies available to them. Victim Rights Notice
2. When necessary the Victim Rights Notice will be given orally
3. This notice is located on the last copy of page 2 of the NYS Domestic Incident Report:

Statement of Allegations/Supporting Deposition. The victim is to receive the pink Victim/Complainant copy of page 1 and the pink Victim/Complainant copy of the State of Allegations/Supporting Deposition. This notice is located on the last copy of the SDI Report (goldenrod color) in both English and Spanish.

4. Additionally, a "Rights of Victims of Family Offenses" form will be provided to the victim or complainant. The report number and officer name should be printed on the form. The officer will request the signature of the victim/complainant on the form. If the victim/complainant refuses to sign the form, the officer should print "Refused."

H. In all **arrest** situations involving a domestic offense, Officers will:

1. Write "DOMESTIC OFFENSE" in the remarks section of the Arrest Report;
  2. **DO NOT** issue an appearance ticket unless instructed to do so by the officer's Supervisor;
  3. Advise the victim that the suspect may be released after arraignment, although the suspect will not be able to post bail until then;
  4. Make reasonable attempt to locate the offender if the offender has left the scene prior to police arrival;
  5. Handle juvenile suspects per General Order 460.
- I. Upon arresting an individual who is licensed to carry, possess, repair, and dispose of firearms pursuant to Article 400 of the NYS Penal Law, the arresting officer will indicate on the accusatory instrument that the defendant is so licensed, and list the licensing authority and county of issuance, when the following conditions exist:
1. The arrest is for a willful failure to obey an Order of Protection issued under Article 8 of the Family Court Act that involves violent behavior constituting the crime of menacing, reckless endangerment, assault or attempted assault; or
  2. The arrest is a willful failure to obey a lawful Order of Protection issued under Article 8 of the Family Court Act or CPL § 530.12 where such willful failure involves:
    - a) Infliction of serious physical injury, or the use or threatened use of a deadly weapon or dangerous instrument.

By Order of the Chief of Police

John P. Colella

John P. Colella (Nov 2, 2020 08:22 EST)

John P. Colella

Chief of Police

Dated this 1st day of November, 2020