



# ***GENERAL ORDER***

**DURHAM POLICE DEPARTMENT  
DURHAM, NC**

**NUMBER:**

**4046 R-7**

## **DOMESTIC VIOLENCE**

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### **INTRODUCTION**

It is the policy of the Durham Police Department (DPD) to view domestic violence and acts of violence between same sex parties as crimes that requires direct police intervention and a coordinated community response. The objective of the patrol officer who responds to such incidents is to reduce the possibility of violence and threats towards the victim and other involved individuals, conduct a thorough on-scene investigation, and provide the victim with information enabling them to seek assistance from alternative community agencies.

This policy is intended solely for the guidance of the officers and is in no way to be construed or relied upon by any third party as a promise that any particular suspect will be arrested, nor that any particular alleged victim will be protected.

### **DEFINITIONS**

N.C.G.S. § [50B-1](#) defines domestic violence as the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

- Attempting to cause bodily injury, or intentionally causing bodily injury; or
- Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in N.C.G.S. § [14-277.3A](#), that rises to such a level as to inflict substantial emotional distress; or
- Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

The term "personal relationship" means a relationship wherein the parties involved:

- Are current or former spouses;
- Are persons of the opposite sex who live together or have lived together;
- Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- Have a child in common;
- Are current or former household members;

- Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

For purposes of this policy, the Department defines same sex acts of violence as incidents between parties of the same sex which would qualify as incidents of domestic violence under N.C.G.S § [50B-1](#) had the parties involved been of the opposite sex.

## INITIAL RESPONSE AND INVESTIGATION

The Special Victims Unit (SVU) will investigate incidents of domestic violence, including same sex acts of violence, where:

- the parties are current or former spouses, or
- have a child in common, or
- have/had a dating relationship.

Domestic violence cases involving household members and parent/grandparent/children cases will be investigated by the district investigators. Whenever possible, supervisors will respond to domestic violence calls and same sex acts of violence to monitor the situation and provide any needed assistance. When responding to a domestic violence call or same sex act of violence call, the responding officers will:

- Restore order by separating the parties, assessing any injuries or the need for medical attention, and protecting the crime scene.
- Interview all parties separately, preferably out of sight and hearing range of one another. Interview children in an age-appropriate manner.
- Contact DCI to determine if there are outstanding warrants, valid Domestic Violence Protective Orders (DVPO), release conditions, and/or recent trespasses.
- After initial investigation, determine if an arrest is appropriate, as described in the Arrest Determination section of this policy.
- Collect and record evidence. When visible bodily injury or property damage is apparent, officers should attempt to take color photographs of the injuries, and/or property damage. Photographs of adult arrestees may be taken at the officer's discretion. Photographs of adult victims require their consent. Officers will make every effort to maintain the victim's privacy when photographing injuries, even if this requires an officer of the same sex to be contacted to take the photographs. Any weapons used should be photographed and collected for evidence. The photographs must be emailed to the SVU.
- When bodily injury is suspected but not visualized, officers should attempt to photograph the suspected injury location for follow up photography showing the evolution of bruising.
- Complete the Lethality Assessment Program (L.A.P) screening form. A copy of the completed form must be submitted to SVU.
- Prepare the appropriate domestic violence report in all cases in which domestic violence, or same sex acts of violence is alleged. Send all originals of the report(s) to the Records Division
- Give the victim a copy of the Crime Victim's Rights form pursuant to N.C.G.S. §[15A-831](#).
- Contact the on-call investigations supervisor, through the chain-of-command, in the event a violent felony has occurred.

## **PROBABLE CAUSE DETERMINATION**

Probable cause exists when the totality of facts and circumstances create a fair probability, not a certainty, that a crime has been committed and the person to be charged probably committed that crime. Probable cause to arrest may be based upon information communicated by an apparently credible victim. Credibility of the victim may be established by a variety of factors, including but not limited to, physical evidence, and other witnesses, including children, which corroborate the victim's statements. If feasible, the suspect should be questioned before an arrest is made. Any responses by the suspect should be considered as part of the probable cause determination.

A victim's preference for or against arrest, or a victim's willingness to appear in court, is not a factor in deciding whether or not probable cause exists. An officer evaluating probable cause should base that decision on all apparently credible information available at the time and shall use the same standards for evaluating probable cause as apply to crimes generally.

If the officer has probable cause to believe that both involved parties committed an offense, the officer will try to determine who the predominant aggressor is. Arrest is the appropriate response only with respect to the predominant aggressor. If the officer cannot determine the predominant aggressor, arrest is not preferred for either party. However, officers are encouraged to use other means to defuse the situation and ensure the parties' safety.

The predominant aggressor is the party who is more likely to initiate and continue the violence. The following are elements to consider when evaluating who the predominant aggressor is:

- evidence from the involved persons – types and severity of injuries, statements, etc.;
- evidence from witnesses;
- history of past domestic violence;
- age, height, and weights of parties;
- proportional nature of mutual violence;
- existence of a DVPO;
- use or threatened use of weapons;
- fear of retaliation by one party; and
- property destroyed by one party;

If for some reason the officer believes a dual arrest is necessary, the officer must contact their supervisor and obtain approval before proceeding.

Officers are reminded that reasonable force used in justified self-defense is not a crime. However, force used in excess of that which is reasonable for justified self-defense is a crime.

If probable cause is denied by the magistrate, then the officer must indicate the reason for denial in their narrative.

## **ARREST DETERMINATION**

According to N.C.G.S. § [15A-401](#), an officer is authorized to make a warrantless arrest when they have probable cause to believe that a criminal offense has occurred and that one or more of the following conditions exist:

- the offense is a felony;
- the offense occurred in the officer's presence;
- the offense is domestic criminal trespass under N.C.G.S. § [14-134.3](#);
- the offense was committed by person with whom the alleged victim has or has had a personal relationship as defined in N.C.G.S. § [50B-1](#) and the offense is:
  - Simple Assault, N.C.G.S. § [14-33](#)(a);
  - Assault on a Female, N.C.G.S. § [14-33](#)(c)(2);
  - Assault with a Deadly Weapon, N.C.G.S. § [14-33](#)(c)(1);
  - Assault Inflicting Serious Injury, N.C.G.S. § [14-33](#)(c)(1); or
  - Assault by Pointing a Gun, under N.C.G.S. § [14-34](#).
- When the offense committed is a misdemeanor under N.C.G.S. § [50B-4.1](#);
- the suspect will not be apprehended unless immediately arrested; or
- the suspect may injure himself or others or cause damage to property unless immediately arrested.

If an officer has probable cause to believe that a person has committed a domestic violence offense, or same sex act of violence, the officer shall make a warrantless arrest when authorized by N.C.G.S. § [15A-401](#).

OR

If a warrantless arrest is not authorized by N.C.G.S. § [15A-401](#) or the officer is unable to apprehend the suspect in a reasonable amount of time, the officer shall obtain the appropriate warrant(s). The officer may allow the victim to accompany them when obtaining the warrant(s). However, it is the officer's responsibility to obtain the warrant(s), regardless of the victim's participation in the process.

N.C.G.S. § [50B-4.1](#)(a) requires a warrantless arrest in cases where there is a Domestic Violence Protective Order in effect and there is probable cause to believe that the suspect violated the order under the following provisions which:

- Exclude the suspect from the residence occupied by the victim;
- Direct the suspect to refrain from:
  - threatening, abusing, or following the other party; or
  - harassing the other party, including by telephone, visiting the home or workplace, or other means; or
  - otherwise interfering with the victim.

If an officer has probable cause to believe that a person has committed an offense under N.C.G.S. § [50B-4.1](#), the officer shall make a warrantless arrest

OR

If the officer is unable to apprehend the suspect in a reasonable amount of time, the officer shall obtain the appropriate warrant(s). The officer may allow the victim to accompany him/her when obtaining the warrant(s). However, it is the officer's responsibility to obtain the warrant(s), regardless of the victim's participation in the process. The terms of the Domestic Violence Protective Order remain enforceable until the order expires or is terminated by court action.

If the suspect has left the scene and probable cause for a warrantless arrest exists under N.C.G.S. § [15A-401](#) or N.C.G.S. § [50B-4.1](#), the officer will make a reasonable effort to locate and arrest the suspect. In the rare circumstance when probable cause exists but the officer does not feel that an arrest is the appropriate response, the officer shall contact a supervisor, obtain his/her approval, and carefully document the circumstances in a written report.

An officer should not:

- Base the decision to not arrest on:
  - the absence of visible signs of injury;
  - the officer's belief that the victim will not assist in prosecution.
- Make any statements which would discourage a victim from reporting an act of domestic violence, or same sex act of violence.
- Threaten, suggest, or otherwise indicate the possibility of arrest of all parties in order to discourage future requests for intervention by law enforcement. If a crime is alleged and a warrant is not obtained, then the officer must explain in detail in their narrative why they did not obtain a warrant.

## **SCREENING PACKAGES**

Any officer who obtains a misdemeanor warrant(s) in a domestic violence incident shall complete a Domestic Violence Misdemeanor Screening Package, utilizing the DV screening form. The package will include all original documents and will be submitted to DPD Records.

Officers who obtains felony warrants in a domestic violence incident shall complete a felony screening package in accordance with general order 4070 *District Attorney Screen Packages*.

## **DOMESTIC VIOLENCE PROTECTIVE ORDERS**

A Domestic Violence Protective Order (DVPO) is a civil order that can only be served by the Sheriff's Department. Warrantless arrest is authorized and required by N.C.G.S § 50B-4.1 when the officer has probable cause to believe that the suspect has violated a valid DVPO under the provisions prohibiting harassment, threats, abuse and presence at a residence. If a violation of a valid DVPO has occurred, the officer must arrest the perpetrator regardless of the present relationship or circumstances between the victim and the perpetrator. Even if the perpetrator has moved back into the residence named on the DVPO or the victim has invited the perpetrator to his/her residence, the officer must arrest once the active order is confirmed. Only a subsequent court order dismissing the DVPO can nullify the enforcement of that order.

In the event a DVPO has been issued but not served, the officer will request service through the Sheriff's Department by notifying Durham Emergency Communications Center (DECC).

N.C.G.S. § [50B-4.1](#)(a) requires a warrantless arrest in cases where there is a DVPO in effect and there is probable cause to believe that the suspect violated the order under the following provisions which:

- Exclude the suspect from the residence occupied by the victim;
- Direct the suspect to refrain from:
  - threatening, abusing, or following the other party; or
  - harassing the other party, including by telephone, visiting the home or workplace, or other means; or
  - otherwise interfering with the victim.

If an officer has probable cause to believe that a person has committed an offense under N.C.G.S. § [50B-4.1](#), the officer shall make a warrantless arrest.

Before placing the subject in custody for a DVPO violation, the officer should ask DCI to check on the order to the confirm:

- The service and expiration date of the order;
- The terms of the order (Are there any exceptions in regard to child custody or the like that may make the arrest false?);

In incidents where the victim alleges the violation of a DVPO, but the officer is unable to verify the validity or existence of the DVPO in question the officer should document the encounter. The victim should be told how to file a protective order with the civil clerk of courts and, if applicable, how to get another copy of the order and that they should keep a copy available at all times.

When the suspect is processed at the Magistrate's Office, the Magistrate will file the order for the violation in Civil Court. The officer may seek a warrant for the underlying criminal charge(s), in addition to the civil proceedings.

Ex Parte Orders: An ex parte order is a temporary order valid for up to ten days or until the set court date for the DVPO hearing in which both parties are present. To enforce an ex parte order, the officer should:

- Confirm the validity of the order by checking the court date on the Notice of Hearing. If the court date is expired, explain to the victim that the complaint must be re-filed and this ex-parte is null and void.
- If the order is valid, confirm that the restrained party has been served with the notice of the protective order complaint.
- If the restrained party was served, enforce as a DVPO.
- If the restrained party has not been served,
  - Attempt to serve through Sheriff's Dept.
  - Inform the suspect of the order.
- Document actions as necessary based on the circumstances

If an officer encounters an out-of-state protective order, or an order issued under the jurisdiction of an Indian tribe, he or she must enforce its provisions if one of the following conditions exist:

- The protective order has been registered with a North Carolina Clerk of Superior Court; or
- A copy of the order is provided, and the person protected states that the order is still in effect; or
- The protective order can be verified as currently being in effect by the issuing jurisdiction; or
- The protective order can be verified as currently being in effect by NCIC.

If a protected person provides a copy of an out-of-state protective order, and states that it is still in effect, and it is determined that the order was not in effect, then the officer may charge the person who made the false statement with N.C.G.S. § [50B-4.2](#) (False statement regarding protective order is a misdemeanor.) If an officer encounters such a situation, he or she should take appropriate action under North Carolina law and contact SVU for further assistance. If a violation occurs and the suspect is not on the scene, officers should attempt to locate the suspect in the immediate area or any other place identified by the victim, such as a place of employment, mother's house, etc. If located at any time, the suspect can be picked up immediately without a warrant.

If the suspect is not found, officers should explain to the victim how to file an order to show cause for this violation and prepare an incident report.

Officers should not become involved in the disposition of personal property. Provisions of a protective order that allocates personal property such as furniture, cars or other items must be enforced through the civil process and are not within the officer's authority. In the absence of a warrant or probable cause, the officer should remain neutral and be concerned primarily with maintaining the peace and safety of those present.

## **FEDERAL CRIMES AND OUT-OF-STATE PROTECTIVE ORDERS**

If an officer encounters an out-of-state protective order, or an order issued under the jurisdiction of an Indian tribe, he or she must enforce its provisions if one of the following conditions exist:

- The protective order has been registered with a North Carolina Clerk of Superior Court; or
- A copy of the order is provided and the person protected states that the order is still in effect; or
- The protective order can be verified as currently being in effect by the issuing jurisdiction; or
- The protection order can be verified as currently being in effect by NCIC.

If a protected person provides a copy of an out-of-state protective order, and states that it is still in effect, and it is determined that the order was not in effect, then the officer may charge the person who made the false statement with N.C.G.S. § [50B-4.2](#) (False statement regarding protective order a misdemeanor.)

If an officer encounters such a situation, he or she should take appropriate action under North Carolina law and contact DVU for further assistance.

## **VICTIM SERVICES**

Whether or not an arrest is made, the officer should provide the following services or information to the victim:

- At a minimum, provide the victim with the responding officer's name, and any incident report numbers.
- Remain on the scene to preserve the peace while the victim removes such items as food, clothing, medication and other personal property as is reasonably necessary to enable the victim and any minor children to stay elsewhere.
- Transport the victim to appropriate facilities, such as hospitals, the magistrate's office, or safe shelter, upon the request of the victim.
- If requests are made by a victim or a victim's advocate for police assistance in removing belongings from the victim's residence or transportation sometime after an initial incident, officers may provide whatever assistance is reasonable and prudent.
- Provide the victim with a copy of the North Carolina Victim Notification form (when a crime has been committed).

## **OTHER CALLS FOR SERVICE**

Officers are often requested to assist a person moving belongings or to escort a victim in domestic situations. If an officer responds to such a domestic related call, he/she will stand by until the caller has completed the task. "Belongings" will be limited to essential clothing, food or medical supplies. If the task cannot be completed within a reasonable amount of time, notify the victim that you will not be able to continue to stand-by and to make arrangements for further assistance at a different time and advise a supervisor of any problems.



If the suspect is present, officers should not leave until the victim is able to leave as well (unless the victim advises differently and no DVPO exists). If a DVPO exists between the parties, the officer should take all necessary precautions to assure the safety of the victim and to prevent any undue harassment. If a DVPO violation should occur, appropriate action outlined in the DVPO section, section III, of this protocol must be followed.

## **DEPARTMENTAL PERSONNEL INVOLVED IN DOMESTIC VIOLENCE INCIDENTS**


When a member of the Durham Police Department is involved in a domestic violence situation or same sex act of violence and sworn personnel are dispatched to the scene, the following procedure shall be adhered to:

- The first responding officer shall notify his or her supervisor, who will respond to the scene and will coordinate the initial investigation. The procedure should be the same as it would be in any domestic violence or same sex act of violence incident.
- The supervisor will notify the Watch Commander, who will have a Domestic Violence Investigator of at least the rank of Corporal (or that supervisors designee) dispatched to the scene regardless if a criminal offense appears to have taken place or not and notify the involved employee's chain of command
- If a weapon was reportedly used in the offense, Forensic Services will be called to collect it, and turn it into property.
- If there is probable cause to believe the involved member committed a criminal offense, the Watch Commander will notify the Professional Standards Division.
- The supervisor will advise DECC to make an audio tape of any 911 recordings related to the incident. The recordings and the written report of the incident should be forwarded to the Domestic Violence Unit and the Professional Standards Division within 24 hours.

## **MANDATORY REPORTING**

If a DPD employee is aware of a domestic violence incident or same sex act of violence involving another member, that employee must inform their immediate supervisor, who must notify the victim's chain-of-command. The Major of the involved employee will then inform the Professional Standards Division.

The provisions of this order that deal with Departmental personnel are intended to further the credibility and effectiveness of this Department and should not be construed as a protocol that assumes guilt or innocence of Departmental employees.

  
Cerelyn J. Davis  
Chief of Police