

 Kinston Police Department	<u>POLICY: Domestic Violence Assistance</u>						<u>POLICY #:</u> 400-8
	<u>NCLEA Standards:</u>						
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Approval: Chief of Police							

I. PURPOSE

The purpose of this directive is to establish a standardized, effective response to domestic violence related incidents and the enforcement of protective orders.

II. DEFINITIONS

- A. Abuse: Patterns of abuse may include, but are not limited to: sexual assault; stalking; property crimes; violation of a court order; criminal trespass; intentionally causing or attempting to cause bodily injury; or, placing another person in reasonable fear of imminent bodily injury to him/herself or another.
- B. Bodily Injury: An injury which causes physical pain, visible marks, or impairment of the victim's physical condition.
- C. Domestic Criminal Trespass (NCGS §14-134.3): Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, if the complainant and the person charged are living apart.
- D. Domestic Dispute: Any incident between people who have or have had a personal relationship (as defined below), where police assistance has been requested, even though no crime has occurred.
- E. Domestic Violence (NCGS §50B-1(a)): 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:
 1. Attempting to cause bodily injury, or intentionally causing bodily injury;
 2. 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 NCGS §14- 277.3A, that rises to such a level as to inflict substantial emotional distress; or
 3. Committing any act defined in NCGS §14-27.21 through 14-27.33 (rape or sex offense).

- F. Ex-Parte Order: A temporary order of protection, entered without notice to the defendant/other party that is typically valid for up to ten (10) days, or until an established court date for a Domestic Violence Protective Order (DVPO) hearing.
- G. Personal relationship (NCGS §50B-1(b)): For the purposes of this policy, the term "personal relationship" means a relationship wherein the parties involved:
1. Are current or former spouses;
 2. Are persons of opposite sex who live together or have lived together;
 3. 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;
 4. Have a child in common;
 5. Are current or former household members;
 6. Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this definition, 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.
- H. Primary Aggressor: The primary aggressor is the party who is responsible for the perpetuation of the violence, although not necessarily who initiated it in one particular incident.
- I. Probable Cause: Whether, at the moment the arrest was made, the facts and circumstances within the officer's knowledge and of which he/she had reasonable trustworthy information were sufficient to warrant a prudent person to believe that the defendant had committed or was committing an offense.
- J. Protective Order: An order entered by the court, including magistrates, as authorized under North Carolina General Statutes that restrains the defendant from further acts of domestic violence. A protective order may include the types of relief as outlined in NCGS § 50B-3(a).
- K. Self-Defense: A person is entitled to use a reasonable amount of force to protect themselves from an assault. A person must have a reasonable fear of bodily injury to justify the use of force. A person may not use more than necessary force nor continue the force once the threat has ceased or been withdrawn. Self-defense is often more difficult to determine in cases of domestic violence and requires careful investigation.
- L. Stalking (NCGS §14-277.3A): Includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

III. PROCEDURES

- A. It is the policy of the Kinston Police Department to reduce the incidence and severity of domestic violence, to protect victims of domestic violence and provide them with support through a combination of law enforcement and community services. In addition, we strive to promote officer safety and quality service delivery by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence related calls for service.
- B. The first responsibility of law enforcement in domestic incidents is to prevent the occurrence or re-occurrence of violence. Arrest, with or without a warrant, offers the best potential for ending the cycle of violence and is the preferred response. In all domestic incidents, officers will take reasonable and prudent steps to address the needs of victims and/or other involved parties.
- C. Authority to protect victims
 - 1. Officers responding to a domestic violence call shall take whatever steps are lawfully authorized and reasonably necessary:
 - a. To protect victims from harm;
 - b. To determine if medical care is needed by any person; and
 - c. To arrest any violator as authorized by law and by this directive.

The officer is authorized by NCGS 50b-5(a) to take whatever steps are reasonably necessary to protect a victim from harm, even in cases where no protective order is in effect.

- D. Training
 - 1. The Training Division is responsible for ensuring that a comprehensive domestic violence training program for members of the Department is implemented. All officers will receive annual training on domestic violence to inform officers of:
 - a. Domestic violence laws;
 - b. Departmental directive and procedures;
 - c. Dynamics of domestic violence; and
 - d. Investigative techniques.

IV. RESPONSE AND ARRIVAL

- A. Officer approach
 - 1. Two (2) patrol units will respond to the scene of any domestic incident that is in progress or has just occurred. While a two-officer minimum response is preferred, officers may need to intervene immediately to protect a person from imminent death or serious physical injury.
 - a. The units should proceed in the direction of the incident as safely as possible by the most direct route.
 - b. Wait for backup, unless there is a need to intervene to protect a person from imminent death or serious physical injury.

2. The officers should approach the scene as cautiously as possible, making an external check of the premises for danger signals.
 - a. Officers should be aware of open windows and doors, which are a prime location for ambush during the initial approach.
 - b. Officers should attempt not to park directly in front of the residence/apartment.
 - c. Listen before knocking to obtain an idea of what is going on inside.
3. Upon initial contact with the disputants, responding officers should identify themselves as police officers, if not immediately apparent, explain their presence, and request entry into the premises. The officers should ask to see the person who is the victim of the call. If the person who called the police is not the victim, the officer should not reveal the caller's name or whereabouts.

B. Officer Entry

1. Entry granted by permission

Officers may enter and remain on private premises after receiving permission from any person who appears to be entitled to give or withhold consent to enter the premises. An adult who has established a residence on the premises with the approval of an owner or other lawful occupant has authority to consent to an entry on the premises.

2. Entry refused

If entry is refused, officers should be persistent about seeing and speaking with the victim in private. If access to the victim is refused, the officers should request that the telecommunicator attempt to make contact with the reporting person to see if the reporting person is the victim. Officers will make every effort to have face-to-face contact with the victim. If access is still refused, the officers must decide whether to leave, remain and observe, or force entry. The Supervisor will be notified of this situation.

- a. If there is any evidence to indicate that a crime has been committed, the officers will not leave the scene without speaking with the victim in private. The condition of the scene, the state of the person who is speaking with the officer, and existence of exigent circumstances should be considered in evaluating possible evidence of a crime.
- b. If the officer has reason to believe that serious bodily injury has occurred or will immediately occur if the officers leave, the officers will not leave the scene.
- c. If the officers leave, they should drive by later to observe and try to determine if any further disturbance is occurring or has occurred.
- d. If the officers remain to observe, they should move to public property within a reasonable time and observe the premises from that location.

3. Forced Entry

When permission to enter is not needed: In some circumstances, forced entry, pursuant to NCGS 15A-285, may be urgently necessary and appropriate in order to save a life or prevent bodily injury.

- a. Officers with a reasonable factual basis to believe violence is presently occurring or threatened inside a private building or vehicle may enter using that force reasonably necessary to affect entry. If feasible, officers shall knock, identify themselves, demand entry, and have entry denied or unreasonably delayed before entry is forced. If time allows, officers shall contact a Supervisor before forced entry is pursued.
- b. Immediate forced entry without knocking and announcing is lawful and authorized when the giving of such notice presents a clear danger to life or would endanger the life or safety of any person. The permission of the owner or other lawful occupant or of a victim is not needed to enter in or remain on private premises if officers have a reasonable factual basis to believe any occupant needs immediate protection from acts of violence threatening personal injury.

4. Contact: Once inside the premises, the officers will:

- a. Take all precautions to ensure their safety and the safety of all parties.
- b. Determine if a suspect is still at the scene.
- c. Restore order by separating the parties and calming them.
- d. Determine if any weapon is at the scene. If the officers have reason to believe that any person is armed or presents a threat to officer safety, the officers may conduct a pat-down for weapons. Even though a person may carry a concealed weapon on their own premises, officers may take control of the weapon to ensure the safety of those present.
- e. Determine location and condition of victim.
- f. Assess the need for medical attention and call for medical support if indicated.
- g. Locate and assess the condition of any children/other persons at the scene.
- h. Officers may conduct a brief, protective sweep of the premises to locate the other parties if:
 - i. It is not readily apparent who is involved in the dispute; and
 - ii. There is reasonable and articulable suspicion to believe that one or more parties is in another part of the residence; and
 - iii. There is believed to be a dangerous threat.
- i. Note any observed evidence of alcohol/drug use and/or other evidence of violence, such as broken furniture or thrown objects.

- j. Determine what, if any, crime has occurred.

V. ON-SCENE INVESTIGATION

A. Interview Guidelines

1. Interview all parties separately and document all statements, including whether or not an assault was committed, the nature of the assault, who the predominant aggressor was, whether one of the parties was acting in self-defense, the nature of injuries inflicted as well as victim/suspect condition, demeanor, and relative size.
2. Ensure that the Domestic Violence Packet is completed, including all applicable forms (see Section XII below), with the input from the victim, including evidence of injury. The Domestic Violence Packet is required to be completed and turned into the District Attorney when charges are filed.
3. Note any utterances/admissions by participants made during and immediately after the conflict. Any statement made by a suspected abuser tending to admit participation in a criminal act is important evidence and must be documented by responding officers.
4. In conducting interviews and calming the individuals involved, officers will be cognizant of the image a uniformed officer may present to a victim and ensure their approach is professional and compassionate.
5. Determine if an assault has previously occurred, if weapons were used, if objects were thrown, what weapons are kept in the home, where any weapons are located and identify any other indicators of violence.
6. Determine the legal status and living arrangements of the parties involved as defined under personal relationships. Evidence of having lived together may include the clothing of both parties at a residence, the sharing of living expenses at the residence, the length of time the residence was shared, whether either person maintains a separate residence, or whether both parties receive mail at the residence.
7. Determine if there are outstanding warrants, court orders, release conditions, Protective Orders under 50B and/or recent trespass orders.
8. An officer should not make statements which would tend to discourage a victim from reporting an incident of domestic violence or domestic disturbance. An officer will objectively enforce the laws and perform his/her duties.
9. Officers will not advise victims of domestic violence that they can "drop" or "press" charges. The decision to prosecute is made by the investigating officers and the District Attorney. The victim and suspect will be advised by the investigating officers that once a domestic violence incident is reported, neither party has control over the decision to prosecute.
10. If circumstances do not exist for the officers to make an arrest, but the victim wishes to pursue obtaining a warrant, the officers will assist the victim in doing so by explaining how a warrant can be obtained, and if necessary and reasonable to do so, provide transportation to the Magistrate's Office.

11. The victim will be provided Victim/Witness Assistance as outlined in this policy (see Section XIII.) and KPD Policy & Procedure 400-11 Victim/Witness Assistance.

B. Victims

The officer should ensure the victim's safety and privacy by interviewing the victim in an area out of sight and hearing range of the assailant, witnesses, and bystanders. In questioning, the officer will:

1. Use supportive interview techniques;
2. Ask the victim about previous domestic incidents, their frequency and severity;
3. Not reveal to the victim what action he/she intends to take until all available information is evaluated;
4. Ask the victim (and the suspect) if they are injured or in pain, even if there are no visible injuries. If pain is reported or injuries are visible, offer to contact Emergency Medical Services (EMS);
5. If the victim does not speak English, locate a translator as soon as possible to assist in investigating the incident and providing services to the victim and witnesses. The Lenoir County Communications Center and/or District Attorney's Office maybe able to assist in obtaining interpreter services;
6. Although family members may volunteer to translate for a victim, an outside translator is preferred because the family member may attempt to cover up the suspect's actions to protect the family.

C. Witnesses

1. Officers will interview any witnesses fully as soon as circumstances allow. If the witnesses provide information about prior incidents, officers will document such incidents.
2. Officers will document names, addresses, and phone numbers of witnesses for follow-up interviews or possible court testimony.
3. If no witnesses are at the scene, officers will check with neighbors or other persons that may be able to provide pertinent information.

D. Children – others in the household

1. Officers at the scene of a domestic violence call should be alert to any signs that children, elders, or dependent adults are also victims of abuse.
2. Children will be interviewed in a manner appropriate to their ages, preferably alone. Officers should contact the on-call Department of Social Services of Lenoir County worker if assistance is needed to interview or help interview the children or to help stabilize the situation.

3. Officers should question children and other adults about possible acts of violence against the children in addition to questions about acts of domestic violence between adults. If any credible evidence of such abuse exists, the Department of Social Services of Lenoir County should be called in order for them to initiate a full Investigation to determine whether the child or others should remain in the home with the abuser (s). Additionally, law enforcement should investigate to ascertain if criminal charges are appropriate.
4. For all children present in the home, even if they did not witness the incident, officers will document names, ages, statements, signs of trauma, and any apparent healing of abuse wounds. Photograph children's injuries, if possible.

VI. EVIDENCE/CRIME SCENE

- A. Whenever a crime is alleged to have been committed, the investigating officer shall note the condition of the scene and collect and preserve relevant evidence regardless of whether an arrest is made at the scene. The charging officer will ensure that all evidence is gathered and preserved for their presentation in court (e.g. photographs, statements, etc.).
- B. Photographs: If applicable, the officer should ensure that photos are taken of:
 1. Visible injuries on the victim:
 - a. Old scars and fading bruises to establish a pattern,
 - b. Fresh injury,
 - c. "Hidden" injuries concealed by clothing. An officer of the same sex as the victim should assist when possible in documenting these injuries, and
 - d. Follow-up photos should be taken 24-48 hours after the incident. Bruises may not appear for several days after the assault. The officer should advise the victim to contact the police if injuries later appear. If possible, the officer should revisit the victim.
 2. Visible injuries on the assailant;
 3. Children - If not present, inquire as to whether or not the children are at home. Ask to see the children and photograph, if possible;
 4. Crime Scene, including but not limited to, damaged/destroyed property, alcohol/drug paraphernalia, blood or other body fluids, weapons, etc.
- C. Evidence Collection: The officer should ensure that all relevant evidence is collected, when necessary. Evidence may include:
 1. Weapons used or threatened to be used in the assault, even "non-traditional" weapons such as a telephone cord or broomstick;
 2. Torn/bloody clothing;
 3. Destroyed property;

4. Audio Recordings, letters from the suspect, phone texts, etc., to establish a pattern and history of abuse; and
 5. 911 recordings of the victim's, witness' and/or suspect's call.
- D. Seizure of Dangerous Weapons
1. Any dangerous weapon possessed, displayed, used, or threatened to be used, by the abuser during a domestic violence incident shall be seized and held as evidence for court. No weapons shall be returned to an abuser unless ordered by a court of competent jurisdiction following notice and opportunity to be heard by the District Attorney, or otherwise ordered upon final disposition of charges.
 2. If the perpetrator has a prior conviction for a domestic assault and is in possession of a firearm that is a violation of Federal Statute 18 USC Section 921(A). That information will be documented and forwarded to the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

VII. ARREST

- A. The responding officer should arrest the assailant whenever an arrest is authorized, including warrantless arrest for certain domestic misdemeanors which did not occur in the officer's presence.
- B. The arrest decision is the responsibility of the officer; therefore, the officer should not consider any of the following factors, except as they relate to the elements of the crime:
1. Victim's opposition to arrest or claims of being unwilling to prosecute;
 2. Any speculation that the victim may not follow through with prosecution;
 3. Concerns about the financial consequences of arrest;
 4. Speculation that the arrest may not lead to conviction;
 5. Relationship or marital status of the parties (i.e. not married, separated, pending divorce, etc.);
 6. Denial by either party that the abuse occurred when there is evidence of domestic violence;
 7. Verbal assurances that the violence will cease;
 8. Racial, cultural, social, political or professional background, or the sexual orientation of either the victim or accused;
 9. Location of the incident, i.e. public or private; and
 10. Injuries are not visible.

C. Determining Probable Cause to Arrest

1. 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 arrested probably committed that crime.
2. Probable cause to arrest may be based solely upon information related by an apparently credible victim, even though corroborating evidence is not available at the time arrest takes place. Physical evidence is important in determining probable cause. A suspect's statements admitting part or all of an alleged violation of the law are important evidence for probable cause and as evidence in court.
3. If an arrest is not authorized because of the absence of probable cause, the officer will complete an incident report, recording the victim and suspect names, their relationship, the history of abuse and the action taken at the scene. Officers shall advise the victim of domestic violence assistance through our department and other applicable referral agencies in our area.

D. If the officer decides not to arrest despite the existence of probable cause, a clear and compelling reason for such action and the actions taken to ensure the safety of the victim must be documented in the written report of the incident.

1. In all cases when an officer declines to arrest or initiate criminal charges, because of insufficient probable cause or for any other reason, the officer shall so advise the victim of their right to apply for an arrest warrant and, if requested by the victim, transport to and from the magistrate's office so the victim can request issuance of an arrest warrant against the alleged abuser.
2. Officers shall not try to influence the decision of a victim to either seek or not seek issuance of an arrest warrant.
3. Officers should follow-up on open cases to determine whether the victim obtained a warrant.

E. Before making an arrest, officers should consider the intent of the law to protect victims of domestic violence from continuing abuse. An officer should closely evaluate the following elements to determine who the primary aggressor is:

1. Evidence from the involved persons, i.e. injuries, statements, etc.;
2. Evidence from witnesses of the domestic abuse;
3. Self-defense wounds:
 - a. Aggressor may have scratches on arms and hands or bite marks on the chest or arm, and/or
 - b. Victim may have bruises on forearms, scratches on his/her own neck, bilateral injuries, etc.;

4. Existence of a permanent Domestic Violence Protective Order;
 5. Possession of weapons;
 6. Property destroyed by one party;
 7. Relative severity of injuries;
 8. One party physically larger or stronger; and
 9. History of violence by one of the parties against the other or against other people.
 10. A determination as to who the primary aggressor is should not necessarily include who started a verbal argument, since verbal provocation is not a justifiable cause for assaultive behavior.
- F. Arrest of both parties in a disturbance where domestic violence is present may trivialize the seriousness of the situation and potentially increase the danger to the victim. True mutual combat is rarely present. Mutual combat exists when both parties to a fight are equally willing participants, each inviting the other to fight, and each trying to inflict an injury on the other. Mutual combat may justify the arrest of both parties to a conflict.
1. Dual arrest is not encouraged. A victim often inflicts injuries upon a suspect while defending him/herself from the suspect's aggression.
 2. Often a cross-complaint is falsely made by an offender to avoid an arrest. In cases of "mutual combat" where an officer cannot determine the aggressor, probable cause may not exist for any arrest.
- G. When warrantless arrest is allowed by the law – According to NCGS §15A-401, arrest is authorized without a warrant if an officer has probable cause to believe that a person has committed any of the following:
1. A felony crime in or outside of the officer's presence;
 2. A misdemeanor crime in the officer's presence, or
 3. The misdemeanor was not in the officer's presence, but
 - a. The suspect will not be apprehended unless immediately arrested; or
 - b. The suspect may cause physical injury to himself or others, or damage to property unless immediately arrested; or
 - c. The suspect committed a misdemeanor under the following;
 - i. NCGS §14-33(a), Simple Assault, Simple Assault & Battery, or Simple Affray,
 - ii. NCGS §14-33(c)(1), Assault Inflicting Serious Injury or Assault with a Deadly Weapon,

- iii. NCGS §14-33(c)(2) Assault on Female,
 - iv. NCGS §14-34 Assault by Pointing a Gun,
 - v. NCGS §14-134.3 Domestic Criminal Trespass, or
 - vi. NCGS §50B-4.1(a) Knowingly violating a domestic violence protective order.
- H. If arrest is authorized by law, with apparently credible information sufficient to support probable cause, arrest is mandatory for a felony and preferred but not mandatory for a misdemeanor.
 - 1. If immediate warrantless arrest is feasible, officers shall make an immediate warrantless arrest.
 - 2. In cases where arrest is not mandatory, the arrest decision should be made based first on whether or not arrest is necessary for the protection of victims against future violence.
- I. Arrest pursuit to a warrant – If immediate warrantless arrest is not feasible (person subject to arrest is not present) or if officers believe the credibility or sufficiency of information about probable cause should be heard by a magistrate before arrest, officers may seek an arrest warrant before making an arrest so long as that can be done without increased jeopardy to the safety of any witness or victim. Officers shall take all feasible steps to reduce the risk of violence to witnesses and victims during the warrant issuing process.
 - 1. An officer should apply for issuance of an arrest warrant even though the victim declines to cooperate or agree to go to the Magistrate's office.
 - 2. It is the responsibility of the officer to relate the seriousness of the crime to the Magistrate or Judge and to request an appropriate bond and release conditions.
 - 3. Inform the Magistrate if the charges include assault on or communicating a threat to a person with whom they have a personal relationship, or domestic criminal trespass or violation of a 50B Order. If so, only a judge may determine the conditions of bail or release conditions during the first 48 hours, a Magistrate will then set the release conditions.
 - 4. Inform the Magistrate or Judge of information known to the officer concerning the defendant's history of violence, threats and the number of previous calls, the potential for further violence if released, and the existence of court orders, release conditions, or civil orders.
- J. An abuser who is charged with a crime should be advised that any attempt to harass or intimidate the victim for the purpose of changing testimony or asking that charges be dismissed will, if sufficient evidence exists, be a good reason for charging the suspect with obstruction of justice, felony interfering and/or intimidating a state's witness, or any additional charges that may apply.
- K. Force used in justified self-defense is not a crime. Every person has a legal right to use reasonable and necessary nonlethal force appropriate for repelling an assault or preventing bodily injury.

L. Special Circumstances

1. If, upon examination of the accused, the officer determines that a voluntary or involuntary commitment to a mental health facility is required, the officer should follow emergency commitment procedures according to Departmental policy (see KPD Policy & Procedure 400-11, Crisis & Mental Health Intervention). The officer should not allow the possibility of mental illness or substance abuse to preclude a valid criminal arrest.
2. In cases where the officer determines that an arrested person is under the supervision of the Division of Parole and Probation, the officer shall notify that agency of the arrest.

VIII. ENFORCEMENT OF PROTECTIVE ORDERS

- A. A Protective Order (often referred to as a "50B") may be obtained by a victim of domestic violence through the District Court.
1. Application for a Protective Order is done through the Clerk's Office. There is no cost to file for a Protective Order.
 2. Instructions and a fillable form are located online at www.nccourts.org. The forms may be located by searching under the Forms tab for:
 - a. AOC-CV-303I: Instructions for Domestic Violence Forms
 - b. AOC-CV-303: Complaint and Motion for Domestic Violence Protective Order
- B. Enforcement: Verifying Contents of Protective Order
1. Ex-Parte Order – A temporary order of protection, entered without notice to the defendant that is typically valid for up to ten (10) days, or until an established court date for a Domestic Violence Protective Order (DVPO) hearing.
 2. Protective Order – An order entered by the court, including magistrates, as authorized under North Carolina General Statutes, that restrains the defendant from further acts of domestic violence. A protective order may include the types of relief as outlined in NCGS § 50B-3 (a).
 3. Officers will enforce North Carolina Protective Orders wherever in the state they are issued, without further court order.
 4. To enforce an ex parte or DVPO, the officer should:
 - a. Read the protective order to confirm the validity of the order and ensure that it remains in full force and effect at the time of its enforcement:
 - i. Ask to see the full DVPO or verify its existence via DCI. If the order exists but has expired, officers have no right to enforce it. Ask the victim if they obtained any further order from the court at the hearing.
 - ii. If the victim did not go back to court, explain to the victim that the order is expired. Explain to the victim you have no authority to enforce an expired

ordered, but you still have the authority to enforce violations of the criminal law.

- iii. If an order is not clear in its direction and meaning, take the order to the issuing judge and ask for clarification and instructions.
- b. If the Ex Parte or DVPO order is not expired, confirm that the restrained party has been served with the order.
 - i. If the restrained party was served, enforce the order as a domestic violence protective order.
 - ii. If the restrained party has not been served, contact the Sheriff's Department with jurisdiction for service of the order and make arrangements to serve the order.
- 5. The officer shall transport a hard copy of the DVPO or Ex Parte order (if available) to the Magistrate's Office for processing with the arrestee. The officer may photocopy the victim's copy or copy the order on file with the agency. Before placing the subject in custody, the officer shall check to confirm that it is valid and that there are no exceptions that would nullify a violation.
- 6. Out-of-State Protective Orders
 - a. A valid protective order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and law enforcement agencies as if the order were issued in a North Carolina court.
 - b. In determining the validity of an out-of-state protective order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or court of an Indian tribe and on the statement of a person protected by the order that the order remains in effect (NCGS 50B-4(d)).
 - c. When a law enforcement officer makes an arrest for violating an out-of-state or Indian Order without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center (NCIC) registry by the sheriff of the county in which the arrest occurs (NCGS 50B-4.1(c)).
 - d. It should be strongly encouraged for the victim to have their out-of-state protective order registered at the Clerk's Office in the county they reside as soon as possible.
- C. Warrantless Arrest. Pursuant to NCGS 50B-4.1(b), law enforcement officers shall arrest, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order:
 - 1. Excluding the person from the residence or household occupied by the victim of domestic

violence, or

2. Directing the person to refrain from doing any or all of the acts specified in NCGS 50B-3(a)(9), including:
 - a. Threatening, abusing, or following the other party;
 - b. Harassing the other party by visiting the home or workplace, or by other means; or,
 - c. Otherwise interfering with the alleged victim.
 3. Reconciliation between the two parties does not invalidate a 50B Protective Order. Arrest for the above violations remain mandatory. 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 shall arrest once the active order is confirmed. Advise the parties that only a subsequent court order, through the Clerk of Court's Office, dismissing or modifying the DVPO can nullify the enforcement of that order.
- D. Arrest Warrant. Pursuant to NCGS §50B-4.1A, any violation of an ex-parte order or permanent protective order, in-state, out-of-state, or Indian order, is a Class A1 misdemeanor, unless covered by Section C above. An officer shall seek a criminal warrant for any violation and may make an arrest pursuant to that warrant as follows:
1. If the perpetrator has left the scene before the officer arrives, the officer has the option of obtaining an arrest warrant, instead of immediately seeking and arresting the perpetrator.
 2. If the perpetrator is not arrested within one hour of the officer's arrival, the officer will seek an arrest warrant.
 3. An arrest warrant is needed in order to enter the perpetrator's own premises to make the arrest.
 4. An arrest warrant is needed in order to enter someone else's premises to make the arrest.
- E. Arrest for Other Violations. In some cases, the perpetrator will have violated a criminal statute, such as Domestic Criminal Trespass or Assault on a Female and may be arrested for that violation as well as the 50B violation.

IX. FEDERAL CRIMES

- A. The Violence Against Women Act (VAWA)
1. The Safe Homes for Women Section of the VAWA outlines federal crimes related to domestic violence. The US Attorney's Office should be contacted in instances in which one of the below crimes are committed against a victim. Crimes include, but are not limited to:
 - a. Crossing State Lines to Injure an Intimate Partner - The suspect crosses state lines with the intent to injure, harass, or intimidate an intimate partner and such action involves a crime of violence that results in bodily injury [18 USC 2261(a)(1)];

- b. Forcing an Intimate Partner to Cross State Lines - The suspect causes a spouse or intimate partner to cross state lines by force, coercion, duress, or fraud where such action also results in bodily injury to the victim. [18 USC 2261(a)(2)]; or
 - c. Interstate Protection Order Violation - The suspect crosses state lines with the intent to violate a protection order, and thereafter acts to violate the order either in the issuing or another state [18 USC 2262(a)(1)].
- 2. VAWA defines intimate partner to include:
 - a. A spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits, or has cohabited with the abuser as a spouse; and
 - b. Any other person similarly situated to a spouse, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides [18 USC 2266].
- 3. The FBI and/or the U.S. Attorney's Office should be contacted in instances in which one of these federal crimes are committed against a victim as defined above.

B. Firearm Related Charges

- 1. The following are federal firearm crimes related to domestic violence:
 - a. Interstate Shipping of Firearms - It is unlawful for any person who is the subject of an order for protection to ship or transport in interstate commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm which has been shipped or transported interstate [18 USC 922(g)8]; or
 - b. Possession of a Firearm - The Domestic Violence Offender Gun Ban, enacted September 10, 1996, prohibits any individuals, including law enforcement officers, convicted of misdemeanor domestic violence offenses from buying or possessing a firearm [18 USC 922(g)9].
- 2. The Alcohol, Tobacco, and Firearms Agency should be contacted in such cases.

X. DOMESTIC VIOLENCE INVOLVING DEPT. EMPLOYEES/PUBLIC OFFICIALS

- A. Any officer or civilian employee of the Kinston Police Department who commits an act of domestic violence outlined in NCGS §50B-1(a), makes threats of assault, or damages property, or harasses and interferes by telephone or in person, or tries to intimidate, or engages in any other conduct that is designed to place fear in a person with whom the officer/employee has a personal relationship, if found in violation, shall be subject to appropriate disciplinary action.
- B. Any officer who is called to the scene of a domestic violence incident and finds the incident involves allegations of domestic violence outlined in NCGS §50B-1(a) or any misconduct prohibited within paragraph A (above) by any person who is a law enforcement officer, public official, or prominent citizen shall immediately notify the highest ranking officer on duty, or their designee, and advise such officer of the incident. In addition to following standard procedures outlined herein, the ranking officer shall:

1. Respond to the scene;
 2. If applicable, relieve the offending officer of badge, identification, and Departmental weapon pending further action, and store the firearm in accordance with KPD Policy & Procedure 600-4, Collection & Preservation of Evidence.
 3. Immediately notify the appropriate Major of such action. The Major will notify the Chief of Police;
 4. Complete a written report containing a full account of the incident and forward the report to the Chief of Police before that tour of duty ends.
- C. Any officer who, for any reason, fails to take action required by this policy, or fails to take action that is appropriate for the assistance of a domestic violence victim, or fails to arrest when arrest is clearly appropriate, if found in violation, shall be subject to appropriate disciplinary action.
- D. No officer shall show any favoritism for, or prejudice against, any person in a domestic violence call. The fact an officer is personally acquainted with one or both parties does not excuse failure to perform duties of office or performing all responsibilities set forth in this directive.

XI. DOCUMENTATION AND REPORTS

- A. The officer shall complete an Incident Report for all incidents in which a domestic violence crime is alleged, regardless if an arrest is made. The officer shall use applicable Department forms to document:
1. The names of the involved parties, addresses, history of domestic violence, and any actions taken at the scene.
 2. All arrest information.
 3. Follow-up information, including attempts and outcome.
- B. Officers assigned to incidents involving Domestic Violence are required to provide the victim with a Victim Referral Notification form, also known as the KPD Domestic Violence Informational Brochure.
1. The officer shall complete three (3) Domestic Violence brochures, filling in the front of the brochure with the following information;
 - a. Case Number
 - b. Printed victims name
 - c. Check appropriate information block
 - d. Victims signature
 - e. Date of incident
 2. Upon completion of required entries on the Domestic Violence brochures, the officer will give the victim Domestic Violence brochure #1 and forward Domestic Violence brochure #2 & #3 to the Investigations Supervisor.
 - a. Domestic Violence brochure #2 will be filed by Investigations Supervisor.

- b. Domestic Violence brochure #3 will be submitted to the District Attorney's Office within 72 hours.
 3. Monthly and yearly files for Domestic Violence Informational Brochures will be maintained by Investigations.
- C. Domestic Violence Supplement (see Appendix A)

When an officer responds to a domestic violence complaint and an arrest is either eminent or the officer observes an injury, the officer should complete the Domestic Violence Supplement (body diagram form). Once completed, the officer should turn in the Domestic Violence Supplement form, along with the Domestic Violence brochure #2 & #3 to the Investigations Supervisor.
- D. A Domestic Violence Packet will be completed and forwarded to the District Attorney's Office for all cases where charges are filed with the Magistrate. Documentation includes but may not be limited to the following, when applicable:
 1. Incident Report and Supplemental Report(s).
 2. Domestic Violence Supplemental Report – Procedures for filling out the PDF version of the form are available in Appendix A of this procedure.
 3. Arrest Report
 4. Victim Referral Notification (KPD Domestic Violence Brochure)
 5. Felony Victim Information
 6. Authorization for Disclosure of Medical Records
 7. Crime Victims' Rights Act Victim Information Sheet (Appendix B)
- C. Temporary relocation of a victim away from the residence, and the names, addresses, and phone numbers of witnesses, as well as statements they made concerning the domestic incident, shall not be released to any person other than an authorized law enforcement officer or other officer of the court for the conduct of official business.

XII. VICTIM ASSISTANCE

- A. Victim assistance is mandatory and will comply with all provisions outlined by NCGS.
- B. In addition, officer(s) should:
 1. Remain on the scene long enough to determine if the victim will be reasonably safe after the officer leaves or if the victim needs assistance to go to another location.
 2. Remain on the scene to preserve the peace while the victim removes items such as food, clothing, medication, and other personal belongings as is reasonable and necessary to enable the victim and minor children to stay elsewhere. Officers cannot decide issues of child custody or possession of property.

- C. The safety of the victim and children is the highest priority of the officers once the situation is under control. The officers must take specific measures to transport or have the victim and children transported to a safe place.
- D. If a request is made for police assistance in removing essential personal belongings sometime after the initial incident, all efforts should be made to assess the potential for conflict and to respond when the potential for conflict is least likely. Officers should be aware of the existence of any legal restrictions concerning the property. Officers will provide protection for the person(s) while removing the property. Officers will not physically assist in entering the premises or removing belongings. Officers will not transport people or property.
- E. Inform the victim to check with the Detention Facility and/or the Clerk's Office regarding the release of the perpetrator.
 1. Do not give assurances to the victim that the perpetrator will be in jail for 48 hours. Not all offenses require a 48 hour hold. (NCGS 15A-534.1)
 2. Consult the University of North Carolina School of Government document, "Domestic Violence Crimes and the 48-Hour Rule" (Domestic Violence: 48-Hour Rule Offense Chart) available at www.sog.unc.edu, search "Domestic Violence 48".

XIII. APPENDIX

Appendix A – Procedures for filling out the PDF version of the Domestic Violence Supplemental Report

The Domestic Violence Supplemental Report is fillable. Either fill in the blank or click to check the box. To draw an "X" or "O" on the person, click on "Comment" on the right hand side of the page. A menu will appear. To draw an "X", click on the pencil and draw an "X" where needed. To draw an "O" click on the drop down arrow for drawing tools (icon with shapes) or select oval/circle. Then click where needed on the body. After you have added the X's and/or O's, "Save As" and rename the document and it will save with the drawing on it.

Home Tools D.V. Supplement.pdf x

☐ FIRST AID ☐ EMS ☐ HOSPITAL ☐ REFUSED

EMS AGENCY: _____ NAMES/ID #S: _____ ATTENDING PHYSICIANS: _____

TO BE COMPLETED BY VICTIM--MEDICAL RELEASE TO ALL HEALTH CARE PROVIDERS:
I hereby consent to the release of my medical records to law enforcement and the attorney general. I have been advised of my right to refuse.

Por este medio autorizo a que mis expedientes médicos se entreguen a oficiales de la policía y al Procurador, he sido notificado/a sobre mi derecho de rehusar.

SIGNATURE: _____ DATE: _____

CHILDREN ☐ VICTIM

Medical Treatment

☐ NONE ☐ WILL SEEK DOCTOR ☐ EMS ☐ REFUSED

EMS AT SCENE? ☐ YES ☐ NO

EMS AGENCY: _____ NAMES/ID #S: _____ HOSPITAL: _____ ATTENDING PHYSICIANS: _____

TO BE COMPLETED BY VICTIM--MEDICAL RELEASE TO ALL HEALTH CARE PROVIDERS:
I hereby consent to the release of my medical records to law enforcement and the attorney general. I have been advised of my right to refuse.

Por este medio autorizo a que mis expedientes médicos se entreguen a oficiales de la policía y al Procurador, he sido notificado/a sobre mi derecho de rehusar.

SIGNATURE: _____ DATE: _____

CHILDREN ☐ VICTIM ☐ SUSPECT

PRESENT DURING INCIDENT? ☐ YES ☐ NO

NUMBER PRESENT: _____

DID THEY ☐ HEAR THE INCIDENT? ☐ SEE

HEIGHT: _____ WEIGHT: _____

Comment

PENCIL **DRAWING TOOL**

Drop Down Box

Line
Arrow
Rectangle
Oval
Text Callout
Polygon
Cloud
Connected Lines
Expand Drawing Tools

File Edit View Window Help

Create

2 / 2 125%

Tools Comment

Please fill out the following form.

Highlight Existing Fields

Annotations

Drawing Markups

Review

Comments List (0)

Find

Por este medio autorizo a que mis expedientes médicos se entreguen a oficiales de la policía y al Procurador, he sido notificado/a sobre mi derecho de rehusar.

SIGNATURE: DATE:

CHILDREN

PRESENT DURING INCIDENT?
☐ YES ☐ NO

NUMBER PRESENT: DID THEY ☐ HEAR THE INCIDENT?
☐ SEE

NAMES AND AGES:
1.

☐ VICTIM
☐ SUSPECT

HEIGHT: WEIGHT:

