Lake Worth Police Department

Policy 7.13 – Domestic Violence and Protective Orders

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I. POLICY

The department assigns domestic or family violence (domestic disturbance) calls a high priority. The nature and seriousness of crimes committed between family or household members are not mitigated because of the relationships or living arrangements of those involved. Law enforcement agencies must exercise leadership in the community in responding to domestic violence. An immediate criminal justice response can make a major difference in the disputants' lives. With all due consideration for their own safety, department members responding to a domestic disturbance call shall (l) restore order, (2) arrest persons when probable cause exists that a crime has been committed, (3) provide safety and security for the crime victim(s), and (4) help participants contact appropriate agencies that might help prevent future occurrences.

II. PURPOSE

To define domestic violence and related offenses, outline a safe procedure for handling violent incidents and calls, and describe measures that can be taken to end violence and protect victims.

III. DEFINITIONS

A. Assault: An act by an assailant who intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse. A threat to cause imminent bodily injury to another, including the person's spouse, is also an assault. This definition is not all-inclusive as family violence may also entail aggravated circumstances, sexual assault, and other offenses. The assault definition also extends to intimate partner violence (IPV) that includes unmarried couples. See Chapter 22 and 25 of the Texas Penal Code.

B. Domestic violence shelters/programs: Services that are provided (usually 24 hours a day) for women and their children who have been physically or emotionally abused, or who have been threatened with abuse by their spouses or partners. Services include crisis intervention, counseling, shelter, escort to court, food, clothing, and transportation. Some shelters also provide information pertaining to jobs, social security services, restraining orders, and various other items of information that is needed if the victim does not wish to return to the previous situation.

C. Family violence: An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

D. Abuse: as defined by Sections 261.001(1) (C), (E), and (G) by a member of a family or household toward a member of the family or household.

E. Dating Violence: as defined by Section 71.0021.

F. Family or household member:

1. Spouses, whether or not residing in the same home.

2. Former spouses, whether or not residing in the same home.

3. Persons who have a child in common, whether or not they have ever been married or resided together.

4. Parents, children, stepparents, stepchildren, grandparents, grandchildren, brothers and sisters, half-brothers and half-sisters regardless of whether they reside in the same home with the suspect.

5. Parents-in-law, children-in-law, brothers- and sisters-in-law regardless of whether they reside in the same home with the suspect.

6. Persons, whether or not related, who cohabit or who previously cohabited with the suspect, and any children of either who then resided in the same home as the suspect.

7. See Sections 71.003, 71.004, and 71.005 of the Family Code.

G. Protective order, sometimes referred to as a “restraining order:” A court order of protection on behalf of an abused family/household member that restrains the abuser from further acts of violence, may order the abuser to refrain from further contact, vacate the residence, relinquish custody of a vehicle, provide temporary child support, plus other measures. A protective order may be valid up to two years.

H. Types of protective orders:

1. Emergency protective order: A protective order issued by a magistrate to a defendant following his or her arrest for an act of family violence. The EPO may be applied for by the victim, a police officer, or may be issued on the magistrate's own motion. The victim may request the EPO at the scene of a domestic violence incident.

2. Protective order: A protective order that is requested by a victim of family violence at any time other than at the scene of a domestic violence incident.

3. Temporary Ex Parte Orders: an order that is issued without the person who committed family violence present. A person subject to an order (the actor) who violates an ex parte order may not be arrested unless it is established that the actor had been served with the order prior to the commission of the act(s) violating the order. In the event that an officer arrives, and the actor is not aware of the order, the officer may assist the protected person in informing the actor of the existence of the order. The protected person should provide the actor with a copy of the order if at all possible. The officer shall then remain at the scene until the actor has complied with any wording that requires him or her to leave the residence. If the order does not require the actor to leave, the officer shall remain at the scene while the protected person gathers necessary items to leave. See Texas Family Code Chapter 83 for additional information.

IV. PROCEDURES

A. Department members shall refer victims of domestic violence or serious bodily injury crimes to appropriate community resources (mental health agencies, medical doctors, legal assistance agencies, victim/witness assistance programs, and domestic violence shelters/programs), and shall provide victims with the name, address, and telephone numbers of the district attorney and the investigating law enforcement agency. Where possible, officers shall help victims directly access referral agencies.

B. Department members shall be trained about domestic violence and its impact. Officers are encouraged to consult community resources, such as the local domestic violence shelter and the local victim/witness advocacy program.

C. Members must be well trained in how to confront unexpected violence. Disturbance calls can be dangerous to responding officers.

V. PROCEDURES: COMMUNICATIONS

Because the dispatcher is likely to be the first person to receive the call, he or she is instrumental in determining the type of response.

A. The dispatcher is responsible for deciding whether an officer is needed at the scene. To make that decision, the dispatcher shall ask the following questions if at all possible:

1. Who is complaining? Phone number? Whereabouts and identity of the suspect/aggressor?

2. Name of caller and location of incident? Location of caller and complainant, if different? Phone numbers?

3. Is the crime (incident) in progress? If not, when did it occur?

4. Is a weapon involved?

5. Have people at the scene been injured? Is an ambulance needed?

6. Are there children present?

7. Are there witnesses present?

B. Depending on the circumstances at this point the dispatcher does the following one or all of the following:

1. If evidence of an injury or a weapon exists, someone has threatened violence, or the complainant requests an officer, dispatch immediately (two officers preferred) and an ambulance, if needed.

2. Perform a TCIC and protective order inquiry and give the results to the responding officer(s) before their arrival at the scene.

3. Keep the caller on the telephone, if possible, and ask the following questions to obtain additional information, if possible:

a. Where is the suspect? If not known, obtain vehicle description, direction of travel, elapsed time, and access to weapons.

b. Was alcohol or drugs involved?

c. Is there a history of calls to this address?

d. Are there outstanding warrants on disputants?

e. What is the probation/parole status of suspect/aggressor?

f. Have there been previous arrests?

g. Is a protective order in effect?

4. If time permits, the dispatcher shall maintain telephone contact until the officers arrive in order to monitor the incident and provide support to the victim. The dispatcher shall advise the victim of the intended department response.

5. The dispatcher shall provide the responding officer with as much information as possible to identify risks at the scene.

6. Dispatchers shall not cancel police response to a domestic violence complaint based solely on a follow-up call from the residence requesting such cancellation. However, the dispatcher shall advise the officers of the complainant's request.

VI. PROCEDURES: FIELD OPERATIONS

A. Before arrival at the scene officers should do the following:

1. Obtain all available information from the dispatcher before arrival.

2. When possible, officers should wait for back-up help, discuss a strategy, and approach the dispute scene in pairs.

B. In the vicinity of the scene, officers should avoid the use of sirens and other alarms.

C. At the scene the officer should observe the location of the dispute before contacting the complainant. Consider the surroundings. Park the marked car a short distance away. Each officer should follow a separate approach to the scene of the dispute, maintaining maximum cover and an escape route. From this point on, officers should remain within sight of one another, if possible.

D. Before knocking on the door, officers should listen, and they should look in windows to obtain additional information about the situation (e.g., layout of the house, number of people, weapons, evidence of violence or damage).

E. Officers must be concerned for their own safety as well as that of the disputants. To minimize the possibility of injury, stand to the side of the door and not in front of windows when knocking. The unexpected may occur when the door opens.

1. Initial contact with occupant(s).

a. Identify themselves as law enforcement officers by name, give an explanation of your presence, and request entry into the home (when conditions permit). Ascertain identity of complainant, and ask to see him or her and any other person at the home.

b. Officers shall not accept statements from any disputant or witness that the call was a mistake without investigating further.

c. Officers shall make every reasonable effort to interview the complainant and remain on scene to assess welfare and safety as required by training and experience.

d. If entry is refused, officers must explain that they must make sure there are no injured persons inside. If no one responds to knocking, officers shall try to establish voice contact by shouting for an answer.

e. Refusal of entry or no response to a knock at the door will require a forced entrance only if officers have a reasonable belief that person(s) inside are at risk of imminent death or serious bodily injury.

f. Officers may conduct a search of the premises if consent has been given to do so. Although a consent search eliminates the need for a warrant and for probable cause, such consent must be freely and voluntarily given. If two people have joint ownership or possession of a place or thing, either one may give a valid consent. However, the other, if present, may legally object. Once a party refuses consent, officers must obtain a warrant to search or articulate another exception to the warrant requirement.

g. A spouse or cohabitant can consent to the search of premises used jointly by both husband and wife or by unmarried cohabitants. However, if both are present, either one may legally object. Once either party refuses consent, officers must obtain a

warrant to search or articulate an exception to the warrant requirement.

F. Officers may also make a warrantless entry to conduct a search if an emergency exists. Officers must have a reasonable belief that such an emergency does exist. For example, if officers believe that someone, perhaps a child or spouse, is in need of emergency assistance they may search the premises without a warrant.

1. Officers shall evaluate the following elements when considering a warrantless entry:

a. The degree of urgency involved, and the time required to get a warrant.

b. The possibility of danger to occupants of the house or others, including officers guarding the site.

c. Whether the suspected offense is serious and involves violence.

d. Whether officers reasonably believe that persons may be armed.

2. Once inside, establish control by:

a. Inquiring about the nature of the dispute.

b. Identifying disputants.

c. Being aware of potential weapons in surroundings.

d. Determining if persons are in other rooms, whether children or adults, and the extent of any injuries. (These persons should be separated from the parties involved and kept out of hearing range, so their status as possible witnesses won't be compromised.)

e. Protect the victim from further abuse. Separate the victim from the suspect and arrange for medical attention if the victim is hurt. If the victim appears injured and yet refuses medical assistance, carefully document any observed injuries, as well as the refusal of medical treatment. Photograph the victim's injuries if possible.

f. Ascertain whether a protective order has been violated.

g. If weapons -- firearms, knives, or any other object that could be used as a weapon-- are present, secure them away from the disputants, if practicable, while the disputants are being interviewed. If appropriate, seize weapons for evidence.

h. Transporting family/household members to a hospital, a safe shelter, or a magistrate.

3. Officers shall transport victims to a safe location as they wish or as the circumstances require.

4. If a complainant seeks officers' help in entering his or her residence to obtain personal property, the officers must determine that the complainant has lawful authority to do so; must advise all parties that they are accompanying the complainant to obtain items for immediate personal (or children's) use; that the officers' function is to maintain order; that any dispute over property is a matter for the courts to decide.

G. Interviewing all disputants

1. Ensure safety and privacy by interviewing the victim in a place separate from the suspect, assuming the suspect has been identified.

2. Critical to the success of the interview is the officer's manner. Officers must listen, show interest in the disputants and their problem, and remain aware of nonverbal communications signals.

3. Officers shall attempt a low-key approach in domestic violence cases. Maintain good eye contact through natural, spontaneous glances. (Fixed gazes or staring increase fear and hostility.) A relaxed stance and appropriate facial and head movements demonstrate interest and encourage the victim to continue speaking.

4. If possible, separate the parties so that they can individually describe the incident without interruption. (This may help the parties relieve emotional tension.) Although the disputants are to be separated, officers shall remain within sight and hearing of each other.

5. After the parties have given their statements, the officers should ask about details for clarification, and summarize the stated accounts, giving the parties an opportunity to point out anything that might be misrepresented.

6. Officers should be aware that verbal statements made by parties have evidentiary value. All verbal statements should be recorded, when practicable, and should be noted in reports of the incident.

7. Interviewing the victim. Get answers to the following questions from the victim:

a. What happened?

b. Were there any injuries, extent of injuries, and who caused them?

c. What weapons or objects were used?

d. What is the relationship to suspect?

e. Were threats made against the victim or others?

f. Was there forced sexual contact.

g. Are there any court cases pending against suspect.

h. Are any protective orders in effect.

i. Is suspect on probation or parole?

j. Did the suspect threaten or hurt others, particularly children or pets.

k. Was property damaged and if so, what was the damage?

H. Interviewing witnesses

1. Interview any witnesses to the incident--children, other family members, neighbors--as soon as possible.

2. Remember that witnesses may be experiencing significant emotional crises that might influence the accuracy of their accounts.

3. If witnesses provide information about prior assaults, document them to help establish a pattern.

4. Children of disputants should be interviewed with care and kindness. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma or abuse should be noted.

I. Collection of Evidence

Officers should treat a family violence offense with the same seriousness as other criminal offenses, and conduct a preliminary investigation in the same manner to include:

1. Collecting any physical evidence or calling crime scene personnel to do so.

2. Photographing any damages or injuries received by any party involved in the incident.

VII. PROCEDURES: ARRESTS

A. Officers shall make an arrest without a warrant if they have probable cause to believe that the individual has committed an assault resulting in bodily injury to a member of the person's family or household. Officers may arrest persons who the peace officer has probable cause to believe have committed an offense involving family violence which did not result in at least bodily injury.

B. If officers cannot identify a predominant physical aggressor and do not make an arrest, they shall nevertheless thoroughly document the incident.

C. Officers shall not threaten to arrest all parties involved for the purpose of discouraging future requests for law enforcement intervention.

D. If the victim claims that a protective order has been violated, officers shall review the victim's copy of the order, checking it for validity. If a protective order exists and its terms ("no contact," "no trespass," or "no further abuse") have been violated the officer shall arrest the violator, assuming probable cause exists.

E. Officers making arrests for family violence may petition for an emergency protective order if so requested by the victim or if the officer believes there is a significant danger of future assaults.

F. Officers shall contact the on-call Child Protective Services worker if a child is abused or if neither parent can reasonably look after the child's safety and well-being. (Child neglect is a separate, reportable offense.)

G. In determining probable cause, the officer shall NOT consider:

1. Race, sex, ethnicity, social class, or sexual orientation.

2. Whether the complainant has not sought or obtained a protective order.

3. The officer's own preference to reconcile the parties despite the complainant's insistence that an arrest be made.

4. That the complainant has called for law enforcement protection previously and has not pursued or has withdrawn the criminal complaint against the abuser.

5. That the complainant has not begun divorce proceedings.

6. Assurances of either or both disputants that violence will stop.

7. The lack of visible bruises or injuries.

H. Factors favoring the decision to arrest based upon probable cause that an offense has been committed

1. Arrest is the most appropriate response when these factors are present:

a. Serious, intense conflict.

b. Use of a weapon.

c. Previous injury or damage.

d. Previous court appearance against the offending party.

e. Previous attempt to sever the relationship.

f. Previous calls for law enforcement help.

g. When a felony has occurred.

h. Evidence of drugs or alcohol use at the assault.

i. Offenses committed with the officer present.

j. Valid warrants on file for other crimes.

k. Officers shall arrest for a violation of a protective order committed in the officer's presence or view.

l. Aggressive behavior toward any person or pets, or any other threatening behavior.

I. If the abusive person is to be arrested, the officer should use the following procedure:

1. If the suspect is present, arrest him/her, apply handcuffs, inform him/her that the decision to arrest is a law-enforcement one, and transport securely to the jail/magistrate.

2. If the suspect is absent or has been arrested, transport (or arrange transportation for) the victim to a safe shelter or other appropriate place. Circulate a "be-on-the-lookout" message describing the suspect, if necessary, and arrange for an arrest warrant.

3. If an arrest must be made because a protective order has been violated, verify its validity by:

a. Examining the victim's copy, if available.

b. Having communications search TCIC or contact the jurisdiction that issued the order to confirm its currency.

J. If the abusive person is not arrested, the officer should use the following procedure:

1. Complete an incident report and give a copy or arrange to have a copy given to the victim.

2. Inform the victim that the department will begin action to procure a warrant for the offender if an offense occurred.

3. Advise the victim of the importance of preserving evidence.

4. Explain to the victim about protective orders, how to obtain them, and offer to help the victim obtain them later.

5. If the victim wants to leave the premises to ensure safety, remain at the scene while the victim packs essentials. Advise the victim to take

only personal items plus important papers, such as a marriage license or divorce decree, health insurance cards, and if children are involved their school records, proof of vaccination, and health information.

6. Regardless of whether an arrest is made, the officer shall provide the "Notice to Adult Victims of Family Violence" to the victim, which explains legal and community resources available, including the name, address, and telephone number of the district attorney and the investigating law enforcement agency

7. Assure the victim that the Lake Worth Police Department shall assist in future emergencies and explain measures for enhancing his/ her own safety.

K. Gathering evidence. Physical evidence takes three forms in domestic violence cases: the injuries sustained by the victim, evidentiary articles that substantiate an attack, and the crime scene itself. The on-the-scene officer should take the following actions:

1. If possible, have a physician corroborate the victim's account of injuries sustained. Since choking is one of the most serious forms of violence but is sometimes hardest to detect, the officer and/or the physician should take particular note of that.

2. When feasible, take photographs of injuries.

3. Photograph the crime scene to show that a struggle occurred; if photography is not possible, write a description of it.

4. Collect evidence according to the same principles applied to any other crime scene.

5. Seize any weapons that the predominant physical aggressor used or threatened to use in the commission of any crime

6. Obtain statements from all witnesses, particularly noting any verbal statements that bear on the incident. Officers shall note the emotional state of the person making the verbal statement.

L. Documenting the incident. All incident reports on domestic violence shall follow general reporting procedures. Officers should include the following in their reports:

1. Facts and circumstances of domestic violence including a description of why one disputant was deemed the predominant physical aggressor.

2. Victim's statements as to the frequency and severity of prior incidents of abuse by the same family or household member.

3. The victim's statements as to the number of prior calls for law enforcement assistance.

M. The disposition of the investigation. Officers involved in an incident should do the following:

1. Thoroughly document probable cause to arrest.

2. If an arrest is not made for domestic violence, the incident must still be documented, stating that either no probable cause for arrest existed, or circumstances dictated another course of action. In such cases, in addition to the above considerations, officers shall note:

a. What referral information was given.

b. The name of any counselor contacted.

c. Why no arrest was made, nor any warrant issued.

3. If children were present, make a report of abuse or neglect, if appropriate, and forward it to Child Protective Services.

4. Regardless of whether an arrest is made, the officer shall provide the "Notice to Adult Victims of Family Violence" to the victim, which explains legal and community resources available, including the name, address and telephone number of the district attorney and the investigating law enforcement agency.

N. Arrests of agency personnel

1. If the predominant physical aggressor or abuser is an employee of this agency, the responding officer shall summon the field supervisor, who shall in turn notify his/her chain of command.

2. The scene shall be secured, and medical attention summoned, if required. The employee shall be disarmed or removed from access to weapons. The possibility exists that the employee's departmental weapon may be evidence of an offense.

3. The IA investigator shall be summoned who shall begin an internal investigation.

a. If probable cause to arrest exists, the field supervisor shall arrest and gather evidence (including taking photographs) consistent with this general order.

b. The assigned investigator shall work with the responding patrol officer to ensure that the victim receives medical attention, if necessary, is transported to a hospital or safe shelter, and that all reports are completed, evidence gathered, and photographs taken. The responding patrol officer shall assist in obtaining an emergency protective order.

c. The investigator shall, as soon as reasonably possible, present the case to the district attorney.

4. Upon termination of the criminal investigation, the Chief of Police may assign an IA investigator to initiate an internal administrative investigation into the incident. The chief may suspend the employee pending the outcome of the investigation.

a. Suspended employees shall immediately turn in all agency-issued weapons, vehicles, badges, and identification to the property officer.

b. If the internal administrative investigation supports a violation of agency policy, the Chief of Police shall take appropriate action. Further, if the investigation confirms that domestic violence occurred, the chief may require that the officer receive counseling, psychological evaluation, demotion, or termination of employment.

c. Federal law states that any person (including a law- enforcement officer) convicted under any state or federal law for a misdemeanor involving the use of, attempted use of physical force, or the threatened use of a deadly weapon when committed by a current or former spouse, parent or guardian of the victim, a person sharing a child in common, or a cohabitant of the victim (past or present), is prohibited from shipping, transporting, possessing, or receiving firearms or ammunition. The offense may have occurred at any time. Law enforcement officers convicted of offenses involving weapons or threats of force may, therefore, be unable to maintain their certification.

d. Note that officers who are the subject of a protective order shall not carry firearms. Officers who are the subject of a protective order shall turn in all agency-issued weapons.

VIII. PROCEDURES: ISSUING AN EPO

A. Emergency protective orders (EPO) (domestic violence)

1. The EPO aims to protect the health or safety of a victim of domestic violence. It is issued only if the offender is arrested. The judge or magistrate who arraigns the offender after the arrest may issue the EPO on the magistrate's own initiative, upon request of the victim, the guardian of the victim, a peace officer, or an attorney representing the state. If an officer has at least a reasonable belief that an assault has occurred and there exists probable danger of further abuse, the officer shall request the judge or magistrate to issue an EPO.

a. If circumstances make it impossible or inappropriate for an officer to obtain the EPO, the officer shall advise the victim that he/ she can request an EPO directly from a magistrate or the district attorney.

b. The victim does not need to press charges or swear a warrant. The presence of the victim or suspect is immaterial to obtaining an EPO.

c. An EPO may order a stop to abusive behavior, prohibit contact between parties, order the abuser out of a shared home, or deny the abuser the right to possess a firearm, and provide other relief.

2. An officer can petition for an EPO by telephone or in person.

3. The EPO remains in effect for up to 61 days but not less than 31 days. The victim can petition for a permanent protective order before the expiration of an EPO.

4. The offender is served with a copy of the order at the time of arraignment. The victim will be contacted and informed that an EPO has been issued and will be provided with a copy and informed of its requirements.

5. A copy is also delivered to the Chief of Police and the communications center for the jurisdiction where the victim resides.

B. Protective Orders from Other States

Officers shall enforce protective orders from other states or possessions of the United States as if they were issued in Texas. This applies to all orders in which the respondent has received notice and opportunity to attend a protective order hearing. Enforcement of out-of-state protective orders does not require that they be registered in Texas. If officers are unable to verify an outstanding protective order, they must nevertheless honor it. Officers cannot arrest for violation of the order, however, if the violator has not been served with it.