

UPPER MERION TOWNSHIP POLICE DEPARTMENT

POLICY AND PROCEDURE

No. 110

Supersedes: 1-93-55.2.1

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Dated: January 29, 1993

DOMESTIC VIOLENCE INCIDENTS

- I. **PURPOSE:** The purpose of this policy is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic violence incidents.
- II. **POLICY:** The department recognizes its responsibility to attempt to reduce violence or the threat of violence in domestic situations. All police personnel will treat domestic violence as alleged criminal activity to be reported and investigated. Where probable cause exists, police officers should arrest and pursue criminal remedies against the accused. Police Officers should also recognize the difference between domestic violence and other crimes and provide victims with special assistance, including notification of available services. This Department shall comply with the requirements of the Pennsylvania Protection From Abuse Act (23 Pa.C.S.A. Section 6101, et seq.) in regard to the responsibilities of law enforcement agencies.
- III. **CROSS-REF:** POLICY #1500, VICTIM/WITNESS ASSISTANCE
- IV. **OBJECTIVES:**
- A. To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, rather than mediation, as the preferred means of police response to domestic violence.
 - B. To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance.
 - C. To ensure that law enforcement services are available in domestic violence cases as they are in other criminal cases.
 - D. To reaffirm the police officer's authority and responsibility to make arrest decisions in accordance with established legal standards.

- E. To promote officer safety by ensuring that officers are fully prepared to respond to domestic calls.
- F. To help reduce the expenditure of police resources in domestic violence cases by reducing the number of police interventions required for any particular household.

V. **DEFINITIONS:**

ABUSE: The occurrence of one or more of the following acts between family or household members, sexual or intimate partners, or persons who share biological parenthood (see 23 Pa.C.S. Section 6102):

1. Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.
2. Placing another in fear of imminent serious bodily injury.
3. The infliction of false imprisonment pursuant to 18 Pa.C.S. Section 2903 (relating to false imprisonment).
4. Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).
5. Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under Title 23 (Domestic Relations) and is inapplicable to any criminal prosecutions commenced under Title 18 (Crimes and Offenses).

FAMILY OR HOUSEHOLD MEMBER: Spouses or persons who have been spouses, persons living as spouses or who have lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

VI. **DOMESTIC VIOLENCE – CRIMINAL PROCEDURE:**

A. PROBABLE CAUSE ARREST UNDER CRIMES CODE SECTION 2711:

1. A police officer shall have the right of arrest without a warrant (as in a felony), even though the offense did not take place in the presence of the police officer, when probable cause exists to believe that an individual has committed any of the following offenses against spouses, persons who have been spouses, parents and children, persons related by consanguinity or affinity, current or former sexual or intimate partners, and persons who share biological parenthood.
 - a. Involuntary Manslaughter (Section 2504)

- b. Recklessly Endangering Another Person (Section 2705)
 - c. Aggravated Assault (Section 2702, a-3, a-4 and a-5)
 - d. Simple Assault (Section 2701)
 - e. Terroristic Threats (Section 2706)
 - f. Harassment and Stalking (Section 2709, b)
2. The probable cause standard is met where two factors are present:
- a. Confirmation by the victim, complainant or witness that the suspect committed one or more of the six enumerated PA Crimes Code violations; and,
 - b. Observation by the officer of recent physical injury to the victim, or other corroborative evidence (e.g., signs of violence, additional witnesses, etc.)

B. POWER OF ARREST

1. *Felony or misdemeanor cases:* The responding officer shall have the same right of arrest without a warrant as in a felony whenever he/she has probable cause to believe that the suspect has violated any of the statutes listed in Title 18, Section 2711 and Section V-A-1 of this policy. If the officer is unable to apprehend the suspect, he/she shall document probable cause and seek an arrest warrant.
2. *Other misdemeanor cases:* When an officer witnesses a misdemeanor crime being committed, he/she shall arrest the perpetrator. When the officer has probable cause to believe a misdemeanor was committed outside his/her presence, he/she shall document probable cause and seek an arrest warrant or summons if the misdemeanor is not listed in Section 2711.
3. In cases where an officer does not have probable cause to arrest, or seek a warrant on a felony or misdemeanor charge, he/she shall advise the victim of the procedures for filing private criminal charges or obtaining a Protection from Abuse Order (P.F.A.). The officer shall document in a written report any evidence and describe why such evidence is not sufficient to establish probable cause.
4. The officer should not consider the following factors in making the arrest decision:
 - a. The marital status of the parties.
 - b. The ownership or tenancy rights of either party.
 - c. Verbal assurances that the violence will stop.
 - d. A claim by the accused that the victim provoked or perpetuated the violence.
 - e. Denial by either party that the abuse occurred when there is evidence of domestic violence.

- f. Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor).
 - g. The disposition of any previous police calls involving the same victim or accused.
 - h. Speculation that the arrest may not lead to a conviction.
 - i. The existence or not of a current Protection from Abuse Order (except insofar as the violation of such an order might justify arrest).
 - j. The victim's emotional state.
 - k. Concern about reprisals against the victim.
 - l. Adverse financial consequences that might result from the arrest.
 - m. That the incident occurred in a private place.
 - n. The racial, cultural, social, political, or professional position, or the sexual orientation, of either the victim or the accused.
5. **CAUTION:** Situations are certain to arise in which an arrest, though authorized, is inappropriate because it does not serve the interest of justice and it is not necessary to ensure the victim's safety.

C. ARREST IF THE VICTIM OPPOSES IT:

1. An officer is authorized to make an arrest where probable cause exists, even should the victim not request, or oppose it, as long as there is evidence of the commission of the misdemeanor/felony outlined in Section 2711, and of recent physical injury to victim or other corroborative evidence. In circumstances where a victim opposes arrest, the officer making the arrest should detail the probable cause factors and should note that the arrest is being made contrary to the wishes of the victim. The victim is not responsible for deciding if an arrest should be made. This is a decision for the investigating officer to make.
2. Court decisions around the country have found officers and municipalities liable both for **failure to arrest** where an arrest was appropriate, and **arresting** where the probable cause standard was not met. The department procedures set forth will greatly reduce the officer's and department's exposure to liability whether sued for improper police response by the victim or alleged assailant.

D. WEAPONS:

1. If the officer arrests for the commission of a crime, the officer should confiscate all weapons available to the actor at the time of the incident. If the officer arrests for violation of a Protection from Abuse Order, the officer is required by 35 P.S. 10190 to confiscate all weapons used or threatened to be used in the violation and notify the sheriff concerning the storage of these weapons. If there is insufficient probable cause to arrest and weapons are present, officers should strongly suggest that the weapons be turned over to police custody for a brief "cooling off" period of time.

E. BAIL CONDITIONS:

1. The police officer responsible for transporting a defendant to a preliminary arraignment shall advise the District Justice of any possible danger to the victim and shall request special conditions on bail authorized by Section 2711 and Rule 4005 of the Rules of Criminal Procedure, to enhance victim protection. These may include, but not be limited to:
 - a. Restraining the defendant from abusing, harassing, or intimidating the victim.
 - b. Preventing the defendant from entering the home, school and/or work place of the victim.
 - c. Preventing the defendant from contacting the victim in person, or by telephone.
 - d. Restraining the defendant from conduct that will prevent the victim from performing normal daily activities.
2. If there are special bail conditions imposed on the defendant, the officer shall immediately notify the victim of such bail conditions and advise the victim of the right to request revocation of bail through the District Attorney's Office if there is a violation of the conditions.

F. PERMISSION TO NOTIFY BATTERED WOMEN'S PROGRAM:

1. The officer shall, in all cases, request permission from the victim to give her name to the Women's Center of Montgomery County, the local battered women's program, for follow-up purposes. The victim shall sign a permission form if she wishes to be contacted by the battered women's program. Copies of all permission forms will be forwarded without delay to the Women's Center of Montgomery County (see Attachment B).

G. WRITTEN REPORTS AND DATA COLLECTION:

1. An Incident Report, clearly identified as a domestic violence incident, must be completed by the officer responding to any call covered by this policy. The report should include the following information:

- a. Names, addresses and telephone numbers of the victim, the accused, any witnesses, and the caller.
- b. What, if any, weapons used or threatened to be used.
- c. A description of any injuries observed by the officer.
- d. Documentation of any evidence that would tend to establish that a crime was committed.
- e. An indication of what arrest decision was made: a warrantless arrest; an arrest with a warrant; or no arrest. If the officer did not arrest or seek an arrest warrant even though an arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest.
- f. A statement of the relationship between the victim and the accused.
- g. A description of any injuries described by the victim but not observed by the officer, and an indication that the injury was not observed.
- h. Whether the accused actually was arrested or whether there is an outstanding arrest warrant.
- i. The crimes with which the accused was charged.
- j. If the accused was arrested and arraigned, whether bail was set and any conditions of bail imposed.
- k. The names and ages of any children present in the household; their address and telephone number if children were relocated.
- l. Notification of previous incidents reported by the victim or witnesses, or of which the officer is aware.
- m. If an officer was injured in the incident, the nature and circumstances of the injury.

H. Lethality Assessment Program

1. When to Initiate a Lethality Assessment

- a. When there is an intimate relationship between the parties involved and a reason to believe that an assault or an act that constitutes domestic violence has occurred, whether or not there is an arrest;
- b. There is a belief or sense on the part of the responding officers that once the victim is no longer in the care or presence of the officers, the potential for assault or danger is high;
- c. Repeated calls for service.

d. The first responder believes that an assessment should be conducted.

2. How to conduct a Lethality Assessment

a. The responding officer will use the form entitled “Domestic Violence Lethality Screen” (referred to as LAP Screen) to ask the victim the lethality assessment questions (victim is not required to participate in this program).

b. Should circumstances be present or the screening indicates a high danger assessment, the street supervisor on duty will be notified. The officer will then call the 24-hour Womens Center Hotline, at the number indicated on the lethality assessment form

c. The officer will provide the case worker with basic information on the situation, and put the victim on the phone with the case worker. The Officer will standby as the case worker briefly speaks to the victim, to determine the proper course of action to ensure the victims safety.

d. The responding officer will include a copy of the lethality assessment along with the initial report and fully document any actions that were taken in regards to the lethality screening and protocol referral. This information will be forwarded to the on duty street supervisor. The on duty street supervisor will then ensure the departments Lethality Assessment Coordinator receives a copy of the Lethality Screen, and is alerted to the call via the Cody scrolling message system. In all cases the victim will be issued a Victim’s Rights Booklet.

VII. PROTECTION FROM ABUSE ORDERS:

A. GENERAL PROVISIONS:

1. Protection from Abuse Orders may be obtained with the assistance of an attorney through the Court of Common Pleas, or by the victim via the Prothonotary’s Office, or through the District Justice at any time when the Court of Common Pleas is closed. A victim may contact Legal Services, or the local domestic violence program, to find out about representation in actions under the Protection from Abuse Act. Persons now eligible to file include: spouses, persons who have been spouses, parents and children, persons related by consanguinity or affinity, current or former sexual or intimate partners, and persons who share biological parenthood.

2. An emancipated minor may also file under this Act. Also a guardian appointed by the court, or a parent or adult household member may seek relief on behalf of a minor child. A court appointed guardian of an adult who has been declared incompetent under 20 Pa.C.S. Chapter 51, Subchapter B, may seek relief on behalf of the incompetent adult. An order may include those provisions outlined in the Victims Form (Attachment A).

3. Protection from Abuse Orders are valid throughout the Commonwealth of Pennsylvania. Violations occurring in Upper Merion Township shall be enforced even if the order was initiated in a county other than Montgomery. Violators will always be arraigned in Montgomery County Courts.
4. Protective orders under Section 4954 of the Crimes Code may be issued to any victim and any other witness in a criminal case to protect them from harassment or intimidation by the defendant or another. Such orders are issued by a District Justice or a Common Pleas Court judge pursuant to a hearing. The possible penalties for violation of such an order include revocation of pretrial release and forfeiture of bail. These penalties are outlined in Section 4955 of the Crimes Code.
5. The department shall insure that all officers are familiar with the provisions of the Pennsylvania Protection from Abuse Act. Instruction concerning protection from abuse shall be made a part of the training curriculum for all trainee officers.
6. The Pennsylvania State Police shall establish a statewide registry of protection orders, which shall be available at all times.

B. PROCEDURE FOR VIOLATION OF PROTECTION FROM ABUSE ORDER:

1. A photocopy of the original order, as obtained in Section VI-A-1 of this policy, shall be considered a duplicate original and sufficient to constitute the Court's original authorization for enforcement. If there is no photocopy, then the officer should contact the local registry of protection orders at the County Radio Room, the local Prothonotary's Office, or a local police department specified by the victim.
2. Probable Cause: The existence of a valid Protection from Abuse Order, coupled with a statement by the complainant detailing the violation, constitutes probable cause for an arrest for violation of the Protection from Abuse Act if the defendant is present at the scene. If the defendant is not at the scene, an arrest warrant is needed.
3. When the police officer is satisfied that there is probable cause to believe that a violation of a Protection from Abuse Order has occurred, he/she may prepare and file with the District Justice in whose district the violation occurred, a Criminal Complaint charging the defendant with Indirect Criminal Contempt (23 Pa.C.S.A. Section 6114 (a), Protection From Abuse Act Order/Indirect Criminal Contempt). A copy of the PFA order shall be attached to the criminal complaint. In addition, an officer may also arrest, without a warrant, if the requirements of Section 2711 of the Crimes Code are met.
4. If, during the violation of the Protection from Abuse Order, other crimes are committed by the actor, then the officer must initiate two separate criminal complaints; one for the Indirect Criminal Contempt, and the second for the new criminal charges.
5. The criminal complaint shall conform with the PA Rules of Criminal Procedure to include a probable cause statement as well as a reference to the Court Term and number of the Protection order.

6. Once the defendant has been arrested, call the issuing judge for clarification as to whether the defendant shall be taken without unnecessary delay by the police to the Court of Common Pleas for the purpose of preliminary arraignment and setting of bail. If the Court of Common Pleas is not in session, the defendant should immediately be brought before the District Justice having jurisdiction over the incident, or if after hours, the District Justice on call. There is no preliminary hearing for violations of the Protection from Abuse Order.
7. When the defendant is arraigned before a District Justice on Indirect Criminal Contempt and released on bail, the District Justice should direct the defendant to appear the next working morning before the Montgomery County Common Pleas judge assigned to hear such matters. This procedure is also applicable when the Protection from Abuse Order is issued in another county. The District Justice should forward all paperwork to the judge of Common Pleas Court. The arresting officer is not required to appear at County Court on this matter.

C. SERVICE OF PROTECTION FROM ABUSE ORDERS:

1. In certain cases, the victim and/or his/her attorney may appear at the Upper Merion Township Police Department with a newly issued emergency or temporary Protection from Abuse Order. Upon their request, we shall accompany them to their home, work place, or other location within Upper Merion Township to serve the order on the actor. If the order states that the actor is to leave the house or location, we shall ensure his/her eviction. The actor can be granted a reasonable amount of time (15 minutes) to gather some essential belongings. A hearing date on the matter will be recorded on the temporary order.

D. ELDERLY VICTIMS OF DOMESTIC VIOLENCE:

1. When the victim of domestic violence is elderly (60 or over) and the batterer is the sole caretaker and where arrest is indicated, the responding officer shall make a determination as to whether the victim is physically endangered, either as a result of the abuse, or a pre-existing medical condition. If the victim is physically endangered and mentally alert, the officer shall ask the victim for the name of a relative or friend who can be contacted immediately to assist the victim. If there is no one available, or the victim appears not to be mentally alert, the officer shall make an emergency referral to the local agency on aging. The officer shall remain at the residence until the protective services worker arrives, or shall transport the victim to a medical facility where he/she can wait for the worker.
2. In all cases, the responding officer shall advise elderly victims of abuse of the availability of protective services through the local agency on aging (Montgomery County Office of Aging and Adult Services; 610-278-3601, or the Montgomery County Radio Room; 610-275-1222 during the evening).

E. MINORS:

1. When the offender in a domestic violence call is a minor and probable cause is found, the responding officers should arrest, in accordance with the provisions of the Crimes Code and applicable laws pertaining to the arrest of juveniles.

F. NOTICE OF SERVICES AND RIGHTS:

1. Upon responding to a domestic violence case, the officer shall provide all abused persons with oral and written notice of the availability of safe shelter and of domestic violence services in the community, including the hotline number for domestic violence services (see Title 23, Section 6105-b). The written notice (see Attachment A, Victims Rights Form), which shall be in English and Spanish, shall include the following statement:
 - a. "If you are a victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to the Protection from Abuse Act (23 Pa.C.S. Ch.61), which could include the following:
 - (1) An order restraining the abuser from further acts of abuse.
 - (2) An order directing the abuser to leave your household.
 - (3) An order preventing the abuser from entering your residence, school, business, or place of employment.
 - (4) An order awarding you or the other parent temporary custody of, or temporary visitation with, your child or children.
 - (5) An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

G. MANDATORY REPORT:

1. The department shall make an incident report, on a form prescribed by the Pennsylvania State Police.

H. NOTICE OF ARREST:

1. The department shall make reasonable efforts to notify any adult or emancipated minor protected by an order issued under Title 23, Chapter 61, of the arrest of the defendant for violation of an order as soon as possible. Unless the person cannot be located, notice of the arrest shall be provided not more than 24 hours after preliminary arraignment (see Title 23, Section 6105-d).

I. DOMESTIC RELATED CALLS FOR ASSISTANCE:

1. There are a wide variety of calls for police assistance in domestic related situations where probable cause for arrest under Crimes Code Section 2711, and probable cause for arrest under a Protection from Abuse Order do not immediately exist. Usually, these situations have the potential for violence, but have not escalated to

that point. Some discretion by police is necessary in these situations, however, our direct involvement is strongly recommended to prevent domestic violence.

APPROVED: _____

DATED: _____

Chief Thomas M. Nolan

APPROVED: _____

DATED: _____

Captain John Hellebush

TO BE REVIEWED: ANNUALLY

DISTRIBUTION: All police officers
Township Manager
File



UPPER MERION TOWNSHIP
POLICE DEPARTMENT

175 WEST VALLEY FORGE ROAD
KING OF PRUSSIA, PA 19406
610-265-3232

This form is to be explained to the victim and have the victim sign it. Retain it for department files.

DOMESTIC PROBLEMS/VIOLENCE
VICTIM'S FORM

A victim of domestic violence has certain rights and remedies, such as:
“If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an Order for Protection from Domestic Abuse, known as “Protection From Abuse Act”.

This order could include the following:

1. An order restraining the abuser from further acts of abuse.
2. An order directing the abuser to leave your household.
3. An order preventing the abuser from entering your residence, school, business, or place of employment.
4. An order awarding you or the other parent temporary custody of, or temporary visitation with your child or children.
5. An order directing the abuser to pay child support to you and the minor children if the abuser has a legal duty to do so.

If the abuser threatens or intimidates the victim while criminal charges are pending against the abuser, the victim may obtain a protection order pursuant to the Victim and Witness Intimidation Act. To do this, go to the District Attorney’s Office at the Montgomery County Court House.

The victim may be entitled to Crime Victim’s Compensation. For more information, contact the office of the District Attorney or call an attorney.

In situations where no arrest is made, the victim may still be able to file a private criminal complaint against the assailant.

As a victim you should be aware that there are recourses and services available to assist you:

WOMEN’S CENTER OF MONTGOMERY COUNTY: 610-279-1548 / 610-970-7363
MONTGOMERY COUNTY PROTHONOTARY OFFICE: 610-278-3000 / 610-278-3360
LAUREL HOUSE: 215-643-3150 / 800-642-3150

THESE AGENCIES OFFER SHELTER, SERVICES AND INFORMATION TO ABUSE VICTIMS

DATE

VICTIM’S SIGNATURE

ATTACHMENT A

WOMEN'S CENTER OF MONTGOMERY COUNTY

Jenkintown Office: The Benson East, Suite b-7, 100 Old York Rd. 215-885-5020
Norristown Office: 1 Montgomery Plaza, Suite 1002, Norristown 610-279-1548
Pottstown Office: 546 High St., 2nd floor, Pottstown 610-970-7363

I understand the Women's Center may contact me to explain my options in regard to domestic abuse, introduce me to the services provided by the Women's Center and explain how they may assist and support me.

NAME (PLEASE PRINT) SIGNATURE

ADDRESS

PHONE NUMBER (HOME & WORK) DATE

What is the best time to reach you? _____

Responding Officer(s) name(s) & badge
number(s) _____

POLICE REPORT NUMBER _____

A United Way Agency