

		<b>DIRECTIVE 6.19</b>	
SUBJECT <b>Domestic Complaint Procedures</b>		NO. PAGES 11	
DISTRIBUTION All Personnel	AMENDS Directive 6.19 Dated: 12/9/2003	THIS ORDER CANCELS	
DATE OF APPROVAL 8/19/2014	DATE OF ISSUE 8/25/14	Applicable Accreditation Standards	
ISSUED BY: Bobby L. Cummings, M.S.  Chief of Police Reviewed: 8/25/14			

## Domestic Complaint Procedures

Directive: 6.19

### I. Purpose

The purpose of this policy is to establish procedures for handling incidents of this policy will provide police guidance in addressing both criminal and civil incidents/calls for service.

### II. Definitions

For the purpose of this policy, "Domestic Related" is based on the victim to offender relationship as defined by 10 Del. C. Sec. 901 which states "husband and wife; a man and woman cohabitating in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in one home under one head or where one is related to the other by any of the following degrees of relationship, both parties being residents of this State:

Mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son, daughter, son-in-law, daughter-in-law, grandfather, grandmother, grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter;

and 10 Del. C. Sec. 901 which states "Former spouses; persons cohabitating together who are holding themselves out as a couple, with or without a child in common; persons living separate and apart with a child in common; or persons in a current or former substantive dating relationship.

For purposes of this paragraph, neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute a substantive dating relationship. Factors to consider for a substantive dating relationship may include the length of the relationship or the type of relationship, or the frequency of interaction between the parties."

Domestic Violence is **defined** as a crime, threatened crime, or violent behavior between one member against another member as defined above.

**Non-Criminal Domestic Incident is defined** as a dispute between family members which does not rise to the level of a criminal act of Domestic Violence, **but the relationship** is Domestic Related.

### III. Policy and Response

1. Calls for service reporting domestic related complaints will be dispatched according to the information received by the call-taker.
2. It shall be the responsibility of the Radio Room Supervisor to determine if more than one unit should be immediately dispatched.
3. **Officers are encouraged to check for prior calls for service either through DELJIS or CAD (computer aided dispatch).**

### IV. Investigative Action

1. A thorough investigation of all evidence collection and other related investigative procedures are to be followed.
2. **When on scene, officers will check via DELJIS or the Data Center, for the criminal history of all parties involved for a history of domestic violence and for any active Criminal No Contact Orders or Protection from Abuse Orders (PFA). Officers are encouraged to check related criminal history to aid in the investigation.**
3. **If during the search, officers find that an un-served PFA exists, they should serve the PFA and complete the appropriate report detailing same and enter the service into DELJIS.** (for enforcement of PFA refer to page 6 VII)
4. In all cases of domestic violence, the assigned officer must complete an incident report, using the appropriate crime classification.

The victim to offender relationship block should indicate the relationship between the subjects involved.

5. **In all cases where the incident does not reach the criminal level of domestic violence i.e. verbal altercation, but documentation is needed, an officer should complete a Non-Criminal Domestic Situation Incident Report.**
6. **It is the policy of the Wilmington Department of Police to take photographs**

of every injury. In all cases involving a felony level assault, EDU will be contacted by the investigating officer. It is the responsibility of the investigating officer to take photographs of injuries in misdemeanor cases. If there is not a camera available to the investigating officer, it is that officer's responsibility to contact EDU. The officer will document injuries, in detail, within the police report.

Photographs will also be taken in domestic related criminal offenses to include felony level criminal mischief with no other felony level crime and ANY level of visible physical injury to ANY involved party.

7. Whenever a child is injured, put in danger or witnesses a domestic violence complaint, **investigating officers** will contact the Division of Family Services **Child Abuse Hotline** immediately and advise them of the situation. **This must** be documented in the officer(s) report. Whether the on-call worker responded, what action was taken **and the name of the person you contacted/responded** will be documented as well.

**The roles and responsibilities of law enforcement and the Division of Family Services are described in the Memorandum of Understanding currently in existence, and as periodically updated.**

V. Arrest Policy

1. **An officer shall make a warrantless arrest if he has probable cause to believe that the person to be arrested committed a felony.**
2. Under 11 Del. C. Sec. 1904, an officer can make a warrantless arrest when the person to be arrested has committed a misdemeanor in the officer's presence. **When the misdemeanor was not committed in the officer's presence but where probable cause is present, the immediate arrest and removal of a defendant will occur and does not require the victim to leave the scene to obtain a warrant.**
3. In addition, an officer **will** make a warrantless arrest for a misdemeanor committed out of the officer's presence in any one of the following circumstances:
  - a. The officer has **probable cause** to believe that the person to be arrested committed a misdemeanor **resulting** in any **visible** signs of physical injury **regardless of causation**; or
  - b. **The officer has probable cause to believe that the person to be arrested committed the threat of a misdemeanor involving serious injury;**

§ 11/621. Terroristic threatening:

(a) A person is guilty of terroristic threatening when that person commits any of the following:

(1) The person threatens to commit any crime likely to result in death or in serious injury to person or property.....'

- c. The officer has **probable cause**, to believe that the person to be arrested violated **an active PFA or other like document from Delaware or any other state to include active no contact orders that can be verified in or out of state** issued by a Family Court or by a court of any state as per Full Faith and Credit 18 U.S.C. 2265-2266.

**Verifiable via NCIC or good faith.**

18 USC § 2265 - FULL FAITH AND CREDIT GIVEN TO PROTECTION ORDERS

(a) **Full Faith and Credit.**— Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory <sup>(1)</sup> as if it were the order of the enforcing State or tribe.....:

4. The following circumstances may be considered in determining the existence of **probable cause**:
- a. There are obvious signs of physical injury to the victim;
  - b. There is a potential for the incident to **escalate**;
  - c. Threats to the victim are made in the officer's presence;
  - d. Any other misdemeanor is committed in the officer's presence;
  - e. **Suspect's** behavior suggests that he/she may **inflict injury or inflict** further injury to the victim or others.

- f. **Independent witnesses or other corroborative information.**
5. **Once probable cause, has been established, even if the victim requests that charges not be filed or becomes uncooperative with the investigation, the officer must pursue the charges and advise the victim of such.**
6. **The victim and the offender should be informed that the action will be prosecuted by the State and the victim does not have the authority to drop the charges.**
7. **When a warrant is issued, and no arrest can be made, the officer will make every attempt to serve the warrant during their shift. If the suspect cannot be apprehended, notification will be made to the Domestic Violence Investigator for follow up.**
8. **Bail Form – When an arrest is made regarding an incident of Domestic Violence, the officer(s) must complete the Domestic Violence Screening Criteria Checklist found on the Bail Hearing Form. The officer must then submit the completed Bail Hearing/Domestic Screening Check List form to the appropriate court. Request no contact and utilize bail guidelines. Also note any special conditions which may be appropriate.**

#### **VI. Interaction with Victim**

1. **When appropriate, the officer must provide the victim with assistance in obtaining medical treatment or other needed services.**
2. **Domestic Violence Lethality Screening (DVLS)**
  - a. **The DVLS should be used for all domestic related crimes for the following relationships: Boyfriend/girlfriend, husband/wife, ex-husband/wife, homosexual relationships (intimate partner).**
  - b. **In addition, the DVLS, is only applicable to crime reports/domestic incidents and does not apply to domestic violence, non-criminal, reports.**
  - c. **Protocol Referral: A protocol referral refers to the act of assisting the victim in calling the assigned domestic violence hotline.**
  - d. **During the victim interview the following sequence of questions should be followed and responses documented:**
    - **Ask the victim all 11 questions as they are written.**
    - **If question 1,2, or 3 are YES or four or more of questions 4-11 are answered YES, the protocol referral is met and officers should**

proceed to section H.

- e. An officer may trigger the protocol referral at any time if it has not already been triggered by above responses and the officer believes the victim is in a potentially lethal situation. Space is available in LEISS to document further concerns.
- f. If the protocol is not met and all of the following questions are left blank by the officer, the victim did not screen in and the officer should select "Check here if victim did not answer any of these questions."
- g. If the protocol is met, the officer should then:
  - Advise the victim of assessment
  - Advise the victim that you (officer) need to call hotline and you would like for the victim to speak with counselor.
  - The Domestic Hotline for New Castle County is (302) 762-6110.
  - If victim does not want to speak with the counselor, tell the victim you need to speak with the counselor to seek guidance and gently ask the victim to reconsider.
  - If victim still does not want to speak with the counselor, advise them of the hotline for future assistance and document in your LEISS report.

3. The officer must provide the victim with the following information, in writing (commonly referred to as the WPD 'green card'):

- a. The Wilmington Department of Police Victim's Bill of Rights;
- b. Referral to the Domestic Violence Coordinator in the Victim Services Unit;
- c. Referral to the Domestic Violence Hotline at 762-6110 for shelter services;
- d. **Notice on how to obtain** a copy of the initial incident report;
- e. **Notice of the Victims Compensation Assistance Program;**
- f. Notice of the availability of information concerning pretrial release; and
- g. Notice of availability of information concerning status of arrest.

4. **Officers should be able to provide basic information on Protection from Abuse Orders (who qualifies, relief available, etc.) and the steps needed to obtain one.**

5. The officer must ensure that all personal information regarding the victim is kept confidential.

**VII. Enforcement/Service of a Protection From Abuse Order (PFA):**

1. Orders for Protection **are** entered into DELJIS by Family Court. **Officers can verify an active Delaware order at any time through DELJIS.**
2. If an individual produces a copy of a PFA Order the terms included are to be enforced. An original sealed copy is not required. **However, officers should still check the validity of the order in DELJIS.**
3. If an individual indicates that a PFA Order exists, but does not have a copy, an officer **will** access DELJIS to determine if there is a valid PFA Order.
4. If an officer encounters a victim who has a Protection From Abuse Order (PFA), however, the respondent has not been served, contact will be made and the officer **WILL** serve the PFA. "The officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent (accused) and allow the respondent (accused) a reasonable opportunity to comply with the order before enforcing the order." 10 Del. C. § 1046(d). **The officer will document their actions in an incident report, along with any additional charges, if it has been determined a crime has occurred. If no additional crime has occurred the officer will use a non-criminal domestic situation incident report. The officer will also enter into DELJIS that service has occurred.**
  - a. **If during an investigation it is learned that a PFA needs to be served the officer will serve the PFA and document same in DELJIS as well as in their LEISS report.**
5. "It shall be the duty of any law enforcement officer to arrest with or without a warrant any person whom the officer has probable cause to believe has violated a protective order issued by the court and of which the person has notice or knowledge." 10 Del. § 1046.
6. Family Court has exclusive jurisdiction over Criminal Contempt of a Family Court Protective Order (11/1271A) violations.
7. If the **PFA** Order requires the respondent to surrender certain property and the respondent fails to surrender the property the officer will advise the respondent that failure to surrender the property will result in arrest. If the individual continues to fail to surrender the property the officer will then arrest the individual for Criminal Contempt of a Family Court Protective Order (Title

11/1271A).

8. Once the individual has been arrested for Criminal Contempt for failing to surrender the property, and if applicable for that noted in the PFA the officer should attempt to obtain consent to search the residence, vehicle, etc; from any other person who has standing to consent.
9. If no consent can be obtained no search or seizure will take place unless some other valid exception to the probable cause requirement is available, such as plain view or an inventory of the arrested person or the vehicle.
10. An officer has no discretion in situations involving violations of a PFA. The violation need not be committed in the officer's presence. If a PFA Order is or can be established to be in effect and a party provides an officer with probable cause to establish that a violation has been committed the officer has a duty to make an arrest or sign a warrant for the violation.
11. **Anytime an officer is made aware that a Protection from Abuse Order has been violated, the existing Crime Report and Arrest Report procedures will be followed. Officers will be responsible for including the PFA order number in the police report.**
12. If an arrest cannot be made for any reason, but, a violation of a protective order has been established the officer shall submit a crime report under the offense of "Criminal Contempt of a Family Court Protective Order" and include the appropriate section - 11 Del. C. § 1271(A), **and sign the appropriate warrants. Regardless of arrest, the existence of physical injury will result in felony contempt under Title 11/1271(A).**
13. The affidavit of probable cause should contain the specific language of the PFA that has been violated along with the dates the PFA is effective and the information on the parties and witnesses.
14. If a conflict arises where two or more PFA Orders are produced involving the same parties, the most recently dated PFA Order is deemed to be in effect. PFA Orders supersede other existing orders issued for various ancillary domestic issues, such as - child support, visitation, etc. So long as the PFA Order is more recently dated than the decree, the Civil Order is to be given full effect and will be enforced.

#### VIII. Out of State Protection Order: **Full Faith and Credit**

**Full faith and credit is the requirement by the U.S. Code (U.S.C) Title 18 section 2265 that jurisdictions honor the terms and conditions of a protection order issued by another jurisdiction.**

Pursuant to the Violence Against Women Act 18 U.S.C. § 2265-66, an officer who encounters a victim with a Protection From Abuse Order (PFA) from another state must enforce the terms and conditions of the order as written by the issuing jurisdiction.

1. The order is presumed valid if it has the correct names of the parties, has not expired, and is signed by an issuing authority.
2. The order should be enforced pursuant to departmental policy, and the laws of the enforcing jurisdiction.

**IX. Enforcement of Protection from Abuse Relinquishment of Firearm(s) and Ammunition Orders**

Enhancement has been made to the DELJIS system to ensure compliance with Family Court Protection from Abuse (PFA) Relinquishment of Firearms and Ammunition Orders. The copy of these orders delivered to Respondents will identify a deadline for compliance to the Order. The procedures set forth herein will be complied with upon receipt of such an order.

1. Initial notification

a. Responsibilities:

Family Court personnel will enter into the DELJIS system all PFA Orders. In those cases where the existence of a firearm is present, and that respondent resides within the City of Wilmington, the **Domestic Violence Investigator** will be notified by **Family Court**. **In the absence of the investigator the Detective Supervisor will receive the notice.**

2. Surrender (Relinquishment) of Weapons Procedure **per Family Court.**

- a. ~~General~~ The PFA Order notifies the Respondent **of the required steps in weapon relinquishment. The respondent should call the department to alert them that they are relinquishing the firearm(s). They are instructed to not bring any firearms into the building and report to the House Sergeant. Respondents are subject to a limited search prior to the collection of any firearms.**

3. Acceptance of Weapons

a. House Sergeant

Upon the arrival of the respondent, the House Sergeant will **assign an officer to accept the weapons.**

b. Receiving Officer

The officer assigned to receive the weapons will:

1. **Obtain the weapon from the respondent and check for any outstanding warrants on the individual and the weapon(s).**
2. Obtain a case number from the dispatcher and include that number on all appropriate paperwork.
3. Complete departmental Personal Property tags (**note the PFA relinquishment and order number with expiration date on tags**) and receipts per current procedures for each weapon or item.
4. Through the DELJIS System complete the Weapon Relinquishment Compliance screen **and print two copies of the weapons receipt.**
5. Give one copy of the CJIS weapon receipt to the respondent and request that the second copy is signed thereby authenticating the delivery of the weapon(s).
6. **A copy of the PFA Order should be attached to the signed CJIS weapon receipt and a copy of the departmental property receipt.**
7. **The weapon(s) will then be turned over to the [REDACTED]**
8. **Once completed, all paperwork should be forwarded to the Domestic Violence Unit.**

c. PFA Relinquishment Compliance Deadline Notification

1. Should an order be issued, the DELJIS system will cause a PFA Relinquishment **Compliance** Deadline Notification to be printed in the **Criminal Investigations Division**.
2. Criminal Investigations **Division** Responsibilities:

Upon notification **an investigator of the Domestic Violence Unit** will conduct an investigation to determine if the conditions of the order have been fulfilled. If it is determined that the Order has been complied with, the **Domestic Violence Investigator** will ensure that the proper entry is made in the CJIS system. **The Domestic Violence Investigator will document his/her actions on an Incident Report.**

3. Non-Compliance Procedures:

In the event that the respondent fails to comply with the Order, **or the officer failed to complete the Weapon Relinquishment Compliance screen of the CJIS system**, the CJIS system will cause a Firearm Relinquishment Compliance Failure notice to be printed in the **Criminal Investigations Division**.

**A Domestic Violence investigator will conduct an investigation, and if appropriate will generate a warrant for the suspect with the criminal charge being a violation of the PFA order.** [REDACTED]

**The Domestic Violence investigator will document their actions in the appropriate incident report.**