

# COLCHESTER POLICE DEPARTMENT

SUBJECT **Domestic Violence**

EFFECTIVE DATE: July 26, 2018

NUMBER: **General Order # 43**

REFERENCE:

SPECIAL INSTRUCTIONS:

REEVALUATION DATE: ANNUAL

APPROVED: *J. Morrison #190*

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## POLICY:

The Colchester Police Department recognizes the seriousness of crimes committed between family/household members. We will respond to and thoroughly investigate all complaints of domestic violence consistent with this policy. We will use appropriate community services and enforcement of the law with the goals of:

1. Protecting victims of domestic violence and providing them with support.
2. Holding offenders accountable.
3. Breaking the cycle of violence by preventing future incidents or reducing the frequency and/or seriousness of such incidents.
4. Promote officer safety when dealing with domestic abuse situations.

## CONTENTS:

- I. **DEFINITIONS**
- II. **PREVENTION**
- III. **PROCEDURES**
- IV. **VICTIM ASSISTANCE/FAMILY SERVICES**

## I. DEFINITIONS:

**Household Member** is defined as it is found in 15 VSA § 1101:

"Household members" means persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling, are engaged in or have engaged in a sexual relationship, or minors or adults who are dating or who have dated. "Dating" means a social relationship of a romantic nature. Factors that the court may consider when determining whether a dating relationship exists or existed include:

- (A) the nature of the relationship;
- (B) the length of time the relationship has existed;
- (C) the frequency of interaction between the parties;
- (D) the length of time since the relationship was terminated, if applicable.

**Domestic Violence** - where a household member causes or attempts to cause "abuse" against another household member as defined below:

"Abuse" means the occurrence of one or more of the following acts between family or household members by:

- (A) Attempting to cause or causing physical harm.
- (B) Placing another in fear of imminent serious physical harm.
- (C) Abuse to children as defined in subchapter 2 of chapter 49 of Title 33.
- (D) Stalking as defined in 12 V.S.A. § 5131(6).
- (E) Sexual assault as defined in 12 V.S.A. § 5131(5).

For the purpose of this policy Domestic Violence shall also include any criminal behavior between household members such as unlawful mischief, unlawful restraint, violation of a protection order, etc.

**Domestic Dispute** – is defined as an incident between household members where, although no crime has occurred, the police were called to the scene.

**Self Defense** – is a person's justifiable use of physical force upon another person when the person believes such force is necessary to defend him/herself or another person from what he/she reasonably believes to be the use or imminent use of unlawful physical force by another.

**Predominant Aggressor** – is the person that poses the most serious ongoing threat, or is more likely to have initiated the violence.

**Lethality Assessment Protocol** – a domestic violence lethality screening tool used by first responders, designed to identify victims in potentially lethal danger and increase the number of victims accessing services/support/advocacy.

## II. PREVENTION

- A. The Department shall adhere to a pro arrest policy and we will focus on prevention of domestic violence by:
  - 1. Collaboration – we will maintain ongoing partnerships with local community stakeholders and victim advocacy organizations. These collaborative efforts will help us develop domestic violence curricula for all employees. We will work with stakeholders to protect potential victims in all reasonable ways.
  - 2. Training – all personnel will receive training on domestic violence generally, response to domestic violence incidents involving police employees, available victim services and our policies on these topics.

### III. PROCEDURES

#### A. Dispatcher's Procedures

1. Priority – Dispatchers will give a domestic violence call the same priority as any other life threatening call and will, whenever possible, dispatch two officers to the scene.
2. In addition to the information normally gathered (nature of complaint, name of caller, exact location of incident) dispatchers should try to elicit the following information immediately and relay it to the responding officers:
  - a. Is the suspect present? Who is it? If caller is not able to identify, the suspect's description and possible whereabouts.
  - b. Were there any weapons used? If so, what kind? Are there weapons present in house?
  - c. Is anyone injured? If yes, is an ambulance needed?
  - d. Are you the victim? If not, are you a witness? Who is the victim?
  - e. Are children present? How old? Where are they located?
3. The dispatcher should make every attempt to keep the caller on the line until arrival of officers. Other information that can be gathered include:
  - a. Are there drugs or alcohol involved?
  - b. Details of the incident/assault.
  - c. Are there any protection orders or Conditions of Release in place?
  - d. How many times has this happened before?
  - e. Are there other hazards present such as pets?
4. Cancellation – 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.
5. Information gathered by a dispatcher can be crucial to a criminal prosecution. Although a witness or victim may change their initial statements, testimony from the original call can be brought to court.
6. Communications personnel should recognize that victims of domestic violence frequently experience "trauma response." The caller may not come across as the dispatcher expects. The dispatcher is to infer nothing from the tone, demeanor or language of the caller, but instead should continue to support the caller, reassure her/him and collect all relevant information.

#### B. Officer's Procedures

1. Approach the scene with a high degree of caution. Obtain as much information from dispatch as possible prior to arrival.

2. Restore order and ensure safety by locating and separating the involved parties. Take control of all weapons (noting their location) and assess the need for medical attention.
3. Interview all parties separately. Attempt to get sworn, digitally recorded statements. (Children should be interviewed in a manner appropriate to their age.) Note the demeanor and emotional state of the victim and any other persons interviewed for later documentation.
4. Conduct a thorough, course of conduct investigation. When appropriate, administer the Lethality Assessment Protocol (LAP). The LAP should be administered whenever officers respond to a domestic involving intimate partners **and** any of the following applies:
  - a. The officer believes an assault has occurred;
  - b. The officer senses that the potential for danger is high;
  - c. The involved parties have previous domestic violence involvements; or
  - d. The officer feels the LAP is appropriate.
5. Preserve, collect and record all available evidence. Take color photographs of injuries as well as the scene as appropriate. Since injuries may not be evident for 24 hours, re-taking photographs should be done whenever possible.
6. Attempt to obtain a signed medical release form from the victim if he/she has been or is going to be treated or evaluated by medical personnel. If ambulance personnel are present, note the identity of those involved in treatment/transportation.
7. Interview all potential witnesses.
8. Determine who the predominant aggressor is. Dual arrests apply only where the officer finds that there is no predominant aggressor and self-defense has not been used. In this rare circumstance, the officer shall thoroughly document why probable cause exists for both arrests. It is preferable that officers consult with the State's Attorney Office prior to making dual arrests.
9. If the offender has left the immediate scene and a crime has been committed –
  - a. Search the residence and immediate area for the offender.
  - b. Solicit information from the victim and witnesses that may assist in locating the suspect. Continue to actively try to locate the suspect.
  - c. Issue a police broadcast to locate and apprehend if probable cause exists for an arrest.
10. Arrest – Arrest of an offender is this department's preferred response to domestic violence. If there is credible evidence sufficient to establish probable cause that a crime has been committed, regardless of the stated wishes of the victim, the officer should:

- a. Arrest the suspect if there has been an assault against a household member whether the offense was committed in the officer's presence or not. (V.R.Cr.P. (3)(a)(2)(c))
  - b. Arrest the suspect for any violation of a relief from abuse order whether the offense was committed in the officer's presence or not. (V.R.Cr.P. (3)(a)(2)(a))
  - c. Arrest **any person** whom an officer believes will cause personal injury or damage to property if not immediately arrested. (V.R.Cr.P. (3)(a)(4)). This includes those not defined in the "Household member" definition thus allowing officers to protect people from abuse who are not eligible for abuse prevention orders.
    - i. If the officer believes that there is any risk of further violence, the suspect should be lodged with Corrections in accordance with V.R.Cr.P. (3)(2)(C). The officer must be able to articulate the belief that there will be continued violence or property damage.
  - d. Arrest for violations of conditions of release relating to a restriction of travel and/or harassment of a victim and/or witness (V.R.Cr.P. (3)(c)(2)(A-E))
  - e. A flash citation (citation to appear in court on the next available court date) may be substituted for an arrest in this section if the officer is able to reasonably ensure everyone's safety and that repeated law violations will not occur. This deviation from normal procedure (arrest and lodge) must be articulated in the officer's report.
11. Immediately notify the Department of Corrections if the offender is on probation, parole, or furlough. If the offender is on pre-trial conditions of release, appropriate action should be taken if violations have occurred.
  12. Officers who discover any evidence of physical, emotional, or sexual abuse or neglect of minors under the age of eighteen shall, without delay, notify the Department for Children and Families. If an incident involves abuse, neglect, or exploitation of a person sixty years of age or older or of a disabled person eighteen years old or older who has a diagnosed physical or mental impairment, the officer shall notify Adult Protective Services without delay.
  13. Officers shall attempt to ascertain if there are firearms present at the incident location and remove when appropriate [see Appendix A].
  14. Documentation – Officers must fully document their response to every domestic violence call regardless of whether a crime has been committed or an arrest has been made. In those instances where probable cause exists and no arrest has been made, officers must document their reasons for not making an arrest. Court work shall be completed and filed in a thorough and timely manner.

#### IV. VICTIM ASSISTANCE / FAMILY SERVICES

1. Victim safety and protection is of the utmost importance. Persons involved in domestic violence may require a variety of assistance to meet their immediate needs for safety, medical treatment, and information. Therefore officers should provide the following assistance to all parties affected by domestic violence.
  - a. Ensure the victim understands English sufficiently, or arrange for an interpreter.
  - b. If one party is removing personal items, remain on the scene to preserve the peace.
  - c. Officers should emphasize to the victim and offender that any criminal action is initiated by the State of Vermont and not the victim.
  - d. Inform the victim that regardless of what occurs with the criminal court, it may be in his/her best interest to obtain an abuse prevention order (APO) from Family Court. Assist the victim in any necessary way to obtain such an order.
    - i. Upon receipt of an APO from the court, an officer shall attempt to serve, or cause the order to be served, as soon as possible. Pursuant to Vermont statutes, no prior notification of the order may be made to the defendant of that order prior to its service.
    - ii. Any violation of an APO by the defendant shall be treated as stated in Section IV (B)(6) above.
    - iii. Notification and copies of the served order shall be made to the APO holding station.
    - iv. Note: Actions by a plaintiff in regards to an APO does not invalidate the order - i.e. invitation to the defendant by the plaintiff to come to the residence is still a violation of the order if that action is prohibited. A plaintiff may not be charged with violating the order. Only the court may alter or dismiss an APO.
  - e. Assist the victim in providing for the safety of any children involved.
  - f. Inform the victim that she/he may request to be notified of the release of a jailed offender. Provide information on registering with the Vermont Automated Notification Service (VANS). VANS communicates with the Corrections booking system and can provide near real-time updates regarding offenders and their status/location to affected persons (victims, community members, law enforcement, etc). This service is free and confidential.
  - g. Provide any requested information to any non-confidential victim's advocate that may be working with law enforcement agencies or

the State's Attorney's office. A non-confidential advocate may assist the officer and this agency in better providing services to the victims of domestic violence and investigating such crimes.

- h. Information on shelters and/or advocacy groups should be provided to the victim.
- i. Predictions of what may occur in either Family Court or District Court should be avoided by police personnel. Questions from victims and/or witnesses about court procedures should be directed to victim's advocates and/or the State's Attorney's Office.
- j. Officers shall respond to follow up inquiries from victims and witnesses in a timely and professional manner.

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No. 92  
2018

Page 1 of 3

**No. 92. An act relating to removal of firearms from a person arrested or cited for domestic assault.**

(H.422)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 1048 is added to read:

§ 1048. REMOVAL OF FIREARMS

(a)(1) When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault in violation of this subchapter, the officer may remove any firearm:

(A) that is contraband or will be used as evidence in a criminal proceeding; or

(B) that is in the immediate possession or control of the person being arrested or cited, in plain view of the officer at the scene of the alleged domestic assault, or discovered during a lawful search, including under exigent circumstances, if the removal is necessary for the protection of the officer, the alleged victim, the person being arrested or cited, or a family member of the alleged victim or of the person being arrested or cited.

(2) As used in this section, "family member" means any family member, a household member as defined in 15 V.S.A. § 1102(1), or a child of a family member or household member.

(b) A person cited for domestic assault shall be arraigned on the next business day after the citation is issued except for good cause shown. Unless the person is held without bail, the State's Attorney shall request conditions of release for a person cited or lodged for domestic assault.



(c)(1) At arraignment, the court shall issue a written order releasing any firearms removed pursuant to subdivision (a)(1)(B) of this section unless:

(A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307;

(C) the person requesting the return is prohibited by law from possessing a firearm; or

(D) the court imposes a condition requiring the defendant not to possess a firearm.

(2) If the court under subdivision (1) of this subsection orders the release of a firearm removed under subdivision (a)(1)(B) of this section, the law enforcement agency in possession of the firearm shall make it available to the owner within three business days after receipt of the written order and in a manner consistent with federal law.

(d)(1) A law enforcement officer shall not be subject to civil or criminal liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this section.

(e) This section shall not be construed:

(1) to prevent a court from prohibiting a person from possessing firearms under any other provision of law;

(2) to prevent a law enforcement officer from searching for and seizing firearms under any other provision of law; or

(3) to authorize a warrantless search under any circumstances other than those permitted by this section.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2018.

Date Governor signed bill: April 11, 2018