



# COLUMBIA POLICE DEPARTMENT

*“Policing Excellence through Community Partnerships”*

<b>Directive Type:</b> General Order	<b>Effective Date:</b> 08-25-2016	<b>General Order Number:</b> 05.10
<b>Subject:</b> Domestic Violence		
<b>Amends/Supersedes:</b> Section 05, Chapter 10, Criminal Domestic Violence 2008	<b>Chief of Police:</b> <i>W.A. Hatcher</i>	
<b>Distribution:</b> All Personnel	<b>Review Date:</b> July 1	<b># of Pages:</b> 6

## 1.0 DIRECTIVE

The Columbia Police Department will reduce the incidence and severity of domestic violence, protect victims of domestic violence and provide them with support through a combination of law enforcement and community services, and promote officer safety by ensuring that officers are fully prepared to respond and effectively deal with domestic violence calls for service.

## 2.0 DEFINITIONS

Domestic Violence (S.C. Code of Laws 16-25-20. Acts prohibited) It is unlawful to:

- Cause physical harm or injury to a person’s own household member,
- Offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

A household member is defined as spouses, former spouses, parents and children, persons who have a child in common and a male and female who are cohabiting or formerly have cohabited. (S.C. Code of laws 16-25-10 and 20-4-20)

## 3.0 DUTIES OF LAW ENFORCEMENT OFFICERS (S. C. Code of Laws 20-4-100)

The primary duty of a law enforcement officer when responding to a domestic abuse incident is to enforce the laws allegedly violated and to protect the abused person if facts are found which substantiate the complaint. In such incidents, the law enforcement officer must take the following protective measures:

- Notify the abused person of the right to initiate criminal proceedings and to seek an order of protection.

- Advise the parties of the importance of preserving evidence. To provide protection to the petitioner and any minor children, the officer may offer or arrange to provide transportation of the abused person to a hospital for treatment of injuries or to a place of shelter or safety and to accompany the abused person to his or her residence to allow for the removal of clothing, medication, and such personal property as is reasonably necessary.

### 3.1 Enforcement Procedures

All officers who investigate an allegation of domestic violence will initiate a written report, **whether or not an arrest is made.**

Officers not making an arrest where alleged domestic violence has occurred shall document the reasons why the arrest was not affected. If an officer responds to and investigates a domestic disturbance where probable cause does not exist to warrant an arrest, the officer should advise the complainant of the following options:

- Recommend that the complainant go to the Family Court to obtain an "Order of Protection" or to the Magistrate and obtain a "Restraining Order".
- Refer the complainant to a social service agency for counseling and assistance (see "Crime Victim/Witness Services Form").
- Recommend that the parties stay at separate locations for a temporary period of time to allow tensions to ease.

If an officer's investigation establishes that an act of domestic violence has occurred and probable cause exists for a lawful arrest, that arrest will be the preferred course of action. The "Domestic Violence Reform Act" allows an officer to make a **warrantless** arrest of a suspect for domestic violence even if the offense did not occur in the presence of the officer, if the officer has probable cause to believe the offense has been "freshly" committed.

### 3.2 Domestic Violence Investigations

Any officer who is confronted with a domestic violence incident where an arrest is clearly warranted will handle the incident in the same manner as any other crime.

The officer conducting the investigation should collect and document in the incident report as much of the following information as possible:

- Collect detailed statements from victims, offenders or other persons having knowledge of the incident
- Document the victim's and offender's injuries and take photographs if possible
- Document the nature of damage to the victim's and offender's clothing
- Document the type of weapons and how they were used
- Document and photograph any damage at the incident location
- Document any history of previous calls, other abuse of family members and any drug or alcohol involvement

- Document the victim's and offender's demeanor
- Collect 911 tape if it is pertinent

### 3.3 Victim Rights and Assistance Form

All officers who respond to a violation of the Domestic Violence Reform Act will inform the victim of their rights through use of the "Crime Victim/Witness Services Form."

## 4.0 PENALTIES FOR VIOLATION OF DOMESTIC VIOLENCE REFORM ACT

Any person found guilty of Domestic Violence Third Degree is guilty of a misdemeanor and may be punished by a fine of not less than one thousand dollars (\$1000.00) or more than two thousand five hundred dollars (\$2500) or imprisonment for not more than thirty (30) days. Domestic Violence Third Degree may be tried in Municipal Court.

Any person found guilty of Domestic Violence Second Degree is guilty of a misdemeanor and may be punished by a fine of not less than two thousand five hundred dollars (\$2500) or more than five thousand five dollars (\$5000) **and** imprisonment for no more than three years or both. Domestic Violence Second Degree must be tried in General Sessions Court.

Any person found guilty of Domestic Violence First Degree shall be guilty of a felony and must be punished by imprisonment for no more than ten years. Domestic Violence First Degree must be tried in General Sessions Court.

## 5.0 PROTECTION FROM DOMESTIC ABUSE ACT (PDAA)

The "Protection from Domestic Abuse Act" provides for an action known as a "Petition for an Order of Protection" that is to be filed in Family Court or in a Magistrate's Court during times when the Family Court is not in session or otherwise not conducting business. The "Order of Protection" seeks to protect the petitioner (victim) or other family members from abuse. An "Order of Protection" from a magistrate has limited power and therefore should be obtained from the Family Court whenever possible.

### 5.1 Filing Requirements (Petition) for an "Order of Protection"

A petition for an "Order of Protection" may be made by any family or household members in need of protection or by any family or household members on behalf of minor family or household members.

A petition for an "Order of Protection" must allege the existence of abuse to a family or household member. It must state the specific time, place, details of the abuse, and other facts and circumstances upon which relief is sought and must be verified.

### 5.2 Hearing on Petition for "Order of Protection" (SC Code of Laws 20-4-50)

The two (2) types of hearings with respect to petitions for "Orders of Protection" are emergency hearings and non-emergency hearings.

Emergency hearings must be held within twenty-four (24) hours of the service of a petition upon a respondent where the petitioner has made a clearly evident showing of immediate and present danger of bodily injury. Upon proof by the petitioner at the hearing of the allegations by a preponderance of the evidence, the Court may issue an "Order of Protection".

Non-emergency hearings are conducted where either there has been no request for an emergency hearing or, when requested, the court deems an emergency hearing inappropriate. Non-emergency hearings must be held within fifteen (15) days of the filing of the petition.

### 5.3 Contents of an "Order of Protection" (SC Code of Laws 20-4-60)

Every "Order of Protection" must conspicuously bear the following language: "Violation of this order is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars."

An "Order of Protection" may also contain any of the following requirements:

- Temporarily prohibit the respondent from abusing, threatening to abuse, or molesting the petitioner or the person or persons on whose behalf the petition was filed.
- Temporarily prohibit the respondent from communicating or attempting to communicate with the petitioner and temporarily prohibit the respondent from entering or attempting to enter the petitioner's place of residence, employment, education, or other location as the court may order.
- Award temporary custody and temporary visitation rights with regard to minor children living in the home over which the parties have custody.
- Direct the respondent to pay temporary financial support for the petitioner and minor child unless the respondent has no duty to support the petitioner or minor child.
- When the respondent has a legal duty to support the petitioner or minor children living in the household and the household residence is jointly leased or owned by the parties or the respondent is the sole owner or lessee, grant temporary possession to the petitioner of the residence to the exclusion of the respondent.
- Prohibit the transferring, destruction, encumbering, or otherwise disposing of real or personal property mutually owned or leased by the parties or in which one party claims an equitable interest, except when in the ordinary course of business.
- Provide for temporary possession of the personal property of the parties and order assistance from law enforcement officers in removing personal property of the petitioner if the respondent's eviction has not been ordered.
- Award costs and attorney's fees to either party.

All officers must remember that the authority to assist a petitioner must be contained in the "Order of Protection" and any assistance that is requested of any officer must also be contained in the "Order of Protection".

### 5.4 Duration of "Order of Protection" (SC Code of Laws 20-4-70)

The duration of an "Order of Protection" is dependent upon the provisions stated in the "Order of Protection."

Any "Order of Protection" issued under SC Code of Laws 20-4-60 which contains provisions number one (1) or two (2) under this directive will be in effect for a fixed time not to exceed one year from the date of issue. A victim cannot void an order of protection. It is only being voided by a court order or by its expiration date.

Provisions numbers three (3) through eight (8) under SC Code of Laws 20-4-60 must be enforced until further order of the court following issuance of the order unless before the expiration of the period the court has scheduled a hearing pursuant to the filing of an action for divorce or separate support and maintenance to determine the temporary and obligations of the parties with respect to support of a spouse or children, custody and visitation, or the distribution of personal property. If the hearing has been scheduled, relief granted by provisions three (3) through eight (8) of SC Code of Laws 20-4-60 remains in effect until the court issues an order pursuant to the hearing.

The Clerk of Court will mail a certified copy of all "Order of Protection" to the petitioner, respondent and all law enforcement agencies having jurisdiction in the area where the petitioner resides. This will allow any officer to verify the existence of an "Order of Protection" anywhere in the state, and if the respondent is in violation of a provision of that order, the officer could affect a warrantless arrest for violation of an "Order of Protection."

5.5 Penalties for Violation of an "Order of Protection" (SC Code of Laws 16-25-20 H)

Any person violating the terms and conditions of an "Order of Protection" issued under the "Protection from Domestic Abuse Act" is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty (30) days **and** a fine of not more than five hundred (\$500.00) dollars.

**6.0 DOMESTIC VIOLENCE CONVICTIONS OF SWORN DEPARTMENT EMPLOYEES**

The "Violence Against Women Act" (VAWA) enacted by the United States Congress in 1994 contains provisions which may directly impact the employment status of any sworn employee which find themselves convicted of Criminal Domestic Violence or the subject of an Order of Protection.

6.1 Order of Protection

Section 922 (d) (8) prohibits the possession of firearms or ammunition by persons subject to an Order of Protection if the person was given reasonable notice and an opportunity to be heard and if the Order of Protection forbids future threats of violence. Sworn employees under such an Order of Protection may be subject to termination of their employment.

6.2 Domestic Violence Misdemeanor

Section 922(d) (9) prohibits the possession of firearms or ammunition by persons convicted of a Domestic Violence Misdemeanor. Sworn employees convicted of such an offence will be subject to termination of their employment.