

Section 15 DOMESTIC VIOLENCE RESPONSE AND ORDERS OF PROTECTION

15.01 DOMESTIC VIOLENCE CHECKLIST

The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party. Effective intervention in domestic violence cases protects the victims from further harm and may reduce exposure to liability suits. The crime should be investigated thoroughly enough to convict without victim participation. Domestic violence calls can be highly emotional situations and should be considered high-risk. Always approach with two or more officers using extreme caution.

CHECKLIST:

- Officers may enter a residence to contact the subjects under the rules of consent, exigent circumstance, or with a warrant. Because of the immediacy of this situation, entry is usually made through consent or exigent circumstance.
- Clear the area for potential danger and officer safety.
- Provide aid for injuries.
- Assess the totality of circumstances, decide whether a crime has been committed, and determine the identity of the primary aggressor (*See DV Arrests, Section 15.02*).
- If a criminal violation of a protective order has been knowingly violated or a domestic violence assault has occurred and the suspect is contacted within four hours of the crime, an arrest is mandatory (*See DV Arrests, Section 15.02 and Orders of Protection - Enforcement, Section 15.06*).
 - Make every reasonable attempt to locate and arrest the suspect if he/she has fled. Broadcast the probable cause information and description of suspect and vehicle to Everett and surrounding agencies. Check possible locations for suspects. Contact other agencies for possible locations for suspect.
 - If the suspect cannot be located, **DO NOT** issue a citation to be mailed. Complete the report with all known facts and forward the Superform with PC to the Records Unit (*See Training Bulletin 2010 – XXX*) Make

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- Photograph injuries and the crime scene
- Collect any evidence (e.g. torn clothing, broken household items).
- Make note of any excited utterances and victim's demeanor.
- Separate and interview participants, third parties, and any other witnesses, juvenile and adult, who may be able to help in your investigation. Complete the Domestic Violence History form (PD-357)
- Advise victims of all reasonable means to prevent further abuse, including advising of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. Hand each victim a copy of the Everett Police Department DV Victim Information sheet (PD-193). If the officer has decided to not initiate a criminal proceedings by citation or otherwise, advise the parties of the importance of preserving evidence.
- Offer, arrange, or facilitate transportation for the victim to a place of safety or shelter.
- Complete a written incident report, using the DV Report Checklist (PD-356). Include your disposition of the case. (*See DV Report, Section 15.04*)

15.02 DOMESTIC VIOLENCE ARREST

The following statutory arrest provisions apply to Domestic Violence cases:

- Officer **must** arrest and take into custody on criminal PC for knowing violation of a protective order (violation of anti-harassment protection order is discretionary arrest). (*See Orders of Protection-Enforcement, Section 15.06*)
- Officer **must** arrest and take into custody on PC that:
 - The suspect is 16 years or older; and
 - Within the preceding 4 hours has assaulted a family or household member (*see DV Arrest Matrix, Section 15.03*); and
 - The officer believes (i) a felonious assault has occurred; or (ii) an assault has occurred which has resulted in "bodily injury" to the victim whether the injury is observable by the officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily harm or death.
 - "Bodily injury" means physical pain, illness, or an impairment of physical condition.

- If PC exists that family or household members have assaulted each other, the officer is **not** required to arrest both persons, but **shall** arrest the person whom the officer believes is the “primary physical aggressor.”
 - To determine “primary physical aggressor,” officers **shall** make every reasonable effort to consider (i) the intent of the law to protect DV victims, (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury, and (iii) the history of DV of each person involved, including whether the conduct was part of an ongoing pattern of abuse.
- Officer **may** arrest on PC that a person has committed or is committing any felony (unless mandatory arrest applies, above)
 - Officer **may** arrest on PC that a person has committed a misdemeanor or gross misdemeanor involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving criminal trespass (unless mandatory arrest applies, above)

15.03 DOMESTIC VIOLENCE ARREST MATRIX

SUSPECT		VICTIM		ARREST
Relationship	Age	Relationship	Age	
Spouse or Former Spouse	Age 16 or older	Spouse or Former Spouse	Any age	Mandatory
Reside Together Past or Present	Adult	Reside Together Past or Present	Adult	Mandatory
Child in Common	16 or Older	Child in Common	Any Age	Mandatory
Related by Blood or Marriage	Adult	Related by Blood or Marriage	Adult	Mandatory
Dating Past or Present, and Reside Together Past or Present	16 or Older	Dating Past or Present, and Reside Together Past or Present	16 or Older	Mandatory
Dating Past or Present	16 or Older	Dating Past or Present	16 or Older	Mandatory
Biological or Legal Parent or Child,	16 or Older	Biological or Legal Parent or Child	Any Age	Mandatory

15.04 DOMESTIC VIOLENCE REPORT

When responding to a domestic violence situation, officers have the duty to take a complete offense report, including the officer’s disposition of the case. For DV cases, use the Domestic Violence Report Checklist (PD-356). Check the appropriate distribution box at the bottom of the report form (e.g. PA or Detectives)

15.05 ORDERS OF PROTECTION - SERVICE

Service Process

Protective orders may exclude a respondent from a dwelling that the parties share (even if it is solely in the respondent's name), from the residence, workplace or school of the petitioner, and/or from the daycare or school of a protected child. If under the circumstances an officer believes it is inappropriate to enforce the terms of an order, the officer will serve the order and follow up with a supervisor or city prosecutor.

How Service is to be Accomplished

Oftentimes, the petitioner is unable to give the address for the respondent. It is not the responsibility of the Everett Police Department to research or provide that information to the petitioner. If an officer is independently aware of the respondent's address, he/she should not provide this information to the petitioner as doing so might violate privacy laws. However, if, for example, the order says the respondent may be served at a certain tavern or restaurant because he or she hangs out there, or at his/her workplace, service should be attempted at that location.

Who May Be Served

The Everett Police Department shall serve all orders where the local agency, specifically EPD, is named as the entity to serve the order. Do not serve orders that specify that a private party shall serve them. If the respondent was present at the hearing, he or she does not need to be served. If the party to be served is a child under the age of 14, they must be served personally, as well as their guardian, parent, or employer (if employed).

Respondent with a Disability

Following 2010 legislation, the law enforcement information form for DV Protection Orders prompt the person to disclose whether the person who the petitioner is seeking to restrain has a disability, brain injury, or impairment requiring special assistance. If an officer serving a DV Protection Order knows that the respondent requires special assistance due to one of these conditions, he/she must make a reasonable effort to accommodate the respondent's needs, without compromising the petitioner's safety.

Distribution, Service Attempts and Collection of Orders

- The sector lieutenant will distribute order(s) to the beat sergeant.
- The beat sergeant will then distribute the order(s) to an appropriate beat officer during briefings. Attached to the order will be three other documents

- (1) Attempt of Service form – Each attempted service of the order will need to be recorded.
 - (2) Return of Service form – This form needs to be completed and returned to the sergeant that distributed the order(s). The sergeant will then return the Return of Service to the Records Unit.
 - (3) LEA sheet – This sheet has information on the respondent and is for law enforcement use only. The LEA sheet is to be returned to Records when the order has been served.
- If, at the end of the officer's shift, the order has not been served, the officer will return it to the sergeant's office. Officers will not hold on to the order(s); they must be returned at the end of the shift.
 - Officers will attempt to serve the orders within the allotted 10-day period that the State allows for service.
 - Sector lieutenants and/or sergeants may wish to explain to parties requesting service that private service is also available to them. Parties often assume that these orders will be served immediately. Although EPD officers attempt to promptly serve orders, this is not always the case and may need to be explained to them. If the petitioner elects to have a third party serve his/her order, explain that the Return of Service must be promptly filled out and filed by the private process server.
 - If order service cannot be accomplished within the 10-day time period, fill out the Return of Service detailing the attempts made and indicating why service could not be accomplished (e.g., respondent not living at address listed, or unable to contact).
 - Officers shall not use force or threat of arrest to transfer property or custody of children. Officers shall not assist in a transfer of residence or children if it can be done with the cooperation of the parties. If the party is unwilling to relinquish possession of property or children, refer the parties back to court. A contempt action may remain, but there is no criminal violation of the Protection Order.

15.06 – ORDERS OF PROTECTION - ENFORCEMENT

Applicability of this Section

This section applies to Orders issued under the following chapters of state law. It DOES NOT apply to Orders issued under Chapter 10.13 RCW (Anti-harassment Protection Orders):

- Chapter 26.50 – Domestic Violence Protection Orders
- Chapter 10.99 – Criminal No Contact Orders (pretrial or post-conviction)

- Chapters 26.09 and 26.10 – Dissolution/Custody-related orders (civil restraining order)
- Chapter 7.90 – Sexual Assault Protection Orders
- RCW 26.52.020 – Foreign Protection Order
- Chapter 74.34 – Vulnerable Adult Protection Order
- Chapter 9.94A – Miscellaneous, issued under the Sentencing Reform Act

Provisions of the Orders that are Enforced by Police

An officer shall arrest without a warrant and take into custody a person whom he/she has probable cause to believe has violated any of the following provisions of an order covered by this section, PROVIDED the person knows of the order.

- (i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;
- (ii) A provision excluding the person from a residence, workplace, school, or day care;
- (iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;
- (iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or
- (v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

Most orders have additional provisions; *HOWEVER, POLICE MAY NOT EXERCISE ARREST POWERS FOR VIOLATION OF ANY PROVISION THAT IS NOT LISTED ABOVE.* Violation of these additional provisions may result in contempt of court but are not criminal in nature.

Knowledge

Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order. If an officer determines that the respondent did not or probably did not know about the order, and the officer has in his/her possession a current copy of the order, the officer shall serve the order on the respondent, if they are present. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give the petitioner a receipt indicating that the petitioner's copy has been served on the respondent. A receipt will be in the form of a business card with a brief explanation on the reverse.

Felony Order Violations

- Any assault that is a violation of an order covered by this section that doesn't amount to Assault 1st or 2nd Degree is a class C felony
- Any conduct in violation of an order covered by this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.
- Any violation of an order covered by this section is a class C felony if the offender has at least two previous convictions for violating the provisions of an order covered by this section. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

15.07 – COMPARISON OF THE MOST COMMON TYPES OF ORDERS

DV Protection Orders – Chapter 26.50 RCW

- ✓ Can be issued by any superior, district or municipal court in Washington
- ✓ In 2010, the law changed regarding minimum age of petitioner
 - Pre-2010, petitioner must be at least 16 and a victim of DV committed by the respondent, who is also at least 16
 - Post-2010, any person 13 years of age or older may petition, alleging that he/she has been the victim of violence in a dating relationship. If petitioner is, however, under 13, he/she must have adult assistance. And the respondent must still be 16 years of age or older.
- ✓ Victim can petition on behalf of herself and minor family/household members
- ✓ Process includes:
 - Filing a petition
 - Getting a temporary order
 - Service on the respondent
 - Hearing for one-year order
- ✓ Costs nothing
- ✓ Respondent might be allowed to get his "essential personal effects," which means necessary for *immediate* health, welfare and livelihood. Examples: clothes, bedding, documents, medications, personal hygiene items.

CRIMINAL NO CONTACT ORDERS – CHAPTER 10.99 RCW

- ✓ Issued by the court at the request of the prosecutor in a DV case
 - Note: This is the only type of order that is NOT obtained by the victim petitioning for it
- ✓ Protects only the victim, not the victim's family
- ✓ Pretrial order issued as a condition of release, until disposition of the criminal case or further court order
- ✓ Post-conviction order issued as a condition of sentencing
- ✓ Order is *TERMINATED* if the associated criminal charge is dismissed

MISCELLEANEOUS CIVIL RESTRAINING ORDERS – CHAPTERS 26.09 AND 26.10 RCW

- ✓ Not standardized like DV Protection Orders and Criminal No Contact Orders
 - The court cause number will have “3” as the second number, e.g. 10-3-12345-1. The “3” indicates that it is a civil matter.
 - Check to make sure the order is signed by a judge and there is a criminal clause (wording that mandates arrest)
- ✓ These orders typically state that ANY violation is a criminal offense. That does not override the law. Police enforcement is limited as provided in this section, despite what the order says.
- ✓ Order can protect more than one person, e.g. a spouse/former spouse and his minor family/household members

VERIFYING PROOF OF AN ORDER

- 1) Complainant produces their copy with judge’s signature or proof of service (this will be a certified copy with the court’s seal).
- 2) A WACIC computer check
- 3) Contact the law enforcement agency where the order was issued.
- 4) Contact the Court Clerk’s Office or the Civil Data Unit.
- 5) The suspect’s signature **or** the suspect’s attorney’s signature is on the order.

15.08 RESPONSE TO CRIMES OR DOMESTIC VIOLENCE INCIDENTS THAT INVOLVE EVERETT POLICE DEPARTMENT EMPLOYEES OR OFFICERS FROM OTHER LAW ENFORCEMENT AGENCIES, OR OTHER PERSONS OF INFLUENCE

The following procedures will be followed in any case involving an Everett Police Department employee, any law enforcement officer from another agency while in our jurisdiction, or any other person of influence (elected political officials, prominent citizens), when such individuals are suspected of criminal conduct, or being a party to a domestic violence incident as either the suspect or the victim.

Patrol Officers:

Upon recognition that they are responding to or investigating such an incident, patrol officers will immediately notify a patrol supervisor.

Officers conducting the initial investigation will complete all reports just as they would for any other incident of a similar nature. Officers will make arrests under a similar guideline. If the incident is domestic violence related, officers will comply with state laws and make every reasonable effort to identify and arrest the primary aggressor. If

the suspect has fled the scene, officers will conduct a search of the area or other locations as appropriate.

Officers will conduct a thorough investigation and identify witnesses, obtain statements, record contacts and interviews if possible, document and retain evidence, take photographs, obtain and impound dispatch tapes, and complete a detailed report.

In domestic violence related cases officers will provide victims with the domestic violence victim's resource sheet (PD-193) explaining court order information, shelter alternatives, and counseling resources.

All victim information will be kept confidential by all officers, to include victim transport locations.

Patrol Supervisors:

Upon notification of such an incident, a patrol supervisor will immediately respond to the scene to supervise the investigation. The supervisor will make the required notification through the chain of command or ODO. An on duty Lieutenant or ODO will respond to the scene if possible to assist the supervisor and to monitor the investigation for compliance with policy and procedure. The patrol supervisor will also make such notification if contacted by another agency and reporting such an incident occurring in their jurisdiction and involving an Everett Police Department employee.

If the incident involves an officer from another jurisdiction, the patrol supervisor will make a notification to the Command Duty Officer. The patrol supervisor will document this notification.

The patrol supervisor will manage any investigation, ensuring a thorough and complete investigation, and that arrests are made as appropriate. The patrol supervisor will request dispatch to retain all tapes regarding the incident and to provide a copy of the tapes for investigators.

If an Everett Police Department officer is arrested, the supervisor will determine if the offense is of such a nature that the employee should be relieved of law enforcement duties and the officer's weapon, badge, and identification confiscated. In all cases where an Everett Police Department officer is arrested for a domestic violence incident, the supervisor will confiscate the officer's weapon, badge, and identification. The supervisor will inform the employee that he or she is on administrative assignment.

The patrol supervisor will ensure that any victims in a domestic violence incident, or any other incident where the supervisor deems appropriate, have been given the name and number of the Office of Professional Standards Inspector as a liaison and a point of contact for questions, concerns, or assistance. The patrol supervisor will also ensure that the victim is provided information regarding employee and family counseling

services that are available. This information is located on any Department bulletin board. The supervisor will see that any personal firearms at the location are removed as allowed by law, and that all parties are given the opportunity to voluntarily relinquish any personal weapons in order to reduce risk to victims, although victims may choose to retain weapons for personal protection. The supervisor will offer reasonable transportation to a safe location for victims, or reasonably assist the victim in any other manner to accommodate for that persons safety.

Office of Professional Standards

The Office of Professional Standards will conduct a thorough administrative internal investigation as directed by the Chief of Police.

Investigations- Detectives

The assigned detective will diligently investigate all such reported incidents and prepare a detailed and thorough case file. The assigned detective will forward all case files to the prosecutor for review at the conclusion of the investigation.

Follow-up

The assigned detective will be responsible for all required follow-up.

If additional incidents occur involving the same parties, each incident will be documented with a new case report, and not as a follow-up to the initial incident. The requirements established in these procedures will be followed for all new incidents.

If any court orders are obtained and the Everett Police Department will be serving those orders, the orders will be served by two officers and one supervisor of higher rank than the employee to be served.

Prosecutor's Office

The prosecutor's office will review all criminal case files and file charges as appropriate.

Chief of Police

The Chief of Police will review all criminal case files and the administrative internal investigation report and administer disciplinary action as appropriate.

City Administration

The city administration will review all administrative internal investigation reports and disciplinary actions for quality and consistency.

If the Chief of Police is involved in the incident, the Mayor will act in place of the Chief of Police during the course of the investigations and will administer disciplinary action as appropriate.