



| | |
|---|--|
| CHAPTER 31: DOMESTIC VIOLENCE | POLICY # 31.1 DOMESTIC VIOLENCE |
| <p><i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i></p> | |
| Date Implemented: 07/15/2021 | Review Date: |

I. POLICY

SPECIAL NOTE: THIS MANDATED POLICY DIRECTS OFFICERS TO PERFORM CERTAIN FUNCTIONS THAT MAY NOT BE APPLICABLE WITHIN JEFFERSON COUNTY, AS THOSE FUNCTIONS ARE HANDLED ENTIRELY AT JEFFERSON DISTRICT COURT. MEMBERS OF THIS DEPARTMENT SHOULD OFFER ASSISTANCE TO VICTIMS NEEDING THOSE SERVICES, WHEN APPLICABLE.

The purpose of this policy is designed to provide officers and support personnel with clear definitions, direction, and guidelines for providing and promoting a consistent, effective response to domestic violence crime to accomplish the following goals:

- A. Make an arrest for any violation of an Emergency Protective Order (EPO), any violation of a Domestic Violence Order (DVO), any violation of a Temporary Interpersonal Protective Order (TIPO), any violation of an Interpersonal Protective Order (IPO), any violation of a Foreign Protective Order (FPO) or any violation of a condition of release or bond when authorized by state law;
- B. Reduce the incidence and severity of domestic violence crime;
- C. Afford maximum protection and support to adult and child victims of domestic violence through coordinated services of law enforcement and victim assistance; and
- D. Reduce the risk of civil liability for officers, supervisors and administrators, and the employing unit of government.
- E. To accomplish these goals, every officer shall:
 - a. Make an arrest when authorized by state law as the preferred response, instead of using dispute mediation, separation, or other police intervention techniques;

- b. Treat all acts of domestic violence as criminal conduct;
- c. Respond with the same protection and sanctions for every domestic violence incident, regardless of race, religion, creed, national origin, gender, sexual orientation, disability, and socio-economic status, including cases where any of the alleged parties may be a law enforcement officer, public official, or prominent citizen; and
- d. Immediately report all known or suspected cases of domestic violence and abuse, adult abuse, or child abuse as required by state law;
- e. Receive training on domestic violence as required by state law.

NOTE: Every officer shall document action taken (arrest or non-arrest) on the JC-3 form. If the victim is a child or a vulnerable adult, the JC-3 shall be forwarded to the Cabinet for Families and Children. If the victim is an adult (other than a vulnerable adult), the JC-3 shall be maintained in the officer's investigation file but will not be forwarded to the Cabinet for Families and Children.

- F. The following facts shall not be considered as an independent compelling reason not to arrest the perpetrator. These facts may be used as background information to complete a domestic violence investigation for prosecution.
 - a. The marital status of the suspect and the victim;
 - b. Whether or not the suspect lives on the premises with the victim (except as may be necessary to qualify the parties as "members of an unmarried couple" or if the victim is a child);
 - c. Whether the victim has not obtained a protective order against the perpetrator;
 - d. The potential financial consequences of arrest;
 - e. Whether there have been previous law enforcement responses to domestic calls at this address;
 - f. Verbal assurances that the violence will cease;
 - g. The victim's emotional status;
 - h. Whether or not physical injuries suffered by the victim can be personally observed at the time of the law enforcement response;
 - i. The location of the incident (i.e. public or private);
 - j. Speculation that the victim may not follow through with the prosecution, or that the arrest may not lead to a conviction;
 - k. The victim's initial reluctance regarding an officer-initiated arrest;
 - l. The fact that the victim and suspect are of the same gender; or,
 - m. The use of alcohol or drugs by either or both parties.

II. PROCEDURES

A. On-scene investigation, arrest, and post arrest procedures

- a. General responsibilities at the scene
 - a.) Respond promptly to the call - utilize two officers when available;
 - b.) Establish control;

- c.) Assess the situation for risks to all parties including children;
- d.) Attend to the emergency medical needs of those involved;
- e.) Interview parties/witnesses separately and away from the line of sight and hearing of the perpetrator; (use direct quotes of witnesses about their fears and concern);
- f.) Effect an arrest of the perpetrator as the preferred response, if legally possible;
- g.) Seize any weapons used in the incident;
- h.) Inform the victim of rights;
- i.) Provide victim information on legal remedies and community services available for protection and safety planning;
- j.) Assist the victim in securing medical attention which shall include arranging for the transporting of the victim to obtain medical attention;
- k.) Assist the victim in securing legal protection (warrant, protective order) which may include transporting the victim to obtain the legal protection, if appropriate;
- l.) Report any actual and suspected incidents of abuse to the Cabinet of Families and Children, Department for Social Services, using the "Child Abuse, Adult Abuse and Domestic Abuse Standard Report" for (JC-3) when the victim is a child or a vulnerable adult;
- m.) If the exigent circumstances have ceased, obtain a consent to search or obtain a search warrant when appropriate;
- n.) Collect and photograph all relevant evidence required for successful prosecution (use body map with checklist to document injuries);
- o.) Arrange for follow up photographs of the victim to demonstrate the extent of the injuries that may later become more obvious;
- p.) Attend to any children or dependent adults;
- q.) Check LINK and NCIC for outstanding warrants, history file on protective orders and whether there are any active "EPO's", "DVO's", "TIPO's", "IPO's" or Foreign Protective Order (FPO's").
(For various reasons, not all valid domestic violence orders may be in the LINK system).

B. Arrests

- a.) Arrest is the preferred response to domestic violence. All arrests shall be made in conformity with Kentucky State Law, Agency Policy and Procedures.
- b.) Warrantless arrest for domestic violence related felonies is the preferred response.
- c.) Misdemeanant arrests without a warrant:
 1. If there is probable cause to believe an offender has intentionally or wantonly caused injury to a family member, or a member of an unmarried couple, or another person with whom the person was or is in a dating relationship, the officer may arrest for Assault in the Fourth Degree. **KRS 431.005 (2) (a).**
 - (a) Effective July 1996, the officer does not have to determine whether the offender will present a danger or threat of danger to others if not immediately restrained to effect an arrest for an Assault in the Fourth Degree. **KRS 431.005(2) (a).**

(b) If the misdemeanor assault charge is a third or subsequent offense, the penalty for the arresting offense can be enhanced by one degree. For the enhancement of the penalty, it is not necessary that the victim be the same person. **KRS 508.032**. The officer should make a reasonable effort to determine if there is a prior history.

(c) If there is probable cause to believe that any condition of a bond or pre-trial release has been violated and the officer has verified that the offender has had notice of the conditions, he shall arrest the offender without a warrant. **KRS 431.005(5)**

d.) Emergency Protective Orders (EPO)

1. Emergency Protective Orders are immediately enforceable only if the respondent has been served or given notice of the contents;
2. The law enforcement officer should check through the LINK - Domestic Violence File to verify service of the Emergency Protective Order;
3. If personal service has not occurred, the officer shall immediately give the respondent notice of the contents of the Emergency Protective Order;
4. After notice has been given to the respondent, its terms are binding and enforceable for subsequent acts;
5. The law enforcement officer shall then make arrangements for personal service of the "EPO" if possible and make notification to the communications center of this department and notification to the responsible agency for LINK entry of the orders.

NOTE: Information regarding notice and arrangements for service shall be marked on the JC-3 form.

e.) Domestic Violence Orders (DVO)

1. DVO shall be enforced immediately upon issuance.
2. The officer shall make sure that the conditions for which an arrest is made are prohibited in the "DVO".

(a) All law enforcement officers should be aware that pursuant to the Carrying a Concealed Deadly Weapon Statute, "...when a Domestic Violence Order or Emergency Protective Order is issued pursuant to the provision of **KRS Chapter 403** against a person holding a license issued under (the law), the holder of the permit shall surrender the license to the court or to the officer serving the order". **KRS 237.110(10)**;

f.) Temporary Interpersonal Protective Orders (TIPO)

1. Temporary Interpersonal Protective Orders are immediately enforceable only if the respondent has been served or given notice of the contents;
2. The law enforcement officer should check through the LINK - Domestic Violence

File to verify service of the Emergency Protective Order;

3. If personal service has not occurred, the officer shall immediately give the respondent

notice of the contents of the Temporary Interpersonal Protective Order;

4. After notice has been given to the respondent, its terms are binding and enforceable

for subsequent acts;

5. The law enforcement officer shall then make arrangements for personal service of the

“TIPO” if possible and make notification to the communications center of this department and notification to the responsible agency for LINK entry of the orders.

NOTE: Information regarding notice and arrangements for service shall be marked on the JC-3 form.

g.) Interpersonal Protective Orders (“IPO”)

1. IPOs shall be enforced immediately upon issuance.

2. The officer shall make sure that the conditions for which an arrest is made are prohibited in the “IPO”.

(a) All law enforcement officers should be aware that pursuant to the Carrying a Concealed Deadly Weapon Statute, “...when a Domestic Violence Order or Emergency Protective Order is issued pursuant to the provision of KRS Chapter 403 against a person holding a license issued under (the law), the holder of the permit shall surrender the license to the court or to the officer serving the order”. KRS 237.110(10);

h.) Foreign Protective Orders (“FPO”)

a. General

i. All out-of-state Protective Orders shall be enforced as written including provisions which grant relief not available in Kentucky;

ii. All Foreign Protective Orders are presumed valid upon presentation to the law enforcement officer. Foreign Protective Orders do not have to have been entered into the LINK system to be valid and enforceable;

iii. Some Foreign Protective Orders may have been filed or recorded and may be verified through LINK

b. Arrest procedures

i. When a Foreign Protective Order is presented to the law enforcement officer by the complainant, the officer should:

1. Determine whether the order is current;

2. Determine whether the conduct complained of is prohibited by the order.

NOTE: For different reasons, some Foreign Protective Orders do not have expiration dates on them. Even though no expiration date is contained on the order, the officer shall accept the statement (written or oral) of the complainant that the order is current.

- ii. The officer shall inquire of the complainant whether the Protective Order has been filed with the circuit clerk's office. If it has not the officer should advise the complainant to register the Foreign Protective Order with the Circuit Court Clerk in the county of residency.
- iii. If the order has been filed with the clerk's office, it can be further verified through the LINK system.

NOTE: Even if the order has not been filed with the court clerk and is not available on LINK, it is still a valid order of protection if Step (1) is completed.

- iv. The officer shall assume that the respondent was given notice of the protective order and its contents:
 1. If the officer has probable cause to believe the respondent has violated the terms of the Protective Order, he shall arrest the respondent as having violated a Protective Order. **KRS 403.763, KRS 456.180.**
 2. All peace officers shall make arrests for a violation of a Foreign Protective Order in the same manner as a violation of an Emergency Protective Order, Domestic Violence Order or Interpersonal Protective Order as if it had been entered by a Kentucky Court. The charge shall be a violation of a Protective Order.

NOTE: This shall not preclude officers from arresting the perpetrator for other violations of the Kentucky Penal Code; Law enforcement officers are not expected to be aware of any changes of a Foreign Protective Order that are not clearly on the order itself; or, if the order is on LINK, if the changes are not indicated on LINK. It is the obligation of the victim to notify the court of changes in the order.

2. Mutual Violence

- a. Where the officer has probable cause to believe that two or more persons committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor and whether one party acted in self-defense;
- b. The officer should arrest the primary aggressor;
- c. Where there is probable cause to believe that all parties are equally responsible, the officer should contact his immediate supervisor for assistance in a resolution;

- d. Officers should not use mutual arrests as a substitute for a thorough investigation;

NOTE: Arresting both parties is not the preferred response.

- e. Factors to consider in mutual violence situations to determine the primary aggressor:
 - i. The history of domestic disputes/violence between the persons;
 - ii. The degree of injury inflicted upon each person keeping in mind that many injuries to the head and body may not be visible at the time;
 - iii. Objective and testimonial evidence from the parties and other persons at the scene including children;
 - iv. Whether one person acted in self-defense;
 - v. The presence of fear of the parties involved and the level of fear (who is afraid of whom); and
 - vi. The likelihood of future injury.

NOTE: An injury inflicted in self-defense is not a basis for an arrest for a violation of a mutual protection order.

ii. Obtaining Warrants/Protective Orders

- 1. When a domestic violence crime has allegedly been committed, and the officer is unable to arrest the alleged perpetrator under the provisions discussed above, the officer shall assist the victim in obtaining an arrest warrant and/or protective order;
 - a. The officer may apply for an arrest warrant himself when he has sufficient information to establish probable cause;
 - b. The officer may consult with his supervisor;
 - c. Prosecution is the preferred response even if the officer must take the initiative;
 - d. The victim's non-cooperation shall not be considered when seeking warrants;
 - e. If the offense occurs after normal working hours, this department will follow the 24-hour access policy established by the court;

NOTE: Each law enforcement agency should insert their local court's 24-hour policy for obtaining Emergency Protective Order and warrants and its own policy for transporting victims.

iii. Duty to victim whether or not an arrest has been made.

- 1. Whether or not an arrest has been made, if the officer has reason to suspect that a family member or member of unmarried couple, or persons who are or have been in a dating relationship, has been the victim of domestic violence, dating violence, sexual assault or stalking, the officer is required by **KRS 403.785 (2)** (for family members or members of an unmarried couple) or **KRS 456.090(2)** (for persons of a dating relationship, victim of sexual assault or

stalking), to use all reasonable means necessary to prevent further domestic violence, including but not limited to:

- a. Remaining at the scene if the officer reasonable suspects there is danger to the physical safety of the individuals present without the presence of an enforcement officer;
- b. Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- c. Advising the victim of rights and services available.

NOTE: These “rights and services” include information about criminal complaint procedures, availability and enforcement of civil protective orders, availability of emergency shelter services, protective services of DSS, and other community resources. Many of these rights and services are printed on the “Victim Rights Information” tear-off portion of the JC-3 form.

Tearing off the victim rights information portion of the JC-3 form and giving it to a victim may not fully satisfy this duty. The responding officer should also ensure that the victim can read and understand the print form.

2. To protect the victim and provide access to a safe environment, the officer should, when possible:
 - a. Provide a copy of a safety plan, if available;
 - b. Inform the person of local procedures for victim notification;
 - c. Provide the victim with the Women’s Crisis Center in their area for crisis intervention counseling; information and referral, emergency shelter for victims of abuse (women and children), speakers on issues of rape, child sexual assault, family violence support groups, and the court advocacy program, which works toward communication, networking, support in legal process, and referrals.
3. Whether or not an arrest has been made, the officer shall report any known or suspected vulnerable adult or child abuse, neglect, or exploitation immediately, or any known or suspected domestic violence or abuse where the victim is a child or a vulnerable adult within 48 hours, to the Cabinet for Families and Children, Department for Social Services using the JC-3 form.
 - a. Death of an adult or child does not relieve the officer of the responsibility to report the circumstances surround the death related to abuse or neglect.

iv. Special Circumstances

1. Agency Assigned Service of an Emergency Protective Order or Temporary Interpersonal Protective Order

- a. Emergency Protective Orders (“EPO”) or Temporary Interpersonal Protective Orders (“TIPO”) assigned by the District or Circuit Court for service by this agency shall receive high priority response. These orders shall be segregated from other or warrants to be served.
- b. Upon service of the order on the respondent, the officer should immediately notify the communications center of this agency and in turn, the law enforcement agency in the issuing jurisdiction responsible for entry of Domestic Violence Protective Orders or Interpersonal Protective Orders on the LINK-Domestic Violence File.
- c. The officer should promptly arrange for a copy of the order with the verified service to be delivered to the entering agency for modification to the LINK-Domestic Violence File record.

b. Domestic Violence Protocol

The Courts, together this agency, recognize the need and desirability for twenty-four (24) hour accessibility to Emergency Protective Orders or Temporary Interpersonal Protective Orders in response to the serious threat that domestic violence and dating violence poses within our community. Although the Court has always been available on a twenty-four-hour basis for the review and consideration of request and consideration of requests for such orders, the following protocol has been developed because of a rising demand for services:

i. Terminology

1. **“Domestic Violence and Abuse”** means physical injury, serious physical injury, stalking, sexual abuse, strangulation or assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation or assault between family members or members of an unmarried couple. **KRS 403.720 (1)**
2. **“Family Member”** means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim. **KRS 403.720(2).**
3. **“Member of an Unmarried Couple”** means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of unmarried couples, who is living together or have formerly lived together. **KRS 403.720(5)**
4. **“Dating Relationship”** means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
 - (a) Declarations of romantic interest;
 - (b) The relationship was characterized by the expectation of affection;

- (c) Attendance at social outings together as a couple;
 - (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the relationship;
 - (e) The length and recency of the relationship; and
 - (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed; **KRS 456.010(1)**
5. **“Dating violence and abuse”** means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship. **KRS 456.010(2)**
 6. **“Sexual Assault”** refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020. **KRS 456.010(6).**
 7. **“Stalking”** refers to conduct prohibited as stalking under KRS 508.140 or 508.150. **KRS 456.010(7).**
 8. **“Strangulation”** refers to conduct, without consent, that intentionally or wantonly impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person; or blocking the nose or mouth of the other person. **KRS 508**

III. Policy

- a.) It shall be the policy of this agency to view complaints of domestic violence as alleged criminal conduct. Such agencies shall respond to such complaints and investigate them accordingly and make an arrest if merited.
- b.) Arrest Authority
 1. Peace Officers may arrest, per **KRS 431.005**,
 - i. Pursuant to a warrant;
 - ii. Without a warrant when a felony is committed in his/her presence;
 - iii. Without a warrant when he/she has probable cause to believe the person has committed a felony;
 - iv. Without a warrant when a misdemeanor, as defined in **KRS.431.060**, is committed in her/her presence.
 - v. Without a warrant when a violation of **KRS 511.080** (Criminal Trespass, Third Degree) or **KRS 525.070** (Harassment) has been committed in his/her presence; or
 - vi. Without a warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple or another person with whom the person was or is in a dating relationship.

2. Peace Officers shall arrest, per **KRS 431.015(1)(c)**, without a warrant when the peace officer has probable cause to believe a violation of a Protective Order has occurred, after service on the respondent or notice to the respondent of the existence and terms of the order by a peace officer or the court.

3. Procedure for obtaining Motion/Petitions for Orders of Protection and Verification of Petitions

a. During regular business hours of the District Court Clerk's office, it is the policy that petitions for Emergency Protective Orders or Temporary Interpersonal Protective Orders be sought from that office.

b. The following persons are hereby authorized to provide Motion/Petition for Orders of Protection forms to any person who meets the definition "family member", or "member of an unmarried couple", persons who are or have been in a "dating relationship", been a victim of "sexual assault", "stalking" or "strangulation" as set out herein and who is seeking an Emergency Protective Order or a Temporary Interpersonal Protective Order:

- i. Circuit/District Court Clerk and all Deputy Clerks;
- ii. Commonwealth Attorney, Assistant Commonwealth Attorneys, and the Commonwealth Attorney's Office staff;
- iii. County Attorney, Assistant County Attorneys, and the County Attorney's office staff;
- iv. Sheriff and all Deputy Sheriffs;
- v. All Peace Officers as defined by KRS.

c. All persons listed in Paragraph (c) are hereby authorized to take the oath of the person making a motion/petition for Orders of Protection and to verify the signature of the petitioner.

d. The person receiving the completed Motion/Petition for Order of Protection shall administer an oath of the Petitioner affirming the truthfulness of the contents of the Petition.

e. The person giving the oath shall sign their name and office in the space provided on the petition.

3. Post Arrest Procedure

a.) Responding officers, after establishing control of the situation, shall complete the JC-3 (victim statement) and any offense/report forms required by his/her department.

b.) A Motion/Petition for an Order of Protection should be offered to the alleged victim for completion. Upon completion, the petition must be signed by the person seeking protection and must be verified by the law enforcement officer present at the scene. **KRS 403.725 and KRS 456.030.**

c.) After hours, the arresting officer shall contact pretrial services for notification of the on-call judge that an order has been requested.

d.) The alleged perpetrator shall be lodged in jail, pending bond.

- e.) The peace officer should take the signed and verified petition to the on-call judge for review and, if merited, the issuance of an Emergency Protective Order. The judge shall keep the original petition and order for filing with the clerk.
- f.) A copy of the signed order and petition shall be taken by the peace officer to the jail for service; together with the identity of the person serving the order shall be noted on the order. A copy of the order shall be filed with the clerk.
- g.) A copy of the signed order shall be sent the local entering agency for the Law Information Network of Kentucky (LINK).
- h.) The victim should be informed by the peace officer that the order has been signed, entered into LINK and that a copy is available to him/her.
- i.) Within forty-eight (48) hours, the law enforcement agency initiating the report shall report the suspected violence and abuse to the Cabinet for Human Resources, Department for Social Services, by use of the JC-3, in cases where the victim is a child or a vulnerable adult. In cases where the victim is an adult, the officer shall keep a copy of the JC-3 in his/her investigative file.
- j.) All arrestees for violation of Protective Orders shall be presented to the on-call judge by pre-trial services for the fixing of bond in accordance with the severity of the offense charged.

4. No Arrest Made

- a.) Responding officers, after establishing control of the situation, shall complete the JC-3 (victim statement) and any offense/report forms required by his/her department.
- b.) A Motion/Petition for Order of Protection should, if possible, be given to the alleged victim for completion. Upon completion, the petition must be signed by the person seeking protection and must be verified by the law enforcement officer present at the scene. **KRS 403.725 and KRS 456.030.**
- c.) If the court is not in session, the peace officer shall contact pretrial services for notification of the on-call judge that an order has been requested.
- d.) The peace officer shall take the signed and verified petition to the on-call judge for review and, if merited, the issuance of an Emergency Protective Order or Temporary Interpersonal Protective Order. The judge shall keep the original petition and order for filing with the clerk.
- e.) A copy of the signed order shall be sent to the local entering agency for the Law Information Network of Kentucky (LINK). The victim shall be informed by the peace officer that the order has been signed, entered into LINK, and that a copy is available to him/her.
- f.) The peace officer shall attempt to serve a copy of the signed order and petition upon the alleged perpetrator. If this is not accomplished within a reasonable time, the peace officer should attempt to give notice of the existence and terms of the order to the alleged perpetrator. The time and place of service or notice shall be set out on the order. A copy of the order shall be filed with the District Court Clerk.
 - i.) If the peace officer is unable to serve the alleged perpetrator within a reasonable time, a copy of the order, the notice setting the hearing and a copy of the petition shall be forwarded to the sheriff for personal service.
 - ii.) Within forty-eight (48) hours, the law enforcement agency initiating the report shall report the suspected violence and abuse to the Cabinet for Human Resources, Department for Social Services, use of the JC-3, in cases where the victim was a child or a vulnerable adult. In cases where the victim is an adult, the officer shall keep a copy of the JC-3 in his/her investigative file.

5. Miscellaneous

- a.) Whenever an Emergency Protective Order or Temporary Interpersonal Protective Order is not issued by the court, the court shall note on the petition any action taken or denied and the reason for it, **KRS 403.730(2)(b) or KRS 456.040(2)(b)** and accept the same for filing.
- b.) Officers acting in good faith shall be immune from criminal and civil liability. **KRS 403.785(4) or KRS 456.090(4).**
- c.) Motions/Petitions for Order of Protection shall be made available to law enforcement agencies and should be in the possessions of peace officer at all times.
- d.) At least six copies of petitions and orders shall be completed. After hours, the original shall be maintained by the judge for filing with the clerk on the next business day. A copy shall be served on the alleged perpetrator, and a copy returned to the clerk. The victim shall be given a copy, a copy shall be sent to LINK and the peace office shall retain a copy.
- e.) Pursuant to statute, if no District Judge can be found within the county, the petition shall be presented to any judge of the Circuit Court found within the county.
- f.) A petitioner for an order of protection under KRS Chapter 403 (family member or member of an unmarried couple) may apply for a temporary permit to carry a concealed deadly weapon on or about his person under the same terms and conditions as a person holding a CCDW license issued under KRS 237.110. **KRS 403.754**

D. Offender or Victim has Left the Scene

- a.) If probable cause exists that an alleged perpetrator has committed an assault on a family member, member of an unmarried couple, or persons who are or have been in a dating relationship or has violated a Protective Order or a Foreign Protective Order, but the perpetrator has left the scene, the responding officer shall interview all available witnesses, record or document these interviews and collect all available physical evidence.
- b.) If the officer is unable to arrest the alleged perpetrator within a reasonable time, the officer should assist the victim in seeking an arrest warrant and/or Protective Order to deter future domestic violence;
- c.) If probable cause exists that there has been an assault on a family member, or a member of an unmarried couple, or another person with whom the person was or is in a dating relationship or that a protective order has been violated, but the victim has left the scene, the responding officer shall, in addition to investigating the offense at the scene, attempt to locate the victim, determine whether the victim needs medical assistance and continue the investigation where the victim is located;
- d.) Effecting an arrest consistent with state law is the preferred response even when one party or the other has left the scene. This may include an arrest based on probable cause or the officer applying for an arrest warrant himself.

- e.) If an officer is unable to execute a probable cause arrest due to not being able to identify the location of the suspect in a reasonable time frame and only if the offense alleged committed was a misdemeanor, the officer shall:
- f.) Provide the victim with a copy of the JC-3, in cases where the victim is a child or a vulnerable adult, along with any other completed police reports. The officer will provide a copy of the victim's rights from the bottom of the JC-3 to all victims, regardless of age or status. **KRS 209A.120**
- g.) Direct the victim to respond to the County Attorney's Office as soon as they open for business to secure an arrest warrant for said charges.
- h.) However, if exigent or special circumstances exist, nothing in this section shall preclude the investigating officer from securing an arrest warrant himself on behalf of the victim.
 - i.) If probable cause exists that a felony was committed, the police officer shall take it upon himself to secure the arrest warrant.

E. Domestic Violence Perpetrator is a Juvenile

- a. Officers will handle juvenile perpetrators of domestic violence in the same manner as when the alleged perpetrators are an adult perpetrator;
- b. If a juvenile is taken into custody, officers shall process the juvenile under the provisions of the Juvenile Code (**KRS Chapters 600-645**);
- c. Officer should not release juvenile perpetrators at the scene.
- d. Officers should contact the Court Designated Worker (CDW) for an alternative placement for the juvenile perpetrator.

F. Special Needs Victims

- a. Some domestic violence victims have special needs because of their relationship to the perpetrator, limited physical or mental abilities, or some other factor. These factors make it extremely difficult for them to report their victimization, call for assistance, or participate fully in the investigation and prosecution of their case.
- b. Such special needs victims may include:
 - a.) Pregnant women;
 - b.) Physically or mentally disable persons;
 - c.) Alcohol or chemically dependent persons;
 - d.) Males;
 - e.) Adolescents, and;
 - f.) Culturally diverse populations.
- c. Officers should treat all victims respectfully and as seriously as any other criminal case;

- d. Officer should refer these victims to specialized support services to ensure the victim receives protection, physical assistance, medical treatment, or other services as needed.

G. Marital Rape/Sexual Assault

- a. Responding officers shall follow all procedures relating to investigation and evidence collection (including comprehensive rape examinations) where a sex offense is reported, regardless of the relationship, including the marriage of the victim to the alleged perpetrator.

NOTE: There is no exemption for marital rape, **KRS 508 and KRS 510.**

H. Children, Dependent Adults and Elderly Adults

- a. Even where a spouse or partner is the primary victim, officers shall take appropriate action on behalf of children, dependent adults, and elderly adults at the scene who may be the direct or indirect victims of violence.

I. Domestic Violence or Dating Violence Stalking

- a. Officers should complete a full report and investigation where a domestic violence, dating violence or any other victim alleges that he or she has been stalked;
- b. Officers shall offer the Motion/Petition for Order of Protection to victims of stalking, whether it be domestic violence, dating violence or when no relationship exists between the victim and the perpetrator, in accordance with KRS 456.
- c. Officers should advise stalking victims to notify this agency of subsequent incidents.

J. Special Relationship/Prominent Citizen

- a. A responding officer should notify his supervisor when he responds to a domestic violence call involving a public official, or a prominent citizen.
 - i.) A responding officer and supervisor shall apply this policy equally to all members of the community;
 - ii.) This applies whether the person is the victim or the perpetrator.
- b. A responding officer shall notify his supervisor when he responds to a domestic violence call involving law enforcement personnel.
 - i.) When possible, the investigation should be handled by an officer at least one rank higher than the party involved;
 - ii.) The investigating officer shall notify the highest-ranking officer on duty of the investigation;
 - iii.) This applies whether the person is the victim or the perpetrator.

- c. When a law enforcement officer is investigating a member of another law enforcement agency, that investigating officer should notify the highest-ranking officer on duty of the agency with whom the officer under investigation is employed.
- i.) This applies whether the person is the victim or the perpetrator.

K. Victim Notification

- a. Officers who receive warnings from mental health professionals under the provisions of **KRS 202A.400** of threatened violence against an identifiable victim or victims should attempt to contact the intended victim or victims;
- b. Officers should inform the victim of the threatened violence, advise him or her of all available legal remedies and assist the victim in accessing those legal remedies;
- c. Officers should discuss alternative safety plans with the intended victim, provide transportation to a safe location if necessary, and give other indicated assistance;
- d. Officer and supervisor should decide what further investigation or action (e.g., increased patrol, alert to all shift officers, etc.) is indicated;
- e. Officers and supervisors should fully document the report of threatened violence, all attempts by officers to contact the intended victim or victims, and all further recommendation investigations or actions.

L. Involuntary Hospitalization

- a. If the officer believes the domestic violence perpetrator has a mental health condition which indicates that the person is an imminent danger to self or others, the officer needs to follow the provisions set forth in **KRS 202A**;
- b. This statute should not be used as substitute for an arrest.

NOTE: Check local procedures for the placement of this individual in an appropriate facility.

M. Other Related Matters

i. Confidentiality

The actual location of any spouse abuse center, or other emergency shelters, shall not be communicated by any electronic means. Such information shall be communicated only on a face-to-face, need-to-know basis to other law enforcement personnel.

ii. Training

KRS 15.334(1)(b) requires that each officer receive initial training, followed at least every four years by continuing education courses, developed by the Justice Cabinet concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources, victims' services, and reporting requirements.

iii. Good Faith Immunity from Liability

Officers who reasonable perform their duties in good faith have immunity from civil and criminal liability under the following situations:

- i.) Enforcing Emergency Protective Order or Domestic Violence Orders **KRS 403.785(4).**
- ii.) Enforcing Temporary Interpersonal Protective Orders or Interpersonal Protective Orders **KRS 456.090(4)**
- iii.) Enforcing Foreign Protective Orders. **KRS 403.7521(2)**
- iv.) Making a report or investigation for adult abuse or neglect **KRS 209.050**
- v.) Making a report or investigation for child dependency, abuse or neglect. **KRS 620.050(1)**

j.) DEFINITIONS

i. General Definitions

- i.) **“Domestic Disturbance or Dispute Call”** means a call involving an argument or disagreement between family members, unmarried couples, or household members.
- ii.) **“Domestic Violence Call”** means a call where an adult, child, or family member or member of an unmarried couple is alleged to be the victim of:
 - a. Physical injury or fear of imminent physical injury (explicit or implied threats);
 - b. Sexual abuse or in fear of imminent sexual abuse;
 - c. Strangulation or in fear of imminent strangulation;
 - d. Unlawful imprisonment/kidnapping;
 - e. Property crime;
 - f. Stalking; or,
 - g. Violation of terms or conditions of a protective order by the other party.
- iii.) **“Dating Violence Call”** means a call where persons who are or have been in a dating relationship is alleged to be the victim of:
 - a. Physical injury or fear of imminent physical injury (explicit or implied threats);
 - b. Sexual abuse or in fear of imminent sexual abuse;
 - c. Strangulation or in fear of imminent strangulation;
 - d. Unlawful imprisonment/kidnapping;
 - e. Property crime;
 - f. Stalking; or,
 - g. Violation of terms or conditions of a protective order by the other party.

NOTE: These calls are the types of cases which, by statute, must be reported to the Department of Social Services on the JC-3 form in cases where the victim is a child or a vulnerable adult.

- iv.) **“Victim or Complainant”** means any person who has been subjected to threats of or actual domestic and abuse or dating violence and abuse. This includes persons who, at that time, may be reluctant to see the perpetrator arrested, file charges, or see the perpetrator prosecuted. It also includes victims of sexual assault or stalking when no relationship between the victim and perpetrator exists.
- v.) **“Exigent Circumstances”** means those circumstances or emergencies which authorized officers to enter a dwelling without consent or a warrant. Examples of such emergencies are:
 - a. Hot pursuit of a fleeing felon;
 - b. The imminent destruction of evidence;
 - c. The need to prevent a suspect’s escape;
 - d. The risk of danger to the police or others;
 - e. Reasonable belief that a person inside needs immediate protection or assistance.

NOTE: If the officer is not in hot pursuit, the officer must have probable cause that one or more of the other three circumstances are present. In assessing the risk of danger, the officer should consider the seriousness of the crime and the likelihood that the suspect is armed. Minnesota v Olson, 110 S. Ct. 1684 (1990)

- vi.) **“Probable Cause”** to justify an arrest means facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense. Probable cause means more than a simple suspicion or a hunch. The officer must have concrete facts or reliable information giving the officer a reasonable belief that the suspect probably committed the crime. Probable cause is frequently referred to in cases and statutes as “reasonable grounds”.

NOTE

- a. The victim’s statement is a factor that should be considered in determining whether probable cause exists.
 - b. The officer shall use the JC-3 form (Child Abuse, Adult Abuse and Domestic Abuse Standard Report) to document the evidence giving the officer probable cause to make the arrest, and/or report suspected abuse.
- ii. Domestic Violence and Abuse Definitions
 - i.) **“Domestic Violence and Abuse”** means not only causing physical injury, serious physical injury, stalking, sexual abuse, strangulation or assault between family members or members of an unmarried couple, but also causing fear of such imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault. **KRS 403.720(1)**.

- ii.) **“Physical Injury”** means substantial physical pain or any impairment of physical condition. **KRS 500.080(13)**.
- iii.) **“Family Member”** means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim. **KRS 403.720(2)**.
- iv.) **“Member of an Unmarried Couple”** means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple, who is living together or has formerly lived together. **(KRS 403.720(5))**

NOTE

- a. The AOC Clerk’s Manual lists the following as being included: the parent of the victim’s child even if the parties are not married, any children of that couple or member of an unmarried couple who are living together or formerly lived together;
- b. The statutes do not define “couple” or “living together”. Officer should make a determination of whether or not parties are a “couple” or “living together” without being influenced by gender or sexual orientation or whether or not sexual activity is involved.

iii. Dating Violence and Abuse Definitions

- i.) **“Dating Relationship”** means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
 - a. Declarations of romantic interest;
 - b. The relationship was characterized by the expectation of affection;
 - c. Attendance at social outings together as a couple;
 - d. The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the relationship;
 - e. The length and recency of the relationship; and
 - f. Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship exists.
- ii.) **“Dating violence and abuse”** means physical injury, serious physical injury, stalking, sexual assault or strangulation or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship.

- iii.) **“Sexual assault”** refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020.
- iv.) **“Stalking”** refers to conduct prohibited as stalking under KR 508.140 or 508.150.

iv. Protective Orders

- i.) **“Emergency Protective Orders” (“EPO”)** means an ex parte court order (an order issued at the request of one party without a hearing) issued under the provisions of **KRS 403.730** against a family member or a member of an unmarried couple who has been determined to present an immediate and present danger and which is valid for up to 14 days (the date of expiration should appear on the order).
- ii.) **“Temporary Interpersonal Protective Orders” (“TIPO”)** means an ex parte order (an order issued at the request of one party without a hearing) issued under the provisions of **KRS 456.040** against a person who is or has been in a dating relationship, the alleged perpetrator of sexual assault or stalking (where a relationship may or may not exist between the perpetrator and victim) who has been determined to present an immediate and present danger and which is valid for up to 14 days (the date of expiration should appear on the order).

NOTE

- a. The officer seeking to enforce the order shall determine that certain conduct has been prohibited on the order form or in the LINK system - - he cannot assume that any particular provision is in force;
 - b. He must also determine whether service or notice of the order has been completed.
- iii.) **“Mutual Protection Order”** is an order of protection against both the Petitioner and Respondent only if each has filed a separate petition seeking protection against the other. The order must be specific to make clear to any peace officer which party has violated the order. **KRS 403.745(4)**.

NOTE: Out-of-state mutual protection orders are enforceable only if the issuing court has made specific findings that each party in a separate order was entitled to an order of protection.

- iv.) **“Domestic Violence Order” (“DVO”)** means a court order issued under the provisions of **KRS 403.750** following a hearing against a family member or a member of an unmarried couple where the court has found violence has occurred and is likely to occur again. In Kentucky, a “DVO” is valid for up to three years (the date of expiration should appear on the order.)
- v.) **“Interpersonal Protective Order” (“IPO”)** means a court order issued under the provisions of **KRS 456.060** following a hearing against a person who is or has been

in a dating relationship, a victim of sexual assault or stalking where the court has found violence has occurred and is likely to occur again. In Kentucky, an IPO is valid for up to three years (the date of expiration should appear on the order.)

- vi.) **“Foreign Protective Order” (“FPO”)** means any judgment, decree, or order of protection issued by a court of any state of the United States or tribal court which is entitled to full faith and credit in this state pursuant to 18 U.S.C. sec 2265. **KRS 403.7521(1)**. Foreign Protective Orders shall be enforced as written.

NOTE: Out-of-state orders may not have an expiration date and may even contain provisions which could not otherwise be issued by Kentucky Court.

v. Adult Abuse or Neglect/Exploitation Definitions

- i.) **“Abuse”** means the infliction of physical pain, ~~injury~~ or mental injury, or injury of an adult; **KRS 209.020(7)**
- ii.) **“Neglect”** means a situation in which an adult is unable to perform or obtain for himself the services which are necessary to maintain his health or welfare, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which a person deprives his spouse of reasonable services to maintain health and welfare.

a. **KRS 209.020(15)**.

- iii.) **“Adult”** means a person eighteen (18) years of age or older or a married person without regard to age, who because of mental or physical dysfunction, or who is the victim of abuse or neglect inflicted by a spouse, is unable to manage his own resources, carry out the activities of daily living, or protect himself from neglect, hazardous or abusive situations without assistance from others and may be in need of protective services; or a person without regard to age who is the victim of abuse and neglect inflicted by a spouse. **KRS 209.020(4)**.
- iv.) **“Exploitation”** means the improper use of an adult or an adult’s resources by a caretaker or other person for the profit or advantage of the caretaker or other person. **KRS 209.020(8)**.

vi. Abused or Neglected/Dependent Child Definitions

- i.) **“Abused or Neglected Child”** means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child, inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child’s well-being;

a person twenty-one (21) years or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age. The relationship between the adult and juvenile does not have to be custodial in nature. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child. **KRS 600.020(1)**

- ii.) **“Dependent Child”** means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child. **KRS 600.020 (19).**
- iii.) **“Person Exercising Custodial Control or Supervision”** means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child. **KRS 600.020 (45).**

vii. Stalking Definitions

- i.) **“Stalking”** means an intentional course of conduct directed at a specific person which seriously alarms, annoys, intimidates or harasses; which serves no legitimate purpose; and which would cause a reasonable person to suffer substantial mental distress. **KRS 508.130(1)(a).**
- ii.) **“Course of Conduct”** means a pattern of conduct composed of two or more acts, evidencing a continuity of purpose; it does not include constitutionally protected activity. **KRS 508.130(2).**

viii. Other Definitions

- i.) **“Self-Protection” or “Protection of Another”** means a person’s justifiable use of physical force upon another person when the person believes such force is necessary to defend himself or a third person from the use, or imminent use, of unlawful physical force by such other person. **KRS 503.050; KRS 503.070.**
- ii.) **“Imminent”** means impending danger, and, in the context of domestic violence and abuse as defined by **KRS 403.720**, belief that danger is imminent can be inferred from a past pattern of repeated serious abuse. **KRS 503.010(3).**
- iii.) **“Peace Officer”** for purpose of this policy means:
 - a. “A full-time sworn officer of the Kentucky State Police, a full time sworn officer of the Kentucky Horse Park, a commissioned full time state park ranger, a full-time state water patrol officer, a full-time city policeman, a full-time county policeman, a full-time university safety and security officer appointed pursuant to **KRS 164.950 to KRS 164.970 and KRS 15.380**, a full-time

city/county policeman, a duly elected sheriff, or a full time paid deputy sheriff or,

- b. A part time law enforcement officer, or a special paid deputy, who has completed a Kentucky Law Enforcement Council approved education and training program referred to in **KRS 15.334**.

ix. The Violence Against Women's Act Federal Crimes

i.) **"Interstate Domestic Violence"** means crossing a state line to commit domestic violence and subsequently committing the act. This crime occurs when:

- a. A person who travels across a state line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner; and,
- b. Who, during or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner. **18 U.S.C. see 2261(a) (2)**.

ii.) **"Interstate Domestic Violence"** means causing another to cross a state line due to domestic violence. This crime occurs when:

- a. A person who causes a spouse or intimate partner to cross a state line or to enter or leave Indian country by force, coercion duress, or fraud; and,
- b. In the course or because of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner. 18 U.S.C. sec 2261(a) (2).

iii.) **"Interstate Violation of a Protection Order"** means crossing a state line to commit domestic violence in violation of a protection order and subsequently violating the protection order. This crime occurs when:

- a. A person who travels across a state line or enters or leaves Indian country with the intent to engage in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment or bodily injury to the person or persons for whom the protection order was issued; or;
- b. Would violate the protection order if the conduct occurred in the jurisdiction in which the order was issued; and,

c. Subsequently engages in conduct which violates the protection order. 18 U.S.C. sec. 2262(a) (1).

iv.) **“Interstate Violation of a Protection Order”** means causing another to cross state lines fleeing because of domestic violence committed in violation of a protection order. This crime occurs when:

a. A person who causes a spouse or intimate partner to cross a state line or to enter or leave Indian country by force, coercion, duress, or fraud; and

In the course or because of that conduct intentionally commits an act that injures the person’s spouse or intimate partner in violation of a valid protection order issued by a state. **18U.S.C. sec. 2262(a) (2).**