

Domestic or Family Violence

413.1 VERSION

Review Date	Effective Date	Approving Authority
01/24/2020	07/09/18	Eric D. English, Chief of Police

413.2 POLICY AND PURPOSE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic or family violence through vigorous enforcement and to address domestic or family violence as serious crimes against society. The policy specifically addresses legal mandates and the commitment of the Harrisonburg Police Department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic or family violence (Virginia Code § 9.1-1300). The Harrisonburg Police Department's response to incidents of domestic or family violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic or family violence is criminal behavior. It is also the policy of this department to facilitate victims and offenders access to appropriate civil remedies and community resources whenever feasible.

413.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

413.4 DEFINITIONS

Abuser- A person who perpetrates a pattern of coercive tactics which can include physical, psychological, sexual, economic, and emotional abuse against another person, with the goal of establishing and maintaining power and control over the victim.

Court order - All forms of orders related to domestic or family violence, that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

Domestic violence - A pattern of physically, sexually and/or emotionally abusive behaviors used by one person to assert power or maintain control over another in the context of an intimate partner or family relationship. For the purposes of this policy, the term includes family abuse, which is any act involving violence, force or threat that results in bodily injury or that places another person in reasonable fear of death, sexual assault or bodily injury, and that is committed by a person against (Virginia Code § 16.1-228):

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Emergency Protective Order (EPO)- issued by a judge or magistrate, upon request of a law enforcement officer or an alleged victim of family abuse. Law enforcement may request an EPO either by telephone or in person. An alleged victim must appear in person before a judge or magistrate to request an EPO. Virginia Code §16.1-253.4

Family Abuse- Any act of violence, force or threat including any forcible detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member (**Code of Virginia** §16.1-228).

Family or Household Members- In accordance with §18.2-57.2, 16.1-228, and 19.2-81.3 of the **Code of Virginia** , "family and household members" are defined as:

- (a) Spouses, whether or not residing in the same home
 - (b) Former spouses, whether or not residing in the same home
 - (c) Parents, stepparents, children, stepchildren, brothers/ half brothers or sisters/half sisters, grandparents or grandchildren regardless of whether they reside in the same home as the alleged abuser
 - (d) Mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law who reside in the same home with the alleged abuser
 - (e) Any person who has a child in common with the alleged abuser, whether or not the person and that individual have been married, or have resided together at any time
 - (f) Any individual who cohabits or who, within the previous twelve months, cohabited with the alleged abuser, and any children of either of them residing in the same home with the alleged abuser
1. Note: For purposes of criminal prosecution, officers shall regard same-sex couples and same-sex situations involving partners who cohabit or who have previously cohabited as domestic in nature.

General or Non-Family/Household Member Protective Orders (General District Court)- When two parties do not meet the definition of family or household member, protective order relief may still be available to alleged victims through Code of Virginia §19.2-152.8, § 19.2-152.9, and § 19.2-152.10.

Intimate Partners- Persons who are, or have been involved, in an intimate relationship who:

- (a) Are married, separated, or divorced
- (b) Live or have lived together
- (c) Have children in common
- (d) Date, or have dated, but do not live, or never have lived together

Predominant Physical Aggressor- The predominant physical aggressor is not necessarily the first disputant to engage in assaultive behavior, but the one with the most ability and inclination to inflict physical injury. Officers shall identify a predominant physical aggressor based on the totality

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of the circumstances, taking care to make conclusive identification in cases of elder domestic violence.

Preliminary Protective Order (PPO)- issued by a judge, upon request of an alleged victim of family abuse. An alleged victim must appear before a judge in person to request a PPO. Virginia Code §16.1-253.1

Protective Order (PO)- issued by a judge, following a hearing at which both the petitioner and respondent are present. Virginia Code §16.1-279.1

413.5 INVESTIGATIONS

Officers investigating reported domestic or family violence (Va. Code § 19.2-81.3):

- (a) Shall arrest the predominant physical aggressor when there is probable cause to believe that the person:
 - 1. Committed an offense of assault and battery against a family or household member (Va. Code § 18.2-57.2).
 - 2. Violated a protective order issued pursuant to Va. Code § 16.1-253.2.
 - 3. Violated a protective order issued pursuant to Va. Code § 18.2-60.4 by committing an act of physical aggression.
- (b) Shall consider the following when determining whether a person is a predominant physical aggressor:
 - 1. The identity of the first aggressor.
 - 2. The protection of the health and safety of family and household members.
 - 3. Prior complaints of domestic or family violence by the suspect involving family or household members.
 - 4. In incidents involving a violation a protective order, any prior acts of violence, force or threat (as defined by Va. Code § 19.2-152.7:1) against the protected person or his/her family or household members.
 - 5. The severity of the injuries inflicted on persons involved in the incident.
 - 6. Whether any injuries were inflicted in self-defense.
 - 7. Witness statements.
- (c) Shall make an arrest in any other incident involving domestic or family violence when there is probable cause to believe that an offense of assault and battery against a family member or a violation of a protective order has occurred, regardless of whether the offense was committed within the presence of the officer.

The following guidelines should be followed by officers when investigating domestic or family violence cases:

- (a) Calls of reported, threatened, imminent or ongoing domestic or family violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.

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- (b) When practicable, officers should obtain and document statements from the victim, the suspect and any witnesses, including children, in or around the household or location of occurrence.
- (c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for Child Protective Services (CPS) follow-up.
- (d) When practicable and legally permitted, video or audio record all significant statements and observations. See Audio/Video Recorders Policy.
- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the initial investigative officer in the event that the injuries later become visible.
- (f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement and make an arrest or seek an arrest warrant if appropriate.
- (h) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- (i) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that officers should consider when determining enforcement action include:
 - 1. Marital status of suspect and victim.
 - 2. Whether the suspect lives on the premises with the victim.
 - 3. Claims by the suspect that the victim provoked or perpetuated the violence.
 - 4. The physical or emotional state of either party.
 - 5. Use of drugs or alcohol by either party.
 - 6. Location of the incident
- (j) If the incident involves a law enforcement officer as the alleged suspect or arrestee, officers should notify the on-duty supervisor (VA Code §9.1-1300) and if the involved law enforcement officer is a member of an outside agency, the on-duty supervisor should notify the respective agency.

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413.6 VICTIM ASSISTANCE

Because victims may be traumatized or confused, officers should be aware that a victim's behavior and actions may be affected.

- (a) Victims shall be provided with the department domestic or family violence information handout, even if the incident may not rise to the level of a crime (Va. Code § 19.2-81.3; Va. Code § 19.2-11.01).
- (b) Victims shall also be alerted to any available victim advocates, shelters and community resources.
- (c) When an involved person requests law enforcement assistance while removing essential items of personal property, officers should stand by for a reasonable amount of time.
- (d) If the victim has sustained injury or complains of pain, officers shall seek medical assistance for the victim as soon as practicable.
- (e) Officers should ask the victim whether he/she has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists (Va. Code § 19.2-81.3).
- (f) Officers should make reasonable efforts to ensure that any children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (g) If appropriate, officers shall seek or assist the victim in obtaining an emergency protective order (EPO) (Va. Code § 19.2-152.8).
- (h) When a victim makes the request, an officer shall transport or arrange for the transportation of the person to a hospital or to appear before a magistrate (Va. Code § 19.2-81.3).

413.7 RESPONDING OFFICER RESPONSIBILITIES

413.7.1 APPROACHING THE SCENE

Obtain all available information from Emergency Communications Center while en route to the scene. When approaching the scene:

- (a) When possible, it is recommended that officers arrive in pairs.
- (b) Avoid the use of sirens and other alarms in the vicinity of the scene. The alleged assailant may be dangerous and could become violent with arriving officers.
- (c) Observe the location of the dispute before contacting the complainant. Consider the surroundings. Park the marked car a short distance away.
- (d) When approaching a building, listen and look in nearby windows to obtain additional information about the situation (e.g., layout of the space, number of people, weapons).

Officers must be concerned for their own safety as well as that of the disputants. To minimize the possibilities of injury, stand to the side of the door when knocking. Be prepared for any response when the door opens.

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Officers should request that communicators check whether any of the involved persons are subject to the terms of a court order.

413.7.2 INITIAL CONTACT WITH DISPUTANTS

Officers should identify themselves by name, provide an explanation for their presence, and request entry into the location (when conditions permit). Ascertain identity of complainant and ask to see him or her. Even when the disputants claim that law enforcement assistance is no longer needed, officers should not leave without attempting to interview the complainant.

If entry is refused:

- (a) Officers should explain that they must make sure there are no injured persons inside.
- (b) A forced entry may be necessitated only if officers have a reasonable belief that the safety of people inside may be in jeopardy.
- (c) If the situation permits, officers shall call the on-call supervisor to determine whether or not to make a forced entry. In the event of an emergency, or inability to contact the supervisor, the officer shall make the determination based on the following:
 1. The degree of urgency involved;
 2. The possibility of danger to others, including other officers;
 3. Whether or not the reported incident involved violence;
 4. Whether officers reasonably believe that persons may have weapons.

413.7.3 ONCE ENTRY IS GAINED

- (a) Inquire about the nature of the dispute;
- (b) Identify the disputants;
- (c) Be aware of potential weapons (e.g., firearms, knives, or other objects that could be used as weapons). If weapons are present, secure them away from the disputants if practicable. If appropriate, seize weapons for evidence.
- (d) Determine who else is present, such as children or other adults. Determine if any are injured. Separate these persons from the parties involved and keep out of hearing range, as they are potential witnesses.

413.7.4 INJURIES

If any of the disputants or others present is injured, arrange for medical assistance.

If the victim appears injured, yet refuses medical assistance, carefully document any observed injuries. Also document the refusal of medical treatment.

Ascertain whether a protective order has been violated. It is important to note that only the respondent listed on a protective order can be charged with a violation of that order. A protective order respondent is also prohibited from purchasing or transporting any firearm (See Code of Virginia § 18.2-308.1:4).

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In order to complete a thorough investigation, an officer must rely on observation, interviewing, victim statements, physical evidence, and independent witness statements.

413.7.5 OBTAINING STATEMENTS

The parties may make statements when the officers arrive on scene, and these statements may have evidentiary value. Record these statements when practicable and note them in the report.

413.7.6 INTERVIEWING THE PARTIES

The officer's manner is critical to the success of the interview. Officers must listen, show interest in the disputants and their problem, and remain aware of nonverbal communication signals. If possible, separate the parties so that they can individually describe the incident without interruption. This may help relieve tension and allow the parties to speak more openly.

Interview all parties to the incident, including children, other family members, neighbors, and others, as soon as possible.

When interviewing the parties, officers should maintain good eye contact through natural, spontaneous glances. Remember that witnesses may be experiencing significant emotional crises that may influence the accuracy of their accounts. If witnesses provide information about prior incidents, document them to help establish a pattern. Children of disputants should be interviewed with care and kindness. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma or abuse should be documented.

Ascertain the following information from the victim:

- (a) Details of the incident
- (b) Any injuries, who caused them, and what weapons or objects were used
- (c) Relationship to the suspect
- (d) Any threats made against the victim, children, or others
- (e) Forced sexual contact against the victim's will
- (f) Any court cases pending against suspect, or current probation or parole of suspect
- (g) Any current protective orders
- (h) Any damage to property or injury to pets

After the parties have given their statements, the officers should ask about details for clarification, and summarize the stated account. This may allow the parties to point out anything that might be misrepresented.

413.7.7 DETERMINING PREDOMINANT PHYSICAL AGGRESSOR

Note: Making a dual arrest is strongly discouraged.

The officer should attempt to determine the predominant physical aggressor in the incident. A dual arrest should only occur if there are two separate determinations of predominant physical aggressor.

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An officer shall arrest the person that he or she has probable cause to believe was the predominant physical aggressor, based on the totality of the circumstances. An arrest shall be made unless there are special circumstances which would dictate a course of action other than arrest.

Elements to consider when determining predominant physical aggressor include:

- (a) Statements from those involved and other witnesses
- (b) The likelihood of future injury to each person, and the health and safety of family and household members
- (c) Whether one of the persons acted in self-defense or tried to escape
- (d) Who was the first aggressor and/or the relative severity of the injuries inflicted
- (e) Previous injury or damage
- (f) Prior complaints of abuse against one party (offender)
- (g) Previous attempt(s) by one party (victim) to sever the relationship
- (h) Second call for officers
- (i) Valid warrants on file for other crimes
- (j) Other observations at the scene

413.7.8 PROVIDE RESOURCES

Provide the complainant with telephone numbers of the department and the local domestic violence program (Information Guide for Crime Victims and Witnesses.pdf)

Assure the complainant that Harrisonburg Police Department will assist in the future if needed, but encourage him/her to develop a safety plan. Advise the complainant that the local domestic violence program can assist with developing a safety plan.

413.8 PROTECTIVE ORDERS

Three categories of protective orders:

- (a) Child Protective Orders
- (b) Family Abuse Protective Orders
- (c) General or Non-Family/Household Member Protective Orders

413.8.1 EMERGENCY PROTECTIVE ORDER

Purpose of an EPO:

- (a) Prohibit acts of family abuse or criminal offenses that result in injury to person or property,
- (b) Prohibit contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person, and
- (c) Grant the family or household member possession of the premises occupied by the parties to the exclusion of the respondent (this does not affect the title to any real or personal property).

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If an arrest for assault and battery against a family or household member is made, the officer shall seek an EPO on behalf of the victim, when the person arrested and taken into custody is brought before the magistrate.

If an arrest is not made and the officer has probable cause to believe that a danger of acts of family abuse exists, the officer shall seek an Emergency Protective Order (EPO) on behalf of the victim. An officer may petition the court for an emergency protective order in any other circumstances where the officer has probable cause to believe that a danger of domestic or family violence exists.

In cases of abuse committed against an intimate partner who does not meet the definition of family or household member, officers are strongly encouraged to seek an EPO on behalf of the victim.

A request for an emergency protective order is not required if the person arrested is a minor (Va. Code § 19.2-81.3).

An EPO expires at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the EPO shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session.

Officers should advise the victim that he/she may request a preliminary protective order, within a reasonable period of time following the incident, through the juvenile and domestic relations district court (§ 16.1-253.1).

Officers may petition for an extension of an EPO on behalf of the victim, if the person protected by the order is mentally or physically incapacitated (not to exceed three days after expiration of the original order).

413.8.2 PRELIMINARY PROTECTIVE ORDER

Purpose of a PPO:

- (a) Prohibit acts of family abuse or criminal offenses that result in injury to person or property.
- (b) Prohibit contacts by the respondent with the petitioner or family or household members of the petitioner.
- (c) Grant the petitioner possession of the premises occupied by the parties to the exclusion of the respondent (this does not affect the title to any real or personal property).
- (d) Prevent the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of, or order the respondent to restore utility services to the premises.
- (e) Grant the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone, or jointly owned by the parties, to the exclusion of the respondent (this does not affect the title to the vehicle).
- (f) Require that the respondent provide suitable alternative housing for the petitioner and any other family or household member.

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- (g) Provide any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

A PPO is valid for 15 days, or until the date of the next hearing scheduled at the time of issuance of the preliminary protective order.

413.8.3 PROTECTIVE ORDER

Purpose of a PO:

- (a) Prohibit acts of family abuse or criminal offenses that result in injury to person or property.
- (b) Prohibit contacts by the respondent with the petitioner or family or household members of the petitioner.
- (c) Grant the petitioner possession of the premises occupied by the parties to the exclusion of the respondent (this does not affect the title to any real or personal property).
- (d) Prevent the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of, or order the respondent to restore utility services to the premises.
- (e) Grant the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone, or jointly owned by the parties, to the exclusion of the respondent (this does not affect the title to the vehicle).
- (f) Require that the respondent provide suitable alternative housing for the petitioner and any other family or household member.
- (g) Order the respondent to participate in treatment, counseling, or other programs the court deems appropriate.
- (h) Include provisions for temporary custody and visitation of a minor child and for temporary child support.
- (i) Provide any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

A PO is valid for any period of time up to a maximum of two years.

413.8.4 VIOLATIONS OF PROTECTIVE ORDERS

Only the respondent listed on a protective order can be charged with a violation of that order. Officers cannot arrest for a violation of a protective order if the respondent has not been served with the order. In this case, the officer shall serve the order immediately. Virginia Code §16.1-253.2

If a copy of the protective order is not available, officers/deputies may still enforce the order and its conditions, upon a credible statement that an order has been granted and served. When relying on such a statement, it is recommended that the officer/deputy have the complainant victim write and sign the statement.

Any person who violates any provision of a protective order, when such violation involves a provision of the protective order that prohibits such person from (1) going or remaining upon land,

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buildings, or premises; (2) further acts of family abuse; or (3) committing a criminal offense, or which prohibits contacts by the respondent with the petitioner or family or household members of the petitioner, is guilty of a Class 1 misdemeanor. The punishments for certain violations and for second and third convictions increase to include mandatory minimum terms of confinement and more severe penalties.

413.9 SERVICE OF COURT ORDERS

Upon receipt of an order from the issuing court, officers serving the order shall (Virginia Code §19.2-152.8; Virginia Code §19.2-152.9; Virginia Code §19.2-152.10; Virginia Code §16.1-279.1; Virginia Code §19.2-387.1):

- (a) Verify the identifying information
- (b) Serve the respondent with the order

413.10 ORDERS REQUIRED TO BE ENTERED INTO VCIN

The Records Supervisor shall ensure protective orders are entered into VCIN (Virginia Code §19.2-152.8; Virginia Code §19.2-152.9; Virginia Code §19.2-152.10; Virginia Code §16.1-279.1; Virginia Code §19.2-387.1).

- (a) Make modification as necessary in the Virginia Criminal Information Network (VCIN)
- (b) Enter the date and time of service and other appropriate information into VCIN
- (c) File any required proof of service forms with the issuing court

413.11 VERIFICATION OF COURT ORDERS

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available and, where appropriate and practicable:

- (a) Ask the subject of the order about his/her notice or receipt of the order, knowledge of its terms and efforts to respond to the order
- (b) Check available records or databases that may show the status or conditions of the order
- (c) Contact the issuing court to verify the validity of the order
- (d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

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413.12 OUT OF STATE COURT ORDERS

Various types of orders may be issued in domestic or family violence cases. Any foreign court order properly issued by a court of another state, Indian tribe or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state (Virginia Code §16.1-279.1).

An officer may rely upon a copy of a order or other suitable evidence which has been provided to him/her by any source and may also rely upon the statement of any person protected by the order that the order remains in effect (Virginia Code §16.1-279.1).