

FAIRFIELD COUNTY



PROTOCOL

2002

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I. PREFACE

This Protocol has been drafted by the Fairfield County Task force on Domestic violence utilizing the Model Ohio Protocol for Responding to Domestic Violence funded by a grant from the Ohio Department of Human Services as a model, and updated in 2002.

This Protocol represents the work product of Fairfield County law enforcement officers, probation officers, Clerk of Court, judges, prosecutors, attorneys, shelter advocates, social service and medical providers who work with survivors of violence and recognize the need for a uniform enforcement of existing domestic violence laws by all actors in the law enforcement network.

This Protocol is not intended to mandate the duties or practices of the actors described within. It does, however, set forth a model of response for the uniform enforcement of domestic violence laws and effective protection of victims. The following agencies support the implementation of this protocol.

- \s\ Fairfield County Sheriff's Office**
- \s\ Lancaster City Police Department**
- \s\ Lancaster Municipal Court**
- \s\ Fairfield County Court of Common Pleas**
- \s\ City of Lancaster Law Director / City Prosecutor's Office**
- \s\ Fairfield County Prosecutor**
- \s\ Fairfield County Department of Human Services**
- \s\ Fairfield County Children Services**
- \s\ The Lighthouse, Inc.**
- \s\ Fairfield Medical Center**
- \s\ Fairfield County Victims Assistance**

WHY IS A COUNTY-WIDE PROTOCOL IMPORTANT?

1. UNIFORM RESPONSE BY ALL COMMUNITY AGENCIES

A. PROTECTION

- a. Protection of victims
- b. Protection of law enforcement officers

B. REDUCE THE RISK OF LIABILITY

C. COOPERATION AMONG COMMUNITY AGENCIES

- a. Expectations of other agencies are clear
- b. Contact persons are identified

D. COOPERATION WITHIN COMMUNITY AGENCIES

- a. Expectations of players are clear
- b. Procedures are clearly defined

2. EDUCATION

- A. Educating agencies on domestic violence and the law
- B. Educating the community on domestic violence and the law
- C. Educating victims of their legal rights and the social services available to them

3. SUPPORT

- A. Sharing frustrations and successes in handling domestic violence cases
- B. Sending a message to victims that they will be protected
- C. Sending a message to offenders that there are serious consequences to their behavior

CITY OF LANCASTER, OHIO

OFFICE OF THE

Law Director and City Prosecutor

121 East Chestnut Street, Suite 200, Lancaster, Ohio 43130

(740) 687-6616 Fax (740) 681-5024

TERR L. VANDERVOORT
Law Director & City Prosecutor

DAVID A. TRIMMER
*Assistant Law Director
& City Prosecutor*

December 2002

To Whom It May Concern:

The Fairfield County Domestic Violence Protocol is a tool to be utilized by law enforcement, service agencies, and the public for guidance in dealing with family violence. Addressing violence in the home aggressively and consistently helps provide the intervention necessary to assure families in Fairfield County live in their homes without the fear of physical abuse.

Sincerely,

Terre L. Vandervoort

Terre L. Vandervoort
Law Director



Lancaster Police Department

130 South Broad Street • Lancaster, Ohio 43130-4385

RANDALL L. LUTZ
Chief of Police

November 19, 2002

Telephone Emergency
911 or 687-6680

Police Services
740-687-6681

Information
740-687-6683

Records
740-687-6684

Detective Bureau
740-653-2117

Community Services
687-6626

Administration
740-687-6688

FAX
740-687-6687

Ms. Terre Vandervoort
City Prosecutor's Office
121 E. Chestnut St.
Lancaster, Ohio 43130

Dear Ms. Vandervoort:

I am pleased to offer my support to this latest edition of the Fairfield County Domestic Violence Protocol. In light of the number of domestic violence calls received by the various law enforcement agencies in Fairfield County, a structured and consistent response is a real asset to all concerned.

With this protocol I feel that any victims of domestic violence will receive better service. In addition, this protocol sends a message that domestic violence is taken seriously and will not be tolerated in our county.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randall L. Lutz".

Randall L. Lutz
Chief of Police

OFFICE OF THE SHERIFF
FAIRFIELD COUNTY

Dave Phalen, Sheriff



November 21, 2002

Ms. Terre L. Vandervoort
Law Director and City Prosecutor
City of Lancaster
104 East Main Street
Lancaster, OH 43130

Dear Ms. Vandervoort:

I am happy to support the Fairfield County Domestic Violence Protocol. The protocol contains necessary information to prosecute a domestic violence offender. All local law enforcement agencies, the prosecutor, judges and community support groups have contributed to the protocol.

The protocol is an effective program that provides our community law enforcement with the necessary guidance to deal with the complex issues of domestic violence. It also helps protect the victim's rights and assure prosecution of the offenders.

Sincerely,

A handwritten signature in black ink that reads 'Dave Phalen'.

Dave Phalen
Sheriff of Fairfield County

Pr

Letters/Com Action Bd.doc

TO SERVE AND PROTECT

TERMS AND DEFINITIONS

II. TERMS AND DEFINITIONS

A. "VICTIM" AND "OFFENDER" are used throughout this protocol in order to conserve space and promote readability, even though at most stages of a domestic violence prosecution these persons are actually "alleged" victims and offenders.

B. "CRIMES OF DOMESTIC VIOLENCE"

- | | |
|---|------------------|
| (1) DOMESTIC VIOLENCE | (ORC 2919.25) |
| (2) MENACING BY STALKING | (ORC 2903.211) |
| (3) AGGRAVATED TRESPASS | (ORC 2911.211) |
| (4) VIOLATING A PROTECTION ORDER | (ORC 2919.27) |
| (5) FELONIOUS ASSAULT | (ORC 2903.11) |
| (6) AGGRAVATED ASSAULT | (ORC 2903.12) |
| (7) INTERSTATE DOMESTIC VIOLENCE | (18 U.S.C. 2261) |
| (8) INTERSTATE VIOLATION OF A
PROTECTION ORDER | (18 U.S.C. 2262) |

NOTE:

- | | |
|-------------------------|---------------|
| (9) AGGRAVATED BURGLARY | (ORC 2911.11) |
| (10) BURGLARY | (ORC 2911.12) |

NOTE: This is not a comprehensive list. This list only outlines domestic violence crimes listed in the Arrest Statutes under ORC 2903 and the new definitions of burglary under Senate Bill 2. Other statutes may be more appropriate under certain circumstances - i.e. child endangering. Always check for changes in the law.

C. "DOMESTIC VIOLENCE" occurs when a person:

- (1) **Knowingly** causes or attempts to cause **physical harm** to a family or household member;
- (2) **Recklessly** causes **serious physical harm** to a family or household member;
- (3) By threat of force, knowingly causes a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

ORC 2919.25

D. "MENACING BY STALKING" occurs when: a person engages in a pattern of conduct knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

O.R.C. 2903.211

E. "AGGRAVATED TRESPASS" occurs when: a person enters or remains on the land or premises of another with the purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person, or

F. causing another person to believe that the offender will cause physical harm to that person.

O.R.C. 2911.211

- G. "VIOLATING A PROTECTION ORDER"** occurs when: a person recklessly violates any terms of a protection order or consent agreement approved pursuant to 2919.26 (Temporary Protection Order) or 3113.31 (Civil Protection Order) of the Revised Code.

O.R.C. 2919.27

- H. "FAMILY OR HOUSEHOLD MEMBER"** means any of the following:

- (1) Any of the following who is residing or has resided with the offender:
 - (a) The offender's current or former spouse, or a person who has lived or is now living with the offender as a spouse;
 - (b) The offender's parent or child, or another person related by consanguinity (blood) or affinity (marriage) to the offender; or
 - (c) A parent or a child of any person identified in parts G (1a) and (1b) above.
- (2) The natural parent of any child whom the offender is the other natural parent.
 - (a) Can be an alleged child
 - (b) No residency is necessary between parents

ORC 2919.25 and 3113.31

- I. "PERSON LIVING AS A SPOUSE"** means a person

- (1) who is living or has lived with the offender in a common law marital relationship; (common law marriage ended 10/10/91)
- (2) who otherwise is cohabiting with the offender;
- (3) who otherwise has cohabited with the offender within five years prior to the date of the alleged domestic violence in question; Am Sub SB1 Effective 10/21/97.

ORC 2919.25 and ORC 3113 (A)(4)

- I. "PROBABLE CAUSE"** means that combination of facts which leads a police officer to believe a crime has been committed. The probable cause standard that applies to domestic violence crimes is no different from the standard applied to all other crimes. On formulation of the definition of probable cause is as follows:

Probable cause exists when facts and circumstances within the officer's knowledge, and of which he or she has reasonable trustworthy information, are sufficient to warrant a person of reasonable caution to believe the offense has been or is being committed, and the accused is or has committed the offense.

Probable cause can be established from all the facts and circumstances observed by or known to the officers, including but not limited to: statement of victims or witnesses; admissions by alleged perpetrators; the appearance of physical evidence (blood, bruises, disheveled or torn clothing, broken furniture, etc.); statements of neighbors or children of appropriate maturity; etc.

If no such circumstances are known of or can be discerned, or if these circumstances are inconclusive, probable cause is established if a person signs a written statement alleging domestic violence against the person or against a child of the person, and naming the alleged perpetrator. O.R.C. 2935.03 (B).

J. "PRIMARY PHYSICAL AGGRESSOR" In a situation in which family or household members have committed the offense of domestic violence against each other, an officer will consider, in addition to any other relevant information, the following.

1. Any history of domestic violence or any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;
2. Whether the alleged violence was caused by a person acting in self-defense;
3. Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;
4. The comparative severity of any injuries suffered by the persons involved in the alleged offense.

ORC 2935.03 B(3)(d)

K. "VICTIM ADVOCATE" means a person who provides support and assistance for a victim of an offense during court proceedings.

ORC 2919.26 AND 3113.31

A. THE ROLE OF THE VICTIM ADVOCATE

1. Provide support and assistance.
2. Primary concern, ensure victim's needs are met.
3. Provide information regarding victim's legal and non-legal options, including giving the victim adequate available resources.
4. Provide information to assist victims in weighing their options, i.e. various legal options, possible outcomes, safety plans, and protection orders.
5. Acts as a liaison with victim's attorney.

6. Helps victims sift through numerous decisions that need to be made and aids her/him (victim) in making decisions and making process less intimidating.
7. Helps victim complete forms and explain court process.
8. Helps victim collect evidence through victim interviews, criminal history records, police records, medical records, and contacts with witnesses.
9. Notify victims of hearings and the release of the offender from jail, if applicable.
10. Arrange for transportation for the victim to court hearings, i.e. bus fare.

COMMUNICATIONS OFFICERS

II. DISPATCHER

The dispatcher who receives a family violence call can provide the responding officer with vital information that could save the victim's and the officer's life. The dispatcher will give a family violence call the same priority as any other life threatening call, depending on the immediacy of the threat and should, dispatch two officers to the scene, if possible.

A. During the initial call for assistance, the call taker will obtain at least the following information*:

- (1) Where is the emergency? What apartment? What phone?
- (2) What has happened?
- (3) Who am I speaking to?
- (4) Are you the victim? If no, are you a witness?
- (5) Is the suspect present? If not, a description of the suspect and his expected whereabouts;
- (6) Are weapons involved? If yes, what kind?
- (7) Is the offender under the influence of drugs or alcohol? If yes, what substance?
- (8) Are children present?
- (9) Does the victim have a current protection order?

* **Police should be dispatched as soon as enough information is obtained to determine the priority of the situation. Any remaining information can be gathered while the unit is on the way.**

* **The above also pertains to rescue personnel.**

B. Dispatch Priority

- (1) Dispatchers will dispatch domestic calls in the same manner as any other life-threatening call (known in most jurisdictions as a "priority one" call).
- (2) The dispatcher should always assign a back-up unit to respond to domestic calls, if possible.
- (3) Dispatchers should inform the caller of the intended response and how long it will take for an officer to arrive at the household.

C. Victim Safety

In volatile situations, the dispatcher will keep the victim on the line until an officer arrives at the household or will ask the victim to meet the officer at a secure location, such as a neighbor's house.

D. Check Previous Incidents and Protection Orders

If circumstances warrant and if the dispatcher has ready access to police department records that indicate whether the parties involved in the incident have been involved previously in domestic incidents, or that indicate whether there is a protection order involving the parties in effect, the dispatcher should consult such records and radio any relevant information to the responding officer.

E. Cancellation of Calls

- (1) If the dispatcher receives a second call to cancel the original call, he or she will still send the units to the location to make sure the family is safe.
- (2) The officer shall privately and individually speak with the person who made the first call, or if the call was not from that household or the caller was unidentified, with other adults present who were not identified in the call as the assailant, and with one or more age-appropriate children (if present) to verify that there is no need for the police intervention.

LAW ENFORCEMENT

IV. LAW ENFORCEMENT

APPROACHING THE CONFLICT SCENE AND GAINING ENTRY

Officers should employ standard precautionary measures and police practice for dealing with any conflict in which violence is alleged and the existence of weapons is a possibility. In addition, because domestic violence is a family crime, officers should try to ascertain prior to gaining entry whether there are children on the premises and take appropriate precautions for their safety.

Officers should listen outside of the premises, if possible, for any sounds, and look through windows to see what is going on inside. Such action is covered by the plain view doctrine, and it (1) increases officer safety, and (2) can establish probable cause that a crime is in progress or has been committed.

A. OFFICER APPROACHING THE SCENE.

- (1) Park away from the residence.
- (2) Approach with caution.
- (3) Listen through the door and observe through the windows.
- (4) Try to ascertain prior to gaining entry whether there are children on the premises and take appropriate precautions for their safety.
- (5) Determine a plan of action prior to knocking or entering the building.
- (6) Stand to the side of the door when knocking or announcing your presence.

ON-SCENE INVESTIGATION AND PROCEDURES

The purpose of the on-scene investigation is to establish "probable cause" through: interviewing all parties, recording statements, preserving the crime scene, and collecting evidence.

B. ENTERING THE RESIDENCE

- (1) Quickly get the attention of the disputants - victim and offender.
- (2) Identify yourself and your partner.
- (3) Identify potential weapons in the surroundings.
- (4) State the reason for your call.

C. ASSESS INJURIES

- (1) Assess injuries, including inquiry about possible internal injuries.
- (2) Administer first aid and/or notify emergency medical services.

- (3) If the victim shows evidence of serious injury but refuses medical attention, call emergency medical services anyway. It is the responsibility of medical personnel to determine the exact extent of injuries and the need for medical care.

D. INVESTIGATION WHEN THE OFFENDER HAS FLED THE SCENE

If the offender has left the scene and there exists probable cause that a crime was committed, the officer should, in addition to interviewing the victim and witnesses and collecting physical evidence:

- (1.) Conduct search of immediate area.
- (2.) Obtain information from victim and witnesses as to where defendant might be (job, friend's, etc.)
- (3.) Remain on the scene until the victim(s) and any children have been transported to a shelter or safe place, or the victim or parent of the children has stated that he or she desires to remain on the premises, or resource people are available at the scene.
- (4.) Officer or victim sign Statement of Domestic Violence, Affidavit, Motion for TPO. (Victim signature not required)
- (5.) Attempt to locate and arrest defendant.
- (6.) If unable to locate defendant, by next court day, the arresting officer will proceed to court on next court day to obtain a warrant.
- (7.) Instruct victim that he/she will be notified when his/her presence is needed in court for the TPO hearing.

E. SEPARATE THE VICTIM AND THE OFFENDER

- (1) Separate the victim and the offender. (ORC 2935.032 (A)(2)(C))
- (2) Identify all occupants/witnesses on the premises.
- (3) Separate the occupants/witnesses from the victim and the offender and keep them out of hearing range (to avoid compromising their witness status).
- (4) If the parties are in a corridor, lobby, or other public place escort them to a private area.
- (5) Each officer should take charge of one disputant.
- (6) Keep the disputants back to back.

F. PRESENCE OF CHILDREN AT THE CONFLICT SCENE

(1) JUVENILE VICTIMS

If the law enforcement officer has probable cause to believe that a crime of domestic violence has been committed and a juvenile was the victim or if the law enforcement officer believes that the nature of the domestic violence between two adults is severe and/or chronic and children are at risk of harm due to the violence:

- (a) Law Enforcement should immediately make a report by phone to Fairfield County Children Services, as required by Ohio law and as mandated by the County Plan of Cooperation. (Agency office hours are 8:00 am - 4:30 pm, phone 653-4060. After hours on-call worker is accessed by paging 731-2100.)
- (b) In conjunction with the law enforcement officer, the agency caseworker will assess the level of immediate risk to the child/children and take steps to assure the safety of the child. If the law enforcement officer is reporting physical injury of a child or if there is any question about the immediate safety of the child, an agency caseworker will respond to the scene to interview the involved parties and photograph the injuries.
- (c) When the incident involves mutual violence between an adult and a juvenile, the law enforcement officer should notify Children Services as stated above. The agency caseworker will assess the situation to determine the level of risk for the juvenile. If it is determined that the juvenile is the offender, a report should then be made by the law enforcement officer to the Fairfield County Juvenile Court (see protocol for Juvenile Offenders). Children's Services will not place juveniles who are determined to be the aggressor in the domestic violence situation.
- (d) Law Enforcement will inform the agency of intent to arrest the alleged offender or of intent to file charges against any of the involved parties.
- (e) Law Enforcement will forward a copy of the official report and any other written documentation of the incident to Children Service.

(2) JUVENILE OFFENDERS:

If the law enforcement officer has probable cause to believe that a crime of domestic violence was committed and a juvenile was the alleged offender:

- (a) Law Enforcement shall take the juvenile offender into custody pursuant to the laws of arrest.
- (b) Law Enforcement shall immediately contact Juvenile Court (the Court during weekday working hours - 8 am - 4 pm; the On-Call Officer after hours & on weekends). The Probation Department or On-Call Officer shall determine whether detention or foster care is most appropriate.
- (c) IF THE VICTIM IS A CHILD: Law Enforcement shall immediately contact

Juvenile Court (same procedure as outlined in "b" above). Law Enforcement shall also contact Children Services and follow the procedures outlined in the "County Plan of Cooperation" for interviewing child abuse victims.

- (d) IF THE VICTIM IS AN ADULT: Law Enforcement shall contact Juvenile Court, following procedures outline in "b" above.
- (e) Law Enforcement shall complete the Field Report and Arrest Forms.
- (f) Law Enforcement shall contact the Fairfield County Prosecutor for an appointment to file a Domestic Violence charge against the juvenile offender.

G. ELDER VICTIMS & DEPENDANTS

1. When responding to a report of domestic violence perpetrated upon an elderly person, the officer must take special precautions to avoid leaving a physically dependant elder alone in the residence without assistance. This may arise when the officer arrests the elder's only caretaker, or when the caretaker is the victim of domestic violence and he or she can no longer provide care (because of hospitalization or fleeing to a shelter).

Before leaving the residence, the office should determine if the elder is physically endangered, either as a result of the abuse, a preexisting medical condition, or the removal of the caretaker.

- (a) If the elder is found to be endangered, yet is mentally alert, the officer should ask the elder for the name of a friend or relative who can be contacted immediately to assist the elder.
 - (b) If there is no one to assist the elder, or if the elder appears not to be mentally alert, the officer should make an emergency referral to the Department of Human Services Adult Protection Services at 687-6812 during office hours of 8:00 am – 5:00 pm, and after hours pager number 734-2243.
2. Advising the Elder Victim

In addition to the written information that the officer will give all domestic violence victims, the officer should advise the elderly victim of the availability of comprehensive victim services for the elderly through the Department of Human Services, Adult Protection Services.

3. Mandatory Reporting Requirement

Ohio Revised Code Section 5101.61 (A) requires that any peace officer having reasonable cause to believe that an adult is being abused, neglected, or exploited or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the Department of Human Services, Adult Protection Services.

H. INTERVIEWING THE PARTIES AND WITNESSES

THE RESPONDING OFFICER SHOULD INTERVIEW THE VICTIM AND THE OFFENDER AS FULLY AS CIRCUMSTANCES ALLOW.

- (1) The officer should be alert to possible incriminating statements of the assailant and record them in the offense report. These statements may (1) establish probable cause and (2) constitute "admissions" that the court will consider as evidence that the accused committed the crime. The officer should be aware that his or her own statements at the scene may be repeated at trial, thereby undermining the prosecutor's case, especially where the officer expresses reluctance for enforcing the law. Examples are statements such as "I don't want to do this, but..." and "I don't think you ought to be arrested, but I have to" (Of course, at times such "soothing" statements may be necessary for officer's own safety.)
- (2) In questioning the victim, the officer should use supportive interview techniques. The officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant, witnesses, and bystanders. The officer should avoid questions or statements that are judgmental or have the effect of blaming the victim. E.G., "why did you let him in if you knew he was drunk?" and "why didn't you press charges the first time this happened?" The officer should also ask the victim about the history of any previous violence involving the offender.
- (3) Find out if there is a Protection Order in effect. The officer should ask the victim whether there is a civil or criminal protection order in effect and whether the victim can produce a copy. If the victim cannot produce a copy of the order, the officer will verify the existence and effective period of the order by calling dispatch. The officer should note carefully the restrictions imposed by the order so that the officer may determine whether there is probable cause to believe that the order has been violated.
- (4) The officer should interview any witnesses as fully and as soon as circumstances allow. Additionally, if witnesses provide information about prior incidents, which they have observed, the officer should document such incidents to establish a pattern, and note this information in the Domestic Violence Field Report and Incident Report.

I. COLLECTING EVIDENCE

THE OFFICER SHOULD COLLECT AND PRESERVE ALL PHYSICAL EVIDENCE REASONABLE NECESSARY TO SUPPORT PROSECUTION, INCLUDING:

- (1) **PHOTOGRAPH ALL INJURIES IMMEDIATELY.** Preserve evidence substantiating the victim's injuries with a Polaroid camera or 35mm. If 35mm used, order development of photograph's immediately and forward them to prosecutor.
- (2) **MEDICAL ATTENTION.** Advise the victim to seek medical attention if there are any visible injuries or if the victim is experiencing any pain.
- (3) **COLLECT AND PRESERVE PHYSICAL EVIDENCE.** Collect evidentiary articles that substantiate the occurrence of violence or imminent threat of violence: weapons, torn or bloodstained clothing, broken window glass fragments or damaged furniture.

- (4) **PHOTOGRAPH THE CRIME SCENE.** Preserve evidence recording the crime scene, such as a photograph of the crime scene showing evidence of a struggle, e.g., a forced door lock, broken window, broken or overturned furniture, blood stains, torn curtains, and general disarray. Use 35mm or Polaroid. If using 35mm order pictures developed immediately and forward to prosecutor.
- (5) **SEIZURE OF WEAPONS.** If an officer responds to an alleged domestic violence or violation of TPO or CPO and the circumstances involved the **use or threatened use** of a deadly weapon, or any person involved brandished a deadly weapon, the weapon shall be seized as contraband and should be treated as evidence.

Note: Deadly weapons are contraband under ORC 2935.03 (B)(3)(h) and the weapon may be forfeited. All physical evidence should be collected, noted in field questionnaire, and vouchered as in other criminal investigations.

J. IMMEDIATE ARREST

1. **PREFERRED ARREST:** This protocol and Ohio Law (2935.03 (B)(3)(b) state a "pro-arrest" or "preferred arrest" policy, wherein the preferred response to domestic violence or the violation of a domestic violence protection order, once probable cause has been established, is to arrest the offender. "Pro-arrest" means that arrest is the preferable action, and non-arrest measures are the exception. In contrast with a "mandatory arrest" policy, pro-arrest leaves some degree of discretion with the officer in deciding whether to arrest or take other action. The officer's discretion, however, should be exercised in accordance with the principles outlined below.

LAW ENFORCEMENT SHALL IMMEDIATELY ARREST AN OFFENDER WHEN:

- (a) There is probable cause to believe that the offender committed a crime of domestic violence.
- (b) There is probable cause to believe that the offender violated a Temporary Protection Order or a Civil Protection Order.
- (c) There are reasonable grounds to believe that a felonious assault or aggravated assault was committed, whether or not the victim was a family or household member. [ORC 2935.032 (A)(1)(a)(b)].

NOTE: The officer shall not require as a prerequisite to arresting or charging a person who has committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense. ORC 2935.03(B)(3)(e)(i).

NOTE: The officer shall not require as a prerequisite to arresting or charging a person, that the victim sign a victim statement if the officer has reasonable cause to arrest based on the facts and circumstances.

NOTE: When an arrest is not made for the offense of domestic violence or the offense of domestic violence or the offense of violating the offense of violating a protection order, the officer shall clearly state reasons for not arresting on his/her field report. ORC 2935.03(B)(3)(c).

2. Guidelines for determining **PRIMARY AGGRESSOR** [ORC 2935.032(A)(1)(B)]

When it is believed that a family or household member committed the offense against each other, officers shall arrest the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. The officer shall use the following guidelines for determining the primary aggressor:

- (a) Any History of Domestic Violence or any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;
- (b) Whether the alleged violence was caused by a person acting in self-defense;
- (c) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person, and the reasonableness of that fear;
- (d) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

K. WHAT IS PROBABLE CAUSE?

PROBABLE CAUSE MEANS THAT COMBINATION OF FACTS WHICH LEADS AN OFFICER TO BELIEVE A CRIME HAS BEEN COMMITTED.

- (1) **PROBABLE CAUSE EXISTS WHEN** facts and circumstances within the officer's knowledge, and of which he or she has reasonable trustworthy information, are sufficient to warrant a person of reasonable caution to believe the offense has been or is being committed, and the offender is or has committed the offense. ORC 2935.03 (B)(3)(a)(ii)

THE OFFICER DOES NOT HAVE TO OBSERVE THE ACT OF DOMESTIC VIOLENCE FOR PROBABLE CAUSE TO EXIST.

You have probable cause to arrest if all the facts and circumstances observed by or known to the officer, leads you to believe that domestic violence has been committed, including but not limited to:

- (a) Statements of victims or witnesses;
- (b) Admissions by alleged perpetrators;
- (c) The appearance of physical evidence (blood, bruises, disheveled or torn clothes, broken furniture, etc...);
- (d) Statements of neighbors or children of appropriate maturity.

- (2) **PROBABLE CAUSE EXISTS WHEN** a person signs a written statement alleging domestic violence against the person or against a child of the person and naming the alleged perpetrator.

L. FACTORS TO BE CONSIDERED IN THE PROBABLE CAUSE DETERMINATION.

LAW ENFORCEMENT SHALL CONSIDER:

- (1) Injuries;
- (2) Disheveled or torn clothes;
- (3) Broken furniture;
- (4) Ripped out phone;
- (5) Broken locks, windows, doors;
- (6) Statements of victims or witnesses;
- (7) Admissions by alleged offenders;
- (8) Statements of neighbors or children of appropriate maturity;
- (9) Observations;
- (10) Any other facts and circumstances observed by or known to the officer which leads you to believe that domestic violence has been committed.

***REMEMBER: YOU DO NOT HAVE TO OBSERVE THE ACT OF DOMESTIC VIOLENCE FOR PROBABLE CAUSE TO EXIST.**

M. FACTORS NOT TO BE CONSIDERED IN THE PROBABLE CAUSE DETERMINATION

The following factors must not be considered in determining probable cause because, while they may play a role in the ultimate outcome of the case, they are irrelevant to the determination of whether a crime has been committed:

- (1) Race, ethnicity, sexual preference, social class, occupation, or prominence in the community;
- (2) Marital status of the parties (except to the extent necessary to determine if the parties fall within the statutory definition of domestic violence);
- (3) Previous court dispositions regarding these same persons;
- (4) The possibility that the victim will not want to prosecute;

- (5) Assurances by one or both parties that the violence will stop;
- (6) Denial by the **offender** that the violence occurred when the facts and circumstances show otherwise. (Of course, when the victim denies any violence occurred, the officer must determine if there is any *independent* evidence from which to establish probable cause, e.g., admissions by the offender, injuries, statements of witnesses).

N. FACTORS NOT TO BE CONSIDERED IN ARREST DECISION

Violence against a family or household member is a crime, and the officer must not allow this fact to be clouded over by myths or stereotypes about domestic violence, or by the belief (however likely in a particular case) that "they will just drop the charges anyway." Assuming that probable cause has been established, the following factors must **not** be considered in determining whether to arrest the offender:

- (1) The marital status of the parties (except to the extent necessary to determine whether the parties fit within a relationship covered by the domestic violence statutes);
- (2) The ownership or tenancy rights of either party;
- (3) Verbal assurances that the domestic violence will stop;
- (4) A claim by the offender that the victim provoked or perpetuated the violence (this is different from the offender claiming that he or she acted in self-defense);
- (5) Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor);
- (6) The disposition of any previous police calls involving the same victim or offender except to the extent necessary to establish credibility);
- (7) Speculation that the arrest may not lead to a conviction;
- (8) The existence or non-existence of a current protection order (except in so far as the violation of such an order might justify arrest);
- (9) The victim's emotional state;
- (10) Concern about reprisals against the victim;
- (11) Adverse financial consequences that might result from the arrest;
- (12) The racial, cultural, social, political or professional position, or the sexual orientation of either the victim or the offender.
- (13) Jail overcrowding. ORC 2935.03 (B)(4)(f)

IT IS THE OFFICER'S RESPONSIBILITY TO DECIDE WHETHER AN ARREST SHOULD BE MADE. The officer, therefore, should not give a controlling weight to the victim's opposition to arrest. The officer should emphasize to the victim and to the offender that criminal prosecution is an action by the state, and is not the victim's action.

O. LAW ENFORCEMENT SHALL ASSESS ALL THE FACTS AND CIRCUMSTANCES TO DETERMINE WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT A PROTECTION ORDER HAS BEEN VIOLATED. ORC 2935.03 (B)(3)(a)(i)

IF THE VICTIM ALLEGES THAT A TEMPORARY PROTECTION ORDER (TPO) OR CIVIL PROTECTION ORDER (CPO) HAS BEEN VIOLATED:

- (1) Ask the victim to produce a copy of the order.
- (2) If the victim produces a copy of the order, check the parties, the expiration date, and the terms of the order.
- (3) If the victim is unable to produce a copy of the order, the officer shall contact dispatch to verify the existence of the order from the crime scene.
- (4) Dispatch shall check the domestic violence binder and NCIC for a valid TPO, CPO, or bond order. Dispatch shall verify the parties, the expiration date, and the terms of the order.
- (5) If the victim produces a certified copy of an order from another county or state, law enforcement shall check the parties, expiration date, terms of the order and enforce the order as instructed in the order.
- (6) The officer shall determine, based on the facts and circumstances, whether there is probable cause to believe that a Protection Order has been violated.
- (7) **Probable cause that a TPO/CPO has been violated is established:**
 - (a) By the facts and circumstance assessed by officer or
 - (b) Victims statement and signature on Domestic Violence Field Report.
- (8) **Out of State and out of county TPO's/CPO's** are to be fully enforced with the preferred arrest policy in this protocol. Am Sub SB1 effective 10/21/97, ORC 2919.27, 2919.272, ORC 2935.03 (B)(1) and (3).

Note: ORC 2935.032(F) provides a new immunity for a peace officer who arrests an offender for violating a protection order of Ohio or another state that on its face is valid from liability in civil action for damages for injury death or loss to person or property allegedly caused by or related to the offense pursuant to existing State officer or Employee Immunity Law or Political Subdivision Employee Immunity Law.

P. IF LAW ENFORCEMENT IS UNABLE TO FIND PROBABLE CAUSE THAT A CRIME WAS COMMITTED OR THAT A PROTECTION ORDER WAS VIOLATED BY ASSESSING ALL THE FACTS AND CIRCUMSTANCES, LAW ENFORCEMENT SHALL ASK IF THE VICTIM WANTS TO SIGN A VICTIM STATEMENT.

- (1) The officer shall review the victim statement with the victim.
- (2) If the victim signs the victim statement alleging that a crime of domestic violence, aggravated trespass or menacing by stalking or violating a protection order was committed was committed by the alleged offender, then the officer has probable cause to arrest the offender. ORC 2935.03 (B)(3)(a)(i)

Note: If officer has probable cause through investigation, victim signature not required. Officer may sign.

Q. IF LAW ENFORCEMENT HAS PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS BEEN COMMITTED OR A PROTECTION ORDER HAS BEEN VIOLATED, AND THE OFFENDER IS PRESENT OR OTHERWISE IMMEDIATELY AVAILABLE FOR ARREST, LAW ENFORCEMENT SHALL ARREST THE OFFENDER.

- (1) Document the facts and circumstances which are the basis of the arrest on the Domestic Violence Field Report and note all physical evidence that is collected.
- (2) Take pictures of the injuries, the crime scene, and order immediate development.
- (3) Collect all physical evidence.
- (4) Instruct victim to be present in court on next court day at 8:30.

NOTE: *The officer shall arrest the offender if there is probable cause that a crime was committed even if the victim opposes the arrest.*

R. IF THE OFFENDER IS ARRESTED, REVIEW PROCEDURE OPTIONS WITH THE VICTIM ORC 2935.032 (C)

- (1) Give the victim a copy of the Domestic Violence Brochure with your name, badge number, and follow-up telephone number printed on the form cover.
- (2) If the victim desires emergency safe shelter, the investigating officer, dispatcher, or communications officer shall call The Lighthouse 687-4428.
- (3) Inform the victim of the right to request a TPO. If the victim wants a TPO, indicate such request in the field report.
- (4) Encourage the victim to create a safety plan to follow if the offender is released.
- (5) Instruct victim to be present in court on next court day at 8:30.

S. COMPLETE FORMS IN THE ARREST PACKETS WHEN AN ARREST IS MADE

THE ARREST COURT DOCUMENTS SHOULD INCLUDE:

- (1) Incident Report

- (2) Domestic Violence Field Report
- (3) Affidavit
- (4) CCH/BMV
- (5) Supplemental Reports
- (6) Witness Statements
- (7) Photograph's (If undeveloped- process request for pictures to be developed and forward developed photograph's as soon as possible to the prosecutor.)

T. DUAL COMPLAINTS

A batterer often claims that the victim also is guilty of domestic violence, in order to direct the blame away from him or herself. The officer should exercise discretion in determining whether to arrest both parties or refer both parties to the Prosecutor keeping in mind the following:

- (1) If both parties allege domestic violence and there is evidence that both parties may have committed some form of violence against the other, the officer must determine who is the primary aggressor based on the guidelines in Section II. (J) Terms & Definitions. **ORC 2935.03 (B)(3)(d)**
- (2) If there is evidence of violence on the part of both parties and the officer concludes that one party was the primary aggressor, the officer should arrest only that person. If the primary aggressor persists in demanding that the victim be arrested, also, the officer should tell the principal aggressor to contact the prosecutor's office. The prosecutor will evaluate the primary aggressor's complaint after the charges against him or her have been resolved.
- (3) If there is evidence of violence on the part of both parties and the officer is unable to conclude that one party was the primary aggressor based on the facts and circumstances and the guidelines for determining the primary aggressor in section I (2) [**ORC 2935.03 (B)(3)(d)**] the officer should call their supervisor or prosecutor.

If the officer is unable to determine the primary physical aggressor, the officer is not required to arrest, but may arrest either or both parties after conferring with their supervisor or prosecutor. The officer must fully document in the Field Report the reasons for arresting neither party of both parties. Every effort should be used to determine the primary physical aggressor, so as not to further victimize the victim. **ORC 2935.03 (B)(3)(b), ORC 2935.032 (A)(1)(a)(ii) and ORC 2935.032 (A)(1)(b)(ii), and ORC 2935 (B)(3)(c).**

- (4) Officers should remember that victims of violence often strike out in their own defense. Officers should also remember that assailants will attempt to file charges against the person they have injured in order to use the charges as negotiating pressure or leverage to have the charges against them dropped.

- (5) The officer must not allow both parties to sign the Victim's Statement, thereby establishing probable cause. Instead, the officer may direct any party to the prosecutor's office to further discuss his or her allegations.
- (6) The officer may refer one or both parties to the Common Pleas Court to seek a Civil Protection Order.

U. ADVISE VICTIM OF RIGHTS WHEN THE OFFENDER IS NOT ARRESTED

- (1) Give the victim a copy of the Domestic Violence Brochure, write your name, and follow-up telephone number on the front cover of the brochure.
- (2) Advise the victim of the availability of criminal charges as a means of relief.
- (3) Advise victim of the right to request a TPO if charges are filed.
- (4) Advise the victim of the right to request, without filing criminal charges, a CPO.
- (5) Advise the victim of the availability of shelter and support services.

V. COMPLETE THE INCIDENT REPORT AND THE DOMESTIC VIOLENCE FIELD REPORTING FORM WHEN THE OFFENDER IS NOT ARRESTED

Fully document the reasons why the offender was not charged and arrested in the Domestic violence Field Reporting Form. Absent an arrest, a **clear statement** outlining your reasons must appear in incident report. **ORC 2935.03(B)(3)(C)**

W. DATA COLLECTION

THE INFORMATION IN THE DOMESTIC VIOLENCE FIELD REPORTING FORM CAN BE VITAL TO BOND DETERMINATION AND CAN ALSO FACTOR INTO OTHER DECISIONS THAT ARISE LATER IN THE PROSECUTION.

The initial reports are a permanent record of information that tends to be overlooked if not recorded right away by someone other than the victim, and the officer must not underestimate the importance of the thorough reporting, even where limited resources and time pressures exist. A Field Reporting Form and Incident Report must be filled out for each and every response to a domestic violence dispute, whether or not the charges will be filed. The officer must complete the form to the best of his or her ability using all available information.

X. RESPONSIBILITY OF LAW ENFORCEMENT FOR VICTIM NOTIFICATION

Within a reasonable time after the defendant's arrest the law enforcement agency shall provide [ORC 2930.05]:

- (1) Notice of the arrest;
- (2) The Defendant's eligibility for pretrial release:

- (3) The telephone number of the custodial agency;
- (4) The victim's right to telephone the agency to determine if the defendant has been released.

Y. PROMPT RETURN OF PROPERTY [ORC 2930.11]

Law Enforcement shall promptly return the victim's property unless the prosecutor certifies the need to retain the property in lieu of a photo or other evidentiary substitute, court rule, or an ownership dispute.

Z. CUSTODIAL AGENCY NOTIFICATION REQUIREMENTS FOR VICTIMS [ORC 2930.16]

MUST NOTIFY VICTIM:

- (1) Three weeks prior to release on electronic monitoring;
- (2) Prompt notice of escape or awol and of recapture;
- (3) Notice of defendant's death while in custody;
- (4) The defendant's release from confinement and conditions of the release.

PROTECTION ORDERS

V. PROTECTION ORDERS

A. TEMPORARY PROTECTION ORDERS (TPO)

(1) A Temporary Protection Order is available for the filing of a complaint in the following offenses:

- (a) Domestic Violence 2919.25 (A-C) [or substantially similar municipal ordinance]
- (b) Violations of the following code section **involving a family or household member.**

(1)	Felonious Assault	2903.11
(2)	Aggravated Assault	2903.12
(3)	Assault	2903.13
(4)	Menacing by Stalking	2903.211
(5)	Aggravated Trespass	2911.211

Note: or substantially similar municipal ordinance of the above

(c) Violations of the following code section **not involving a family or household member** qualify for an anti stalking order.

(1)	Felonious Assault	2903.11
(2)	Aggravated Assault	2903.12
(3)	Assault	2903.13
(4)	Menacing by stalking	2903.211
(5)	Aggravated Trespass	2911.211
(6)	Menacing	2903.22
(7)	Aggravated Menacing	2903.21

Note: or substantially similar municipal ordinances [Amended by HB93 effective 12/30/97]

ORC 2903.213(A)

Note: For law enforcement purposes the ant stalking order and temporary protection order are the same and will utilize the motion for a protection order on the Domestic Violence field report.

(2) **Terms of Temporary Protection Orders**

- (a) A temporary protection order is a pretrial condition of release in addition to bond.

(b) A temporary protection order can order the abuser to stay away from victim's residence, work place, or school. It can order the abuser to refrain from all direct and indirect communication, i.e. telephone or mail. It can also include any other terms necessary to ensure the victim's safety and protection.

(c) See addendum for copy of temporary protection order.

(3) HOW TO FILE A MOTION FOR A TEMPORARY PROTECTION ORDER (TPO)

(a) When the arresting officer signs the Domestic Violence charge, he or she will have the victim sign a Petition for a TPO if the victim is at risk of further harm. Or, if the officer arrests the offender, the officer may request a TPO in the domestic violence field reporting form. The Prosecutor shall request a TPO as a condition of bond at arraignment if the victim requests a TPO.

(b) If the victim requests a TPO but is not physically or emotionally able to sign the Petition for a TPO, the arresting officer will sign the Petition.

(c) When the victim is signing the Domestic Violence charge, the officer should recommend that the victim request a TPO.

(d) Regardless of who requests the TPO, the victim must appear at the Protection Order hearing. **A VICTIM ADVOCATE MAY ACCOMPANY THE VICTIM AT THE HEARING.** Advise the victim to contact the clerk of court for a hearing date and time.

(e) The court may issue a TPO on its own motion. **2919.26 (D) (1)**

(f) If the victim is not physically or emotionally able to appear at the Protection Order hearing, the arresting officer should appear on the victim's behalf.

(g) If the victim is unable to appear because of the person's medical condition or hospitalization resulting from the offense, the prosecutor, court advocate, or officer may appear in lieu of the victim to provide the court with information. **ORC 2919.26(C)**

(h) The TPO is effective until dismissal of case or sentencing.

(4) ENFORCEMENT OF TPO'S / ANTI STALKING ORDERS.

(a) The municipal and county courts have original jurisdiction within their territories in any action concerning out of county or out of state protection orders. **ORC 1901.18 (A)(9) and ORC1901.19 (A)(6) and (7).**

B. CIVIL PROTECTION ORDER [ORC 3113.31]

A Civil Protection Order is an Order issued by the Domestic Relations division of Common Pleas Court and is good for up to five years.

In a Civil Protection Order, the Judge can order the abuser to stay away from the victim's residence, work place, and school. The Judge can order the abuser to refrain from abusing, telephoning, harassing, or threatening the victim directly or through a third party. The Judge can award custody or establish visitation rights with regard to the children. The Judge can order child support, counseling, use of a motor vehicle, division of property, and any other relief necessary for the victim protection.

HOW TO FILE A PETITION FOR A CIVIL PROTECTION ORDER (CPO)

- (1) The victim can call the Lighthouse at 687-4423 or Victim Assistance at 687-6778.
- (2) A victim does not need an attorney to obtain a CPO. The Light House, Victim assistance, Southeastern Ohio Legal Services, or a private attorney will discuss the case with the victim to determine if the victim may qualify for a Civil Protection Order.
 - a. ✱ Southeastern Ohio Legal Services will file CPO's and has CPO packets available for victims filing without an attorney.
- (3) If it appears that the victim may qualify for a Civil Protection Order, The Lighthouse, Victim Assistance, or a private attorney will assist the victim in preparing the petition and filing the petition in the Common Pleas Court.
- (4) The victim can ask the Court to grant an ex-parte order when the Petition is filed. An ex-parte order is a protection order that goes into effect before a full hearing. If the ex-parte order is granted, it will remain in effect until the hearing on the Civil Protection Order.
- (5) A full hearing for the Civil Protection Order will be scheduled within seven (7) to ten (10) days of filing a Petition for a Civil Protection Order. At the hearing, the victim must explain to the Judge why a CPO is necessary to protect the victim or a family member from further harm by the offender. If the victim fails to appear at the hearing, the Judge, will not grant a CPO.
- (6) A CPO full hearing after the issuance of an ex-parte hearing may be continued if:
 - (a) Prior to the date schedule for the full hearing the respondent has not been served with the CPO petition and notice of full hearing.
 - (b) The parties consent.
 - (c) Continuance is needed to allow a party to get counsel.

(d) For other good cause.

ORC 3113.31 (D)(2)(a)

- (7) A Civil Protection Order remains in effect for up to FIVE YEARS. **ORC 3113.31 (E)(3)(a)**, am sub SB1 effective 10/21/97. An ex-parte CPO **does not** expire because of a failure to serve notice upon the respondent before the date set for the full hearing or because of a continuance. **ORC 3113.31 (D) (2) (b)**.
- (8) Both the ex-parte order and final order are civil protection orders and are fully enforceable.
- (9) CPO's, other than ex parte orders, are final appealable orders. **ORC 3113.31 (G)**
- (10) Subject to the limitation on the Duration of an order or agreement set forth in division (E)(1)(A) of this section, any order under Division (E)(1)(d) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues an order allocating parental rights and responsibilities for the care of children or on the date that a juvenile court in an action brought by the petitioner or respondent issues an order awarding legal custody of minor children. Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) or this section, any order under division (E)(3)(e) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues a support order or on the date that a juvenile court in an action brought by the petitioner or respondent issues a support order. **ORC 3113.31 (E)(3)(b)**.

It should be noted that a CPO is available even when there are criminal charges pending and a criminal TPO is in place (**ORC 3113.31 (G)**). The domestic violence statute provides, however, that the issuance of a CPO automatically terminates the effectiveness of a criminal TPO. There may be cases where it is advisable for the victim to obtain a CPO. The advantages of a CPO are that the Domestic Relations Court may also make orders concerning temporary custody of minor children, and temporary orders of child and spousal support. Further, the CPO may be effective for up to FIVE YEARS, and can be extended by the court for good cause. By contrast, the criminal TPO is only effective until the criminal case is disposed of.

C. DIVORCE RESTRAINING ORDER DISTINGUISHED FROM DOMESTIC VIOLENCE PROTECTION ORDER (TPO, CPO)

Do not confuse the Civil Protection Order with a "Restraining" Order that is issued by the Common Pleas Court pursuant to its inherent authority in divorce cases. [Note, however, that in some jurisdictions a CPO may be issued in conjunction with a pending divorce case.] Law enforcement agencies have no duty or authority to enforce the restraining order in a divorce action.

Divorce-related restraining orders (unless a CPO) do not fall under the domestic violence statutes, and are enforceable only by a motion for contempt filed by the aggrieved party with the Common Pleas Court. Officers should advise the person alleging that his or her divorce-related

restraining order has been violated to contact their attorney.

Keep in mind, however, that an act by one party that is a violation of a divorce-related restraining order **may also independently constitute an act of domestic violence, and should be charged as such.** Parties to a divorce are entitled to no less protection than other victims of domestic violence. Also, the officer should consider whether there is probable cause that any other crimes have been committed, such as trespass or property damage crimes.

D. VIOLATING A PROTECTION ORDER

RECKLESS OR INTENTIONAL VIOLATION OF A CRIMINAL TPO OR OF A CPO IS A CRIMINAL OFFENSE IN ITSELF AND SHOULD BE TREATED AS SUCH. (ORC 2919.27)

- (1) If the victim alleges that a TPO or CPO has been violated, but cannot produce a copy of it, the officer should make every effort to verify the existence of the order from the scene of the conflict by contacting dispatch.
- (2) Upon a finding of probable cause that a valid TPO/CPO has been violated, and if the offender is still on the scene or otherwise immediately available for arrest, an arrest should be made. Probable cause to arrest maybe established by the officers observations and evidence collection or by the victim signing the statement of Domestic Violence on the Field Report Form. The officer does not have to observe the offense. This is a preferred arrest policy violation and **if no arrest is made a clear statement must be made in the officer's report.**
- (3) If the victim produces a valid certified copy of a TPO or CPO from another county or state and there is probable cause that a term of Protection Order was violated, arrest the offender. **ORC 3113.31 (F)(3) AND 2919.26(G)(4) ORC 2919.27 (A) and (B).**
- (4) Violations of a TPO/CPO should be charged as follows:
 - (a) First Offense: First Degree Misdemeanor.
 - (b) Second Offense: Fifth Degree Felony (F5). ORC 2919.27
- (5) A police officer has immunity for enforcing a protection order that is valid on its face **ORC 2935.032 (F).**
- (6) A TPO/CPO is effective when served upon the defendant.
- (7) Out of state or out of county TPO's and CPO's may be registered with Municipal court clerk's office by filing with the Lancaster Police Department and the Fairfield County Sheriff's Office. Regardless of whether the TPO/COP is registered, it is enforceable. **ORC 2919.26**
- (8) Changing a TPO/CPO. Occasionally a victim will need to change the terms of a TPO or

CPO. The terms may be changed as follows:

- (a) CPO: File a motion in Domestic Relations Court.
- (b) TPO: Contact the prosecutor's office.

PROSECUTOR

VI. PROSECUTOR

A. ETHICS AND ADVOCACY

The prosecuting attorney's highest ethical responsibility is the duty to seek justice, not merely to convict. This special duty exists because the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers such as the selection of cases to prosecute. During trial the prosecutor is not only an advocate, but he or she may make decisions normally made by an individual client and system of criminal justice, the accused is to be given the benefit of all reasonable doubts. Further, the prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecution's case or aid the accused.

B. VERTICAL PROSECUTION

The prosecuting attorney who handles a domestic violence case at arraignment will be responsible for that case throughout the entire prosecution, to the extent the court docket allows.

C. "NO DROP" POLICY

It will be made clear to the victim and the offender from first contact through sentencing, and be every person associated with the prosecutor's office, that the victim in a domestic violence case cannot "drop" or "press" charges. It will be made clear that domestic violence is a crime against the state and that only the Judge can dismiss a case.

D. CHARGING PROCEDURE

Although some misdemeanor domestic violence cases originate with local law enforcement departments, some originate in the Prosecutor's Office through the intake procedure. The following guidelines apply to cases originating there:

1. **Filing criteria.** In determining whether to file a misdemeanor charge, the prosecuting attorney will determine if the Offender has a prior domestic violence conviction and if there is sufficient evidence to prove the elements of the crime. If the offender has a prior conviction, the case may be referred to the county prosecutor's office for felony review, prior to misdemeanor charges being filed.
2. **Referral to the Victim Advocacy Service.** Early consistent contact between the prosecuting attorney and the victim, and referral of victim to an appropriate support service agency, is crucial to effective prosecution of domestic violence cases. The following steps should be taken:
 - a. The prosecutor will contact the Victim's Advocate Office, if this has not already been done. The victim advocacy service will assist the victim throughout the prosecution of the case and inform him or her of the availability of support and treatment.

- b. The prosecuting attorney will attempt to contact or interview the victim as soon as possible prior to hearing.
- c. The prosecuting attorney will inform the victim that the Prosecutor's Office is responsible for charging and prosecuting the case.
- d. The Prosecutor will stress that the victim is an important witness in the case and that they will be included in the process.
- e. The victim will be instructed to report his/her address and phone number (and any changes) to the prosecutor's office and Victim Advocate.

E. DECLINED PROSECUTIONS

If the Prosecutor declines to prosecute the case, written reasons shall be provided for the file. The Prosecutor will then refer the matter to the Lighthouse or other appropriate agency for follow up if necessary.

F. BOND

1. Prosecutor provides the court with necessary information.

The prosecutor should provide all relevant information reasonably accessible to the court for consideration on bond-setting and establishing terms of the temporary protection order. Such information includes: the victim's and defendant's statements, the Domestic Violence Field Report, physical evidence (injuries, weapons), information obtained from the advocate or victim, and any criminal history or lack thereof.

2. Fully utilize domestic violence bail statute.

The prosecutor will request that the Court consider all factors described in **O.R.C. 2919.251** before setting bail. These factors - the offender's history of violence or of violating court orders, mental health, potential threat to others - must be considered when the offender is charged with committing domestic violence or related crimes while subject to the terms of a TPO or CPO, or has previously been convicted of domestic violence or a related crime.

3. Based on an affidavit by the victim that acts or threats of violence or intimidation were made by the defendant or at his/her direction, against the victim, the victim's family or representative, the prosecutor may make a motion that the bond of the defendant be revoked. **[ORC 2930.05]**.

G. SUBPOENAS AND NOTICE OF HEARING

Victims and all other witnesses will be subpoenaed at the earliest possible date to allow sufficient time to achieve service of the subpoenas.

The Prosecutor shall notify the victim of all scheduled hearings.

H. UNCOOPERATIVE VICTIMS

Helping a victim overcome the fear and uncertainty of the judicial process is crucial to building cooperation with the victim as a witness. Early contact with the victim can clear up any misunderstandings regarding criminal prosecution. The State can assure the victim that the goal is to stop the violent behavior. Victims are often concerned over the possible punishment of the offender. They rarely understand the crime of domestic violence and believe that lengthy imprisonment is the only outcome. The various other potential outcomes should also be explained. By sharing the State's goals with the victim, the prosecutor may gain an ally.

Experience shows that early and supportive contact with victims decreases fear of the process and increases victim-witness cooperation. All victims should be contacted by a victim-witness advocate and/or local domestic violence program advocate. They should be offered information about the dynamics of domestic violence and court accompaniment. It is important to note that there are many legitimate reasons why a victim may not want to cooperate with a prosecutor. Abusers can be lethal and the victim is in the best position to know the capabilities of the perpetrator. A victim who does not appear in court or changes the story on the witness stand is not being "**uncooperative**" but rather is being "**self-protective**". Prosecutors should be encouraged to learn ways to prosecute without the availability of the victim-witness by using evidence gathered on the scene, police reports, other witnesses, etc.

Cases in which the victim is uncooperative will be dealt with individually.

1. The victim advocacy service should be contacted for assistance in case where the prosecuting attorney determines that the victim is reluctant to testify.
2. If the victim fails to appear for trial and his or her testimony is **not** essential to successful prosecution (i.e., there is sufficient independent corroboration of the crime to prove the charges without the victim's full involvement), the matter should proceed to trial. **ORC 2935.03(B)(e)(ii)**.
3. If the victim refuses to testify and/or fails to appear for trial and his or her testimony is essential to successful prosecution, the prosecuting attorney will determine on a case by case basis whether to seek to enforce a subpoena.
4. If the victim refuses to testify, the prosecutor may nonetheless subpoena him/her to court and call the victim to testify under oath, seeking a declaration that he/she is hostile witness, if necessary.
5. If the victim refuses to testify and his or her testimony is essential to successful prosecution, the cases may be recommended for dismissal.
6. In cases where the prosecutor chooses to dismiss, based on the victim's refusal to testify, the victim will be required to appear in court to explain the reason for refusing to testify on the record. The Prosecutor will encourage the victim to file charges again if the

violence reoccurs.

7. If the victim changes his/her story, the prosecutor should evaluate possible charges for this change (i.e. falsification, obstruction, or perjury).

I. PLEA NEGOTIATIONS

1. **Restrictive Plea Bargain Policy.** Reduction of charges will be limited to those cases in which evidentiary deficiencies suggest that a conviction for the charged offense has become unlikely. In these situations, and consistent with prosecutor discretion, there will be an offer to amend the complaint or to plea bargain to the court. Dismissals are appropriate in cases where evidentiary problems preclude the possibility of proving all elements of the crime.
2. Prior to the reduction or dismissal of a domestic violence case, the prosecutor should contact the victim and, in some cases, the victim advocacy service, to explain the decision and allow the victim to express his/her feeling about this.
3. The prosecuting attorney or victim advocate will personally contact the victim prior to disposition and where possible, have victim sign plea sheet showing victims agreement with plea recommendation.
4. There shall be no pleas offered or dismissal solely because a victim so requests. Reluctant or refusal of the victim or a witness to testify shall not be sufficient basis in itself for reduction or dismissal. Cases in which the victim is uncooperative will be dealt with on an individual basis.
5. Plea offers on domestic violence charges shall not be used in domestic relations negotiations.

J. CONTINUANCES

1. The prosecutor will proceed with as few continuances as possible to increase the likelihood of conviction and to protect the victim and society.
2. If a victim fails to appear for trial and the victim's testimony is essential, a continuance should be requested. If the defendant requests a continuance, it should be opposed unless the case can be rescheduled within two weeks.
3. If a continuance is granted, it should be brought to the attention of the court and made clear to the defendant on the record that any conditions of bond or order of protection remain in effect. If there has not been a previous order of protection and the victim desires one, it should be requested from the court.

K. ADVOCATE'S ROLE

Advocates should be permitted to attend hearings with the victims and to act as advocates at any

and all pretrial conferences. Prosecutors should explain to defense attorneys that advocates may be present and that the prosecutors support the advocacy role. Advocates may be asked by the Court or by the Prosecutor to provide input.

1. THE ROLE OF THE VICTIM ADVOCATE

- (a) Provide support and assistance.
- (b) Primary concern, ensure victim's needs are met.
- (c) Provide information regarding victim's legal and non-legal options, including giving the victim adequate available resources.
- (d) Provide information to assist victims in weighing their options, i.e. various legal options, possible outcomes, safety plans, and protection orders.
- (e) Act as a liaison with victim's attorney.
- (f) Help victim sift through numerous decisions that need to be made and aids her/him (victim) in making decisions and making process less intimidating
- (g) Helps victim complete forms and explain court process.
- (h) Helps victim collect evidence through victims interview, criminal history records, police records, medical records, and contacts with witnesses.
- (i) Notify victims of hearings and the release of the offender from jail, if applicable.
- (j) Arrange for transportation for the victim to court hearings, i.e. bus fare.

L. SENTENCING RECOMMENDATIONS

- 1. In the case of first-time offenders, the assigned prosecuting attorney should request, at a minimum, that the court (1) impose a sentence of supervised probation; (2) order an appropriate fine and costs; and (3) order the defendant to make restitution to the victim, including payment for her stay at a protective shelter; and (4) order the defendant to participate in a domestic violence treatment program. When required by the ends of justice, the prosecuting attorney should request that the court impose a period of incarceration.
- 2. In the case of second or repeat offenders, the prosecuting attorney should request that the court impose a period of incarceration. Further, special conditions of probation may be recommended, including, but not limited to, a psychiatric or psychological evaluation, substance abuse evaluation, and counseling or treatment as appropriate.
- 3. Prosecutors should make case by case evaluations in preparing arguments concerning post-conviction sentences. If, in the view of the prosecutor, the defendant deserves incarceration, he or she should keep in mind that the appropriate penalty may be the

maximum penalty allowed: Six months incarceration and/or a fine of \$1,000.00.

However, in the event that the prosecutor believes that the defendant is an especially good candidate for treatment as a batterer, he or she should recommend that the defendant be placed on long term probation, with the condition that such defendant complete a long term batterers treatment program. Under no circumstances will prosecutors agree to generalized "family counseling" in which the convicted defendant himself will be allowed to decide when he is "cured".

There should be a relationship between the treatment program and the probation department, such that the treatment provider is required to report the defendant's non-participation to his/her probation officer. Pre-conviction diversion programs should be avoided.

M. NOTICE, CASE DISPOSITION AND PARTICIPATION IN SENTENCING [ORC 2930.12]

At the victim's request the prosecutor shall notify the victim of the case disposition. In the case of a conviction, notification shall include the crimes of which the defendant was convicted, the address and telephone number of probation office that will prepare the pre-sentence investigation and the telephone number and address of the person who is prepare the victim impact statement pursuant to 2947.051.

- (1) Notice that the victim may make a statement for inclusion in the pre-sentence investigation report or a victim impact statement, and that either will be made available to the defendant unless exempted for disclosure by the court;
- (2) Notice of the victim's right to make an impact statement at sentencing;
- (3) Notice of date, time and place of sentencing;
- (4) Notice of sentence imposed and any modification of sentence.
- (5) Notice of appeal [ORC 2930.15];

(a) If the victim requests notice of the filing of an appeal, the prosecutor shall notify the victim and shall give the victim the following information;

- (1) A brief explanation of the appellate process; including the possible disposition of the case.
- (2) Whether defendant has been released on bail or other recognizance pending the disposition of the case.
- (3) The time and place of appellate court proceedings and any subsequent changes in the time and place of those proceedings.

(4) The result of the appeal.

**CLERK OF COURTS
(CRIMINAL)**

VII. CLERK OF COURTS (CRIMINAL)

- A.** The Clerk of Court shall call the victim Advocates office before arraignment of any domestic violence cases on the docket each day in order that they may provide support court escort and advocacy to the victim.
- B.** The Clerk of Court shall provide victims, Lancaster Police Department, and Fairfield County Sheriff's Department on all cases, and Pickerington (only if Pickerington is arresting agency) with a copy of a TPO/CPO.
- C.** Clerk of Court shall make victim brochures available in the immediate proximity.
- D.** Upon the request of the victim, the Clerk of Court shall provide the victim with a certified copy of the temporary protection order for registering in another county. If the victim submits proof of indigency, the clerk may waive the fee otherwise required for obtaining certified copy.
- E.** The Clerk of court shall accept a certified copy of out of county temporary protection order for registration. The Clerk shall place an endorsement of registration on the order and give the victim a copy of the order that bears that proof of registration. The Clerk shall maintain a registry of certified copies of temporary protection orders that have been issued or approved by courts in other counties and that have been registered with the Clerk. The Clerk may waive any fee that otherwise would be required for registration upon sufficient proof of indigency.
- F.** The clerk or court shall notify the Lancaster Police Department and Fairfield County Sheriff's Office, in writing, of a change in status in any TPO/CPO issued by the Court.

THE JUDICIARY (CRIMINAL)

VIII. THE JUDICIARY (CRIMINAL)

The cooperation of the courts is essential to the success of any coordinated effort toward reduction of the incidence of domestic violence cases. Research consistently shows that "when the bench is serious about domestic violence, the rest of the justice system cooperates." However, it would be counterproductive (and questionable on legal grounds) to attempt to mandate rules for the judges, which would dictate how every domestic violence case should be handled. Each case is unique on its own facts and, within the parameters of the law, each judge must bring to bear his or her individual discretion in deciding how the cases which appear before him or her should be handled.

The following, then, constitutes a suggested framework for a consistent overall approach to the unique problems, which domestic violence cases present to the criminal justice system, while leaving intact the full range of judicial responses to those problems.

A. MOTIONS FOR TEMPORARY PROTECTION ORDER (TPO)

1. Ex-Parte Appearance by the Complainant.

Since the purpose of the TPO is to maintain the peace and prevent the possibility of further violence, pending a judicial determination of, at a minimum, probable cause, these orders are in the nature of injunctive relief and should be liberally granted.

2. Appearance of Defendant Following Summons or Arrest

- (a) A formal hearing with full due process protection should be afforded the defendant, if he/she so request, to allow him/her to challenge the allegation made in the motion for TPO.
- (b) If the court issues a temporary protection order as an ex parte order, it shall conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender not later than the next day on which the court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons to determine whether the order should remain in effect, be modified, or be revoked. **ORC 2119.26 (D)(2)**.
- (c) At the conclusion of the hearing, if the motion is granted, the defendant will be given a copy of the TPO.

3. The burden of proof at the formal hearing on the motion for a TPO should be probable cause.

- (a) This is not, and should not be, a trial on the merits.
- (b) The purpose of the order is to keep the parties separated in order to prevent further violence, while the court sorts out the equities.

4. The terms of the TPO must be carefully and completely spelled out, since law

enforcement officers can enforce only the exact term of the order.

5. Admonishing the defendant.

The judge should explain the terms of the TPO to the defendant and warn him/her that Law enforcement officers shall immediately arrest for violation of a TPO. If the victim is present, the judge should explain (within hearing of the defendant) what steps he/she should take to enforce the TPO.

B. DEFENDANT'S APPEARANCE AT ARRAIGNMENT

The judge should require the appearance of the defendant at arraignment. The appearance will serve as a reminder of the potential consequence of future violence and may therefore deter pre-trial violence directed at the victim.

C. VERIFY WHETHER THIS IS A SECOND OFFENSE

At this stage, it should already have been determined whether defendant has a previous domestic violence conviction (by the police, court clerk, or prosecutor) that would escalate the current pending charge to a felony. The judge should inquire of the prosecutor whether the defendant's record has actually been examined. If the victim or the victim's advocate indicates that there has been a prior court case, the judge should direct the prosecutor to make this determination before proceeding with the case, and amend the complaint if appropriate.

D. BOND

The judge should request and consider all available information in deciding what type of bond will be set. Such information should include, at minimum **(2919.251 and Criminal Rule 46)**

- (1) Whether the person has a history of domestic violence or a history of other violent acts;
- (2) The mental health of the person;
- (3) Whether the person has a history of violating the orders of any court or governmental entity;
- (4) Whether the person is potentially a threat to any other person;
- (5) Whether setting bail at a high level will interfere with any treatment or counseling that the person or the family of the person is undergoing.

When a TPO has not been issued for some reason, the judge should impose a "no-contact" order as a condition of bond. If the violent incident involved children, they should be named in the TPO or the Court should order supervised or suspended visitation as a condition of bond.

The victim should be given an opportunity to request special terms for the temporary disposition of such matters as requiring the defendant to turn over the family house of car keys, and

confiscation of weapons.

For second offenses as described in **ORC 2919.251**, the Court should request and consider all available information related to the considerations enumerated in the statute.

Defendant shall be informed verbally and in a written order that law enforcement shall immediately arrest the Defendant for any violation of the temporary protection order.

E. DISMISSAL OR REDUCTION OF CHARGES

Judges should not accept civil compromises, deferred prosecutions, reduce charges, or dismissals where justice is not served by these devices. If a dismissal is filed, the court should have all parties in court to make an independent determination.

Alternative dispositions and diversion in family violence cases are frequently inappropriate, and send a message to both the victim and the offender that the crime is less serious than comparable crimes against non-family members. When these alternatives are proposed, judges should ascertain that they are in the interest of justice and not simply devices for docket management. When a victim asks to have the complaint withdrawn or is reluctant to testify, the judge should inquire about coercion and intimidation. (This may be especially true where a divorce is pending or contemplated. Victims are often coerced into "dropping" charges by empty, unenforceable promises of a favorable divorce settlement.) In cases where the victim refuses to testify, it is often possible to prove the case with other evidence. Sometimes the judge should deny motions for dismissal and schedule the case for trial.

F. PRETRIAL CONFERENCE

Given the dynamics of family violence and the existence of an ongoing intimate relationship between the defendant and the victim, speedy resolution of the case will serve to better protect the victim as well as increase the efficiency of the entire process. Therefore, the pretrial conference should take place as expeditiously as possible not later than 30 days of the arraignment.

Cases of family violence shall not be dismissed at the pretrial conference stage if the sole reason for dismissal is the victim's unwillingness or reluctance to testify. (The victim shall be subpoenaed to appear at trial). Where possible, the victim shall be informed that a sheriff or police officer will be available to escort her/him to the trial. If the prosecutor insists on dismissing the charge solely on the basis of the victim's reluctance to testify, judicial disapproval of the dismissal shall be stated on the record and the victim shall state the reasons for refusing to testify on the record. Inappropriate pleas to reduced charges will not be accepted.

G. PRE-TRIAL CONFERENCE/NOTICE [ORC 2930.06]

The prosecutor, to the extent practicable, shall confer with the victim before a trial, amending, or dismissing a charge, or agreeing to negotiated pleas.

Failure of the prosecutor to confer with the victim shall be noted on the court record. Such notation will include the reason for the failure to confer with the victim. However, failure to confer does not in any way invalidate any disposition of the case.

H. TRIAL

If the victim has been subpoenaed and appears but indicates a continuing reluctance to testify, the judge should order the victim to testify. If, after being ordered to testify, the victim indicates that the previous information regarding the assault was untrue and she/he was mistaken, the prosecutor should point out the facts as they were sworn to in the complaint. The prosecutor should also, at this point, confront the victim with other evidence previously gathered regarding the assault. If, after being confronted in this manner, the victim insists that the previous statements made were untrue, the matter should end. However, if there is independent evidence of the assault, even if the victim refuses to testify or does not appear at the trial, the prosecutor should proceed with the case. If the prosecutor refuses to proceed, even though there is independent evidence, and agrees to dismiss, judicial disapproval of the dismissal should be noted in the record.

I. PRE-SENTENCE INVESTIGATIONS AND RECOMMENDATIONS

- 1.** If the Defendant is set for a change of plea hearing or trial on a charge of domestic violence, or any allied offense, the judge should request the probation department to conduct a pre-sentence investigation and report. Pre-sentence investigations should be requested if the Defendant pleads at the initial arraignment if the facts and circumstances indicate that this information should be obtained.
- 2.** The judge should require that every reasonable effort be made to contact the victim or the victim's advocate in order to:
 - (a)** Inform the victim of sentencing options and/or release conditions available to the court, and obtain a statement from the victim regarding the case. Any verbal or written statement from a victim must be included in the victim impact statement and may include an explanation of the nature and extent or any physical, psychological, or emotional harm suffered; the extent of, any property damage or other economic loss; an opinion regarding the need for restitution and information on whether the victim has applied for or received an compensation, and the victim's recommendation for an appropriate sanction. [ORC 2930.13 (C)].
 - (b)** Allow the victim to be heard at a plea hearing or trial to raise any objections or concerns to the court regarding sentencing.
 - (c)** Discuss the need for conditions of probation or release which will provide for the on-going safety of the victim, i.e., limited contact by the assailant with the victim, supervised visitation of children, temporary removal of weapons from the household, continued absence of assailant;
 - (d)** Inform the victim of the resources available, including Ohio Victims of Crime Compensation Act monies, legal advocacy, emergency shelter, and support/counseling groups;

- (e) Obtain information from the victim regarding any aggravating circumstances, including but not limited to:
 - 1. Serious bodily injury or threat thereof to any adult or minor child in the household;
 - 2. Forced sexual contact or threat thereof to any adult or minor in the household or any prohibited intra-familial sexual contact;
 - 3. Use, or threat with, a dangerous weapon;
 - 4. Verifiable history of physical abuse by the offender to the victim;
 - 5. On-going harassment of the victim by phone, mail or in person by the assailant.

J. SENTENCING

Before imposing sentence upon the defendant, the court shall permit the victim to make a statement regarding the impact of the crime on the victim. At the judge's option, the victim can present the statement in writing prior to the sentencing hearing, orally at the hearing, or both. If written, copies of the statement will go to the prosecutor and defendant. **(ORC 2930.14)**.

The court shall consider the statement along with other factors, in determining the sentence. If the statement contains new material facts upon which the court intends to rely the court shall continue the sentencing proceeding to allow the defendant adequate opportunity to respond.

- 1. Every sentence in a family violence case should:
 - (a) Hold the offender accountable;
 - (b) Order offender involvement in activities specifically designed to reduce future violence;
 - (c) Require an alcohol and drug evaluation where appropriate, mandate successful completion of treatment, and provide for mandatory chemical testing;
 - (d) Provide for formal supervision and monitoring of compliance;
 - (e) Place restrictions on the defendant as needed to protect the victim and other family members.

Key to this recommendation is the principle that all of these items must be a part of every sentence or court order. Offender accountability may be accomplished in a variety of ways, including restitution (for lost wages, shelter costs, medical counseling and treatment fees, and replacement cost of destroyed property), supervised probation, and/or

jail time.

2. The sentence for first offenders (except in aggravated cases) should include the following elements:
 - (a) Imposition of maximum jail term;
 - (b) Suspension of all or most of the jail term, depending on the facts;
 - (c) A supervised probationary period of at least one year;
 - (d) Specific conditions of probation prohibiting any act of violence, no contact with the victim and, where appropriate, the use of all mind-altering substances;
 - (e) Mandated counseling and treatment, as appropriate, including:
 - * Education/therapy
 - * Substance abuse rehabilitation
 - * Mental health treatment
 - * Prompt payment of any associated fees

Treatment programs should be designed specifically to deal with battering and violent behavior. Individual or couples counseling does not address these issues or remedy the problems of violence, power and control. Alcohol and drug evaluations are also usually appropriate. While treatment for the alcohol and drug problems will not solve the violence problem, it is often a necessary prerequisite. Urine testing for alcohol and drug abuse as a condition of probation is absolutely necessary to monitor compliance.

Provision must be made for formal supervision and monitoring of the offender's behavior. Unsupervised bench probation is not appropriate or effective. In addition to offender accountability, formal supervision provides a measure of protection for the victim who will have an officer of the court to turn to in the event of subsequent threats or assaults.

If the Defendant is ordered to attend any treatment programs, the court will strive to find programs that will address the battering issue or other issues of violence and/or substance abuse. Generally, the Defendant is required to have an assessment report to the court within 30 day period and then is scheduled to come back to court to review that assessment. If the court orders the Defendant to complete treatment, monthly reports are required and Defendant's compliance is monitored by the court probation officer.

Enhanced sentences may be called for in a number of circumstances such as the presence of children; use of a dangerous weapon; elderly, pregnancy, youthful or handicapped victim; sexual assault; serious injuries requiring hospitalization; or threats of death or serious bodily injury.

3. The Court will inform all Defendants convicted of domestic violence {2919.25 (A) or (B)} that a subsequent conviction on a domestic violence charge is a felony. Defendant's shall sign a written statement acknowledging that a subsequent

conviction of domestic violence is a felony.

K. VICTIM'S STATEMENT PRIOR TO JUDICIAL RELEASE (ORC2930.17)

Prior to releasing the defendant from a term of incarceration the court shall permit a victim to make an additional statement, orally or in writing at the court's discretion, concerning the impact of the crime on the victim. Copies will be given to the defendant and the parole authority.

The court shall consider this statement of the statement made under **ORC 2930.14** in deciding whether to release the defendant.

L. PROTECTION OF VICTIM PARTICIPATION FROM EMPLOYER DISCIPLINE (2930.18)

No employer shall discharge, discipline, or otherwise retaliate against the victim, a member of the victim's family or the victim's representative, for participation, at the prosecutor's request, in the criminal proceeding.

Any employer who knowing violated this section maybe contempt of court.

M. CONFIDENTIALITY OF VICTIM INFORMATION (2930.07).

(1) If the prosecutor believes there are reasonable grounds for the victim to be apprehensive of act or threats of harm, or intimidations by the defendant, the prosecutor may make a motion that the victim or witness not be compelled in any phase of the criminal process to testify for purposes of identifying the victim's address, employer or other personal identification. The court shall hold a hearing on the motion in chambers, and a court reporter shall make a record of the proceeding.

(2) The Court file or court documents in a case shall not contain the address of the victim unless it is used to describe the location of the crime. The file shall not contain the phone number of a victim unless it is contained in a transcript of the trial.

N. VICTIM'S INTEREST IN SPEEDY PROSECUTION (2930.08)

If practicable the prosecutor shall inform the victim of any delay in the progress of the prosecution. The prosecutor shall inform the court of the victim's objections to the delay and the court shall consider the objection in ruling on the motion.

O. VICTIM'S PRESENCE AT COURT PROCEEDINGS (2930.09)

The victim may be present whenever the defendant is present during any critical stage of a criminal case that is conducted on the record, other than a grand jury proceeding.

At the victim's request, the court shall permit any other person to accompany the victim to provide support, unless the court determines that the presence of that individual would deny the

defendant's right to a fair trial.

P. SEPARATE WAITING AREA (2930.10)

The court that hears a criminal case shall make a reasonable effort to minimize unwanted contact between the victim and defendant before, during and immediately after court proceedings.

Q. VICTIM/WITNESS PROTECTION (ORC 2945.04)

If a motion is filed with a court before which a criminal case is pending alleging that the defendant or a person acting in concert with the offender has committed or is reasonably likely to commit any act prohibited by section 2921.04 of the revised code in relation to the case, or any act that would constitute an offense against the person or property of the complainant, his/her ward or child, if the court holds a hearing on the motion, and if the court determines that the allegations made in the motion are true, the court may issue any order protecting the victim, his/her ward or child, subpoenaed witness or other person entering the courtroom from the defendant or another person acting in concert with the offender, or a person other than the defendant who is before the court, including but not limited to subpoenaed witness or other person entering the courtroom in compliance with **ORC 2945.04**

A PERSON WHO VIOLATES AN ORDER ISSUED PURSUANT TO ORC 2945.04 (A) OR (B) IS SUBJECT TO THE FOLLOWING SANCTIONS:

1. Criminal prosecution for a violation of section 2921.04 (intimidation of a witness) of the revised code or a violation of the section of the revised code that constitutes an offense against the person or property of the complainant, his/her ward or child.
2. Punishment for contempt of court.
3. The punishment of a person for contempt of court pursuant to division (A) or (B) of **ORC 2945.04** does not bar criminal prosecution.

CLERK OF COURTS (CIVIL)

IX. CLERK OF COURTS (CIVIL)

A. FACILITATING PETITIONS FOR CIVIL PROTECTION ORDERS

- (1) Upon initial contact, the clerk will refer the petitioner to The Lighthouse, Victim Advocate Program, or a private attorney for assistance in filing a petition for a CPO.
- (2) The clerk shall have an immediate proximity a literature display, stocked with free written information about victims' rights and remedies, as well as pamphlets from the Lighthouse.
- (3) The clerk will promptly provide certified copies of **ex-parte** and final protection orders to the appropriate law enforcement agencies.
- (4) The clerk will promptly respond to request from law enforcement to verify the existence and terms of CPO's.
- (5) Upon the request of the victim or petitioner, the clerk of court shall provide the victim or petitioner with a certified copy of the temporary protection order, civil protection order or consent agreement for registering in another county. If the victim submits proof of indigence, the clerk may waive the fee otherwise required for obtaining a certified copy.
- (6) The clerk of court shall accept a certified copy of out of county temporary protection orders, civil protection orders, and consent agreements for registration. The clerk shall place and endorsement of registration on the order and give the victim or petitioner a copy of the order that bears that proof of registration. The clerk shall maintain a registry of certified copies of temporary protection orders, civil protection orders, and consent agreements that have been issued or approved by courts in other counties and clerk may waive any fee that otherwise would be required for registration upon sufficient proof of indigence. **ORC 3113.31 (N)**.
- (7) The clerk of court shall distribute a certified copy of registered protections orders to Lancaster Police Department and Fairfield Sheriff's Office.
- (8) The clerk shall notify Lancaster Police Department and the Fairfield County Sheriff's Office of any change in status in a TPO/CPO.

THE JUDICIARY (CIVIL)

X. THE JUDICIARY (CIVIL)

A. CIVIL PROTECTION ORDERS

1. The Court of Common Pleas, Division of Domestic Relations may exercise subject matter jurisdiction regarding issues of family violence pursuant to **ORC Section 3113.31 (Civil Protection Orders)**.

2. Ex-parte Orders requested by a Petitioner in accordance with **ORC 3113.31 (D)** are issued after a hearing on the record. The subsequent full evidentiary hearing as required pursuant to said code section is docketed at the time of the Ex-parte hearing with both proceedings having priority over all other court matters.

B. ROLE OF VICTIM ADVOCATE

The petitioner may request the presence of a "victim advocate" for support and assistance at all stages of the proceedings.

SUPPORT SERVICE

XI. SUPPORT SERVICES

DOMESTIC VIOLENCE SHELTERS RESPONSIBILITIES

A. Emergency Shelter

The Lighthouse shall provide 24-hour temporary, emergency, protective placement for victims of domestic violence, and their children, as well as counseling for adults and children.

B. Providing Assistance

The Lighthouse shall provide victims assistance as follows:

1. Food, shelter, and necessary clothing, as required, when the victim must abandon her residence and find a safe haven and she has no other housing resources available to her.
2. Information about appropriate social service agencies.
3. Information about legal options available to victims of domestic violence, referrals to appropriate legal service providers, individuals and/or agency, and court escort and advocacy services.

***NOTE: At no time will a non-attorney shelter employee, volunteer, or other advocate give legal advice to or engage in legal representation of any victim or otherwise engage in the practice of law.**

4. Information about victims' potential eligibility for public benefits, when appropriate.

C. Acceptance of Referrals

The Lighthouse accepts victim self referrals of and referrals from community entities, agencies and individuals.

1. Referring entities, agencies and individuals should call the following phone number: 687-4423, which is available 24 hours. When possible, the referral source should provide the following preliminary information.
 - a. The victim's name
 - b. The names and ages of children
 - c. The victim's present location and her physical/emotional status.
 - d. A brief description of the abuse suffered
2. When possible, referring entities, agencies and individuals should arrange for the victim to talk directly with a Shelter staff member so that

additional intake information can be obtained, and an assessment made as to victim's needs and as to what services the Shelter can provide.

D. Shelter Policies and Practice

The shelter shall comply with the uniform Shelter Standards of Practice prepared by a united group of Ohio Shelter programs. The Standards provide a model for Shelters in the areas of Governing Body; Fiscal and Data Management; Personnel Management; Staff and Volunteer Training Orientation and Development; Volunteer Program; Health Safety and Security Program Participant Rights; Program Standards; General Services; Individual and Group Support Standards for Adults and Children; Children's Programming; Individual and Group Support Issues Specific to Children; and Community Education.

Special emphasis is placed on the following policies;

1. The Shelter is maintained in confidential location. The Shelter shall require all victims residing at the Shelter to preserve the secrecy of the Shelter location.
2. The Shelter has limited space. In the event the Shelter is full when a victim is referred, the Shelter shall assist the victim in locating other protective placement and, when possible and appropriate, assist in arranging transportation for the victim to the alternate shelter.
3. The Shelter reserves the right to decline providing initial or ongoing shelter placement to victims who are an immediate threat to themselves or others, who otherwise place shelter residents and staff at palpable risk of harm, or who, by their behavior, disrupt the ongoing, day-to-day functioning of the Shelter so as to render the shelter placement disadvantageous for other shelter residents.
4. The Shelter shall clearly explain shelter policies and practices that victims must comply with upon placement.

E. Transitional Services

The Shelter provides support, advocacy and referral services to non-sheltered victims of domestic violence.

MEDICAL PROVIDER

XII. MEDICAL PROVIDER POLICY AND PROCEDURE FOR DOMESTIC VIOLENCE

POLICY

Domestic violence may take the form of physical, sexual, psychological abuse, is generally repeated, and often escalates within relationships. Cases of domestic violence will be reported according to state law.

A. PROCEDURE

1. Signs of possible domestic violence

- (a)** Injuries to face, neck, throat, chest, abdomen, and genitals.
- (b)** Evident of sexual assault.
- (c)** Chronic pain.
- (d)** Injuries during pregnancy.
- (e)** Substantial delay between onset of injury and presentation for treatment.
- (f)** Multiple injuries in various stages of healing.
- (g)** Injury inconsistent with patient's explanation.
- (h)** Injury inconsistent with patient's explanation.
- (i)** Repeated use of Emergency Department
- (j)** Evidence of alcohol or drug use.
- (k)** Suicidal ideation or attempts.
- (l)** Overly attentive partner or aggressive partner accompanying the patient.
- (m)** Eating disorders.
- (n)** Report of self-mutilation.
- (o)** Marital discord.
- (p)** Lacerations and burns.

B. ASSESSMENT

- 1.** Interview the patient in privacy. Questioning a patient about battering in the

presence of the abuser may put the patient in extreme danger.

2. Ask the patient directly if the injuries or complaints are the result of an assault by someone known.
3. Preserve physical evidence. Refer to sexual assault policy for evidence collection.
4. Help the victim assess the need for immediate safety.
5. Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, licensed professional clinical counselor, licensed profession counselor, or licensed counselor's assistant who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in section 3113.31, for it in the patient's or client's records and create, whenever possible a photographic record of the injuries. **ORC 3727.08 AND ORC 2921.22(F)(1).**

C. Reporting

1. Offer to call law enforcement. Reporting is not mandatory unless serious physical harm has resulted. Refer to "Law Enforcement Cases" policy. The patient must consent to release of information to law enforcement if the case does not qualify for mandatory reporting.
2. Distribute domestic violence booklet to victim. This will explain the victim's legal rights.
3. If any law enforcement officer submits in writing a statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has commenced against a specified person, that requests the provider to supply to the officer copies of any records that the provider possess that pertains to any test or the results of any tests administered to the specified person to determine the presence or concentration of alcohol, a drug abuse, or alcohol and a drug abuse in the person's blood, breath, or urine at anytime relevant to the criminal offense in question, and conforms with section **ORC 2317.022**, the provider, except where specifically prohibited by law, shall supply the same to the officer, or provide a written statement that none exists in provider's possession. **ORC 2317.02(2).**

D. Make appropriate referrals

1. Offer to notify representative from Fairfield County Victim's Assistance Program or Lighthouse.
2. Notify Crisis Line if shelter is needed.