

<b>TITLE:</b>	<b>Domestic Violence</b>
<b>CODIFIED:</b>	<b>49.1</b>
<b>EFFECTIVE:</b>	<b>6/9/20</b>
<b>RESCINDS/AMENDS:</b>	<b>SOP</b>
<b>PAGES:</b>	<b>5</b>

effectively deal with domestic abuse calls for service. It is the policy of this agency to remove firearms in compliance with NMSA.

**PROCEDURE**

**RESPONDING OFFICERS**

**PURPOSE**

It is the policy of the Department to enforce laws dealing with domestic abuse and to take appropriate action in cases involving domestic abuse. This directive serves as a guide to personnel so that they have an understanding of their respective responsibilities, to establish a uniform procedure for responding to Domestic Violence Incidents and to process the seizure of a weapon under relinquishment laws.

**DISCUSSION**

Domestic Violence is a crime that differs from other crimes because of the intimate relationship between the victim and the accused. This policy provides guidance on conducting investigations, identifying the predominant aggressor, restraining orders and ensuring the safety of the victim and relating parties. Personnel are encouraged to use training and de-escalation techniques in their investigation of these matters to identify a predominant aggressor. They should also recognize that the presence of a firearm, whether or not it was used in the commission of a crime, presents an increased risk to the safety of victims.

**POLICY**

It is the policy of this agency to reduce the incidence and severity of domestic abuse; protect victims of domestic abuse and provide them with support through a combination of law enforcement and community services. The promotion of officer safety by ensuring that officers are prepared to respond to, and

**49.1.01 On-scene Investigation**

- A. When responding to a domestic abuse call, the officer shall:
  - 1. Restore order by gaining control of the situation.
  - 2. Ensure safety of the scene by taking control of all weapons used or threatened to be used in the crime, and place them into evidence.
  - 3. Assess the need for medical attention and call for medical assistance, if indicated. In all cases of a report of strangulation, medical attention will be summoned and medical personnel briefed.
  - 4. Interview all parties and witnesses, including children and neighbors and make every effort to determine the predominant aggressor. Take into account the history of the parties, offensive and defensive wounds, size disparity, or any other factors to assist in a predominant aggressor determination.
  - 5. Officers report should include;
    - a. Children's date of birth.
    - b. Names, addresses and telephone numbers of people interviewed.
    - c. Any and all methods of contact for the victim.
  - 6. After each party has been interviewed, responding officers should confer to determine if an arrest should be made or whether other actions should be taken. Pursuant to the New Mexico Family

- Protection Act, Chapter 40, Article 13 NMSA, an officer DOES NOT have to witness the misdemeanor crime(s) to take appropriate enforcement action, to include arrest, as long as there are visible signs of violence, to include trauma, damage, interference with communications, or other facts to constitute a finding of probable cause.
7. The arrest of the person shall be considered the preferred action by a law enforcement officer of this agency when evidence indicates that domestic abuse has occurred.
  8. Officer shall determine whether Children Youth and Families Department (CYFD) should be notified. (Refer to 46.1 Juvenile Matters for further direction).
  9. If an officer makes an arrest pursuant to the Family Violence Protection Act, the person must be charged through Magistrate Court and the Family Violence Protection Act will be referenced, along with the appropriate charge(s).
  10. All domestic violence cases filed in Magistrate Court require the following information for screening. These items will be completed by the investigating officer at the time of the investigation:
    - a. Report and DV form.
    - b. Criminal Complaint (if arrested).
    - c. Statement of Probable Cause (if arrested).
    - d. Handwritten, audio or video statements from all victim(s), witness(s), suspect(s), if possible.
    - e. Criminal Complaint and a Statement of Facts or an Arrest Warrant may be completed if the suspect is not arrested at the scene.
  - f. Collect and record evidence (photographs, weapon(s), clothing, serology) and, where appropriate, take photographs of injuries and property damage in order to provide appropriate documentation for an evidence based prosecution.
  - g. The report must include the officers' observation at the scene.
  - h. In all cases of domestic violence, photos of victim and suspect shall be taken.
  - i. 911 tapes may be requested as evidence.
11. All other cases must be sent to the District Attorney's Office and/or Magistrate Court.
  12. Complete appropriate offense or incident reports necessary to fully document the officers' response, whether or not a crime has been committed or an arrest has been made.
  13. Officers responding to requests for assistance shall take whatever steps are reasonably necessary to protect the victim(s) from further domestic abuse, including the following:
    - a. Officers may arrest the alleged offender where it has been determined arrest is reasonably necessary to protect the victim(s) from further domestic abuse.
    - b. Officers will enforce the provisions of valid court orders of protection if one exists.
    - c. Officers will advise the victim of the procedures and remedies available under the Family Violence Protection Act, i.e., the right to file a written statement or request for an arrest warrant, and the availability of domestic violence shelters, medical care, counseling, other

- services, and the importance of preserving evidence.
- d. Upon request of the victim, the officer shall arrange for transportation to a shelter, safe refuge, or medical facility, for victims of domestic abuse. When it is possible arrangements can be made for transportation to destinations substantially outside the city limits but within Santa Fe County. A reasonable effort to resolve the situation locally is sufficient until other arrangements can be made at a more appropriate time.
  - e. Officers shall, upon request of the victim, accompany the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children in care of the victim.
14. If the suspect has left the scene and a crime has been committed, the officers will:
    - a. Conduct a search of the immediate area.
    - b. Obtain information from victims and witnesses as to where the offender may be.
    - c. Determine whether or not it is appropriate to seek an arrest warrant for the suspect, taking into consideration safety of the victim.
    - d. Refer the matter to the District Attorney's Office.
  15. In every case where one of the parties involved requests court protection and/or a restraining order, the party will be referred to the Domestic Violence Division of the District Court for further assistance.
  16. Victims shall be referred to the local Domestic Violence shelter program. Transportation to the shelter shall be provided upon request.
  17. Crime scene Technicians may be called on felony cases where evidence exists that require photographs of blood spatter, fingerprints, etc., when the on-duty Commander deems it necessary.
  18. A business card, containing the handling officer's name and a case number, shall be left with the victim.
  19. Prepare and complete accurate and detailed report of all observations and actions.
  20. Cases should ONLY be forwarded to Special Investigations if in-depth follow-up is required. Others will be sent back to the officer to complete.
  21. Officers may personally petition the District Court for emergency orders of protection. In this event the Officers must state their need to the court via telephone, facsimile, or in person, and must file a sworn written statement setting forth the need for an emergency order of protection.
  22. Domestic Violence incidents involving Department personnel shall be referred to another agency. After the fact incidents shall be referred to Internal Affairs.

#### **49.1.02 As used in the Family Violence Protection Act**

- A. Family or household members means:
  1. A spouse, former spouse, family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, or a person with whom the person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purpose of this section.
- B. Domestic abuse means:
  1. An incident of stalking or sexual assault whether committed by a household member or not;

2. An incident by a household member against another household member resulting in:
  - a. physical harm;
  - b. severe emotional distress;
  - c. bodily injury or assault;
  - d. a threat causing imminent fear of bodily injury by any household member;
  - e. criminal trespass;
  - f. criminal damage to property;
  - g. repeatedly driving by a residence or workplace;
  - h. telephone harassment;
  - i. harassment;
  - j. strangulation;
  - k. suffocation;
  - l. harm or threatened harm to children as set forth in this paragraph; and
  - m. does not mean the use of force in self-defense or the defense of another.

NM Stat. 40-13-2 Definitions. (New Mexico Statutes (2019 Edition))

#### 49.2.01 Firearm Relinquishment Obligations

- A. At a hearing on an order of protection, if the judge determines that the respondent poses a credible threat of harm to the petitioner, the judge will enter an order stating that the respondent may not possess, care for or have custody or control of a firearm pursuant to NMSA 30-7-16. The restrained party shall relinquish any firearm in their possession or control in a safe manner to law enforcement within forty-eight (48) hours of the service of the order. A "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon.
- B. If the restrained person relinquishes a firearm, subject to an Order of Protection, personnel shall:
  1. Confirm the validity of the Order of Protection, Firearms Finding and

Notice, or other applicable documents ordering the seizure.

2. Take possession of the firearm (s) upon the relinquishment by the respondent, or representative, per the court order.
3. Place the following in evidence with an evidence sheet:
  - a. A copy of the Order of Protection
  - b. Any and all firearm(s) collected will be documented by make, model, and serial number on the firearm. The firearm(s) will be unloaded and packaged in a safe manner.
  - c. A copy of the Firearm Relinquishment receipt
- C. Provide the respondent with a receipt of the items relinquished (see attached addendum).
- D. A copy of the receipt will also be provided to the petitioner within seventy-two hours of taking possession of the firearm.
- E.
- F. A copy of the receipt will be provided to the District Attorney Liaison to make notification via certified mail.
- G. File the original receipt with the court that issued the order of protection within seventy-two hours of taking possession of the firearm.
- H. Write an Incident Report indicating that the firearm was relinquished pursuant to an Order of Protection.

#### 49.2.02 Firearm Seizure


- A. A firearm may also be seized pursuant to NMSA 30-7-16 if a subject is found to have a conviction, per a criminal history inquiry (Triple III), for any misdemeanor qualifying offense such as Battery on a Household Member, Criminal Damage to Property of a Household Member, and/or Stalking. Any and all firearms shall be seized, considered evidence, and processed per Directive 51.1 *Evidence Collection and Preservation*.

to destroy a firearm or sell or transfer the firearm to a federal firearms licensee.

**49.2.03 Storage of Firearms**

- A. The storage of firearms seized pursuant to conditions specified in a protection order shall be handled in the same manner in which contraband and/or evidence is handled by the agency.
- B. Upon notice of release of the firearm based upon a court order, the Santa Fe Police Department shall make the firearm available to a formerly restrained party within three business days of receipt of a request from a formerly restrained party. The agency will confirm the respondent is otherwise eligible to own and possess a firearm through a background check.
- C. A formerly restrained party who has surrendered firearms to a law enforcement officer or law enforcement agency pursuant to this section who does not wish the firearm returned or who is no longer eligible to possess a firearm may sell or transfer the firearm to a federal firearms licensee. The law enforcement agency shall not release the firearm to a federal firearms licensee until:
  - 1. The federal firearms licensee has displayed proof that the formerly restrained party has transferred the firearm to the licensee; and
  - 2. The law enforcement agency has verified the transfer with the formerly restrained party.
- D. The Santa Fe Police Department, holding a firearm relinquished pursuant to this section may dispose of the firearm twelve months from the date of proper notice to the formerly restrained party of the intent to dispose of the firearm, unless another person claiming to be the lawful owner presents written proof of ownership. If the firearm remains unclaimed after twelve months from the date of notice, no party shall assert ownership and the law enforcement agency may dispose of the firearm. For the purposes of this subsection, "dispose" means

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APPROVED:   
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