

Germantown Police Department

Policies and Procedures

Number: 2-9
Effective Date: January 1, 2003
Subject: Domestic Abuse
Previous Revisions:

I. PURPOSE

The purpose of this policy is to establish procedures describing the responsibility of police officers under Tennessee state law in responding to domestic abuse calls for service.

II. POLICY

Tenn. Code Ann. 36-3-601 to 36-3-620 (Domestic Abuse); Tenn. Code Ann. 39-17-315 (Stalking); Tenn. Code Ann. 39-17-1301 to 39-17-1322 (Weapons); and Tenn. Code Ann. 40-7-103(7) (arrest in connection with a domestic violence call) acknowledge the seriousness of domestic abuse as a crime and assure victims of domestic abuse enhanced protection from violent behavior. The intent of the law is that the official response shall communicate the attitude that violent behavior is not excused or tolerated. For law enforcement, the preferred response is arrest. In both arrest and non-arrest situations, officers will take all reasonable measures necessary to assist and/or assure the immediate safety of the victim(s), the children, the offender, or any other person who may be affected; and to determine what action will be most effective in preventing future violence.

The goals of the Germantown Police Department domestic abuse policy are to reduce:

1. domestic homicides
2. domestic assaults
3. police callbacks
4. injuries to officers
5. liability risks for the Department

It is the policy of Germantown Police Department that all personnel adhere to the provisions herein with respect to domestic abuse.

III. DEFINITIONS

- A. Domestic Abuse: Inflicting or attempting to inflict physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, or malicious damage to the personal property of the abused party;

- B. Adult: Any person 18 years of age or older, or who is otherwise emancipated;
- C. Firearm: Any weapon designed, made, or adapted to expel a projectile by the actions of an explosive or any device readily convertible to that use;
- D. Petitioner: The person alleging abuse in a petition for order of protection;
- E. Preferred Response: Law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest;
- F. Probable Cause: The combination of facts and circumstances, which lead a law enforcement officer to believe a crime has been committed;
- G. Respondent: The person alleged to have abused another in a petition for order of protection;
- H. Self-Defense: A person's justifiable use of physical force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the use or attempted use of unlawful force against them, under the factors set out in Tenn. Code Ann. 39-11-611 and following;
- I. Victim: Any person who falls within the following categories and whom a law enforcement officer has determined is not a primary aggressor under the factors set out in Tenn. Code Ann. 36-3-619(c):
 - 1. Adults or minors who are current or former spouses;
 - 2. Adults or minors who live together or who have lived together;
 - 3. Adults or minors who are dating or who have dated or who have or had a sexual relationship (as used herein "dating" and "dated" do not include fraternization between two individuals in a business or social context);
 - 4. Adults or minors related by blood or adoption;
 - 5. Adults or minors who are related or were formerly related by marriage; or
 - 6. Adult or minor children of a person in a relationship that is described in subdivisions (8)(A)-(E) of Tenn. Code Ann. 36-3-601.
- J. Weapon: A firearm or device listed in Tenn. Code Ann. 39-17-1301(a)(1)-(7).

IV. ARREST DETERMINATION

- A. Pursuant to Tenn. Code Ann. 36-3-601 and 36-3-620 (Domestic Abuse), if a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or a felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.
1. Domestic abuse cases can either be Simple Assault or Aggravated Assault based on the facts. Pursuant to Tenn. Code Ann. 39-13-102, for an assault to be an Aggravated Assault, one of the following aggravating factors must be present:
 - a. Serious bodily injury to the victim;
 - b. Use or display of a weapon by offender;
 - c. Violation of court order of protection, diversion agreement or probation agreement *;
 - d. Failure or refusal of parent or guardian of victim to protect victim from an aggravated assault or aggravated child abuse*.

*NOTE: This criteria for aggravated assault only applies in domestic abuse situations.

2. Arrest is mandatory for a violation of an order of protection where officers have proper jurisdiction and have reasonable cause to believe respondent has violated or is in violation of the order and verification has been made that the order is valid. If the order is Ex Parte, respondent must have been served or otherwise have actual knowledge of the order.
3. Pursuant to Tenn. Code Ann. 39-14-406, the Aggravated Criminal Trespass statute, an offender entering or remaining at the residence of the petitioner with knowledge of an order of protection may be charged with aggravated criminal trespass.
- 4.. Pursuant to Tenn. Code Ann. 39-13-214, the Viable Fetus as a Victim statute, if the victim of domestic abuse has incurred serious bodily injury and is pregnant and carrying a viable fetus (currently recognized by courts as six months into gestation), the offender may be charged with assault or other crimes against persons to the viable fetus.

5. Pursuant to Tenn. Code Ann. 71-6-101 to 71-6-120 (Tennessee Adult Protection Act), if the victim of domestic abuse is 60 years or older or a mentally impaired adult, officers shall notify the Tennessee Department of Human Services to investigate allegations of abuse. "Abuse" is defined in this act as physical abuse, emotional abuse, neglect, or exploitation.
- B. If a law enforcement officer has probable cause to believe that two or more persons committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that the arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, the officer shall exercise his/her judgment in determining whether to arrest all, any, or none of the parties.
- C. To determine who is the primary aggressor, the officer shall consider:
1. The history of domestic abuse between the parties;
 2. Evidence from the persons involved in the domestic abuse;
 3. The likelihood of future injury to each person;
 4. Whether one of the persons acted in self-defense; and
 5. Evidence from witnesses of the domestic abuse.
- D. An officer shall not:
1. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel; or
 2. Base the decision of whether to arrest on:
 - a. The consent or request of the victim; or
 - b. The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.
- E. When determining primary aggressor and self-defense during an investigation of domestic abuse, the officer should consider the following:

Pursuant to Tenn. Code Ann. 39-11-611(a), the self-defense statute, “a person is justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other’s use or attempted use of unlawful force. The person must have a reasonable belief that there is an imminent danger of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be real, or honestly believed to be real at the time, and must be founded upon reasonable grounds. There is no duty to retreat before a person threatens or uses force.”

- F. If a law enforcement officer decides to arrest two or more parties, the officer shall include in the report the grounds for arresting two or more parties.
- G. Additional Domestic Abuse Investigation Protocol:
 - 1. Officers shall examine **all** of the facts to determine probable cause prior to making an arrest.
 - 2(a). If it becomes necessary to examine a domestic abuse victim to determine injuries (marks, bruises, etc.), only officers of the same gender as the victim will be present. This will only be done with the consent of the victim.
 - 2(b). If necessary, paramedics shall be called to the scene to examine a victim.
 - 3. Video Taping: A shift supervisor will respond to the scene and conduct a video taped interview with the victim, witnesses and/or the suspect, after Miranda warnings have been given. Further, the supervisor will document the condition of the scene with the video camera. Video tapes will be submitted as evidence in accordance with established guidelines.
 - 4. Affidavits of Complaint relating to charges placed in a domestic abuse situation will be accurate, detailed, and complete.

V. SEIZURE OF WEAPONS IN DOMESTIC VIOLENCE INCIDENTS

- A. If an officer has probable cause to believe that a criminal offense involving abuse against a family or household member has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime.
- B. Incident to an arrest for a crime involving abuse against a family or household member, an officer may seize a weapon that is in plain view or discovered pursuant to a consensual search, if necessary, for the protection of the officer or other persons.

Provided, however, an officer is not required to remove a weapon such officer believes is needed by the victim for self-defense.

VI. POST-ARREST PROCEDURES

- A. When a defendant is arrested for domestic abuse and after the bond and the conditions of release are set by a judge, a copy of the conditions of release shall be provided upon his/her release. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the defendant has notice of such conditions.
- B. When a defendant who is arrested for or charged with a domestic abuse crime or a violation of an order for protection is released from custody, the Germantown Police Department shall:
 - 1. Use all reasonable means to immediately notify the victim of the alleged offense of the release; and
 - 2. Furnish the victim of the alleged offense at no cost a certified copy of any conditions of release.
- C. If the disputants do not meet the guidelines of a domestic abuse call as established by state law, then the call should be handled as a disturbance, and the party who owns the premises or is on the lease as tenant has the exclusive rights to the premises and may order the other party to leave. In such cases, a party may swear out a warrant or make a citizen's arrest as above.

VII. VICTIM ASSISTANCE

- A. Pursuant to Tenn. Code Ann. 36-6-601, the officer shall offer to transport the victim to a place of safety such as a shelter or similar location or the residence of a friend or relative, unless it is impractical for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as feasible.
- B. Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged abuser.
- C. Advise the victim of a shelter or other service in the community.
- D. Provide the victim notice of the legal rights available by giving the victim a copy of those rights as outlined in Tenn. Code Ann. 36-3-619(g)(3).

- E. The victim will acknowledge receipt and understanding of these rights by signing the form.
- F. If the offender is arrested, inform victim that the offender may be allowed to post bail to be released.

VIII. REPORTING PROCEDURES

- A. When an officer investigates an allegation that domestic abuse has occurred, the officer shall make a complete report and file the report with the officer's supervisor.
- B. If the officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.
- C. If the officer seizes any weapons, an inventory of seized weapons shall be included with the domestic abuse report.

IX. VIOLATIONS OF ORDER GRANTING BAIL

- A. Tennessee Code Annotated 40-7-103(b) allows an officer to make an arrest with or without a warrant when a domestic abuse suspect violates one or more conditions of release. The statute reads:

“(b) If a law enforcement officer has probable cause to believe that a person has violated one (1) or more of the conditions of release imposed pursuant to (Tenn. Code Ann.) 40-11-150, and verifies that the alleged violator received notice of such conditions, the officer shall, without a warrant, arrest the alleged violator regardless of whether the violation was committed in or outside the presence of the officer.”

- B. Tennessee Code Annotated 40-11-150(i) further states:

“A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant, as provided in (Tenn. Code Ann.) 40-7-103(b). Such a violation shall be punished as contempt of the court imposing the conditions and the bail of such violator may be revoked.”

NOTE: Individuals arrested under the above circumstances will be charged with Tenn. Code Ann. 40-11-150(i) - “Violation of Conditions of Release.”

- C. The arresting officer will note on the order granting bail, the time of arrest as required by Tenn. Code Ann. 40-11-150(h)(2).

- D. A copy of the order, with a notation of issuance to the defendant, will be maintained in the Communications Center for reference.

X. REVIEW PROCESS

An annual review of this policy shall be conducted to determine if it should be revised, cancelled or continued in its present form.

This order shall remain in effect until revoked or superseded by competent authority.