

Officer Involved Domestic Violence Policy Framework

For Oregon Law Enforcement Agencies

Officer Involved Domestic Violence
Policy Framework Advisory Committee

OREGON ASSOCIATION CHIEFS OF POLICE AND
OREGON STATE SHERIFFS' ASSOCIATION



Dedicated to the memory of: Charlotte Grahn, Kathleen Hoffmeister and Victoria Schulmerich

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FOREWORD

It's clear to all of us that law enforcement is not immune from domestic violence. Regardless of whether we believe this is a prevalent issue within our profession, Oregon Chiefs and Sheriffs need to assure the public that when acts of domestic violence are alleged we will hold our own accountable by investigating, arresting and prosecuting officers that commit domestic violence. In this process, being proactive and transparent will be key to public trust. Further, by having policies that clearly communicate domestic violence will not be tolerated, we will go a long way to encourage victims to step forward. Even so, transparency and accountability will alone not change the course. We also need to address domestic violence through effective selection processes and training. We need to reach out to our law enforcement families at the beginning of a career, and throughout, to reinforce what resources are available if they feel unsafe. We need to train our supervisors in the field to identify officers in distress so that we can get our personnel the assistance they need. As law enforcement executives it is ours to make clear – we are not going to tolerate violence in our police families. And it is equally our responsibility to create a culture within our agency and profession that promotes officer wellness and supports family members safely stepping forward to end abuse.

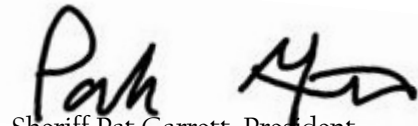
The intention of this policy framework is to bring our agencies together under common principles and standards while recognizing that no one policy and investigation protocol will fit every agency. For those agencies that already have an officer-involved domestic violence policy, we encourage you to revisit your policy using the framework as a guide. The framework suggests best practices that have been sourced from a variety of national and regional policies as referenced, including IACP and Lexipol models. Differences between those two models are noted within the framework.

There were a lot of eyes on the numerous drafts of the framework. The majority of questions and comments concerned the service of a restraining order on sworn personnel and considerations around use of an agency-issued duty firearm following the passage of SB 525 (2015). This also triggered discussion around fit for duty examinations. Both of these considerations are addressed in Section V of the framework and were informed by discussions with law enforcement legal advisors and psychologists.

The policy framework addresses the obligation of each agency to provide training on domestic violence dynamics, distress warning signs, and relevant laws. We recognize that agency training resources are not equal. To provide uniform training to all agencies OSSA and OACP have formed a workgroup to develop separate training for executives, supervisors, officers, and police families. We expect training to be available in September 2017.

There are numerous people who spent many hours contributing and reviewing framework drafts. Special thanks goes to our Policy Framework Workgroup: Hood River County Sheriff Matt English, Gold Beach Police Chief Dixon Andrews, OSP Capt. Eric Davenport, and ATF Resident Agent in Charge - Colene Domenech. And our editors that gave the final version a critical last review: Gilliam County Sheriff Gary Bettencourt, Washington County Sheriff Pat Garrett; Lake Oswego Police Chief Don Johnson, Beaverton Police Chief Geoff Spalding, retired. And special thanks to Oregon State Representative Carla Piluso for her partnership and leadership, for her work to prioritize this important issue and to move this policy framework forward.

Finally, we dedicate this effort to the Grahn, Hoffmeister and Schulmerich families. Our professional associations are committed to ensuring that every Oregon law enforcement agency has an officer involved domestic violence policy.

A handwritten signature in black ink, appearing to read 'Pat Garrett', with a stylized flourish at the end.

Sheriff Pat Garrett, President
Oregon State Sheriffs' Association

A handwritten signature in black ink, appearing to read 'Geoff Spalding', with a stylized flourish at the end.

Chief Geoff Spalding, President
Oregon Association Chiefs of Police

I. DRAFTING AN OFFICER-INVOLVED DOMESTIC VIOLENCE POLICY

In 1999 the International Association of Chiefs of Police (IACP) issued a comprehensive issues paper on police officer-involved domestic violence along with a model policy. The model has become the standard for many law enforcement agencies across the nation. The IACP *Concepts and Issues Paper* should be read before drafting an agency policy to understand the rationale supporting the recommended policy components: Prevention, Education and Training; Early Warning and Intervention; Incident Response Protocols; Victim Safety and Protection; Post-Incident Administrative and Criminal Investigations. In Oregon, both the IACP and Lexipol models are used.¹ While most agencies choose a standalone policy based on one of these models, some agencies choose to incorporate officer involved domestic violence protocols within a section of their general domestic violence policy.²

II. DEVELOPING YOUR OWN AGENCY POLICY

Choosing policy components that fit your agency will be influenced by its size, resources, geographic location and community. While it is easy to copy one of the model policies and be done with it, that will not tailor the policy to your agency's needs. The best way to use the model policies and this framework is as a guide – a starting point for choosing the components that fit your agency.³ We recommend this approach for two reasons: the process of assessing particular components for your agency will produce a vetted policy, and secondly, it will help determine how your agency will ultimately use the policy. This framework provides reference examples from a selection of local and national policies to get you started.

In drafting, consultation with stakeholders is critical. It will help you identify roles and expectations before the policy is used. Best practice supports consulting with these key stakeholders: union representatives regarding member due process considerations; the District Attorney regarding protocols for notification and criminal investigations; a non-profit DV victim advocate resource for victim assistance protocols; employment department for pre-hire screening standards; and, a mental health professional that specializes in working with law enforcement families for prevention and wellness services. Finally, any policy should be reviewed by your city attorney or county counsel's office before adoption to ensure that it meets legal standards.

¹ 95 police agencies and 25 sheriff's offices subscribe to Lexipol

² See, Hillsboro Police Department, Domestic Violence policy

³ See also, Washington State and Florida for similar guides that offer practical steps to develop a tailored agency policy. Florida: <http://training.familyvio.csw.fsu.edu/content/docs/FloridaModelPolicyonOfficerDV2010.pdf>
Washington: <http://www.atg.wa.gov/dv-involving-law-enforcement>

III. POLICY COMPONENTS

A. STATEMENT OF PURPOSE

Some policies provide a purpose statement to explain the reasoning behind the policy, while others forgo this section and elect a clear standalone policy statement, as outlined in section II of this document.

Best Practice: We recommend agency heads using this section as a place to make his/her “statement” about why the policy is important to their agency values, and whether the policy will apply to all agency employees or sworn only.⁴ The examples that follow represent two different approaches.

Example 1:

This policy serves to ensure that law enforcement officers, their family and household members receive the same level of protection from domestic violence as members of the general public. This policy will establish procedures for handling matters of domestic violence involving law enforcement officers, of any rank in any law enforcement agency. This policy also furthers the agency’s commitment to its officers to educate through all phases of the law enforcement career in order to increase stress resiliency and wellness through training. This policy also stands to encourage employees to seek assistance to address stress early to reduce conflict with family members, and increase the chances of career stability.⁵

Example 2:

Public confidence in our agency is important to maintain community trust and our ability to maintain public safety. This policy recognizes that some law enforcement officers may commit acts of domestic violence. Community trust is dependent upon uniform procedures that swiftly address such conduct and hold the officer accountable while recognizing his/her legal rights, and also the safety needs of the victim. Family and household members abused by law enforcement partners may be especially isolated and fearful of reporting abuse to authorities because reporting could result in the officer’s loss of employment. This policy seeks to encourage family and household members to step forward and end the abuse. When they do so, victims can be assured they will receive the same level of protection from domestic violence as members of the general public.

⁴ Oregon Accreditation Alliance, Standard 2.2.1 requires an OIDV policy to include both sworn and non-sworn personnel

⁵ Adapted from Washington State, Clark County Sheriff’s Office, *Personnel Involvement in Domestic Violence Incidents*, Ch. 1.40

Allegations will be thoroughly investigated, and the victim will be informed and supported by our agency throughout the investigation.⁶

B. POLICY STATEMENT

The policy statement should clearly set forth what standards will be followed when your agency receives an officer involved domestic violence complaint or information sufficient to trigger an administrative investigation, such as the issuance of a restraining order against an employee.⁷ The IACP model recommends that agency heads make a definitive statement that domestic violence will not be tolerated and uses the phrase “zero tolerance” to express that position. As a result, many policy statements lead with that phrase. Even so, one commentator states that while at first the meaning of the phrase seems clear, it can be confusing as applied because violence exists on a continuum – from a heated argument overheard by neighbors to an assault.⁸ In reality some instances will result in arrest and prosecution, while other conduct may fall short of probable cause and only support administrative sanctions. Still other conduct may indicate a referral to an Employee Assistance Program (EAP) as appropriate.

Best Practice: We recommend drafting a “zero tolerance” policy that addresses criminal conduct. Behavior that falls short of criminal conduct should be addressed through appropriate administrative sanctions taking into account the severity of the conduct, the safety of those involved, the willingness of the employee to undertake professional mental health assistance and the impact of that decision on the agency’s ability to maintain public accountability and trust.

Example 1:

This policy delineates a position of zero tolerance for domestic violence. Agency employees convicted of domestic violence or an allegation of domestic violence sustained through an administrative or criminal investigation will be subject to disciplinary action. It is also policy of this agency to promote the use of early prevention strategies to avoid or minimize the occurrence of domestic violence and its effects in the workplace. This agency will provide available support and assistance to members who are victims of

⁶ Adapted from, New Jersey Model Policy (<http://www.state.nj.us/lps/dcj/agguide/DV-Model-Policy-Final-12-11-09.pdf>); and IACP

(<http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/DomesticViolencebyPolicePolicy.pdf>)

⁷ See, Section V for policy re restraining orders

⁸ Wetendorf, *Developing Policy on Officer-Involved Domestic Violence* (eBook 2015), p.3

domestic violence. In all responses to domestic violence, this agency will respect the confidentiality and autonomy of the victim to the fullest extent permitted by law.⁹

Example 2:

Public confidence in law enforcement is important to our agency's ability to maintain public safety. The public expects law enforcement employees to be held to the same standards of the law as the general public when domestic violence occurs, and that our agency will respond swiftly, be accountable and transparent. To support those objectives, this policy takes a position of zero tolerance toward criminal conduct involving domestic violence.

Therefore the agency will:

- Promptly respond to allegations of domestic violence by an employee according to this policy and all applicable laws.
- Give primary consideration to protection of the victim of domestic violence and enforcement of the laws.
- Respect the due process rights of all employees, according to legal precedent and collective bargaining agreements.
- Expeditiously report and conduct thorough investigations into any allegation of employee involved domestic violence.
- Train employees and seek to educate their families about domestic violence and avenues for assistance.¹⁰

C. DEFINITIONS

Your agency will need to decide whether to define domestic violence in line with ORS 135.230, which states, "domestic violence means *abuse* between family or household members", or more broadly to encompass criminal conduct in addition to abuse. Additionally, some policies also define other terms such as probable cause, law enforcement agency, restraining order - among others. If you choose this style consider citing to ORS definitions without restating the language of the statute. That way if the statutory definition changes, you will not need to update your policy.

Best Practice: While Oregon law defines domestic violence as abuse, public policy supports a broader definition that would include criminal conduct of any type when the

⁹ Adapted from Benton County Sheriff's Office

¹⁰ Adapted from Washington State Model Policy

victim is a family or household member.¹¹ The examples that follow represent two different styles supporting the broader definition.

Example 1:

Domestic violence means conduct in violation of Oregon law committed against a *family or household* member as that term is defined in ORS 135.230, and also conduct including but not limited to:

- Assault
- Menacing
- Rape or Sexual Abuse
- Strangulation
- Harassment
- Stalking
- Unlawful Use of a Weapon
- Interfering with Making a Report
- Violation of a Restraining Order
- Violation of a Release Agreement involving Domestic Violence¹²

Example 2:

The terms “domestic violence” and “family or household member” have the same meaning as in ORS 135.230, except that domestic violence also includes any other conduct in violation of Oregon law in which the victim is a family or household member, and also conduct in violation of a Family Abuse Prevention Act restraining order.

D. EMPLOYEE RESPONSIBILITIES

Models generally stress the responsibility of each employee to self-report to a supervisor immediately after arrest or after being served with a restraining order.

Most also place an obligation on employees to report when a fellow employee is known to have engaged in domestic violence and some agencies extend that responsibility to knowledge of any law enforcement officer regardless of employing agency. Some policies provide for an exception to duty to self-report when the employee is a victim of domestic violence. Styles differ with respect to including general duties together with specific protocols for responding to an officer involved domestic violence incident. We have included them together.

¹¹ Whether you choose to define domestic violence narrowly or broadly – your agency will either be applying its officer involved DV policy or another policy that prohibits criminal conduct generally. Regardless of the type of crime or category of victim, a criminal conviction will result in DPSST decertification and agency termination.

¹² Adapted from Hillsboro Police Department, Domestic Violence Policy

1. General Duties:

The following are recommended best practices for this section:

- Individual responsibility to seek assistance
- Duty to self-report when employee is subject of DV investigation, arrest, or restraining order; exception for officer who is a DV victim
- Prohibition on solicitation of special privileges
- Duty to report knowledge of fellow officer involved in DV
- Prohibition on interfering with criminal or administrative investigation

Examples:

- a. Officers are required to take personal responsibility in seeking confidential referrals and assistance from resources to include Peer Support, Chaplaincy Services, EAP or other professional mental health resources to prevent behavior from escalating to the level of criminal conduct against a family or household member.¹³
- b. Officers who become a suspect in a domestic violence investigation or any investigation in which a family or household member is the victim, a respondent in a Family Abuse Prevention Act restraining order or other protective order, must immediately report the fact to his/her supervisor and provide a copy of court orders and notices of court dates, appearances and proceedings as they become available. The officer will fully cooperate with any investigation and will not engage in solicitation of privileges or special consideration from fellow law enforcement officers.¹⁴
- c. Officers who disclose that they have engaged in domestic violence may not be entitled to confidentiality and their disclosure could be regarded as an admission or report of a crime and will be investigated criminally and administratively.¹⁵
- d. Officers with knowledge of domestic violence committed by a fellow officer of any rank or agency will report such information in a timely manner to their supervisor. Failure to do so will subject the officer to disciplinary action.¹⁶

¹³ Adapted from IACP

¹⁴ Washington State

¹⁵ Lexipol

¹⁶ Subsections d-f are adapted from North Dakota Model Policy

<https://www.ag.nd.gov/BCI/NDModel2012DomesticViolencePolicy.pdf>

- e. Officers who engage in threatening, harassing, stalking, surveillance or other such behavior intending to interfere with criminal or administrative investigations against fellow officers, or themselves, will be subject to disciplinary action and possible criminal charges.
- f. Exception to Duty to Report for Officers who are Victims of Domestic Violence: This agency does not require an officer who is a victim of domestic violence to report even if the abuser is a law enforcement officer. However, officers in this situation are strongly encouraged to contact EAP or a domestic violence advocacy agency for support. Officers who are victims of domestic violence may choose not to cooperate in an investigation in which they are the alleged victim without being in violation of this policy.

2. Specific Duties Responding to OIDV and Service of Protective Orders

The following are recommended best practices for this section:

- Mandatory arrests will be made as required by law
- Prohibition on special consideration
- Immediate notification to supervisor when subject is a law enforcement officer or victim

Examples

- a. Privilege or special consideration shall not be given to other law enforcement employees that are suspects in a domestic violence investigation. In any situation where probable cause exists and mandatory arrest is required by law, agency employees shall make an arrest.
- b. When an agency employee responds to a domestic violence call and finds that the alleged offender or victim is an employee of a law enforcement agency, the responding officer will immediately notify his/her shift supervisor.
- c. When an agency employee applies for an ex parte emergency protective order on behalf of a victim and the respondent is a law enforcement officer, or when an officer is to serve or enforce the terms of a restraining order on a respondent law enforcement officer, that activity will be reported to a supervisor immediately.

E. AGENCY RESPONSIBILITIES

The Lexipol model combines both supervisor and agency responsibilities together, whereas IACP separates each. We include them together in this section. Both models address an agency's need to identify early warning signs before conduct escalates and provide training to supervisors on detection. The IACP stresses the importance of the agency providing officers and families with non-punitive avenues for assistance before criminal conduct occurs. Toward that end, agencies are advised to establish resources for officers and families to make confidential referrals to counseling services with expertise in assisting law enforcement families. To support the goal of early intervention and employee wellness, and when collective bargaining agreements allow, best practice supports agency heads having the discretion to order that an employee consult with an Employee Assistance Program or other mental health professional as indicated.¹⁷

The following are recommended best practices for this section:

- Discretion of agency-head with cause to order employee consult with EAP
- Employee training specific to DV dynamics, distress warning signs, state and federal laws
- Outreach to law enforcement family members regarding policy standards and wellness resources¹⁸

Examples:

- a. The agency will provide training to employees covering domestic violence dynamics, victim safety, responsibilities of supervisors and officers responding to officer involved domestic violence, employee warning signs and support resources, state and federal firearms prohibitions, and the agency's Officer Involved Domestic Violence policy.¹⁹
- b. When circumstances warrant, the agency head may order that an employee consult with EAP and participate in services as determined necessary by the consulting mental

¹⁷ Agency heads will likely need to obtain authority in their collective bargaining agreements to with cause order that an employee consult with EAP. Clackamas County Sheriff's Office, CBA has the following provision: *The Sheriff or designee may, with cause, order any employee to consult with EAP as necessary. The results of the consultation shall remain confidential except that the EAP will contact the Department of Employee Services, Integrated Disability Analyst to confirm the employee's consultation. The appointments will be paid on straight time.*

¹⁸ Lexipol OIDV policy requires annual DV training. To meet this standard and provide outreach to family members, Gold Beach Police Department partners each January with its women's shelter to provide policy training and invites spouses and partners to attend.

¹⁹ IACP recommended training areas

health professional. The results of the consultation shall remain confidential to the employee, except the employee must provide proof of consultation to his/her supervisor who shall maintain the confidentiality of the contact.²⁰

- c. At the point of hire and annually the agency will provide family and household members with information on the agency's Officer Involved Domestic Violence Policy, resources for assistance and prevention, and an agency point of contact for assistance.

F. INCIDENT RESPONSE PROTOCOLS

Incident response protocols may depend on agency size, location and resources. IACP recommends that a supervisor be called to the scene for any OIDV in order to defuse dynamics between the responding officer and the accused. Similarly, an on-scene response by a non-profit domestic violence advocate is recommended for victim support. We recognize that these recommendations will be dependent on resources available to the agency.

In outlining best practices, we follow the IACP model that categorizes an agency's response into three separate functions: agency, patrol and supervisor. Ultimately, agency resources will determine how best to allocate response protocols and personnel functions. We mention the use of a domestic violence risk assessment screen as a tool to evaluate an increased likelihood of future violence. The tool can assist the agency and the non-profit victim advocate resource in determining the victim's safety needs. While we believe it is best practice to employ a risk assessment screen at the scene, not all law enforcement agencies have the training to use the tool, or a non-profit DV victim advocate to aid in support of its use.²¹

1. Agency Response:

The following are recommended best practices for this section:

- A commitment to a prompt response and full investigation of all OIDV
- Supervisor response to the scene when possible
- Outside agency investigation if agency-head is the suspect or when agency believes an outside agency would better serve the investigative process
- All allegations of officer involved criminal activity documented in a report

²⁰ Agencies should contact their Employee Assistance Program to identify providers who have expertise with counseling law enforcement officers and their families

²¹ See appendix for DV Risk Assessment Screen example

- Confidentiality of location of victim and children maintained by personnel
- Notify District Attorney's Office of arrest

Examples:

- a. The agency will promptly respond to and fully investigate any allegation of domestic violence involving a law enforcement officer of this agency or any other, and document allegations in a report.
- b. In the event the agency head is the suspect, an outside agency will conduct the investigation.
- c. An incident of domestic violence in which the suspect or victim is a law enforcement officer requires a supervisor response to the scene when possible.²²
- d. All personnel shall ensure that confidentiality is maintained concerning the whereabouts of any domestic violence victim or children who have been moved to a shelter or other location for protection.
- e. The District Attorney's Office will be notified of an arrest by the agency head or his/her designee.

2. Patrol Response

The following are recommended best practices for this section:

- Request supervisor of higher rank than suspect officer respond to scene
- Safety of victim as primary concern
- Written report completed without delay
- Secure duty service weapons
- Determine if victim wants firearms removed from home
- Conduct DV risk assessment screen at the scene when available
- On-scene contact with DV advocate for victim assistance when available

²² IACP recommends that the responding supervisor be of at least a rank higher than the suspect officer

Examples:

- a. Upon arrival on the scene of a domestic violence call or incident involving a law enforcement officer, the primary patrol unit shall immediately request a supervisor of higher rank than the involved officer report to the scene when possible.
- b. Standard domestic violence response and investigation procedures will be followed in addition to those specifically required by this policy, whether the suspect officer is employed by this agency or another.
- c. Safety of the victim will be the primary concern and a domestic violence risk assessment screen should be completed when available.
- d. All service weapons of the accused officer shall be confiscated following arrest. An inquiry will be made to determine whether the victim requests any other firearms or specific weapons be removed for safekeeping and accommodate removal.
- e. All reports of possible criminal activity implicating law enforcement officers in domestic violence shall be documented in accordance with the policies governing the handling of reports of domestic violence involving civilians. Incident reports shall be prioritized and completed without delay.

3. Patrol Supervisor Response

The following are recommended best practices for this section:

- Notification to agency head through chain of command
- Notification to agency head employing suspect officer if not from same agency
- Ensure probable cause arrest or warrant
- Supervisor written report regardless of arrest
- Remove duty firearm, and other weapons at victim's request
- Ensure DV risk assessment screen is completed when available
- Coordinate victim assistance
- Act as the agency point of contact for the victim

Examples

- a. Whenever possible a patrol supervisor shall respond to the scene of any domestic violence incident involving a law enforcement employee regardless of employing jurisdiction. The patrol supervisor shall assume command of the scene and is

responsible for appropriate notification of the incident through the chain of command, coordination of the investigation and victim advocate resources.

- b. Where probable cause exists for a mandatory arrest, the patrol supervisor shall ensure the arrest is made of the suspect officer. If the suspect has left the scene the patrol supervisor will ensure that a good faith effort is made to locate and arrest, or if unable to locate, ensure that a warrant is sought.
- c. The patrol supervisor will write a report on all incidents, whether deemed criminal or not and route it through the chain of command. A copy of the report will be forwarded to the agency head through the chain of command. If the suspect officer is employed by another agency, a copy of the report will be sent to the employing agency head.
- d. The patrol supervisor shall ensure that duty firearms of the accused officer are confiscated following arrest and determine if the victim requests any other firearms or specific weapons be removed for safekeeping and accommodate removal.
- e. If a law enforcement employee from another agency is arrested, the patrol supervisor shall contact that agency as soon as practical and request authorization to seize the employee's duty weapon and agency identification or arrange for the employing agency to do so.

4. Victim Safety

On-Scene: Many agencies place the responsibility with the patrol supervisor to coordinate communication at the scene between the victim and the victim advocate when those resources are available. This function could also be managed by the responding patrol officer. Agencies are advised to consult with their local non-profit DV advocate resource to develop a written pamphlet detailing key information that can be provided to the victim at the scene.²³

Best Practice: the victim should receive the following information²⁴

- The availability of requesting an on-scene victim advocate if resources allow;
- An overview of the criminal investigation process;

²³ Oregon law provides that victim's statements made to a non-profit victim advocate – unrelated to government – are confidential. The ability to speak confidentially to a non-governmental victim advocate may encourage the victim to seek assistance. See, ORS 40.264.

²⁴ Adapted from IACP and Clackamas County Sheriff's Office OIV Policy

- The agency point of contact for information and assistance, and to obtain a copy of the report;
- If the suspect is a law enforcement employee of another agency, information that the employing agency will be notified of the domestic violence incident and sent a report;
- Procedure for obtaining an emergency protective order;
- Procedures for removing firearms from residence for safe keeping;
- Personal safety planning and the availability of transportation to a local shelter or other safe location;
- Community domestic violence resources;
- Potential for disclosure of records under Oregon public records laws.

Post-Incident: Many agencies designate a command staff member or the agency head to be the principal point of contact post-incident. This role is responsible for overseeing victim safety planning and communication throughout the progression of the criminal and administrative investigations. IACP advises that safety measures are especially important immediately following the report of an incident, and immediately preceding and following the implementation of sanctions against the officer. IACP also encourages agencies to consider issuing an agency administrative No-contact Order prohibiting the employee from contact with the victim to enhance safety.²⁵ While conditions of release or a restraining order will provide the same no-contact restrictions, administrative orders allow the agency to respond quickly to violations without waiting for a determination through the judicial process.

IV. POST INCIDENT INVESTIGATIONS

A. ADMINISTRATIVE INVESTIGATION

Consider conducting a separate parallel administrative investigation to the criminal investigation. Regardless, the administrative investigation should not interfere with the criminal investigation. The administrative investigation should be conducted by the agency's internal affairs unit or an investigator assigned to this function, unless the agency-head determines that an outside law enforcement agency will conduct the investigation. Before the administrative investigation begins, agencies may consider

²⁵ The authority to issue an administrative no-contact order derives from agency policy that directs the employee not to obstruct or hinder an investigation. See Appendix for No-contact Order example.

issuing an administrative No-contact Order, whereby any violation of the order will be additional and independent grounds for disciplinary action.

An agency must decide whether to place the accused employee on administrative leave pending investigation or otherwise limit police powers, to include relief of duty weapons,²⁶ or restriction on assignments.²⁷ In making this determination agency-heads should seek legal counsel and also confer with their District Attorney to understand how the decision may impact the accused employee as a witness. Many agencies require administrative leave following arrest, this is Lexipol's standard. We recommend this as best practice unless removing the employee would cause the agency extreme hardship. IACP advises that agency-heads consider the following factors in making an administrative leave decision: the level of danger an officer poses, the officer's history of compliance with departmental rules, history of aggressive behaviors, and existence of an alcohol or substance abuse problem. When policies or collective bargaining agreements allow, agency-heads may consider requiring that the employee consult with an Employee Assistance Program (EAP) or other mental health resource, during the pendency of the investigation to assist in employee support.²⁸ Prior to returning an employee to duty after administrative leave agency-heads should consult with legal counsel in order to determine whether a fit for duty examination will be required.²⁹

The following are recommended best practices for this section:

- Determine whether to have an outside agency conduct the investigation
- Consult with legal counsel to decide whether to place the employee on administrative leave and if not, what restrictions will be imposed pending the investigation
- Confer with the District Attorney regarding impact on the accused employee's capacity to be a witness pending the investigation
- Issue an administrative No-contact Order

²⁶ If the employee is arrested, the duty firearm should be removed at the scene. If that occurs, the agency will be deciding whether to restore and allow use in the event the employee remains on duty pending investigation. Best practice is to confer with legal counsel before restoring a duty weapon because of the increased liability risk.

²⁷ When limited or restricted duty is imposed, best practice recommends placing the employee in a non-safety sensitive position pending the outcome of the investigation.

²⁸ See footnote 17

²⁹ Fit for Duty Examinations (FFDE) are indicated when, (1) there is objective evidence that the employee may be unable to safely and effectively perform his/her duties, and (2) a reasonable basis exists for believing the cause may be attributable to a psychological condition or impairment. Best practice recommends waiting until the administrative investigation is complete so that the examiner may consider information from the investigation. The FFDE should be conducted in the time period immediately prior to return to duty in order to evaluate fitness as close as possible to reinstatement. An FFDE should be considered when termination will not be imposed, and the agency head has determined the employee will return to duty pending a successful FFDE.

- Order consultation with EAP
- Evaluate fit for duty examination prior to return to duty

Examples:

- a. The agency will observe appropriate policies and procedures applicable to administrative investigations of alleged misconduct regardless of whether an arrest is made. The agency will respect the rights of the accused employee under the collective bargaining agreement and all laws.³⁰
- b. As determined by the agency-head an outside agency may be assigned the administrative investigation.
- c. Where sufficient evidence exists, the agency may take immediate disciplinary action against the accused officer.
- d. At the discretion of the agency-head administrative leave or conditional assignment may be ordered to include reassignment of duties, restrictions on law enforcement powers, use of duty weapons, building and records access and issuance of an administrative no-contact order.
- e. Agency employees may be ordered to consult with EAP as a condition of assignment pending investigation and separately, undergo a fitness for duty evaluation prior to return to duty.³¹

B. CRIMINAL INVESTIGATION

Discretion lies with the agency-head to determine whether an internal investigation or the use of an outside agency would better serve the investigative process. Regardless, best practice recommends that an investigator have expertise in domestic violence investigations. Smaller agencies with limited resources may consider cooperation agreements with other agencies to specially cross-train officers to conduct OIDV investigations regionally. Agencies should keep their District Attorney's office apprised throughout the investigation. The completed investigation should be sent to the District Attorney's office for a charging decision even when the agency believes that evidence falls short of criminal conduct or the victim recants.

³⁰ Sections a-c, adapted from Washington State Model Policy

³¹ Adapted from Clackamas County Sheriff's Office OIDV policy

The following are recommended best practices for this section:

- For smaller agencies, determine in advance if the agency has the capacity to investigate an OVID investigation; predetermine what outside agency may be available to conduct the investigation
- Work closely with the District Attorneys' Office throughout the investigation
- Submit the completed investigation to the DA's Office regardless of the sufficiency of the evidence or victim cooperation

Examples:

- a. Responsibility to complete a criminal investigation shall rest with the agency unless the agency-head determines that an outside law enforcement agency will conduct the criminal investigation.
- b. The agency will completely investigate the charges and present all information to the District Attorney for determination even in cases where the victim is uncooperative or evidence does not substantiate criminal conduct occurred.
- c. Any officer convicted of a domestic violence crime will be terminated from the agency.

V. SPECIAL CONSIDERATIONS - RESTRAINING ORDERS & POSSESSION OF DUTY FIREARMS

Family Abuse Prevention Act restraining orders are only issued upon court findings that the petitioner is in imminent danger of further abuse and that the respondent is a threat to the physical safety of the victim or children. The judicial findings will be sufficient to trigger an agency administrative investigation into possible policy violations and in most instances, a collateral criminal investigation will be underway stemming from the conduct alleged in the restraining order.

With the passage of SB 525 in 2015, a FAPA restraining order, now by operation of law, prohibits the respondent-employee from possessing firearms and ammunition except for those firearms *issued* by the agency and *used while on duty*.³² Agencies are advised to consult with legal counsel

³² The exception for possession of duty firearms is codified in, ORS 166.255 (2). Some agencies however do not issue duty-firearms, personnel purchase their own. In those instances, the exception in ORS 166.255 will not apply. The inability to possess a firearm for the 1 -2 year term of the restraining order will not allow the employee

in each instance to individually assess whether to place the employee on administrative leave or limited-duty, and whether to permit continued possession of agency issued firearms.³³ Employees should be required to promptly provide a copy of the restraining order to his/her supervisor and keep the agency apprised of court dates and findings. Following service of the restraining order, the respondent-employee will have 30 days to contest the restraining order before it becomes a final order. Before that occurs, it is reasonable to ask the employee to appear before the court and have the court make a specific finding that the employee is authorized to possess his/her duty weapon while on duty subject to agency approval, before the agency will make that determination. While ORS 166.255 permits possession of a duty firearm, the court's finding may assist the agency in evaluating liability risk before making a determination to allow the exception.³⁴

The following are recommended best practices for this section in addition to those identified under Administrative Investigations:

- Consult with legal counsel to determine whether to place the employee on administrative leave and if not, what duty restrictions should be imposed pending administrative investigation
- Employee to provide notice of court dates and court orders to his/her supervisor and obey all orders of the court
- Employee to immediately upon service of a restraining order notify his/her supervisor, and allow removal of all agency-issued firearms
- Ask the employee to request that the court make a finding in the restraining order that the employee is authorized to possess a firearm issued by the agency while on duty subject to agency approval

Examples:

- a. Any employee that becomes a respondent in a restraining order is required to immediately make a report to their supervisor and provide notice of court dates, appearances, results of any proceedings, and obey all orders of the court. The supervisor will notify the agency-head through the chain of command.

to fulfill the duties of a law enforcement officer and will be agency grounds for termination or layoff as provided in the agency's CBA.

³³ See footnote 29 for considerations regarding Fit for Duty Examination

³⁴ Lexipol policy specifically prohibits an officer from possessing a firearm on or off-duty, upon the issuance of a restraining order that prohibits firearm possession. And it requires the officer to remove firearms from his/her residence and all other locations. It also requires the officer to be put on admin leave, or assigned to a position involving no contact with the public or access to firearms. (See Lexipol, 1052.3.3)

- b. Any sworn employee who learns that he/she is the subject of a restraining order that prohibits the possession of firearms and ammunition shall immediately ensure that all agency-issued firearms and ammunition are removed by a supervisor and safely secured.
- c. The agency head will make a determination regarding what accommodation, if any, the agency will make for a restraining order firearm possession prohibition. The agency may require that the employee participate in a fit for duty evaluation prior to approving the possession of duty firearms and ammunition.³⁵

VI. HIRING STANDARDS

The IACP includes hiring standards in its OIDV policy that require screening for domestic violence in pre-hire interviews and background checks and post-conditional offer psychological examinations.³⁶ Most agencies already have clearly defined hiring standards set forth in their employment policies that include background checks and psychological examinations. Whether you restate the agency's hiring standards in the OIDV policy or in your employment policy, IACP recommends the following best practices:

- Candidates asked in the background process if they have ever been criminally investigated, arrested or convicted of domestic violence, elder abuse, child abuse, animal abuse, dating violence, stalking or sexual assault-related incidents, or a respondent in a protective order for any reason
- Determine whether background information suggests the candidate may have a history that indicates a pattern of violence
- Psychological examinations should address indicators of abusive tendencies

Examples:³⁷

- a. Pre-hire background investigations will be used to determine whether an applicant has a history of domestic violence or whether an applicant has been the respondent in a petition for a protective order or similar injunction in any state related to domestic

³⁵ Adapted from Benton County Sheriff's Office General Order, 17. Member-involved Domestic Violence

³⁶ Lexipol does not include hiring standards in its OIDV policy

³⁷ Adapted from IACP

violence, elder abuse, child abuse, animal abuse, dating violence, stalking or sexual assault-related incidents

- b. Psychological screening of all viable candidates for employment will include screening for abusive tendencies
- c. Candidates for employment shall be informed of the agency's position of zero tolerance and are required to verify that they have reviewed this domestic violence policy.



END.

Appendix

| | |
|---|-----------|
| Domestic Violence Lethality Screen for First Responders..... | 24 |
| Domestic Violence Supplemental Report..... | 25 |
| No-Contact Administrative Order..... | 26 |

CWS Hotline: 503-654-2288

Records: Fax this form to CWS at 503-722-8059

| | | |
|---|--|---|
|  | CLACKAMAS COUNTY SHERIFF 2223 Kaen Road Oregon City, OR 97045 503-785-5000 |  |
| DOMESTIC VIOLENCE LETHALITY SCREEN for FIRST RESPONDERS | | |

| | | | |
|---|----------|------|------------|
| Reporting Officer(s) | DPSSST | Date | Incident # |
| Victim | Offender | | |
| <input type="checkbox"/> Check here if victim did not answer ANY of the questions | | | |

| A positive response to any of questions 1 – 3 automatically triggers the protocol referral. | Yes | No | Not answered |
|---|--------------------------|--------------------------|--------------------------|
| 1. Has he/she ever used a weapon against you or threatened you with a weapon? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has he/she threatened to kill you or your children? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do you think he/she might try to kill you? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

| Negative responses to questions 1 – 3 but positive responses to at least four of questions 4 – 11 automatically trigger the protocol referral. | | | |
|--|------------------------------|-----------------------------|---------------------------------------|
| 4. Does he/she have a gun or can he/she get one easily? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Not answered <input type="checkbox"/> |
| 5. Has he/she ever tried to choke you? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is he/she violently or constantly jealous or does he/she control most of your daily activities? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you left him/her or separated after living together or being married? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is he/she unemployed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Has he/she ever tried to kill himself/herself? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Do you have a child that he/she knows is not his/hers? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Does he/she follow or spy on you or leave threatening messages? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

| A deputy may trigger the protocol referral, if not already triggered above, as a result of the victim's responses to the questions below, or whenever the deputy believes the victim is in a potentially lethal situation. | | | |
|---|------------------------------|-----------------------------|--|
| Is there anything else that worries you about your safety? | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| Describe what worries you <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> | | | |

| | | | |
|--|------------------------------|-----------------------------|--|
| CHECK ONE: <input type="checkbox"/> VICTIM SCREENED IN ACCORDING TO THE PROTOCOL <input type="checkbox"/> VICTIM SCREENED IN BASED ON THE BELIEF OF THE DEPUTY <input type="checkbox"/> VICTIM DID NOT SCREEN IN | | | |
| If the victim screened in, and after receiving advisement of a high risk assessment, did the victim speak with the hotline counselor? | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |

Note: The questions above and the criteria for determining the level of risk a person faces are based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors influencing risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not expect to be killed, these victims face much higher risk than that of other victims of intimate partner violence.

| |
|---|
| Submit Lethality Screen with Incident Report to Records. |
|---|

CCP-SF207 (9/11)

| | | | | | |
|--|----------------------------------|---|---|----------------------------------|--|
| Classification <input type="checkbox"/> Criminal <input type="checkbox"/> Non-criminal <input type="checkbox"/> Information | | CLACKAMAS COUNTY SHERIFF 2223 Kaen Rd., Oregon City, OR 97045 503-785-5000 | | Incident No.: Connecting #'s: | |
| Domestic Violence Supplemental Report | | | | | |
| ORIGINAL REPORT | | THIS REPORT | | LOCATION OF OCCURRENCE | |
| THIS REPORT MUST BE ACCOMPANIED BY AN INCIDENT REPORT | | | | | |
| Victim | NAME | | | DOB | SEX RACE |
| | VICTIM PHONE NUMBER | | EMERGENCY CONTACT PERSON FOR VICTIM (Name/phone of person who will be able to contact the victim) | | |
| Suspect | NAME | | | DOB | SEX RACE |
| | | | | | |
| LIST ALL CHILDREN UNDER CARE/CUSTODY/GUARDIANSHIP OF PERSONS INVOLVED, WHETHER PRESENT AT SCENE OR NOT. SHOW ADDITIONAL CHILDREN AND DETAILS ON INCIDENT REPORT. CHECK ALL BOXES THAT APPLY. | | | | | |
| CHILD'S NAME | <input type="checkbox"/> Present | <input type="checkbox"/> Witnessed | <input type="checkbox"/> Not Present | DOB | SEX RACE INTERVIEWED? <input type="checkbox"/> WELFARE CHECK? <input type="checkbox"/> PROT. CUSTODY? <input type="checkbox"/> |
| CHILD'S NAME | <input type="checkbox"/> Present | <input type="checkbox"/> Witnessed | <input type="checkbox"/> Not Present | DOB | SEX RACE INTERVIEWED? <input type="checkbox"/> WELFARE CHECK? <input type="checkbox"/> PROT. CUSTODY? <input type="checkbox"/> |
| CHILD'S NAME | <input type="checkbox"/> Present | <input type="checkbox"/> Witnessed | <input type="checkbox"/> Not Present | DOB | SEX RACE INTERVIEWED? <input type="checkbox"/> WELFARE CHECK? <input type="checkbox"/> PROT. CUSTODY? <input type="checkbox"/> |
| CHILD'S NAME | <input type="checkbox"/> Present | <input type="checkbox"/> Witnessed | <input type="checkbox"/> Not Present | DOB | SEX RACE INTERVIEWED? <input type="checkbox"/> WELFARE CHECK? <input type="checkbox"/> PROT. CUSTODY? <input type="checkbox"/> |
| CHILD'S NAME | <input type="checkbox"/> Present | <input type="checkbox"/> Witnessed | <input type="checkbox"/> Not Present | DOB | SEX RACE INTERVIEWED? <input type="checkbox"/> WELFARE CHECK? <input type="checkbox"/> PROT. CUSTODY? <input type="checkbox"/> |
| CHILD'S NAME | <input type="checkbox"/> Present | <input type="checkbox"/> Witnessed | <input type="checkbox"/> Not Present | DOB | SEX RACE INTERVIEWED? <input type="checkbox"/> WELFARE CHECK? <input type="checkbox"/> PROT. CUSTODY? <input type="checkbox"/> |

| VICTIM MARK ALL THAT APPLY | SUSPECT MARK ALL THAT APPLY | RELATIONSHIP BETWEEN VICTIM & SUSPECT MARK ALL THAT APPLY |
|---|--|---|
| <input type="checkbox"/> Abrasion <input type="checkbox"/> Fracture <input type="checkbox"/> Afraid <input type="checkbox"/> Hysterical <input type="checkbox"/> Angry <input type="checkbox"/> Irrational <input type="checkbox"/> Apologetic <input type="checkbox"/> Laceration <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Minor cut <input type="checkbox"/> Calm <input type="checkbox"/> Nervous <input type="checkbox"/> Complain of pain <input type="checkbox"/> Threatening <input type="checkbox"/> Concussion <input type="checkbox"/> Other - explain <input type="checkbox"/> Crying <input type="checkbox"/> Fearful | <input type="checkbox"/> Abrasion <input type="checkbox"/> Fracture <input type="checkbox"/> Afraid <input type="checkbox"/> Hysterical <input type="checkbox"/> Angry <input type="checkbox"/> Irrational <input type="checkbox"/> Apologetic <input type="checkbox"/> Laceration <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Minor cut <input type="checkbox"/> Calm <input type="checkbox"/> Nervous <input type="checkbox"/> Complain of pain <input type="checkbox"/> Threatening <input type="checkbox"/> Concussion <input type="checkbox"/> Other -- explain <input type="checkbox"/> Crying <input type="checkbox"/> Fearful | <input type="checkbox"/> Cohabitants <input type="checkbox"/> Prior history of DV? <input type="checkbox"/> Former cohabitants <input type="checkbox"/> Spouse <input type="checkbox"/> Prior history of DV reported to police? <input type="checkbox"/> Former spouse <input type="checkbox"/> Parent of child from relationship <input type="checkbox"/> Related by blood or marriage <input type="checkbox"/> Same sex <input type="checkbox"/> Sexual relationship |

| SUSPECT'S ACTIONS (MARK ALL THAT APPLY) | | | |
|---|--|--|---|
| <input type="checkbox"/> Attempt to suffocate | <input type="checkbox"/> Forced sexual contact | <input type="checkbox"/> Phone call | <input type="checkbox"/> Threw object |
| <input type="checkbox"/> Banged head | <input type="checkbox"/> Grabbed arm / face | <input type="checkbox"/> Pulled hair | <input type="checkbox"/> Threw to the ground |
| <input type="checkbox"/> Bit | <input type="checkbox"/> Hit with closed fist | <input type="checkbox"/> Pushed / Shoved | <input type="checkbox"/> Unauthorized contact |
| <input type="checkbox"/> Choked / Strangled | <input type="checkbox"/> Hit with object | <input type="checkbox"/> Scratched | <input type="checkbox"/> Verbally abusive |
| <input type="checkbox"/> Disabled phone | <input type="checkbox"/> Kicked | <input type="checkbox"/> Slapped with hand | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Fled scene / UTL | <input type="checkbox"/> Kicked in door | <input type="checkbox"/> Threatened / Used weapons | |

| DESCRIBE ALL EVIDENCE | MEDICAL TREATMENT |
|--|---|
| Photos of scene? <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> None |
| Photos of victim's injuries? <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Refused medical aid |
| Photos of suspect's injuries or lack of injuries? <input type="checkbox"/> Yes <input type="checkbox"/> No | If victim is seeking medical treatment, request a signed medical release, and attach it to this report. |
| Weapon used during incident? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Type of weapon used: | |
| Weapon(s) seized? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Firearm(s) in the home? <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Paramedics |
| Drugs / Alcohol involved? <input type="checkbox"/> Yes <input type="checkbox"/> No | - Unit Number: |
| | - Name(s)/ID #'s: |
| | <input type="checkbox"/> Hospital taken to: |
| | - Physician attending: |
| | <input type="checkbox"/> Will seek own doctor, hospital or clinic: |

| | | | |
|-------------------|---------|--------|-------------|
| REPORTING OFFICER | DPSST # | AGENCY | APPROVED BY |
|-------------------|---------|--------|-------------|

DVSupp SR#12051 2016
CCP-SF95 (Rev. 3/16)

ADMINISTRATIVE NO-CONTACT ORDER

To:

Re: Agency Administrative No-Contact Order – **Effective Immediately**

Date:

Victim: (Name of Individual that is the subject of the no-contact order)

You are the subject of a personnel complaint relating to your alleged unlawful misconduct that occurred on or about (date of alleged incident). An administrative investigation into this allegation is being conducted. *You are ordered to immediately refrain from any contact, conversation or communication of any sort, written or oral with victim noted above.*

You are further ordered to follow all terms and conditions of any restraining order or other protective order issued by the court against you. Should you find yourself in a situation or location which subjects you to a violation of this order, you are required to immediately notify your supervisor.

You are also prohibited from any indirect attempt to communicate with the victim through third parties unless you are utilizing legal representation.

This order shall remain in effect until rescinded in writing by this agency. Violation of the terms of this order shall result in disciplinary action that may result in your termination.