

## NIAGARA FALLS POLICE DEPARTMENT

### GENERAL ORDER

EFFECTIVE DATE: 10/09/2013	SUBJECT:  <b>Domestic Violence Policy; Officer Involvement</b>	Number 315.10 (NYSLEAP O-44-1)
RESCINDS: 08/19/2011		Number of pages 16

#### I. Purpose:

- A. The policy recognizes that the profession of law enforcement is not immune from members committing domestic violence against their partners. The purpose of this policy is to establish procedures for handling acts of domestic violence committed by police officers and for implementing prevention strategies. This policy will provide police commanders, supervisors, officers and all Niagara Falls Police Department members guidance in addressing incidents where one (or more) party to a domestic violence incident is an employee, whether sworn or civilian, of any rank in the NFPD.
- B. This policy also covers domestic violence incidents involving law enforcement officers employed by outside jurisdictions.

#### II. Policy:

- A. This policy offers a comprehensive, pro-active approach to domestic violence by police department employees with an emphasis on victim safety. It delineates a position of zero tolerance by the department. It is imperative to the integrity of the profession of policing and the sense of trust communities have in the Niagara Falls Police Department that leaders, through the adoption of clear policies, make a definitive statement that domestic violence will not be tolerated.
- B. Also, federal law prohibits police officers convicted of qualifying misdemeanor domestic violence crimes from possessing firearms.
- C. Officers found guilty of a qualifying domestic violence crime through criminal proceedings shall be terminated.

#### III. Definitions:

- A. Domestic Violence

1. For the purposes of this policy “domestic violence” refers to an act or pattern of violence perpetrated by a law enforcement officer upon his or her intimate partner not done in defense of self or others, including but not limited to the following:

- a. Bodily injury or threat of same
- b. Sexual assault
- c. Physical restraint
- d. Property crime directed at the victim
- e. Stalking
- f. Violation of a court order of protection or similar injunction
- g. Death threats or death

B. Intimate Partner

1. An “intimate partner” of a law enforcement officer is any person who meets one or more of the following criteria:
  - a. Is or was legally married to the member;
  - b. Has a child in common with the member;
  - c. Has or had a dating relationship with the member;
  - d. Is specified as an intimate partner according to New York State Law;
  - e. Is cohabitating or has cohabitated romantically with the member.

C. Protection Order

1. A “Protection Order” refers to any injunction or other order issued by a court, including criminal or civil orders of protection, regardless of form, content, length, layout, or name (such as stay away, restraining, criminal, and emergency or temporary protection orders or injunctions), issued for the purpose of preventing the following:
  - a. Violent or threatening acts against another person;
  - b. Stalking or harassment of another person;
  - c. Contact or communication with another person;
  - d. Physical proximity to another person

D. Qualifying misdemeanor:

1. A “qualifying” misdemeanor crime of domestic violence must include:
  - a. A state or federal misdemeanor crime that has an element of use or attempted use of physical force or threatened use of a deadly weapon.
  - b. Right to counsel or knowing an intelligent waiver;
  - c. Applies to convictions occurring prior to and after September 30, 1996

- d. Excludes convictions that have been expunged, set aside, or person has been pardoned or has had his/her civil rights restored.

#### IV. Procedures:

While prioritizing the safety of victims, this policy is designed to address prevention through hiring and training practices, provide direction to supervisors for intervention when warning signs of domestic violence are evident, institutionalize a structured response to reported incidents of domestic violence involving department members, and offer direction for conducting the subsequent administrative and criminal investigations. Components of the policy include:

- Prevention and Training,
- Early Warning and Intervention,
- Incident Response Protocols,
- Victim Safety and Protection and
- Post-Incident Administrative and Criminal Decisions.

##### A. Prevention and Training:

1. The Niagara Falls Police Department will adhere to a zero-tolerance policy towards police officer and department member domestic violence and will not tolerate violations of the policy. The department will provide ongoing training to every member on domestic violence and the zero-tolerance policy throughout all phases of the member's career.

##### a. Prevention Through Collaboration

1. Through ongoing partnerships with local victim advocacy organizations the department has developed domestic violence curricula and trained officers in order to enhance the officers'/agency's response to victims.
2. The department shall provide local domestic violence advocacy organizations copies of all domestic violence criteria, protocols and policies for review and possible revision.

##### b. Training Topics

1. Upon implementation of this policy, all officers shall receive comprehensive mandatory instruction covering the following topics:
  - a. Understanding Domestic Violence
  - b. Departmental Domestic Violence/Response Protocol
  - c. Warning Signs of Domestic Violence by Officers

- d. Victim Safety
    - e. Federal Domestic Violence Laws
  - c. Ongoing Training
    - 1. The Niagara Falls Police Department shall use a variety of training techniques including in-service, roll call, FTO and training bulletins to regularly reinforce standards of effective response protocol.
- B. Early Warning and Intervention
  - 1. Pre-Hire Screening and Investigation
    - a. The Niagara Falls Police Department will conduct thorough background investigations of all potential new employees using address history, driver's record and protection order databases.
    - b. All candidates shall be asked if they have engaged in or been investigated for domestic violence and asked about any past arrests, suspended sentences, diversion programs, convictions, and protection orders related to elder abuse, child abuse, sexual assault, stalking or domestic violence.
    - c. Those candidates with a history of perpetrating violence (to include: elder abuse, child abuse, sexual assault, stalking or domestic violence) should be screened out at this point in the hiring process.
    - d. Candidates will be clearly informed of the department's position of zero tolerance concerning domestic violence by officers.
  - 2. Post Conditional Offer of Employment
    - a. The psychological screening of all viable candidates will focus on indicator of abusive tendencies indicative of abusive behavior.
  - 3. Department Responsibilities
    - a. The Niagara Falls Police Department will develop cross-jurisdictional MOU's to ensure timely notification of an incident involving a member.
    - b. The Department will, either in response to observed warning signs or at the request of a member, intimate partner, or other family member, provide non-punitive avenues of assistance before an act of domestic violence occurs.

- c. The Department will inform members of the procedure for seeking confidential referrals, either internally or externally, to confidential counseling services.
- 4. Supervisor Responsibilities:
  - a. Supervisors will be cognizant of and document any pattern of abusive behavior potentially indicative of domestic violence including but not limited to the following:
    - 1. Aggressiveness
      - a. Excessive and/or increased use of force on the job
      - b. Stalking and inappropriate surveillance activities
      - c. Unusually high incidences of physical altercations and verbal disputes
      - d. Citizen and fellow member complaints of unwarranted aggression and verbal abuse
      - e. Off –Duty member injuries
    - 2. Domestic violence related issues
      - a. Monitoring and controlling any family member or intimate partner through such means as excessive phone calling.
      - b. Stalking any intimate partner or family member.
    - 3. Deteriorating work performance
      - a. Tardiness
      - b. Excessive absences
      - c. Alcohol and drug abuse
  - b. When the supervisor notes a pattern of problematic behavior (as detailed above) the supervisor will:
    - 1. Address the behaviors during evaluations or other contact with the member and document those contacts.

2. Forward written reports capturing the behaviors to the Superintendent through the chain of command in a timely manner.
  3. When warranted, request the Superintendent order a member to seek assistance from a certified program for batterers, and if such a program is not available, a counselor knowledgeable about domestic violence.
5. NFPD Member Responsibilities:
- a. Members are encouraged to take personal responsibility in seeking confidential referrals and assistance from the department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.
  - b. Members who engage in the following actions will be subject to severe discipline up to and including dismissal:
    1. Failure to cooperate with the investigation of a member's domestic violence case (except in the case where that member is the victim).
    2. Failure to report knowledge of abuse or violence involving a fellow member.
    3. Interference with cases involving themselves or fellow members.
    4. Intimidation/coercion of witnesses or victims (i.e., surveillance, harassment, stalking, threatening, or falsely reporting)
  - c. Members who learn they are the subject of a criminal investigation, regardless of jurisdiction, are required to immediately make a report to their supervisors and provide notice to the court dates, times, appearances and proceedings. Failure to do so may result in severe discipline up to and including dismissal.
  - d. Members who learn they are the subject of any protective order proceeding, whether or not the order is issued and regardless of jurisdiction, shall immediately notify their supervisor and provide a copy of the order, if issued. If subject to a qualifying protection order, the member shall surrender all firearms. Failure to do so may result in severe discipline up to and including dismissal.

C. Incident Response Protocols:

1. Department-wide Response:
  - a. The Niagara Falls Police Department will accept, document, and preserve all calls or reports, including those made anonymously, regarding domestic violence as on-the-record information.
  - b. All reports of possible criminal activity implicating members in domestic violence shall be documented in accordance with the policies governing the handling of reports of domestic violence involving non-department members.
  - c. The on-scene supervisor shall forward a copy of the report alleging domestic violence by the member to the Superintendent through the chain of command.
  - d. All such incident reports shall be made available by the department to the victim without cost.
2. Communications Response:
  - a. Communications officers/dispatchers will be instructed to assign a high priority to all domestic violence calls, including those that involve or appear to involve a member of any police department.
  - b. Communications officers/dispatchers shall immediately notify the supervisor on duty of any domestic violence call received that involves, or appears to involve, a police officer, regardless of the involved officer's jurisdiction.
  - c. Communications shall prepare and preserve documentation of the facts and circumstances of the call, including the 911 recording, for use in potential administrative or criminal investigations.
  - d. Communications officers/dispatchers shall have available current contact information of local domestic violence victim advocacy organizations for on-scene supervisors to provide to victims.
3. Patrol Response:
  - a. Upon arrival at the scene of a domestic violence call or incident involving a police officer, the primary patrol unit shall immediately notify dispatch and request a supervisor of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.

- b. The responding officers shall perform the following actions:
  - 1. Obtain needed medical assistance
  - 2. Address the immediate safety of all parties involved
  - 3. Secure the scene and preserve evidence
  - 4. Note all excited utterances, admissions and/or incriminating statements
  - 5. Make an arrest if probable cause exists.
- 4. On-Scene Supervisor Response:
  - a. A supervisor of higher rank shall report to the scene of all police officer domestic violence incidents, regardless of the involved officer's jurisdiction.
  - b. The on-scene supervisor shall assume command and ensure that the crime scene is secured and that all evidence is collected. Photographic documentation of the parties involved and scene shall be recorded where such resources are available.
  - c. The supervisor shall inquire as to the safety of all children present at the time of the incident and all children in the household. As appropriate and necessary, the children should be interviewed separately from other parties.
  - d. In cases where probable cause exists, the on-scene supervisor shall ensure an arrest is made.
  - e. If the alleged offender has left the scene and probable cause exists, the supervisor shall perform the following actions.
    - 1. Notify the Administrative Captain
    - 2. Exhaust all reasonable means to locate the alleged offender
    - 3. Ensure that domestic violence paperwork is completed.
  - f. In the event that the victim has left the scene, the supervisor shall make every effort to follow through on the investigation and attempt to locate the victim.
  - g. Arrest of both parties in a domestic violence incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the dominant aggressor is made in accordance with New York State Law.



- h. Whenever an officer is arrested, the supervisor shall relieve the accused officer of all service weapons regardless of whether the officer is a member of the Niagara Falls Police Department.
  - i. All other weapons owned or at the disposal of the accused officer shall also be seized for safety reasons.
  - j. The supervisor shall inquire whether the victim wants any firearms removed from the home for safekeeping by the Department and make arrangements as necessary.
  - k. The on-scene supervisor shall ensure the victim is informed of the following:
    - 1. The judicial process and victim rights
    - 2. The department's policy on employee domestic violence, procedures and cross-jurisdictional responsibilities as they apply.
    - 3. The standard of probable cause for arrest
    - 4. Procedures for obtaining protective orders
    - 5. Domestic violence victim services
    - 6. The option to remove firearms for safekeeping
  - l. Whenever an NFPD member involved domestic violence call does not result in an arrest or a warrant is not sought, the on-scene supervisor shall explain in a written report.
  - m. The on-scene supervisor shall notify the Superintendent and the accused officer's Commander as soon as possible. In the event that the officer is from another jurisdiction, the supervisor shall ensure the accused member's Chief is notified. All notifications, and attempts to notify, shall be fully documented.
5. Additional Critical Considerations:
- a. When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers, investigators and supervisors shall follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from the Niagara Falls Police Department.
  - b. In the event that the reported incident involves the Superintendent of Police, the Shift/Division Commander shall immediately notify the Niagara County District Attorney and the City Administrator.

- c. In responding to domestic violence incidents where the victim is a police department member, standard domestic violence response and investigation procedures should be followed.
  - d. In responding to incidents where both parties involved are police department members, standard domestic violence response and investigation procedures should be followed. After probable cause and dominant aggressor are determined, an arrest should be made and all service weapons of any accused officer or member confiscated.
6. Department Follow-Up:
- a. In a timely manner, the Superintendent shall ensure that all officers who responded to a police officer domestic violence call are debriefed. The debriefing shall include the following:
    - 1. A review of Department confidentiality guidelines
    - 2. A direct order prohibiting discussion of the incident outside the official inquiry.
    - 3. A clear delineation of assignments
  - b. Follow-up investigators shall proactively seek out information on existing protective orders and, if found, shall enforce them and any applicable New York State Laws and determine whether the officer violated department policy by failing to report the protective order.
  - c. Arrest warrants charging police officers with domestic violence and protective orders issued at a later time shall be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, they shall be seized including the service weapon.
  - d. In the event the protection order expires or the victim asks that it be discontinued, the department shall still conduct a thorough administrative investigation.
  - e. Following the reported incident, the Office of Professional Standards in conjunction with the Domestic Violence Office shall:
    - 1. Conduct a danger assessment of the accused officer to determine the potential for further violence and inform the victim of the possibility of danger regardless of the outcome of the assessment.

2. Act as a principal point of contact to keep the victim apprised of all developments.
3. Report the findings of the danger assessment to the Superintendent who will make decisions concerning appropriate sanctions, administrative actions, and referrals for the accused officer.

D. Victim Safety and Protection:

1. The Office of Professional Standards shall inform the victim of confidentiality policies and their limitations and ensure that confidentiality is maintained throughout the case.

E. Post Incident Administrative and Criminal Decisions:

1. The Niagara Falls Police Department will conduct parallel separate administrative and criminal investigations of alleged incidents of member involved domestic violence in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case, the department shall uphold all administrative decisions. If the facts of the case indicate that domestic violence has occurred or any department policies have been violated, administrative action shall be taken independent of any criminal proceedings as soon as practicable.
2. The Department will adhere to and observe all necessary protocols to ensure an accused member's departmental, contractual, union and legal rights are upheld during the administrative and criminal investigations.

a. Administrative Investigations and Decisions:

1. The responsibility to complete the administrative investigation of a member involved domestic violence incident shall rest with the Office of Professional Standards. The Superintendent may ask an outside law enforcement agency to conduct the criminal investigation.
  - i. Regardless of whether an arrest was made on scene, the Office of Professional Standards shall conduct an independent, comprehensive administrative investigation using standard elements of criminal investigations. Victims and witnesses shall be re-interviewed and their statements recorded; crime scene evidence, photographs and medical records accessed; and 911 tapes requested.

- ii. Where sufficient information/evidence exists, the Department shall take immediate administrative action against the accused member that may include removal of badge and service weapons, reassignment, sanctions, suspension or a termination hearing (Article 75).
- iii. When an investigation of an incident uncovers members who had knowledge of violence on the part of another member but failed to notify the department or engaged in actions intended to interfere with the investigation, the department shall investigate those members and take disciplinary action as warranted.
- iv. The Superintendent shall determine whether and when the accused member should be issued an administrative order of protection.
- v. If administrative policies and/or administrative orders of protection are violated or sufficient concern exists regarding a violation, the Department shall initiate an independent administrative investigation, seize firearms as allowed under department policy as soon as practicable, and take disciplinary action up to and including dismissal.
- vi. In determining the proper course of administrative action, the NFPD shall consider factors including the member's history of compliance with departmental rules, prior written or verbal threats, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.
- vii. If the accused member is assigned enforcement duties while the administrative and/or criminal investigations are under way, those duties should not include response to domestic violence calls.
- viii. If the Department determines through an administrative investigation that the member violated department policy, the Department may employ the full range of administrative sanctions. Any member determined through an administrative investigation to have committed domestic violence shall be terminated from the Department.

b. Criminal Investigations and Decisions:

1. The responsibility to complete a criminal investigation of an incident of member involved domestic violence shall rest with the domestic violence unit of the NFPD. The Superintendent may ask an outside law enforcement agency to conduct the criminal investigation.
  - i. The investigating official shall conduct the criminal investigation, as would be the case for any other criminal violation.
  - ii. In accordance with the member's and victim's privacy rights, the investigating official or agency shall conduct sufficient interviews (recorded) of family members, friends, neighbors, colleagues and others who may have information regarding criminal charges.
  - iii. Even though an initial report may already exist concerning a department member, reports of any subsequent or additional criminal or non-criminal incidents, which may include fellow members engaging in surveillance or intimidation of the victim, shall be documented in separate incident reports, assigned a case number, cross referenced with the original case number and investigated thoroughly.
  - iv. The Department shall completely investigate the charges and where warranted seek prosecution even in cases where the victim recants.
  - v. The Domestic Violence Detective will work with the Niagara County ADA on each case. This detective shall present all the information to the prosecuting attorney for action and ask that decisions about the adjudication of the case be made in a timely manner.

## **Domestic Violence Policy Involving Police Officers**

### Appendix A: Risk Assessment

There are several factors that have been associated with domestic violence and homicide. The best predictor of future violence is past violence. The victim's risk is often heightened at certain times: at separation, during pregnancy, and in situations where the victim has been strangled.

It is important to note that while there are ways to assess the risk of a particular situation, the absence of these conditions does not assure low risk or minimal danger. Risk assessment of a domestic violence incident is not an exact science and lethality of serious injury cannot be absolutely predicted. Interventions must be case specific, based on the totality of the circumstances. Officers should establish whether risk is inherent in a particular situation or an attempt to safeguard against future violence. Information gleaned from the assessment should be incorporated into all aspects of safety planning as well as into the court and protective order process. The elements of risk assessment should include the following:

#### **1. Assessing Threats**

- Are the threats credible to the victim?
- How detailed or specific are they?
- Are they consistent with past behavior?
- Can the abuser carry them out?
- Have there been any rehearsals by the abuser?
- Do the threats extend to others?
- Do the threats involve murder, suicide, or both?

#### **2. History of Violence or Use of Force**

- Has there been abuse of former partners or family members?
- Has there been a recent increase in frequency and intensity of violence or both?
- Is there a history of violence toward children?
- Has prior violence involved strangulation or choking?
- Has prior violence involved head trauma?
- Did any violence occur during pregnancy?
- Was there sexual abuse?
- Has there even been abuse towards animals?
- Has there ever been destruction of the victim's property?

#### **3. Weapons**

- Are there any weapons in the household?

- Are there any illegal or exotic weapons (if weapons are present)?
- Did past violence involve weapons?
- Does the victim possess any weapons?

#### 4. Centrality

- Do the parties live together?
- Do the parties have any children in common?
- Do the parties have any legal ties?
- Is the victim financially independent upon the abuser?
- Is the abuser possessive?
- Does the abuser exhibit excessive jealousy?
- How much does the abuser's sense of self depend on the relationship?

#### 5. Stalking

- Does the offender check up on the victim? If so, how?
- Has the offender engaged on surveillance on the victim?
- Does the offender enlist others to monitor the victim?
- Has the offender contacted or threatened the victim's family, friends or coworkers?
- Have there been unwanted communications (phone calls, e-mails, written communications, and so on) from the offender (either positive or negative)?

#### 6. Control

- Does the abuser control the finances?
- Does the abuser attempt to control the victim's activities?
- Does the abuser attempt to control what the victim is allowed to do?
- Has the abuser attempted to isolate the victim?
- Does the abuser feel entitled to be in control?
- Does the abuser equate compliance with loyalty?

#### 7. Other Concerns

- Does the abuser drink, use drugs, or both regularly or excessively?
- Has alcohol or drug use escalated?
- Does abuser have a childhood history of domestic violence, child abuse, or sexual abuse?
- Is there an upcoming traumatic incident anniversary date from the abuser's past?
- Have holidays been flashpoints?
- How does the abuser respond to change?

## **Domestic Violence Policy Involving Police Officers**

### Appendix B: Administrative Order of Protection

#### **A. Defined**

The Superintendent has at his disposal a valuable tool to increase victim safety – the administrative order of protection. This is nothing more than a direct order from the Superintendent or his designee to refrain from particular conduct toward a particular person(s).

If a complaint or investigation reveals that a member of the Niagara Falls Police Department may have committed a domestic violence offense the Superintendent or his designee are free to order the officer to refrain from contact with the alleged victim. An administrative order of protection will simply be this order reduced to writing and issued by a superior officer.

#### **B. Terms and Conditions**

Terms of an order must be drafted to fit the needs of the particular circumstance and the relationship of the parties involved. The order will be tailored to protect the interests of the Niagara Falls Police Department. In general, administrative orders of protection will be issued after speaking with the victim in order to ensure the terms of the order are appropriate for the victim's situation, and not overly broad so as to render it unlawful. For example, if the parties are living separately, a comprehensive "no-contact order" can be issued. If the parties will continue to live together, an order specifying no threats, harassment, or physical duress of the victim or members of the household would be advisable.

These orders will remain in effect whether or not the member is on duty, and will remain valid until rescinded by competent authority. A supervisor will deliver the order in person to the subject to it, and the member will acknowledge receipt in writing on the bottom of the copy for the OPS file. The order, where applicable, should include language prohibiting witness intimidation or tampering. It will contain language advising the member that failure to comply with the order will constitute independent grounds for disciplinary action, and may result in termination, regardless of the outcome of the underlying investigation.