WEST NORRITON TOWNSHIP POLICE DEPARTMENT

Subject: Domestic Violence		Policy # 4.10.1
Accreditation 4.10.1		
Effective Date: May 21, 2008	Revised Date:	
By Authority Of: Chief A. Dale Mabry	Signature: ADMabry	

4.10.1 DOMESTIC VIOLENCE

A. Purpose

The principal purpose of this protocol is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic calls.

Other purposes and goals of this protocol are:

To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, rather than mediation, as the preferred means of police response to domestic violence;
To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance;
To ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases;
To reaffirm the police officer's authority and responsibility to make arrest decisions in accordance with established probable cause standards;
To promote officer safety by ensuring that officers are as fully prepared as possible to respond to domestic calls; and
To help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

B. Policy

The department recognizes the importance of improving our efforts to reduce violence or threat of violence in our homes.

All police personnel will treat domestic violence as alleged criminal activity to be reported and investigated, regardless of the relationship between the victim and the defendant.

Police should arrest and pursue criminal remedies appropriate to the crime that the police have probable cause to believe the accused has committed. In recognition of the difference between domestic violence and other crimes, however, police also should provide victims with special assistance, including efforts to victims of domestic violence.

All police personnel should be especially alert on domestic calls as there is a high potential for violence. Therefore, two officers will be assigned to all such complaints. Status checks will continue throughout the incident and until the officers clear.

C. Definition

1. Domestic Violence – For the purpose of this directive, domestic violence is defined as harmful physical contact, or placing by physical menace another in fear of imminent serious bodily injury, that occurs between the following persons: spouses, persons who have been spouses, persons living as spouses, persons who lived as spouses, parents and children, persons related by blood or affinity, current or former sexual or intimate partners, persons who share biological parenthood.

D. Domestic Violence – Criminal Procedure

1. Probable Cause Arrest Crimes Code Section 2711:

   a. A police officer shall have the same right of arrest without a warrant as in a felony, whenever he has probable cause to believe that an individual has committed any of the following offenses against a person with whom he resides, or formerly resided, although the offense did not take place in the presence of the police officer.

      i. Involuntary Manslaughter (Section 2504)
      ii. Recklessly Endangering Another Person (Section 2705) M2
      iii. Simple Assault (Section 2701) M3

2. Probable Cause Standard

   a. The probable cause standard is met where two factors are present:

      i. Confirmation by the victim, complainant or witness that the suspect committed one or more of the three enumerated Pa. Crimes Code violations;
      ii. Observation by the officer of recent physical injury to the victim, or other corroborative evidence (e.g., signs of violence, additional witnesses, etc.).

E. POWER OF ARREST

1. **Felony or violent misdemeanor cases**: The responding officer shall arrest the suspect upon probable cause that he has committed a felony or a violent misdemeanor as defined in Section 2711. This includes all aggravated assaults (2702) and criminal trespass (Section 3503). If the officer is unable to apprehend

the suspect, he shall document probable cause and seek a warrant for arrest.

2. **Other misdemeanor cases**: When an officer witnesses a misdemeanor crime being committed, he shall arrest the perpetrator. This includes the crime of terroristic threats (Section 2706 M1). When the officer has probable cause to believe a misdemeanor was committed outside his presence, he shall document probable cause and seek an arrest warrant or summons.

3. In cases where an officer does not have probable cause to arrest, or seek a warrant on a felony, or misdemeanor charge, he shall advise the victim of the procedures for filing private criminal charges. The officer shall document in a written report any evidence and describe why such evidence is not sufficient to establish probable cause.

4. The officer should not consider the following factors in making the arrest decision:

   a. The marital status of the parties.
   b. The ownership or tenants rights of either party.
   c. Verbal assurances that the violence will stop.
   d. A claim by the accused that the victim provoked or perpetuated the violence.
   e. Denial by either party that the abuse occurred when there is evidence of domestic violence.
   f. Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor).
   g. The disposition of any previous police calls involving the same victim or accused.
   h. Speculation that the arrest may not lead to a conviction.
   i. The existence or not of a current protection from abuse order (except insofar as the violation of such an order might justify arrest).
   j. The victim's emotional state.
   k. Concern about reprisals against the victim.
   l Adverse financial consequences that might result from the arrest.
   m. That the incident occurred in a private place.
   n. The racial, cultural, social, political, or professional position, or the sexual orientation, of either the victim or the accused.

F. Arrest if Victim Opposes It

1. An officer is authorized to make an arrest where probable cause exists, even should the victim not request, or oppose it, as long as there is evidence of the commission of the misdemeanor/felony. In circumstances where a victim opposes arrest, the officer who arrests should detail the probable cause factors and should note that the arrest is being made contrary to the wishes of the victim. The victim is not responsible for deciding if an arrest should be made - the officer is.

2. Recent court decisions around the country have found officers and municipalities liable both for failure to arrest where an arrest was appropriate and arresting where the probable cause standard was not met. The department procedures set forth will greatly reduce the officer's and the department's exposure to liability whether sued for improper police response later brought by the victim or the alleged assailant.

3. If the officer arrests for the commission of a crime, the officer should confiscate all weapons used or threatened to be used in the commission of the crime, and such weapons should be held as evidence for prosecution. If the officer arrests for violation of a Protection From Abuse Order, the officer is required by 35 P.S. Chapter 10190 to confiscate all weapons used or threatened to be used in the violation, and to deliver such weapons to the office of the sheriff.

G. Arrest, Charges & Victim Notification

1. The responding officer should take the accused into custody as soon as the officer determines that a warrantless arrest is appropriate. If a warrant is necessary, the officer should obtain and execute the warrant as soon as practical.

2. Pursuant to the Crime Victims Act, it is the responsibility of law enforcement agencies to notify the victim of any personal injury crime of the filing of a criminal complaint and/or the arrest of the suspect. Unless the victim cannot be located, notice of arrest shall be provided within 24 hours. Attempts at notification should be documented in the police report. See 18 P.S. §11.212(f). "Personal injury crime" is defined as any act, attempt or threat which would constitute a misdemeanor or felony offense relating to Criminal Homicide, Assault, Kidnapping, Sexual Offenses, Arson or Related Offenses, Robbery, Victim/Witness Intimidation, PFA Violations, and any vehicular or watercraft offenses involving death or personal injury. See 18 P.S. §11.103.

H. Bail Conditions

1. The police officer responsible for transporting a defendant to a preliminary arraignment shall advise the Magisterial District Judge of any possible danger to the victim and shall request special conditions on bail authorized by Section 2711 and Rule 4013 of the Rules of Criminal Procedure, to enhance victim protections. These may include, but not be limited to:

   a. Restraining the defendant from abusing, harassing, or intimidating the victim.
   b. Preventing the defendant from entering the home, school and/or workplace of the victim.
   c. Preventing the defendant from contacting the victim in person, or by telephone.
   d. Restraining the defendant from conduct that will prevent the victim from performing normal daily activities.

2. If there are special bail conditions imposed on the defendant, the officer shall immediately notify the victim of such bail conditions and advise the victim of the right to request revocation of bail through the District Attorney's Office if there is a violation of the conditions.

I. Notification of Availability of Protections for Victims

1. Whenever an arrest is made, the officer shall notify the victim of the availability of special conditions available under Act 35 - Protection From Abuse Act - on how to obtain and enforce such protection shall be outlined by the officer, and the officer shall provide Victims' Rights form to the victim (see Attachment A). In addition to providing a copy of the Notice of Rights, the officer shall have the victim sign the Victims' Form (Attachment B) for the department's records. The West Norriton Township Police shall keep copies of Victim's Rights forms on hand for use in both English and Spanish and include the following statement:

   "If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to the Protection From Abuse Act (23 Pa.C.S. Ch.61), which could include the following:

   (1) End to further acts of harassment, threats, abuses or stalking by abuser,
   (2) Exclusion of the abuser from your residence,
   (3) No contact by the abuser with you, your relatives and/or your children either directly, by phone or in writing.
   (4) Awarding you temporary legal and physical custody of minor children
   (5) Abuser to turn over weapons used or threatened to be used
   (6) Abuser to reimburse out of pocket expenses resulting from abusive behavior
   (7) Other relief as determined by the Court.

2. Permission to Notify Battered Women's Program

   a. The officer shall in all cases request permission from the victim to give her name and phone number to the Women's Center of Montgomery County, the local battered women's program, for follow-up purposes. The victim shall sign a permission form if she wishes to be contacted by the battered women's program. The permission form (Attachment C) will be forwarded without delay to the Women's Center of Montgomery, with a copy being retained by this department.

J. Incident Report and Data Collection

1. The officer, when gathering information, shall seek to answer the following for a thorough report:

a. Names, addresses and phone numbers of the victim, the accused, any witnesses and the caller.
b. A secondary address and telephone number for the victim (such as a close family member or a friend).
c. A statement of the relationship between the victim and the accused.
d. A narrative of the incident (including the date, time and whether the accused appeared intoxicated or under the influence of a controlled substance.
e. What, if any, weapons were used or threatened to be used.
f. A description of any injuries observed by the officer.
g. A description of any injuries described by the victim but not observed by the officer and an indication that the injury was not observed.
h. Documentation of any evidence that would tend to establish that a crime was committed.
i. An indication of what arrest decision was made, e.g., a warrantless arrest; an arrest with a warrant; or no arrest.
j. Whether the accused actually was arrested or whether there is an outstanding arrest warrant.
k. The crime in which the accused was charged.
l. If the accused was arrested and arraigned, whether bail was set and any conditions of bail.
m. If the officer did not arrest or seek an arrest warrant even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest.
n. The names and ages of any children present in the household; their address and phone number if children were relocated.
o. Notation of previous incidents of which the officer is personally aware.
p. Notation of previous incidents reported by the victim or witnesses.
q. If the officer was injured in the incident, the nature and circumstances of the injury.

K. Protection from Abuse Order

1. Protection From Abuse Orders may be obtained with the assistance of an attorney through the Court of Common Pleas, or by the victim pro se, or through the Magisterial District Judge, on a weekend when the court of Common Pleas is closed. A victim may contact Legal Services or the local domestic violence program, to find out about representation in actions under the Protection From Abuse Act. Persons now eligible to file include: spouses, persons who have been spouses, persons living as spouses, persons who lived as spouses, parents and children, persons related by consanguinity or affinity, current or former sexual, or intimate partners, and persons who share biological parenthood. An emancipated minor may also file under this Act. Also, a guardian appointed by the court, a parent, or adult household member may seek relief on behalf of a minor child. A court appointed guardian of an adult who has been declared incompetent under 20 Pa C.S. Chapter 51, Subchapter B, may seek relief on behalf of the incompetent adult. An order may include those provisions outlined in Victims Form (Attachment A).

2. Protective Orders Under Section 4954 may be issued to any victim and any other witness in a criminal case to protect them from harassment or intimidation by the defendant, or another. Such orders are issued by a Magisterial District Judge or a Common Pleas judge pursuant to a hearing. The possible penalties for violation of such order includes revocation or pretrial release and forfeiture of bail. These penalties are outlined in Section 4955 of the Crimes Code.

3. The Police Department shall make reasonable efforts to notify any adult or emancipated minor protected by an order issued of the arrest of the defendant for violation of an order as soon as possible. Unless the person cannot be located, notice of the arrest shall be provided not more than 24 hours after preliminary arraignment.

L. Procedure for Violation of Protective Order

1. A photocopy of the original order, as obtained in above, shall be considered a duplicate original and sufficient to constitute the court's original authorization for enforcement. If there is no photocopy, then the officer should contact the local registry of protection orders at the Montgomery County Emergency Dispatch Services (610-631-1161), the local Prothonatary Office, or a local police department specified by the victim.

2. Probable Cause - The existence of a valid protection order coupled with a statement by the complainant detailing the violation, constitutes probable cause for the arrest for violation of the Abuse Act. If the requirements of 2711 (CC) are not met, this would be an arrest with a warrant.

3. When the police officer is satisfied that there is probable cause, to believe that a violation of a protection order has occurred, he may prepare and file with the Magisterial District Judge in whose district the violation occurred, a criminal complaint charging the defendant with indirect criminal contempt (Health & Safety Code, 35 PA C.S.A. Indirect Criminal Contempt, Sec. 10190). In addition an officer may also arrest, without a warrant, if the requirements of 2711 (CC) are met. Complaint shall conform with the PA Rules of Criminal Procedure regarding necessary averments to include probable cause statement as well as a reference to the court term and number of the Protection Order.

4. Once the defendant has been arrested, call the issuing judge for clarification as to whether the defendant shall be taken without unnecessary delay by the police to the Court of Common Pleas for the purpose of preliminary arraignment and setting of bail. If the Court of Common Pleas is not in session, the defendant should immediately be brought before the Magisterial District Judge having jurisdiction over the incident or, if after hours, the Magisterial District Judge on call.

M. Elderly Victims of Domestic Violence

1. When the victim of domestic violence is elderly (60 or over) and the batterer is the sole caretaker and where arrest is indicated, the responding officer shall make a determination as to whether the victim is physically endangered, either as a result of the abuse, or pre-existing medical condition. If the victim is physically endangered and mentally alert, the officer shall ask the victim for the name of a relative, or friend, who can be contacted immediately to assist the victim.

2. If there is no one available, or if the victim appears not to be mentally alert, the officer shall make an emergency referral to the local area Agency on Aging. The officer shall remain at the residence until the protective services worker arrives, or shall transport the victim to a medical facility where he/she can wait for the worker.

3. In all cases, the responding officer shall advise elderly victims of abuse of the availability of protective services through the local area Agency on Aging. Daytime phone number is 610-278-3601; evening hours call Montgomery County Emergency Dispatch Services 610-275-1222.

N. Minors

1. When the offender in a domestic violence call is a minor and probable cause is found, the responding officers should arrest, in accordance with the provisions of the Crimes Code and applicable laws pertaining to the arrest of juveniles.

O. Officers Who Batter

1. When officers are called to a domestic violence incident involving a West Norriton Township Police Officer and/or his/her spouse and/or paramour; and/or a police officer from another department or agency and his/her spouse and/or paramour will be handled by the on duty supervisor of the department or his designee. The responding officer will insure that all involved parties are safe and secure. Those involved in the domestic shall be kept separate. The supervisor will contact the Chief of Police immediately, and/or in his absence, the Deputy Chief. The Chief of Police will designate the investigating officer. The Chief of Police may also request an outside agency to handle the investigation.

2. Any weapons, including the department issued firearm(s), used to threaten or inflict injury in the immediate incident, will be confiscated.

3. The investigating officer will make an incident report detailing the incident. The Chief of Police will review the report, adding pertinent information if necessary. The report shall be submitted within 24 hours to the Chief of Police or his designee.

4. In the event that a misdemeanor/felony relating to domestic violence is committed by a supervisor of the department, the same procedures shall apply as for the commission of any other criminal act by that officer.

P. Individuals Who are the Subject of a PFA

1. The 1994 Crime Bill has changed the Federal Gun Control Act. Section 110401 makes it a federal crime for any person, including law enforcement officers, to possess firearms if they are under a court issued adult/spouse abuse order. The prohibition only applies after the exparte period when the individual has had the opportunity to appear before the court with council to defend himself/herself. *If the court issues the order, it is a violation of federal law for the individual to receive, purchase or possess a firearm during the term of the court order.* Under 18 USC925A1, law enforcement officers are exempted while "on duty". When the officer goes off duty, the firearms must be left at the station. As the result of the Omnibus Appropriations Bill passed in 1996, the effective date being September 30, 1996, officers who have been convicted of crimes of violence relating to a domestic are prohibited from carrying a firearm. There are no exemptions for law enforcement officers. Therefore, the Township would have no alternative but to terminate the officer.

2. All sworn personnel are required to inform their immediate supervisor in writing when a PFA order has been filed against them. That report will contain the scheduled hearing date.

   a. Immediately before attending this hearing the officer shall return his issued firearm to the department as a precaution, eliminating the possibility of being in violation of this federal statute.
   b. If the court does not grant the order the officer's firearm will be returned to him at the first available opportunity.
   c. If the order is issued by the court;

      i. The officer will be issued a firearm at the beginning of each shift, which shall be returned at the end of each shift.

Q. Training

1. All new officers of the West Norriton Township Police Department shall be trained in the content and use of this policy during their initial Field Training. This training shall be documented on the new officer's Field Training Reports.