

**SENECA FALLS POLICE DEPARTMENT  
GENERAL ORDER**

<b>General Order:</b> 442	<b>Rescinds:</b> 07/01/13,07/09/14
<b>Subject:</b> Domestic Disputes and Family Offenses	<b>NYS Accreditation:</b> 29.4, 44.1
<b>Effective Date:</b> 01/25/17	
<b>By Order Of:</b> Stuart W. Peenstra, Chief of Police	

- I. **PURPOSE:** The purpose of this order is to establish procedures for investigating domestic violence and Family Offenses, define the departments arrest policy in these cases, provide guidance to officers in notifying victims about the court proceedings available to them regarding Family Offenses and to ensure compliance with the provisions of the Family Protection and Domestic Violence Intervention Act of 1994.
- II. **POLICY:** It is the policy of the Seneca Falls Police Department to respond to every domestic incident as a serious call for service. The department members shall consistently seek to enhance the safety of victims and their children through a combination of law enforcement and referral to domestic violence service providers. The department will further promote officer safety by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence calls for service. This policy must be followed regardless of the gender, age, race, class, education level, sexual orientation, or religion.
- III. **REFERENCES:**
- a. Criminal Procedure Law – CPL-Sections-140.10, 530.11 & 530.12
  - b. Family Court Act – FCA-Sections-155, 812, 821-a, 827, 828, 842 & 846
  - c. Penal Law – PL
  - d. Executive Law – EL
  - e. DRL (Domestic Relations Law) section 252
  - f. JudL (Judiciary Law) section 216
- IV. **DEFINITIONS:**
- a. **Domestic Incident:** Means any dispute, act of violence, or report of an offence between individuals within a family or household where police intervention is requested. A domestic incident is not necessarily a violation of the law.
  - b. **Domestic Relationship:** Members of the same family or household: (defined as such by the FCA and the CPL in that they:)
    - i. Are related by consanguinity or affinity.
      1. Consanguinity – related by blood.
      2. Affinity – familial relation resulting from a marriage.
    - ii. Are legally married to one another.
    - iii. Were formally married to one another, regardless of whether they still reside in the same household.
    - iv. Have a child in common, regardless of whether such persons have been married or have lived together at any time.
    - v. Are not related by consanguinity or affinity, but who are or have been in an “intimate relationship” regardless of whether such persons have lived together at any time.
  - c. **Intimate Relationship:** Persons who are not related by blood or marriage and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Indicators that help determine a relationship include:
    - i. The nature or type of the relationship regardless of whether the relationship is

- sexual in nature.
  - ii. Exclusiveness of the relationship.
  - iii. The frequency of interaction between the persons.
  - iv. The duration of the relationship.
  - v. The parties speak of “common law” marriage.
  - vi. The parties describe themselves as “domestic partners” including same sex partners.
  - vii. Mutual dependents in several areas of life, other than as business or for convenience.
  - viii. High degree of emotional investment in the relationship.
  - ix. Others describe the parties as a “couple”.
  - x. Mutually owned property or pets, other than as a business arraignment.
  - xi. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship.”
- d. **Domestic Violence:** For the purposes of this order, the term “domestic violence” shall include all designated family offenses as defined in CPL articles 140.00, 530.11(1) and FCA 812(1).
- i. Additionally, for the purposes of this order, the term “domestic violence” shall also include the following acts or offenses between members of the same family or household, as defined above in this policy:
    1. Acts that violate the terms or a valid order of protection issued by the Family, Criminal, or Supreme Courts of the State of New York, or any valid order of protection or restraining order issued by a court in any other state, commonwealth, territory, or possession of the United States, or by any tribal governments located within the United States; or
    2. Coercion 1<sup>st</sup> degree (PL 135.65), Coercion 2<sup>nd</sup> degree (PL 135.60), Tampering with a witness (PL 215.10, 11, 12, 13), Intimidating a witness (PL 260.10), Endangering the welfare of an incompetent or physically disabled person (PL 260.25), and/or Endangering the welfare of a vulnerable elderly person (PL260.32, 34); or
    3. Any conduct specifically intended to prevent or delay a person from communicating a request for emergency assistance by intentionally disabling or removing communication equipment, such as a telephone or teletypewriter service (TTY) (PL 145.00(4)).
- e. **Parental Discipline:** Section 35.10 subdivision 1 of the New York State Penal Law states that, “A parent guardian or person entrusted with the care and supervision of a person under the age of 21 or an incompetent person...may use a reasonable amount of physical force, but not deadly physical force, upon such person when and to the extent that he reasonably believes it necessary to maintain discipline or promote the welfare of such person.”
- f. **Concurrent Jurisdiction:** Where two or more courts from difference systems simultaneously have jurisdiction over a specific case. A victim of a Family Offence may elect to proceed in either a civil or criminal court or both. Criminal Courts and the Family Court have concurrent Jurisdiction when:
- i. A designated Family Offense is alleged to have been committed; **AND**
  - ii. A family/household relationship exists; **AND**
  - iii. The alleged offender is 16 years of age or older.
- g. **Order of Protection:** A civil or criminal order that provides protections to a person from another person that they are married to, separated from, divorced from, have a child in common with, are/were in an intimate/dating relationship with (including same sex and teen couples) or are related to by blood or marriage. An Order of Protection may only be issued by a court, and can likewise only be modified or terminated by that same court or

a court of competent jurisdiction, and shall be considered valid under the following conditions:

- i. Any Order of Protection, including an order of consent, from the Family, Criminal, or Supreme Courts of New York State, and/or
- ii. Any foreign Order of Protection, defined as a court order that is issued by a court other than a court located within New York State, including:
  - 1. Any state, county, or local court of other states;
  - 2. Any Indian tribal court located within the United States;
  - 3. Any court of a commonwealth, territory, or possession of the United States.
- h. **Officer:** State, Local, Federal and Tribal law enforcement officers.
- i. **Registry:** Statewide computerized database of Orders of Protection.
- j. **Victim's Rights Notice:** As used in this policy shall mean the notice or form described in Criminal Procedure Law section 530.11(6).
- k. **Domestic Incident Report (DIR):** The state issued form described in Executive Law 837 (15) and mandated by CPL 140.10 (5) for officers to complete for all calls for service where police intervention is requested for a domestic incident.

## V. **PROCEDURE:**

- a. **Responding Officer Procedures:** A domestic incident call signifies that violence or abuse has potentially occurred, and that people are in need of law enforcement assistance.
  - i. Dispatchers shall not cancel the law enforcement response to a domestic incident call regardless of whether such a request is made by someone at the scene during the call or a follow up call. However, the dispatcher shall advise the responding officer(s) of the request.
  - ii. A minimum of two officers shall be dispatched to all in-progress/just occurred domestic violence complaints. Upon being dispatched officers shall respond promptly to the call, and at a minimum complete the following:
    - 1. Be alert to the sights and sounds coming from the location and that anything or anyone present may serve as evidence.
    - 2. Approach the scene in a manner that reduces the officer's exposure to hostile actions.
    - 3. Make observations of the premises and attempt to determine what may be transpiring at the scene.
  - iii. Upon entering the premises, officers shall:
    - 1. Separate and maintain visual contact with the parties involved.
    - 2. When appropriate, administer first aid and request EMS personnel to provide treatment.
    - 3. Be alert to and take control of weapons or household items that can be used as weapons.
    - 4. Locate and visually check all occupants of the location to verify their safety and well-being, including children.
  - iv. After stabilizing the situation, officers shall:
    - 1. Complete a thorough investigation to determine:
      - a. Identities of persons involved;
      - b. Relationship between persons involved;
      - c. Probable cause that an offence has occurred;
      - d. Existence or status of Orders of Protection;
      - e. Physical evidence;
      - f. Obtain statements of victims, witnesses, and suspects.
      - g. If the victim, children or other witnesses do not speak English

or require accommodations such as a sign language interpreter, contact the local DV service provider or seek other methods for assistance in obtaining a translator/interpreter ASAP.

- i. NEVER use the children to translate or interpret. It can compromise the children's safety and expose them to details of the abuse that are inappropriate and is not an accurate way to obtain information.
  - ii. Officers should also discourage the use of witnesses as translators because of their potential for bias.
2. After all interviews, have been conducted, determine whether an offense has been committed, whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release of the suspect can occur at any time so that the victim may take desired safety precautions. If you have not already, provide the victim with the phone numbers of the local DV service provider.
3. Provide the victim with the NYS Domestic & Sexual Violence Hotline information.
4. Collect and record all potential evidence, including excited utterances and spontaneous admissions by all parties and witnesses. Make every effort to locate all potential witnesses, take photographs of injuries, or the lack thereof and property damage.
5. Complete the NYS Domestic Incident Report form and any other reports necessary to fully document the officer's response, whether or not an offense was committed or an arrest was made. See additional information about DIR's later in this order.
6. Officers investigating complaints of domestic violence who cannot make an arrest shall remain at the scene until the immediate danger has passed.
7. Officers shall attempt to reconcile the parties or mediate the dispute when no offense has been committed.
8. Whenever there is reasonable cause to believe that a crime has been committed, and the offender left the scene, the officer will attempt to locate and arrest a suspect without delay by:
  - a. Conducting a search of the immediate area; and
  - b. Obtaining information from the victim and witnesses that will aid in the apprehension of the suspect; and
  - c. Continuing investigation as necessary. If the search for the offender is unsuccessful and the victim has elected to remain on scene, advised the victim to call 911 if the offender returns. Prior to leaving the scene officers should attempt to obtain a signed information, complaint or deposition from the victim.
  - d. Officers will file for an accusatory instrument and apply for a warrant themselves for all mandated arrest crimes when the suspect is not on scene or has not been arrested.
9. When appropriate, officers must arrange for the transportation of the victims to a shelter and assist with accommodation for victims of domestic violence and their children at available shelters or other places of safety.

**v. Arrest Procedure:**

1. Whenever there is probable cause to believe there has been an offense committed, officers shall consider an arrest of the offender to be the preferred action.
2. An ARREST DECISION shall NOT be based on the willingness of a person to testify or participate in a judicial proceeding (CPL 140.10 (4)(c)).
3. However, if law does not mandate an arrest, the officer may use discretion to not arrest if it is determined to be in the best interest of the family.
4. All warrantless arrests shall be made in conformance with CPL 140.10 and applicable department policy and procedure.
5. The victim shall NOT be required to make a civilian arrest when the officer is able to make a lawful warrantless arrest.
6. No member of the department shall discourage, prevent, or attempt to discourage or prevent any person who wishes to file a family court petition or sign an accusatory instrument from making such complaint.
7. Victims have the right to go to family court and family court is a civil court not a criminal court.
8. Appearance tickets shall not be utilized when an arrest has been made for domestic violence. All persons arrested for domestic violence, Family Offenses or violation of orders of protection shall be arraigned before an appropriate criminal court of jurisdiction.
9. Booking procedures, fingerprints and photographs shall conform to current department policy and procedures and section 160.10 of the CPL.

**vi. Mandatory Arrest:**

1. Officers shall affect an arrest and not attempt to mediate the dispute or reconcile the parties:
  - a. When reasonable cause to believe that a felony, other than subdivision three, four, nine, or ten of section 155.30 of the penal law, has been committed against persons that are in a domestic relationship, or
  - b. Upon verification and/or presentation of a valid order of protection;
  - c. The act committed consists of a violation of a "stay away" provision of such order of protection; or
  - d. The act committed consists of a family offense in violation of such order of protection; or
  - e. When a misdemeanor constituting a Family Offense has been committed against persons that are in a domestic relationship.
2. There is no requirement that a crime (misdemeanor or felony) occur in the officer's presence. Consequently, a lawful arrest may be and often shall be founded upon factors other than the officer's observations, including, but not limited to physical injury, property damage, or statements made by the victim or other witnesses.
3. Even if the victim actively intercedes and requests that no arrest be made, a lawful warrantless arrest based on reasonable cause shall be made in accordance with CPL 140.10 and documentation of the victims' requests should be made, with attention to the possibility that such an arrest could lead to subsequent increased violence.

**vii. Primary Physical Aggressor:**

1. Primary Physical Aggressor misdemeanor offenses must be determined when an officer has reasonable cause to believe that more than one family or household member has committed a family offense. In such circumstances, the officer is not required to arrest each person, instead, the officer shall attempt to identify and arrest the primary aggressor after considering:
  - a. The comparative extent injuries inflicted by and between the parties.
  - b. Whether any such person is threatening or has threatened future harm against another party or another family or household member.
  - c. Whether any such person has a prior history of domestic violence that the officer can reasonably ascertain.
  - d. Whether any such person acted defensively to protect himself or herself or a third party from injury.
2. Cross complaints and arrests of both parties shall require supervisory approval.

**Note:** When investigating this factor at the scene, the following sources of information may be available: agency records, eJusticeNY services, Registry of Orders of Protection, Domestic Incident Report Repository, Criminal History, prior DIR's, prior acts of violence against others, reports of other officer(s) responding to address for past incidents and statements of neighbors of others in the residence.

**viii. Completing the NYS Domestic Incident Report**

1. When investigation indicates that a Domestic Incident has occurred, officers shall prepare a New York State Domestic Incident Report. This shall be completed in accordance with the New York State Standardized Domestic Incident Report Training Guide which is made a part of the Report Forms Manual.
2. A copy of the New York State Domestic Incident Report shall be provided to the victim as soon as possible. The information contained in this report shall include, but shall not be limited to:
  - a. The results of the investigation and the basis for any action taken.
  - b. A record of the victim's allegations of domestic violence.
  - c. What other services or agencies, including but not limited to medical, shelter, advocacy and other supportive services are or have previously been involved with the victim.
  - d. Whether the victim has been provided with written notice as required.
  - e. Weapon/pistol permit information and disposition.

**ix. Subjects on Probation or Parole:**

1. Someone involved in a domestic incident that is currently on probation or parole supervision, they shall notify the corresponding probation or parole authority and shall fax a copy of the approved DIR to said authority. If officers are unable to perform the above listed notification immediately, they shall cause the notification to occur as soon as practical.

**x. Citizen Arrests:**

1. When a petty offense was committed out of the officer's presence the victim shall be afforded the opportunity to make a citizen's arrest pursuant to the provisions of the Criminal Procedure Law. This is a useful alternative for those situations in which officers are not authorized to make a summary arrest.
2. When a citizen arrest occurs, officers shall:
  - a. Inform the victim, out of the presence of the suspect whenever possible, of the victim's right to make a citizen's arrest.
  - b. Assist the victim in effecting and processing such an arrest.
  - c. In cases involving a citizen's arrest, the complainant shall sign the complaint or information.
  - d. Officers shall not take an arrested person into custody or take any other action on behalf of the arresting person if the officer has reasonable cause to believe that the arrested person did not commit the alleged offense or that the arrest is otherwise unauthorized.

**b. Suspected Child Abuse:**

- i. When investigating allegations of Domestic Violence of a child by a parent, it is important for officers to carefully evaluate all circumstances involved to determine:
  1. The amount of force used and if such force was reasonable or unreasonable.
  2. The intent of the parent in using such force (i.e. did the parent reasonably believe it necessary to maintain discipline or promote the welfare of such person).
- ii. If it is determined that the force used was within the allowable limits of a parent, no Domestic Incident Report shall be completed; however, under these circumstances officers shall, at minimum, complete an NYS Incident Report
- iii. If the force was unreasonable or there is a possibility of abuse or neglect, contact CPS in accordance with General Order 440 Child Abuse and Neglect.

**c. Family Offense Arrest Processing:**

- i. See appendix A for list of Family Offenses.
- ii. When a Family Offense has been committed by one of the persons in a domestic relationship, and the offender is less than 16 years of age, officers shall assist the victim in petitioning the case to family court.
- iii. Whenever a Family Offense has been committed by a person that is in a domestic relationship, and the offender is 16 years of age or older, officers shall:
  1. Inform the victim that he/she has the option of having the case heard in criminal court and/or family court (both courts have concurrent jurisdiction over Family Offenses and cases may be heard in one or both courts) and that:
    - a. A proceeding in criminal court is for the purpose of ending the violence, prosecuting the offender, and can result in a criminal conviction of the offender.
    - b. A family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end the family disruption, and obtain protection. Referrals for counseling services are available through probation for this purpose. The family court may also order the payment of temporary child support and award temporary custody of children.
    - c. A proceeding is initiated at the time of the filing of an accusatory

- instrument or family court petition, not at the time of arrest, and that an arrest is not a requirement for commencing either proceeding.
2. Give the victim written notice (if necessary, delivered orally) of the legal rights and remedies available to a victim of a Family Offense under the relevant provisions of law.
  3. Provide the victim with information regarding the procedures for obtaining a temporary order of protection.
  4. Assist in providing for the safety of the victim and their children, to include:
    - a. Assist in obtaining medical treatment for the victim or their children, if necessary.
    - b. Advise the victim of the availability of a shelter or other services in the community.
    - c. Assist the victim in obtaining essential personal effects.
    - d. Assist the victim, upon their request, in locating and getting to a place of safety (e.g. home of a friend or relative, shelter, etc.). When necessary, transport the victim to such place, provided the location is within a fifteen (15) mile radius of the geographic boundaries of the Town of Seneca Falls. In exigent circumstances, Sergeants or above may authorize such transports beyond the 15-mile limit.
  5. Whenever an arrest is made for a Family Offense, officers shall:
    - a. Arrest and book the defendant in accordance with department procedures.
    - b. Prepare an accusatory instrument charging a defendant with a Family Offense. The accusatory instrument must include a designation that the offense charged therein is a Family Offense and a description of the relationship between the victim and the defendant in the upper right hand corner.
    - c. Attach to the accusatory instrument a copy of the victim's affidavit, if any and a copy of the New York State Domestic Incident Report.
    - d. If the Domestic Incident Report has not yet been reviewed by a supervisor, the Court's copy should have the word "DRAFT" stamped on it.
    - e. Arraign the defendant before a local criminal court of jurisdiction. The victim is not required to be present at arraignment
    - f. If an OOP is desired, the court should be advised of such request.
  6. If the victim wishes to proceed in family court, advise the victim that it will be necessary for them to appear in family court to file a petition, seek orders of protection and make provisions for temporary child support and custody. If family court is in session, this petition must be filed immediately. If family court is not in session, the petition is to be filed in the afternoon of the next day when family court is in session.
  7. If the victim wishes to proceed in criminal court only, advise the victim that it will be necessary to appear in family court to simultaneously resolve matters of child support and custody.
  8. Appearance tickets shall not be utilized when an arrest has been made for domestic violence. All persons arrested for domestic violence, Family Offenses or violation of orders of protection shall be arraigned before an appropriate criminal court of jurisdiction.

supplied in the form of a copy of the draft New York State Domestic rape, kidnapping and unlawful imprisonment may occur in the domestic setting. These offenses, which include felonies, misdemeanors and violations, cannot be prosecuted in family court. Criminal courts have exclusive jurisdiction over these acts.

10. Violation of an order of protection is not a Family Offense; however, family court does have jurisdiction over the matter if the order violated was issued by family court.
11. A person who commits a misdemeanor family offense and he or she has been convicted of one or more specified family offenses within the immediately preceding five years, shall be charged with Aggravated Family Offense contrary to the provisions of section 240.75 subdivision 1 of the NYS Penal Law. An Aggravated Family Offense is classified as an E Felony.

**d. Non-Family Arrest Processing:**

1. Offenses that are not designated Family Offenses, but which occur in domestic situations cannot be handled in Family Court. Criminal Courts have exclusive jurisdiction over these acts.
2. Although violation of an OOP is not a designated Family Offense, the Family Court has concurrent jurisdiction to enforce these orders when it issued them.

**e. Orders of Protection:**

1. Although the penalties for violating these orders are all similar, differences exist in the circumstances under which each may be obtained and the manner in which they should be enforced.
2. Members should be guided by the following distinctions when advising the public as to which forum may properly be of assistance in granting orders of protection:
  - a. Local criminal courts and county courts may issue a temporary order of protection which provides protection for victims of Family Offenses or other crimes when a criminal action is pending. They cannot issue a temporary order of protection unless an accusatory instrument has been filed. Local criminal and county courts may issue an order of protection upon conviction of any crime or violation.
  - b. Local criminal courts have the authority to issue a family court order of protection when the family court is not in session.
  - c. Supreme courts may issue an order of protection or a temporary order of protection in connection with an action for divorce, separation, or annulment.
  - d. Family court may, unlike the supreme court, county court, or local criminal court, issue an order of protection without any other action being brought when the parties are related by marriage (current or past), blood, persons with a child in common or persons who were or are in an intimate relationship.
  - e. Upon issuance of an order of protection, the court shall promptly cause such information on the order of protection to be entered into the statewide computerized registry over the New York State Police Integrated Justice Portal in accordance with applicable procedures. In order to do so the court must first complete a Family Protection Registry Information Sheet. Information for this form will be

supplied in the form of a copy of the draft New York State Domestic Incident Report. Upon arraignment and/or request for an order of protection, the officer shall provide the court with a copy of the draft Domestic Incident Report. If the report has not yet been reviewed by a supervisor, the court's copy shall have the word "DRAFT" stamped upon it.

3. Enforcing Orders of Protection:
  - a. Officers shall make an investigation of the facts and circumstances surrounding the incident.
  - b. Officers shall arrest a person, and shall not attempt to reconcile the parties or mediate, when such officer has reasonable cause to believe that the defendant/ respondent has violated a valid and duly served (or of which the defendant or respondent has actual knowledge because they were present in court when such order was issued) order of protection.
  - c. A lawful arrest may be made even though the victim is unable to present a copy of the order to the police if the officer is able to verify the existence and terms of such order. Verification is required only if the complainant is unable to produce a copy of the order, or if the complainant's copy appears to have been altered or mutilated.
  - d. Upon presentation of the order of protection by the victim, an arrest shall be made. There is no requirement that the prohibited behavior occur in the officer's presence. An arrest may be founded upon factors other than the officer's observations.
  - e. Whenever an arrest is made for violating an order of protection, a supporting deposition shall be taken from the complaining victim. This deposition shall include a statement that the terms of the order were violated and a description of the offender's behavior.
  - f. If the complaining victim has an extra copy of the order available, one copy should also be taken. If an extra copy is not available, officer should make a photocopy. Officers should not take a complainant's sole copy of an order of protection. A copy of the order of protection shall be attached to the accusatory instrument.
  - g. In all cases where an arrest is made for violating an order of protection, it is advisable for the victim to be present at arraignment. In cases where a family court order was violated, the victim is required to appear in family court to file a petition and shall be so advised by the arresting officer.
4. In many instances the offensive conduct prohibited by the order of protection will be conduct which is independently unlawful. For example, a person who assaults another in violation of an order of protection which prohibits assault has committed two (2) offenses and shall be charged with both the violation of the order of protection and the underlying assault.
5. Appearance tickets shall not be issued when a defendant is charged with violating an order of protection.

**f. Firearms:**

- i. Upon arresting an individual who is licensed to carry, possess, repair, or dispose of firearms, pursuant to Article 400 of the Penal Law, the arresting officer shall, whenever practical, notify the arraignment court that the alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.
- ii. The arresting officer shall confiscate all firearms, including long guns, when the

domestic violence results in an arrest, and any weapon was either used or threatened to be used during the commission of such crime. If licensed, the arresting officer shall indicate, on the accusatory instrument, that the defendant is so licensed.

- iii. The arresting officer shall provide the offenders name to any/all local agency/agencies issuing firearms permits, with notification of the arrest and firearms confiscation.
- iv. This notification will also be made on the accusatory instrument when the following conditions are met:
  - 1. The arrest is for a willful failure to obey an Order of Protection issued under Article 8 of the FCA, that involves violent behavior constitution the crime of; menacing, reckless endangerment, assault or attempted assault.
  - 2. The arrest is a willful failure to obey a lawful Order of Protection issued under Article 8 of the FCA or section 530.12 of the CPL where such willful failure involves the infliction of serious PI or the use or threatened use of a deadly weapon or dangerous instrument.

**g. Appearance Tickets and Bail:**

- i. Following an on-scene arrest for an offense arising from a domestic incident, an appearance ticket shall NOT be issued. Instead, and where possible, the officer shall remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with department policy and section 160.10 of the CPL.
- ii. Any deviation from this procedure must be approved by supervision and the reasons for such deviation must be documented in the case file.
- iii. Officer shall advise the victim that the police department does not set bail, the court does. Therefor officers shall not assure victims that an arrested individual will remain in custody for any period of time because of the provisions of this policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim might take.

**h. Additional Services:**

- i. The department will advise the victim(s) of agencies that provide aid to victims of domestic violence. Officers shall refer victims to these agencies when appropriate.
- ii. Where victims of domestic violence are incapacitated by physical, mental, or emotional impairments, and/or language barriers, officers will consult with the county adult protective services and assist, where appropriate, in supportive interventions.
- iii. Officers should be trained on an ongoing basis with regard to this policy, domestic violence, the applicable statutes concerning domestic violence, and the roles, responsibilities, and limitations of law enforcement in responding to and intervening in domestic violence cases.

**i. Officer-Involved Incidents:**

- i. **Purpose:** To acknowledge the special nature of officer-involved domestic incidents and to establish department policy and procedure in handling such calls.
- ii. **Definition:** An officer-involved domestic incident under this policy, shall include:
  - 1. Any domestic incident which a police officer is identified as a suspect on a DIR or otherwise;
  - 2. Domestic violence perpetrated by a police officer upon a member or members of his/her family or household; and/or
  - 3. Any domestic incident or domestic violence in which the identified victim, witness, or suspect are police officers.

**iii. Responding officer procedures:**

1. Notify the patrol supervisor immediately.
    - a. If the suspect is a rank of Sergeant, then the responding supervisor shall immediately notify the Lieutenant.
    - b. If the suspect is a rank of Lieutenant, then the responding supervisor shall immediately notify the Chief of Police.
    - c. This shall be done regardless of the alleged offending officer's jurisdiction.
  2. In responding to a domestic incident where the victim is a police officer, standard domestic violence response and investigation procedures will be followed. In addition to being provided with the local DV service providers contact information, the victim should be referred to the departments EAP or other appropriate personal and given the choice to make contact at any point.
  3. Notifications: All of the following notifications will be made without unnecessary delay. The particulars of the notification attempt shall be recorded and noted in the case file.
    - a. When the officer-involved is employed by the responding agency the supervisor on duty will be notified immediately by the responding officer. The supervisor will respond to the scene without unnecessary delay. In the event a supervisor is not working the Lieutenant will be notified immediately.
    - b. When the officer-involved is employed by another jurisdiction, an attempt to notify the highest-ranking supervisor on duty in that agency shall be made by the supervisor responding.
  4. When the officer involved is employed by the Seneca Falls Police Department the New York State Police will be requested to respond and take over the investigation. The officers on scene will clear immediately following the arrival of the New York State Police.
    - a. If an arrest is made, applicable departmental policies related to duty status/assignment, suspension, etc. will be followed.
  5. Any such deviation and its justification shall be documented in writing. If no supervisor is available, there shall be no deviation from these procedures.
  6. An agency which made a domestic incident related arrest of a law enforcement officer from another agency shall notify the employing agency of the arrest, the specific charges and the time of arrest, prior to the end of the shift during which the arrest was made.
  7. Any officer who has been arrested or who has been involved in a domestic incident requiring police assistance will notify the Lieutenant of the incident immediately, or as soon as practicable.
  8. Whenever an officer has been served with an OOP, including service of modifications of existing OOP's, the officer will make a copy available to the Chief of Police or Lieutenant as soon as practicable.
- iv. Victim Assistance:**
1. When the victim is a police officer, he/she shall be informed of and provided access to all the services and protections set forth for all DV victims covered under this policy.
  2. **His/her name and pedigree information shall remain confidential within the department.**
- v. Criminal Investigation:**
1. A criminal investigation shall be set in motion by the Chief of Police with jurisdiction over the case. This may include assistance from an outside agency.
  2. The criminal investigation shall be handled the same as any domestic

incident investigation not involving a police officer.

3. Internal investigation processes shall be followed the same as other internal investigations of officers, unless a conflict in procedures with domestic incidents is evident.
4. When both parties in an alleged domestic incident are officers, the department shall proceed with the investigation and prosecution whether or not the victim chooses to participate.

**vi. Internal Investigations:**

1. An IA investigation shall take place regardless of whether an arrest has been made, and shall apply to all officer-involved domestic incidents.
2. Administrative Order of Protection: The department may issue an order directing that the offending officer stay away from or refrain from engaging in behavior directed at a specific person. This order shall include provisions stating that a violation of the order shall be cause for disciplinary action.
3. Based upon the evidence found in the investigation, administrative actions and discipline of the offending officer shall be enforced.
4. Administrative discipline shall be handled according to department policy and labor agreement.
5. Officers who are victims in an officer-involved domestic incident will be provided with information during and after the IA investigation, with as much advance notice of outcomes as possible. It may be needed to adjust their own personal safety plan and make other arrangements for themselves in response to the potential for escalating violence that typically accompanies the enforcement of DV offender accountability.

**vii. Duty Weapons:**

1. Whenever a the Chief of Police is given a copy of an OOP by an officer, an officer of the court, or a party to the order, or when the Chief of Police has reason to believe an officer is under a qualifying OOP, the department will implement a procedure that attempts to verify the officer is in compliance with 18 U.S.C section 922 (g)(8) and/or 922 (g)(9), both of which describe when it is prohibited for an officer to possess pistols, rifles, shot guns or ammunition.
2. A police officer's "duty weapon" is generally exempt from this prohibition.

**APPENDIX A**

The following offenses are designated as a family offense by Criminal Procedure Law 530.11(1) and Family Court Act 812(1):

1. Aggravated harassment 2<sup>nd</sup> degree;
2. Assault 2<sup>nd</sup> and 3<sup>rd</sup> degree;
3. Attempted assault (any degree);
4. Criminal Obstruction of Breathing or Blood Circulation;
5. Criminal Mischief (any degree)
  - a. This includes damage to property of another in which a person has some type of joint ownership. Intentional damaging such property is subject to a criminal offense when the person has no right to do so, nor any reasonable ground to believe that he or she has such right.
6. Disorderly Conduct – to charge a person in Family Court this need not be committed in a public place;
7. Forcible touching;
8. Harassment 1<sup>st</sup> and 2<sup>nd</sup> degree;
9. Menacing 2<sup>nd</sup> and 3<sup>rd</sup> degree;
10. Reckless endangerment (any degree);
11. Sexual abuse 3<sup>rd</sup> degree;
12. Sexual abuse 2<sup>nd</sup> (1);
13. Stalking 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> degree; and
14. Strangulation 1<sup>st</sup> and 2<sup>nd</sup> degree.

Note: Persons less than 16 years of age who commit acts that would otherwise be a family offense may only be prosecuted in Family Court.

**APPENDIX B****Sections of Crimes and Criminal Procedure – 18 U.S.C. Title 18****Relevant to I (vii) Duty Weapons****Section 922. Unlawful Acts**

**(g)** It shall be unlawful for any person –

**(8)** Who is subject to a court order that –

- A. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- B. Restrains such a person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- C. (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or  
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

**(9)** Who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

**Sections 925. Exceptions: Relief from disabilities**

**(a)(1)** The provisions of this chapter, except for sections 922(d)(9) and 922 (g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State of any department, agency, or political subdivision thereof.

**APPENDIX C****Family Court Act 153-b and Executive Law 221-a**

Part relevant to Orders of Protection and updating the computerized database of orders.

S 153-b. Service of process request for order of protection. Whenever a petitioner requests an order of protection or temporary order of protection or files for an extension of such order or a petition or motion for modification or a violation of such an order under any article of this act:

- (a) the summons and the petition and, if one has been issued, the temporary order of protection, order of protection issued upon a default, or a copy or copies thereof, may be served on any day of the week, and at any hour of the day or night;
- (b) a peace officer, acting pursuant to his or her special duties, or a police officer shall, upon receipt, serve or provide for the service of the summons and the petition together with any associated papers and, if one has been issued, the temporary order of protection, or order of protection issued upon a default and shall not charge a fee for such service, including, but not limited to, fees as provided under section eight thousand eleven of the civil practice law and rules;
- (c) if a temporary order of protection has been issued, or an order of protection has been issued upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection together with any associated papers that may be served simultaneously including the summons and petition, to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or to any other county or municipal officer who may be directed to effect service under section two hundred fifty-five of this act, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided in this section shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition if not previously served. Service of such temporary order of protection, or order of protection, and associated papers, shall insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this section, and his or her employer, shall not be liable for damages resulting from the failure to achieve service where, having made a reasonable effort, such officer is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order;
- (d) where the temporary order of protection or order of protection and papers, if any, have been served, such officer or designated person shall provide the court with an affirmation, certificate or affidavit of service when the temporary order of protection or order of protection has been served, and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the

executive law. A statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of the service of the summons, petition and temporary order of protection or order of protection;

- (e) Notwithstanding any other provision of law, all orders of protection and temporary orders of protection issued pursuant to this act along with any associated papers that may be served simultaneously may, for the purposes of section one hundred sixty-eight of this article, be transmitted by facsimile transmission or electronic means and may be transmitted by facsimile transmission or electronic means for expedite service in accordance with the provisions of this section. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

\* NB There are 2 sb (e)'s

\* (e) where an officer or designated person obliged to perform service pursuant to this section is unable to complete service of the temporary order of protection or order of protection such officer or designated person shall provide the court with proof of attempted service of the temporary order of protection or order of protection with information regarding the dates, times, locations and manner of attempted service. An affirmation, certificate or affidavit of service with a statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the name of the party and the papers attempted to be served on said person, and for each attempted service, the date, time, address or in the event there is no address, place, and manner of attempted service, shall be proof of attempted service.

\* NB There are 2 sb (e)'s

### **Executive Law – Article 11 – Division of State Police**

§ 221-a. Computer system to carry information of orders of protection and warrants of arrest.

3. Whenever any court issues an order of protection or special order of conditions, the sheriff's office or appropriate municipal police department in the county in which the complainant or petitioner resides, or if he or she resides within a city, the police department of such city, which receives a copy of the order of protection or special order of conditions from the clerk of the court or otherwise pursuant to law, shall promptly transmit such information on the order of protection or special order of conditions as required by rule and regulation over the law enforcement communication system, including but not limited to: the names of the parties to the proceeding giving rise to such order, the date such order becomes effective, the date such order was served or whether the defendant or respondent had actual knowledge of such order because he or she was present in court when such order was issued, the date such order is to expire, and the terms and conditions of such order. When any peace officer, acting pursuant to his or her special duties, or police officer receives a warrant issued by family court, supreme court or by a criminal court pertaining to an order of protection or special order of conditions, as described in subdivision one of this section, the officer shall cause specific information on the warrant as required by rule and regulation to be promptly dispatched over the law enforcement communication system. For purposes of this subdivision, municipal shall have the same meaning as municipality, as defined in subdivision six of section eight hundred thirty-five of this chapter. Notwithstanding the provisions of article fifty-four of the civil practice law and rules, a person entitled

to protection under an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, may file such order without fee with the clerk of a court in this state having jurisdiction over family, criminal or matrimonial proceedings; such order shall be accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified. Upon such filing, information regarding such order shall be transmitted to the statewide computerized registry in accordance with this section, provided, however, that such filing and registry entry shall not be required for enforcement of such order.