

**CITY OF DAYTON
DOMESTIC VIOLENCE TASK FORCE**

DOMESTIC VIOLENCE PROTOCOL

REVISED APRIL 2005

This protocol is also available at www.daytonmunicipalcourt.org

**This protocol is a product
of the City of Dayton
Domestic Violence Task Force.
The Task Force is comprised of representatives
from the criminal justice system and social service
agencies across Montgomery County, including:**

**City of Dayton Police Department
City of Dayton Probation Department
City of Dayton Prosecutor's Office
City of Dayton
Dayton Municipal Court Clerk of Courts
Artemis Center for Alternatives to Domestic Violence
The Family Violence Collaborative**

**Special thanks are extended
to State Senator Tom Roberts for serving
as Task Force Chairman.**

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DOMESTIC VIOLENCE PROTOCOL**

SECTION I:

THE POLICE RESPONSE

APRIL 2005

SECTION I
THE POLICE RESPONSE

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I. DISPATCH

The dispatcher who receives a domestic violence call can provide the responding officers with vital information that could save the victim's life and the officer's life. The dispatcher shall give a domestic violence call the same priority as any other life threatening call and shall dispatch two officers to the scene whenever possible.

Officers should be dispatched as soon as enough information is obtained to determine the priority of the situation. Any remaining information should be gathered while the unit is underway.

The following information should be obtained:

- 1) What is happening?
- 2) Is anyone injured? Where are you now?
- 3) Is the suspect there? Are there weapons? What kind? Where is he/she now? How did he go- in a car, on foot, etc.? Description of suspect and/or vehicle?
- 4) Did the suspect threaten to hurt or kill anyone? or hurt or kill him/herself?
- 5) Has the suspect been using alcohol or drugs? If yes, what kind? Does the suspect have any mental health problems?
- 6) What is your name? Are you the victim? If not, are you a witness?
- 7) Did the suspect threaten to hurt anyone or kill him/herself? If so, when, and how? Does the suspect have a weapon? If yes, what kind? Are there weapons in the house? If yes, where?
- 8) Are/were children there? Did they witness the incident? Ages of children?
- 9) Previous incidents, physical/verbal, prior calls to dispatch
- 10) Suspect relationship to victim? What is his/her name? Are they recently separated, or were divorce papers recently served? (Recent separation is an indicator of increased lethality.)
- 11) Is there a current protection order? How recently served?

Dayton Police should have a policy in place to preserve, or make copies of, all domestic violence related 911/telephone calls that have been recorded for future use as possible evidence. The tapes should be preserved for a minimum of 12 months

If the CAD system indicates the domestic violence call is from the home of a police officer, or if the caller reports that the victim or suspect is a police officer, refer to MOP #2 and the addendum.

II. RESPONDING TO THE SCENE OF DOMESTIC VIOLENCE OR VIOLATION OF PROTECTION ORDER "WITHOUT UNDUE DELAY"

R.C. Section 2935.032 (A)(2) requires that peace officers "respond without undue delay to a report of an alleged incident of the offense of domestic violence or the offense of violating a protection order or consent agreement".

III. ARRESTS FOR DOMESTIC VIOLENCE OR VIOLATION OF PROTECTION ORDER OR CONSENT AGREEMENT

A. WARRANTLESS ARRESTS

Section 2935.03(B) of the Ohio Revised Code states in part:

"When there is reasonable grounds to believe that an offense of violence, . . . the offense of domestic violence, . . . the offense of violating a protection order or consent agreement as defined in Section 2919.27 of the Revised Code, the offense of menacing by stalking . . . (or) the offense of aggravated trespass . . . has been committed . . . a sheriff, deputy sheriff . . . , municipal police officer . . . , (or) police officer of a township . . . may arrest and detain until a warrant can be obtained any person whom he has reasonable cause to believe is guilty of the violation."

This section gives to a police officer who has "reasonable grounds" (i.e. probable cause) the authority to make a warrantless arrest of a domestic violence offender or a violator of a protection order or consent agreement. An officer does not have to personally witness the act of domestic violence or violation of a protection order or consent agreement in order to effect a valid arrest.

If the suspect has left the scene prior to the officer's arrival, and the officer has probable cause to arrest, the officer should initiate a radio broadcast directing the arrest of the suspect. If or when the suspect is located, the department requesting the broadcast should be notified so that further appropriate action may be taken. Also, in accordance with Sec. 2935.03(B)(3)(g), the officer should seek a warrant for the arrest of the person.

NOTE: An officer who makes an arrest pursuant to this statute is:
"immune in an civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure" to the extent described and in accordance with the existing State Officer or Employee Immunity Law or the existing Political Subdivision Employee Immunity Law. Sec. 2935.03(B)(4).

B. ESTABLISHING PROBABLE CAUSE TO ARREST FOR DOMESTIC VIOLENCE OR VIOLATION OF PROTECTION ORDER

1. Adult Victims

Under Section 2935.03(B)(3) - "reasonable grounds to believe that the offense of domestic violence or the offense of violating a temporary protection order or consent agreement has been committed and reasonable cause to believe that a particular person is guilty of committing the offense" can be established in one of three ways:

- a. The complainant/victim executes a written statement alleging that the suspect has committed the offense of domestic violence or the offense of violating a protection order or consent agreement against the complainant/victim or his/her child. Note, however, that a police officer may not require, as a prerequisite to arresting or charging, that the victim consent to the filing of charges or require the victim to sign the complaint. Sec. 2935.03(B)(3)(e)(i).
- b. The victim executes no written statement, but the police officer, based upon his own knowledge and observation of the facts and circumstances of the alleged incident or based upon other information, including, but not limited to, any reasonably trustworthy information given to him by the victim or any witness to the incident, concludes that there is reasonable grounds to believe the suspect has committed the offense of domestic violence or the offense of violating a protection order or consent agreement;
- c. The victim executes no written statement, but the police officer witnessed the suspect commit the offense of domestic violence or the offense of violating a protection order or consent agreement.

NOTE: An officer who makes an arrest pursuant to this statute is: "immune in an civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure" to the extent described and in accordance with the existing State Officer or Employee Immunity Law or the existing Political Subdivision Employee Immunity Law. Sec. 2935.03(B)(4)

2. Juvenile Victims

- a. **Ohio law does not prohibit all corporal punishment. Therefore, in situations where a parent is alleged to have engaged in domestic violence and the victim is their minor child, it will only be a violation of Ohio law if the parent assaulted the child in a non-discipline situation or engaged in physical discipline that is in violation of Ohio law. In Ohio v. Suchomski, 58 Oh St.3d 74 (1991), the Supreme Court stated that nothing in O.R.C. 2919.25 (A) prevents a parent from properly disciplining his or her child. Physical discipline is not**

proper, and is criminal under section 2919.22 Endangering Children, if it is excessive under the circumstances and creates a substantial risk of serious physical harm to the child. Therefore, if an officer cannot make an arrest for Endangering Children, the officer should not arrest for Domestic Violence. Conversely, if the severity of the situation requires the issuance of a TPO, and/or the facts support the charge of domestic violence, a charge of domestic violence should be filed in addition to, or in lieu of, the charge of Endangering Children.

- b. If a law enforcement officer knows or suspects that a child has suffered or faces the threat of suffering any physical or mental wound or injury, or condition of a nature that reasonably indicates abuse or neglect of the child, they shall make a referral to Montgomery County Children Services (R.C. 2151.421(D)(1)).**

C. ARREST IS THE “PREFERRED COURSE OF ACTION.”

A police officer should convey an attitude that domestic violence is criminal behavior and will not be tolerated. The officer should treat acts of domestic violence and protection order violations as criminal conduct and should not discourage victims from pressing charges against the offender.

If there is probable cause to believe that an offense has been committed, the officer should not allow the victim’s behavior, such as substance abuse, mental illness or hostility towards the officer, to solely determine the officer’s decision as to whether or not to make an arrest.

Section 2935.03(B)(3)(b) provides that whenever a police officer has reasonable grounds to believe domestic violence has occurred or a violation of a protection order or consent agreement has occurred, a physical warrantless arrest - as opposed to the issuance of a summons - "is the preferred course of action in this state . . . until a warrant can be obtained."

However, any police department, by policy, may establish a mandatory arrest policy in domestic violence cases. Sec. 2935.032(B)(1)(a) authorizes the creation of a departmental policy which requires an officer who has reasonable grounds to believe that an offender has committed domestic violence or has committed a violation of a protection order or consent agreement to arrest the offender.

In deciding to arrest or charge a suspect, a police officer must follow two guidelines set forth in Sub. H.B. 335:

1. An officer may not require, as a prerequisite to arresting or charging such person, that the victim consent to the filing of charges or require the victim to sign the complaint. Sec. 2935.03(B)(3)(e)(i).
2. In determining whether to make an arrest, one factor an officer may not consider is possible shortage of jail cell space or that the arrest may contribute to or exacerbate jail overcrowding. Sec. 2935.03(B)(f).

If an officer, who has probable cause to make an arrest for domestic violence or for violation of a temporary protection order, does not make an arrest, that officer must "articulate in his written report of the incident . . . a clear statement of his reasons for not arresting." Section 2935.03(B)(3)(c).

If the suspect is a juvenile: The Ohio Attorney General's Office by Opinion 96-061 has determined that the provisions of Sec. 2935.03(B) establishing arrest as the preferred course of action in domestic violence situations is not applicable to juveniles. However, if a police officer determines that detention of a child appears to be required as provided in Sec. 2151.31 and Juvenile Rule 7 (A), the police officer is required to bring the child to the Court or deliver the child to a place of detention as designated by the Court. In Montgomery County, the Juvenile Court has asked law enforcement who have arrested juveniles for domestic violence to call the Intervention Center, as space permits the juvenile will then be transported to the Intervention Center for assessment and a determination on whether the juvenile should be detained or released in some fashion.

Finally, an officer should not use dispute mediation or other police intervention procedures as a substitute for arrest. It should be kept in mind there can be no balanced, fair or effective mediation because victims of domestic violence often continue to be fearful of, or influenced by, their abusers and, thus, are unable to participate in mediation voluntarily and on a basis equal to that of the abuser.

D. THE ARREST OF THE "PRIMARY AGGRESSOR"

If an officer has reasonable cause to believe that both parties have assaulted each other, the officer is not required to arrest both persons. An officer should make reasonable effort to identify, and arrest, the "primary aggressor" in the incident. Section 2935.03(B)(3)(d) states that for purposes of determining which person was the primary aggressor, the police officer, in addition to any other relevant circumstances, should consider all of the following:

1. Any history of domestic violence or other violent acts by the persons involved that the officer reasonably can ascertain;

2. Whether the alleged violence was caused by a person acting in self-defense;
3. Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;
4. The comparative severity of any injuries suffered by the persons involved in the alleged offense. (If strangulation is alleged or suspected, see section VII for guidelines to determine the nature and severity of the assault/injury.)

After determining the primary aggressor, the other party should not be arrested or charged with domestic violence if he/she used reasonable force in self-defense.

If the officer is unable to determine whether there was a primary aggressor, the Ohio law does not mandate a preferred cause of action. The officer simply retains his discretionary authority under Sec. 2935.03(B)(1) "to arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary aggressor." Sec. 2935.03(B)(3)(b).

NOTE: An officer who makes an arrest pursuant to this statute is "immune in a civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure" to the extent described and in accordance with the existing State Officer or Employee Immunity Law or the existing Political Subdivision Employee Immunity Law. Sec. 2935.03(B)(4).

E. ENHANCED PENALTIES FOR DOMESTIC VIOLENCE OR VIOLATION OF PROTECTION ORDER

If the officer determines that there are reasonable grounds to believe that the suspect has committed either a felony Domestic Violence or a felony Violating a Protection Order or Consent Agreement, he should treat the incident as a felony and preferably arrest and charge the suspect for such felony.

1. Domestic Violence

Domestic Violence, under section 2919.25 (A) or (B) **ONLY** is a fifth degree felony if the offender has previously been convicted of domestic violence or has been convicted of Felonious Assault, Aggravated Assault, Assault, Menacing by Stalking or Aggravated Trespass involving a person who was a family or household member at the time of such violation. Sec. 2919.25(D).

Note: A previous conviction for Domestic Violence under any subsection of Section 2919.25 can be used to enhance a subsequent offense under Section 2919.25 (A) or (B) to a felony.

If the officer determines that there is reasonable cause to believe that the suspect has committed a Felonious Assault or Aggravated Assault, then, regardless of whether the victim of the offense was a family or household member of the offender, the officer must treat the incident as a Felonious Assault or Aggravated Assault, and preferably arrest and charge the suspect for such felony. (Do not forget that Section 2919.26 authorizes the issuance of temporary protection orders in cases of Felonious Assault, Aggravated Assault, Assault, Menacing by Stalking, and Aggravated Trespass which involve victims who are family or household members.)

2. Violating a Protection Order or Consent Agreement

Under Section 2919.27, Violating a Protection Order or Consent Agreement is a first degree misdemeanor for a first offense. A subsequent offense may be a fifth degree felony if any of the following applies:

- a) When the subsequent offense involves a violation of a protection order or consent agreement pursuant to Section 2919.26 or 3113.31, or a protection order issued by a court of another state, and the offender has either a) two or more convictions for Menacing by Stalking or Aggravated Trespass involving the same person who is covered by the protection order or consent agreement, or b) any prior conviction of Violating a Protection Order or Consent Agreement; or
- b) When the subsequent offense involves a violation of a protection order pursuant to Section 2903.213 or 2903.214, and the offender has either a) two prior convictions for Violating a Protection Order or Consent Agreement, b) two or more convictions for Aggravated

Menacing, Menacing by Stalking, Menacing, or Aggravated Trespass involving the same person who is covered by the protection order or consent agreement, or c) two or more convictions of the former Section 2903.214 (Violating an Anti-Stalking Protection Order).

F. WARRANTLESS ARREST FOR VIOLATIONS OF PROBATION AND/OR COMMUNITY CONTROL SANCTIONS

Under R.C. 2951.08 a police officer is authorized to arrest any person on probation or under community control sanction without a warrant if the peace officer has reasonable grounds to believe the offender has violated or is violating any of the following conditions of the person's probation or the person's community control sanction:

1. A condition prohibiting ownership, possession or use of a firearm or deadly weapon;
2. A condition prohibiting offender from being within a specified structure or geographic area;
3. A condition that confines the offender to a residence, facility or other structure;
4. A condition that prohibits the offender from contacting or communicating with any specified individual (such as the victim);
5. A condition that prohibits the offender from associating with a specified individual.

If the Probation Department has provided a list of such restrictions to the law enforcement agency, the individual law enforcement officer would be armed with the knowledge of the offender's conditions, and could arrest said offender if the officer had reasonable grounds to believe the offender was violating said conditions and confirmed that the conditions were still in place (as one would for a warrant or protection order violation).

IV. ENFORCEMENT OF PROTECTION ORDERS

A. GENERAL

If a court issues a protection order, the court must deliver a copy of it to the complainant, the defendant, and all law enforcement agencies with jurisdiction to enforce it. Those law enforcement agencies must establish and maintain an index for the protection orders delivered to them and must include in the index the date and time of its receipt of each protection order.

As in domestic violence situations, it is expected that a police officer who has “reasonable grounds” to believe that a person has violated a protection order shall arrest and detain that person until a warrant can be obtained. R.C. 2935.03(B)(3)(b). Furthermore, any officer who arrests a person for violating a protection order shall be immune from liability for enforcing an order that “on its face is valid.” R.C. 2935.032 (F).

Current law provides for the nationwide enforcement of all protection orders. It states that a person who obtains a protection order from another county in Ohio or from another state may register that protection order with the clerk of any Ohio court by providing that clerk with a certified copy of the order to be registered. The person may then file a copy of the order that bears proof of registration with a law enforcement agency in the county in which the order has been registered.

Any officer of a law enforcement agency must enforce all protection orders. This is true even if the protection order was issued by the court of another county or state and such order was not registered in the officer’s jurisdiction.

A protection order is granted against the defendant and is meant to control the defendant’s behavior. If the defendant is violating a protection order, charges should be filed, whether or not the victim requested or in any way facilitated the conduct prohibited by the order.

Furthermore, no victim should be arrested or charged for aiding or abetting the defendant’s violation of a protection order. Arrest or prosecution of the victim would only serve to convince the victim not to report future violations and/or acts of domestic violence.

B. SPECIFIC ENFORCEMENT ISSUES

All law enforcement officers should aggressively enforce all protection orders issued by any court, whether within the State of Ohio or from a court of another state. However, due to the different types of protection orders and the varying ways in which they are obtained, specific enforcement of an order will not be identical in all cases. Accordingly, the following practices are recommended:

1. Enforcement of Criminal Protection Orders

Criminal Temporary Protection Orders are nearly always served upon the Defendant at an arraignment in municipal court, whether for a misdemeanor or a felony charge. As a result, while a lack of service will not be a problem, the continuing validity of the order is subject to some doubt, as the order will terminate upon a dismissal or a sentencing for the underlying charge.

Therefore, when considering enforcement of a criminal Temporary Protection Order, an officer should attempt to ascertain whether the underlying criminal charge is still pending. Unless an officer is able to verify from the appropriate clerk of courts that a charge has been dismissed or the defendant has been sentenced, he or she should proceed to aggressively enforce an otherwise facially valid criminal Temporary Protection Order.

2. Enforcement of Ex-Parte Civil Protection Orders

Ex-Parte Civil Protection Orders are granted without the Defendant's participation and are generally in effect until a full hearing on the order is held and the court decides whether a civil protection order should remain in effect. This full hearing can only take place after a Defendant has been served with the Ex-Parte Order, which also contains notice of the date and time of the full hearing. Here, whether or not a Defendant has been served with the Ex-Parte order will be the primary question faced by an officer.

The officer should attempt to verify through the Montgomery County Sheriff's Office whether or not the Defendant was served with the Ex-Parte Order. If the Defendant was served with the order prior to the potential violation that the officer is investigating, then the officer should proceed with enforcement. If the officer verifies that the Defendant has not been served, or is unable to determine whether this has occurred, and the officer decides not to make an arrest, then the officer should notify the Defendant of the existence and terms of the Ex-Parte Civil Protection Order, if at all possible.

It is critical that an officer attempt to notify a Defendant of the existence and terms of the order if an arrest is not made, as from the point of notification forward the Defendant may be arrested for a criminal violation of the order, whether or not formal service via the Montgomery County Sheriff's Office has taken place. Notification of the existence and terms of the order can either be physical or oral. If the officer has access to a copy of the order, typically through the victim, then the officer should either give the Defendant a copy or show the Defendant a copy, allow him or her to read it, and orally advise the defendant of its terms and of the full hearing date, time and location. If a copy is not available, then the officer should orally advise the Defendant of the terms of the order, pursuant to the entry of the order into the NCIC database, as well as the Defendant's responsibility to contact the issuing Court and find out the date and time of the full hearing.

Such a notification will be useless unless it is fully documented in a report, and then faxed to the Montgomery County Sheriff's Office communication center, via fax# 225-5546. The Communication Center staff will forward a copy to the Sheriff's legal processing unit, where the copy will be filed in the jacket with the original C.P.O. This process ensures that service can be verified at any future date.

3. Enforcement of Final Civil Protections Orders

These orders present the least difficult case of enforcement for an officer. The final hearing on a civil protection order will only take place after the Defendant has been served with the Ex Parte Order and notice of the time and date of the full hearing. As a result, from that point onward the Defendant is on notice that a protection order with its specified terms and conditions is in existence.

Accordingly, whether the Defendant has been served a copy of the order from the full hearing or not, an officer may proceed with enforcement. Furthermore, unlike criminal protection orders, full hearing civil protection orders have fixed expiration dates, so that an officer will not be in doubt as to whether the order has terminated on that basis.

V. VICTIM ASSISTANCE

A. VICTIM SAFETY

Whenever a police officer has reason to believe that a family or household member has been abused or is in danger of being abused, the officer should use all reasonable means to prevent abuse, including but not limited to the following:

1. Remaining on the scene as long as there is reasonable risk to the physical safety of such person or until such person is able to leave the residence;
2. Assisting an abused person in obtaining medical treatment necessitated by an assault, including assistance to the abused person in obtaining transportation to an emergency room of the nearest hospital;
3. Assisting the abused person in locating and getting to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or friend's residence or similar place of safety.
4. If no arrest is made, issuing a warning to both parties that any future act of domestic violence is a crime which will not be tolerated by the police and will likely result in the arrest and prosecution of the offender.

B. VICTIM NOTICE OF RIGHTS

Sec. 2935.032(C) requires that an officer who investigates a report of an alleged incident of domestic violence or an incident of violating a protection order or consent agreement to provide to the victim the following information:

1. Advice about the availability of a criminal protection order or a civil protection order or consent agreement;
2. The officer's name and the officer's badge number if he has one;
3. The report number for the incident if a report number is available at the time of the officer's investigation;
4. A telephone number that the victim can call for information about the case;
5. A telephone number of a domestic violence shelter in the area;
6. Information on any local victim advocate program.

An officer may complete the attached form entitled "Information for Domestic Violence Victims" and deliver to the victim.

Also, Sec. 109.42(B)(1)(b) requires the officer to give to the victim, his/her family or dependents a copy of the Victim Rights pamphlet of the Attorney General upon first contact unless the circumstances are such or their condition is such that they will not understand the significance of the pamphlet. In that event, the officer must later deliver the pamphlet personally or by mail.

VI. EVIDENCE COLLECTION

Investigating officers should conduct their domestic violence or protection order investigations in a way that it can be successfully prosecuted even without the availability or cooperation of the victim. To this end, the following investigative guidelines should be followed by the officer:

(Note: for investigation of strangulation assaults, see section VII below for specific considerations.)

A. INTERVIEWING THE VICTIM

1. Sub. H.B. 335 mandates that the officer shall "separate the victim . . . and the alleged offender, conduct separate interviews . . . in separate locations, and take a written statement from the victim that indicates the frequency and severity of any prior incidents of physical abuse of the victim by the alleged offender, the number of times the victim has called peace officers for assistance, and the disposition of those calls, if known". Sec. 2935.032(A)(2)(c).

It is advisable to interview the victim alone - out of the presence and hearing of not only the offender, but other family members or third parties as well.

2. While interviewing the victim, the officer should note in his/her report the following:
 - a) The location of the victim upon officer's arrival;
 - b) The victim's emotional and physical state (crying, bruising, swelling, redness, complaint of pain, hysterical behavior, intoxication, etc.).
3. Keep in mind that at trial a prosecutor may be able to introduce any "excited utterances" made to a officer by the victim (or any other witnesses) which implicate the defendant, even if the victim or witness refuses to testify or retracts her statement. Evidence Rule 803(2) defines an excited utterance as "a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event". An officer should fully document in his/her report any such statements, specifically noting when the statement was made in relation to the assault and the emotional state of the victim at the time she made the statement (e.g., shaking, anxious, excited, upset, nervous, hysterical, crying, sobbing, dazed, etc.).
4. Solicit and record exact details of the assault. Be very specific - not just that suspect hit victim, but how, how many times, with what, location of blows, etc.
5. Ascertain from the victim the identity of other witnesses not only to the assault itself, but to the circumstances leading to and following the assault (e.g., witnesses who can corroborate prior physical threats by suspect toward victim). Interview those witnesses.

6. Inquire about relationship between victim, suspect and other persons present.
7. Ask about previous incidents of violence or any convictions.
8. Ask about existing court temporary protection orders, and obtain copies.
9. Ask about alternative addresses.

B. INTERVIEWING THE SUSPECT

1. Describe in report the suspect's location upon police arrival.
2. Record any spontaneous statements made by the defendant which are not in response to any questioning by the police. The Miranda Rule does not apply to such volunteered statements.
3. Sub. H.B. 335 mandates that the officer shall "separate the victim . . . and the alleged offender, and conduct separate interviews . . . in separate locations. " Sec. 2935.032(A)(2)(c). Mirandize the suspect if he has been arrested or is being detained and is not free to leave. Ask the suspect about his relationship to the victim (to establish the element of family or household member relationship). Then question him about the incident itself.
4. Describe in report suspect's physical condition (e.g., under the influence of alcohol or drugs, torn clothing, out of breath, or any other characteristics indicative of having just been involved in an assault). Describe suspect's injuries in detail and ensure the suspect's offensive injuries (e.g., bruised knuckles) are photographed.
5. Describe suspect's emotional state (belligerent, apologetic, etc.).
6. Ask if suspect has any prior convictions.

C. INTERVIEWING OTHER WITNESSES

1. Identify and interview all witnesses separately, including those who only heard something (e.g. yelling or the sound of broken glass), but did not see anything.

2. Note in report relationship, if any, of witnesses to one another, or to the involved parties.
3. Interview children present, listing names and ages. Document in report whether any such statements are "excited utterances" - See section VI (A)(3) above.
4. Record names and contact information of paramedics and emergency personnel. Statements made to paramedics may be admissible under the medical treatment exception to the hearsay rule.
5. Check with immediate neighbors for potential witnesses of the assault, and the circumstances leading up to and following the assault.

D. CRIME SCENE AND EVIDENCE COLLECTION

1. Note in report and photograph condition of crime scene (overturned furniture, ripped telephone lines, splattered blood, etc.).
2. Ensure the victim's bruises are photographed. Because bruising and swelling may not immediately be visible, an officer should photograph victim both at the scene and several days later.
3. Ensure the suspect's offensive injuries (bruised knuckles, etc.) are photographed.
4. Collect and photograph all other related evidence (torn or bloodied clothing, objects used /thrown during the assault, etc.). If the evidence or object is immovable or too large, describe in detail in report, and photograph.
5. Seize as contraband any firearm/weapon in plain sight or obtained pursuant to a consent search that was used, threatened to be used, or brandished during or in relation to the incident. See Section 2935.03(B)(3)(h). Also, if the suspect is in possession of firearm or dangerous ordinance in violation of the Having Weapon Under Disability Statute, Sec. 2923.13, such weapon likewise should be seized. These weapons are subject to forfeiture under Sec. 2933.43. (If the weapon was not a factor in the assault and is not contraband, the suspect may be persuaded nonetheless to voluntarily consent to a temporary impoundment of the weapon - a procedure currently being utilized by the Dayton Police Department.)

NOTE: An officer who seizes a deadly weapon pursuant to this statute is "immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to . . . the seizure." See Section 2935.03(B)(4).

6. Take into evidence any and all threatening notes or tape recordings (e.g. answering machine recordings).
7. Complete the Dayton Police Department Domestic Violence Supplement, based upon the interviews and evidence collected at the scene pursuant to this section. (See Section II: The Prosecutor's Response, Form #3.)

E. FOLLOW-UP INVESTIGATION

1. Document whether any past history of violence exists, reported or not.
2. Several days after the assault, view victim's injuries and photograph emerging bruises.
3. Obtain records of medical treatment which document not only victim's injuries, but statements made by the victim to medical staff which may be admissible at trial even though the victim does not testify. Evidence Rule 803(4) states:

"The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" (emphasis added).

4. Interview all other potential witnesses such as neighbors, relatives etc., including those who may have talked to or seen the defendant immediately before or after the assault.
5. Obtain tape of any 911 calls.
6. Attempt to substantiate or refute alibi defenses.

VII. STRANGULATION

Strangulation, often incorrectly referred to as choking, is a form of assault frequently used to commit acts of domestic violence. Because it is not only potentially life-threatening but also difficult to detect, it is recommended that all officers pay particular attention to detecting the visual clues and victim symptoms when strangulation may have occurred.

A. NATURE AND SERIOUSNESS

Strangulation is defined as a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck. It occurs either as manual strangulation, where hands or other body parts are used, or as ligature strangulation, where a rope, cord, or article of clothing is used.

Strangulation can leave a victim unconscious within seconds, and the attacker need use as little as 4.4 pounds of pressure to do so. Continued strangulation will lead to brain damage, due to a lack of oxygen and blood flow to the brain, and will eventually lead to death.

Strangulation is a particularly dangerous form of domestic violence given the strong possibility that it may not be detected by an investigating officer. In the leading study of strangulation cases, which covered over three hundred known strangulations in the San Diego, California jurisdiction, visible, documented injuries were noted in less than 16% of the cases.

B. DETECTION OF STRANGULATION

1. Visual Observations

Carefully observe the victim, particularly the head and neck, for the typical signs of strangulation. Also observe the suspect for corresponding defensive injuries. Look for:

Red Spots (petechiae), created by the rupture of small blood vessels, are usually found in the eyelids, around the eyes, or in the face. These are most pronounced in a case of ligature strangulation.

Blood in eyes (subconjunctival hemorrhage) is created by the rupture of small blood vessels in the eye. This is most pronounced where the strangulation is intermittent, i.e., where the pressure is repeatedly applied and then released.

Redness (erythema) can darken to a noticeable bruise, but more often can disappear within a very short period of time.

Bruises, particularly in the area of the neck, most often caused by the pressure of the abuser's thumb(s).

Scratches, abrasions, scrapes, which can either be defensive (when the victim is attempting to break the strangulation) or caused by the abuser's own assault (typically fingernails or jewelry).

Ligature marks (such as rope burns) will be present when a rope, cord, or article of clothing is used in a ligature type of strangulation.

Loss of Bodily Functions

Coughing or Spitting of Blood

Neck Swelling (edema) is a **RED FLAG** danger sign, as it can indicate internal bleeding, a larynx injury, or a fracture of the hyoid bone. If left untreated, these symptoms could lead to severe injury or death.

Breathing Difficulty is also a **RED FLAG** danger sign, for the same reasons noted for neck swelling.

2. Interviewing the Victim

When speaking with a strangulation victim, the officer should also look out for additional symptoms:

Voice Change, usually raspy or hoarse, but total loss of voice is possible.

Difficult or Painful Swallowing

Psychiatric Illness or Personality Changes, although difficult for an investigating officer to determine, may be indicated through follow-up interviews with close family or friends.

Once the officer has obtained the basic statement from the strangulation victim, follow-up questions should be used to ensure that all relevant details are discovered. These questions may include:

Was victim shaken and strangled? how much? how strongly?

Did the abuser use one or two hands? an object?

How long did the strangulation last? How much force was used?

HAVE VICTIM DEMONSTRATE HOW IT OCCURRED.

The officer should inquire as to whether the victim suffers from any of the above noted strangulation symptoms, whether or not the victim has specifically complained of them.

C. OFFICER RESPONSE

Once an officer determines that a victim has or may have been the victim of strangulation, it is critical that the victim be provided with emergency medical services by paramedics and/or an emergency room physician. Not only will this protect a victim against unseen or barely notable but life-threatening injury, but emergency medical intervention will enhance the officer's ability to collect evidence as to the nature and severity of the assault.

In such a case, it is also vital that the officer obtain a medical records release from the victim, so that the prosecution of the assault will not be needlessly delayed.

Finally, when an officer reasonably believes that there is sufficient evidence to substantiate that a strangulation occurred, the case should be referred to the Montgomery County Prosecutor's Office for consideration of Felonious Assault or Attempted Felonious Assault charges.

VIII. COMPLETION OF DOMESTIC VIOLENCE REPORT

Sections 2935.032(C)(1) and (D) -- as enacted by Sub. H.B. 335 -- require that an officer who investigates a report of an alleged incident of domestic violence or an alleged incident of violating a protection order or consent agreement, complete a written report of the incident whether or not an arrest is made.

The report must:

"document the officer's observations of the victim or the alleged offender, any weapons at the scene, the actions of the alleged offender, any statements made by the victim or witnesses, and any other significant facts and circumstances." Also, if the officer does not make an arrest, the officer "must articulate in the report a clear statement of his reasons for not arresting and detaining the alleged offender until a warrant can be obtained."

Also, if the alleged offender has been granted pretrial release from custody on a prior charge of the offense of domestic violence or the offense of violating a protection order or consent agreement and violated conditions of that pretrial release, the officer must document in his/her report the facts and circumstances of the violation. Sections 2935.032(A)(2)(b).

All officers should complete the Law Enforcement Domestic Violence Supplement, based on interviews and evidence collected at the scene (see attached form).

IX. MISCELLANEOUS

1. All departments should be in compliance with Section 3113.32 of the Revised Code which requires all chiefs to "keep a separate record of domestic violence problems on a form prepared and distributed by the Superintendent of the Bureau of Criminal Identification and Investigation." Copies of these records must be submitted to BCI on a monthly basis.
2. No law enforcement officer investigating an incident of domestic violence should threaten the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

**CITY OF DAYTON
DOMESTIC VIOLENCE TASK FORCE
DOMESTIC VIOLENCE PROTOCOL**

SECTION II:

THE PROSECUTOR'S RESPONSE

APRIL 2005

SECTION II
THE PROSECUTOR'S RESPONSE

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I. VERTICAL PROSECUTION

Whenever possible, domestic violence cases should be "vertically prosecuted" so as to allow the same prosecutor to handle all hearings in the case. This develops trust between the prosecutor and victim.

II. INVESTIGATION AND FILING OF CRIMINAL CHARGES

A. SIGNING OF FORMAL COMPLAINT

Section 2935.03(B)(3)(e)(i) provides that the victim may not be required to sign the formal complaint as a prerequisite to arresting or charging an individual. If charges are filed and complainant declines to sign the complaint, the complaint should be signed by the investigating officer or the prosecutor.

Likewise, Section 2935.03(B)(3)(e)(i) provides that the victim's consent to the filing of charges may not be required as a prerequisite to charging an individual. The determination to charge should be based on the factual and legal sufficiency of the case, not on the victim's wishes. Charges can and should be filed without victim cooperation if there is sufficient independent corroboration of the crime to prove the charges without the victim's full involvement.

B. WAIVER OF COUNSEL AND WAIVER OF COUNSEL FORM:

In order to successfully prosecute a subsequent domestic violence incident as a felony, adequate evidence showing that the defendant was represented by counsel at the time of his prior conviction or that the defendant knowingly waived his right to counsel at that time is necessary. Such proof is more difficult when the defendant was not represented by counsel due to a substantial risk that a waiver was not properly recorded. Use of a written waiver of counsel will avoid unnecessary difficulty in use of prior convictions. When the plea is entered, the defendant must also be advised that by entering a plea to the charge of domestic violence 2919.25 (A) or (B), violation of a protection order, or assault, menacing by stalking, or aggravated trespass of a family or household member, a subsequent offense may be enhanced to a felony. However, if the new charge is domestic violence menacing 2919.25 (C), then a subsequent offense may be enhanced to a third degree misdemeanor. (See attached form #1.)

C. WAIVER OF RIGHTS AND WAIVER OF RIGHTS FORM:

Each defendant who enters a guilty or no contest plea to domestic violence or violation of protection order charge shall sign a "Plea of Guilty to Charge and Waiver of Rights Form." Use of a written waiver of rights form will avoid unnecessary difficulty in use of prior convictions and reduce issues for appeal. (See attached form #2.)

D. USE OF LAW ENFORCEMENT DOMESTIC VIOLENCE SUPPLEMENT

Effective on-scene investigation by police officers is one of the most critical components for effective domestic violence prosecutions. The on-scene officer has to record observations as to the physical and emotional status of the parties, describe the appearance and location of injuries, note the condition of the scene of the violence, insure that appropriate photographs are taken and evidence collected, and record the nature of medical follow-up. To assist the on-scene officer in accomplishing this myriad of tasks, the Dayton Police Department Domestic Violence Supplement is intended to serve as a “one-stop shop” form to ensure that all these facets of a thorough investigation are covered. (See attached form #3.)

Use of the Supplement will also assist in the prosecution of domestic violence cases by giving any prosecutor assigned to the case a concise but comprehensive summary of the evidence in the case, thus allowing a prosecutor to make more informed decisions within the time pressures of the criminal justice system.

III. ENHANCED PENALTIES FOR DOMESTIC VIOLENCE OR VIOLATION OF PROTECTION ORDER

A. DOMESTIC VIOLENCE

1. A violation of Domestic Violence 2919.25 (A) or (B) is a misdemeanor of the first degree unless there has been a prior conviction of Domestic Violence, or Felonious Assault, Aggravated Assault, Assault, Menacing by Stalking or Aggravated Trespass involving a person who was a family or household member at the time of such violation. In this case, a violation of Domestic Violence 2919.25 (A) or (B) is a fifth degree felony. Sec. 2919.25(D).
2. A violation of Sec. (C) is a misdemeanor of the fourth degree, unless there has been a prior conviction of Domestic Violence, or Felonious Assault, Aggravated Assault, Assault, Menacing by Stalking or Aggravated Trespass involving a person who was a family or household member at the time of such violation. In this case, it is a misdemeanor of the third degree. Sec. 2919.25(D).
3. *If* the police officer determines that there is reasonable cause to believe that the suspect has committed a Felonious Assault or Aggravated Assault, then, regardless of whether the victim of the offense was a family or household member of the offender, the officer must treat the incident as a Felonious Assault or Aggravated Assault, and arrest and charge the

suspect for such felony. (Section 2919.26 authorizes the issuance of temporary protection orders in cases of Felonious Assault, Aggravated Assault, Assault, Menacing by Stalking, and Aggravated Trespass which involve victims who are family or household members.)

B. VIOLATING A PROTECTION ORDER OR CONSENT AGREEMENT

Violating a Protection Order or Consent Agreement is ordinarily a first degree misdemeanor. Under the following circumstances, a violation can be a fifth degree felony:

1. Violation of a Temporary Protection Order (TPO) or Civil Protection Order (CPO) R.C. '2919.27(A)(1)

A violation of a TPO or CPO is a fifth degree felony if the offense has a prior conviction under '2919.27 or two prior menacing by stalking or aggravated trespass convictions involving same victim as the TPO/CPO.

2. Violation of a (Stalking) Protection Order (SPO) or (Stalking) Civil Protection Order (SCPO)

A violation of a SPO or SCPO is a fifth degree felony if the offender has two prior convictions under '2919.27 or two prior aggravated menacing, menacing by stalking, menacing, or aggravated trespass convictions involving the same victim as the SPO/SCPO.

All reasonable and practical efforts should be made to prosecute enhanceable offenses as felonies. However, not every case where the defendant has a prior domestic violence conviction will or should be prosecuted as a felony. If a felony prosecution is not feasible, consideration should be given to filing appropriate misdemeanor charges.

IV. "NO DROP" POLICY

It should be made clear to the victim and the offender, from the first contact through sentencing, and by every person associated with the prosecutor's office, the police department and the court, that the victim in a domestic violence or protection order case cannot "press" charges or "drop" charges. The decision whether or not to "press" or "drop" charges can be made only by the prosecutor. Section 2935.03(B)(3)(e)(ii) - provides:

"If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order or consent agreement and if the victim does not cooperate with the involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or filing of the charges, informs the

involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the incident that resulted in the arrest or filing of the charges and of all witnesses to that incident" (emphasis added).

In all cases where there is sufficient evidence to proceed, the case must be presented for trial at the misdemeanor level. A case should not be dismissed by the prosecutor unless the prosecutor, in conjunction with law enforcement, has made a good faith effort to obtain corroborating witnesses or evidence. Dismissal should be a last resort and only after all other alternatives have been explored.

Prosecutors should also be aware of Ohio Revised Code Sections 1901.20, 1907.02, 2930.06 and 2931.03 which specify that a judge of a municipal court, district court, or court of common pleas does not have the authority to dismiss a criminal complaint, charge, information or indictment solely at the request of the complaining witness and over objection of the prosecuting attorney, law director, village solicitor or other chief legal officer responsible for the prosecution of the case.

V. UNCOOPERATIVE COMPLAINANTS

Cases in which the victim is uncooperative should be dealt with individually. Section 2935.03(B)(3)(e)(ii), quoted above in Section III, makes clear that a prosecutor may not dismiss a domestic violence or protection order case merely because a victim is reluctant to cooperate.

Given the typical dynamics between a batterer and a victim, a prosecutor should expect that a victim may recant prior statements or testimony as a means of self-protection. Financial pressures, lack of housing, fear of losing custody, and threats from the defendant are possible reasons why it is difficult for many victims to follow through, even when it appears obvious to others that they should. Fear of death is another; separation is a risk factor for increased violence and homicide. Subsequent prosecution of the victim for making false statements or testimony not only destroys any likelihood of proceeding with an evidence-based prosecution but also serves to reduce the likelihood that the victim would report future domestic violence to law enforcement.

The following steps should be taken by all prosecutors in domestic violence cases to avoid or limit the difficulty of proceeding regardless of the victim's wishes:

1. A victim advocate should make contact with the victim as soon as possible after charges are approved and maintain contact throughout the process.

Whenever a prosecutor becomes aware of a victim's lack of cooperation or reluctance to testify, the victim advocate should be contacted as soon as possible.

2. All witnesses that would be necessary for prosecution to proceed without a victim's cooperation must be identified as witnesses at the time charges are approved, **whether or not the victim is uncooperative at that time.** Physical evidence must be sought and obtained on the same basis.
3. Use of contempt and/or material witness proceedings against uncooperative complainants should not be routinely used. Such measures should be used only under unusual circumstances and after careful consideration of all the facts in each case, including, when possible, the involvement of a victim advocate. If the decision is made to use contempt and/or material witness proceedings, a victim advocate should be involved in any subsequent arrest or court proceedings that arise.
4. If the victim fails to appear for trial, a continuance should be requested. If a continuance is denied, and the victim's testimony is not essential to successful prosecution (i.e., there is sufficient independent corroboration of the crime to prove the charges without the victim's testimony), the matter should proceed to trial. See Section V below.
5. If the victim refuses to testify, the prosecutor may nonetheless subpoena him/her to court and ask the Court to call the victim as a "court's witness". Evidence Rule 614(a) provides:

"The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called."

A prosecutor may use leading questions to examine a victim designated by the court as its witness, and may use a prior inconsistent statement to cross-examine the victim/witness (and, if the victim/witness denies making such prior statement, introduce the statement through the testimony of the officer who took the statement).

"A trial court possesses the authority in the exercise of sound discretion to call individuals as witnesses of the court." State v. Adams, 62 Oh.St.2d 151, 16 OO3d 169 (1980). "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." State v. Adams, 16 OO3d at 173.

A prosecutor is not required to demonstrate surprise at the witness' changed testimony as a prerequisite to the court's calling witness as its own under Ev. Rule 614(A). See: State v. Apanovitch, 33 OS3d 19 (1987); State v. Adams, 62 Oh.St.2d 151 (1980); State v. Scalmato, Unreported Case No. 51698 (8th App. Dist., 1988); State v. Hambrick, Unreported Case No. 51698 (8th App. Dist., 1987); State v. Starks, Unreported Case No. 50087 (8th App. Dist., 1986); State v. Dacons, 5 O App3d 112 (10th App. Dist., 1982).

Fact patterns of cases which hold that the trial court properly exercised its discretion in calling a court's witness include:

- a. Prosecutor had put on a prima facie case when the court's witness was called, witness has a relationship with defendant and witness has given inconsistent statements.

See: State v. Adams, 62 Oh.St.2d 151 (1980).

- b. Prosecutor had put on a prima facie case when the court's witness was called and witness has a relationship with defendant.

See: State v. Strong, Unreported Case No. 93-AP-99 (10th App. Dist., 1993).

- c. Witness has a relationship with defendant and has given inconsistent statements.

See: State v. Scalmato, Unreported Case. No. 53959 (8th App. Dist., 1988); State v. Brewer, Unreported Case. No. 84AP-852 (10th App. Dist., 1985); State v. Hoagland, Unreported Case. No. CA 83-02-014 (12th App. Dist., 1983); State v. Dacons, 5 O App3d 112 (10th App. Dist., 1982).

- d. Witness has a relationship with defendant and has refused to speak to prosecutor.

See: State v. Ross, Unreported Case No. 93-AP-1017(10th App. Dist., 1993); State v. Marsh, Unreported Case. No. CA 84-11-080 (12th App. Dist., 1985).

- e. Witness has given inconsistent statements.

See: State v. Apanovitch, 33 OS3d 19 (1987); State v. Hambrick, Unreported Case No. 51698 (8th App. Dist., 1987); State v. Starks, Unreported Case No. 50087 (8th App. Dist., 1986).

The jury should not be informed that the witness has been called as a "court's witness". See: State v. Ross, Unreported Case No. 93-AP-1017 (10th App. Dist., 1993).

6. One case that is extremely helpful to the prosecutor in cases in which an uncooperative complainant testifies in a domestic violence prosecution is State v. Derrick Anderson, Unreported Case No. 13003 (2nd App. Dist., 1994). That case holds that the prior identification by a testifying witness may be admissible non-hearsay under Ohio Evidence Rule 801(D)(1)(c). That rule provides:

"A statement is not hearsay if . . . (1) Prior Statement by Witness. The declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (c) one of identification of a person soon after perceiving him, if the circumstances demonstrate the reliability of the prior identification."

Importantly, Anderson holds that such a statement is substantive evidence and not merely impeachment evidence. Thus, in trial, if a victim/witness retracts a prior identification of the defendant made to an Officer, that Officer may be permitted to take the stand to testify to the victim's prior identification of the defendant. Since that prior identification is substantive evidence, the prosecutor then will be able to survive at Rule 29 motion for a directed verdict and the case may be submitted to a jury.

7. If the victim refuses to testify and his or her testimony is essential to successful prosecution, the case may be recommended for dismissal without prejudice. The prosecutor should encourage the victim to file charges again if the violence reoccurs.

VI. PROSECUTING CASES BASED UPON INDEPENDENT CORROBORATIVE EVIDENCE

Criminal charges can and should be filed, and convictions obtained, in domestic violence cases irrespective of the cooperation of the victim, where there is sufficient independent corroborative evidence of the elements of the crime and the identity of the perpetrator of the offense. A combination of the following evidence may constitute independent corroboration:

1. Visible injuries photographed by an officer or observed by a person other than the victim;
2. A medical report that indicates injuries;

3. Neighborhood or family witnesses to the violence;
4. Witnesses who heard noises indicating that a domestic violence incident was taking place; e.g., screams, furniture being thrown, etc.;
5. A 911 tape with the victim/witness/suspect's statements;
6. Excited utterances of the victim, the suspect or eyewitnesses made to a police officer or any other person. Evidence Rule 803(2). See State v. Justice, 92 Ohio App. 3d 740 (9th App. Dist., 1994), a domestic violence case in which the prosecutor was permitted to introduce the victim's excited utterances to the police officer who responded to the call;
7. Statements made by the victim to medical personnel for the purpose of medical diagnosis or treatment. Evidence Rule 803(4);
8. Out-of-court child statements admissible under Evidence Rule 807;
9. Physical evidence present; e.g., weapon, broken furniture, disarray, torn clothes;
10. Admission by the defendant to the police or to third persons;
11. Threats by the defendant overheard by third parties;
12. "Like and similar" acts of domestic violence which prove motive, intent, identity, or absence of accident. Evidence Rule 404(B).
13. Subpoena the emergency contact person listed on the Police Supplement to testify as to the family or household member element and to provide additional evidence or information.
14. Use family photo collected from the victim at the scene for identification of the defendant in court.

VII. PLEA NEGOTIATIONS

Plea bargaining in domestic violence cases involving intimate partners should be discouraged. All other domestic violence cases should be reviewed on a case by case basis. Reduction of charges or dismissals should be limited to those cases in which the evidentiary deficiencies suggest that a conviction for the charged offense has become unlikely.

Prior to making a decision to reduce or dismiss the charge, the prosecutor should contact the victim, the victim advocate, and the investigating officer to obtain input. However, the decision to reduce or dismiss charges shall rest solely with the prosecutor.

Factors to consider in offering a plea bargain should include an assessment of the lethality factors, the severity of the injury, whether children were present during the violence, whether prior violence has occurred, regardless of whether or not the police were called or charges were filed, and any other relevant factors.

The majority of plea bargains or reductions for intimate-partner domestic violence cases should result in a domestic violence conviction of a lesser degree for possible future felony enhancement. Reductions to non-domestic violence type offenses for non-intimate partners should be considered on a case by case basis.

There should be no pleas offered or dismissals solely because a victim so requests. The reluctance or refusal of a victim to testify is not a sufficient basis in itself for reduction or dismissal.

Certain minimum recommendations should be made by the prosecutor when community control or probation sanctions are being considered by the Court. Also, if the Court is inclined to grant judicial release, similar recommendations should be made.

Given that chronic substance abuse is a significant lethality indicator, prompt and sustained treatment is a vital component of any sentence. Accordingly, a prosecutor should recommend that all defendants should undergo substance abuse assessment. Where substance abuse is present or likely, long-term treatment should be recommended.

In cases where incarceration is not granted, batterer intervention programs should be recommended by the prosecutor for defendants in all intimate-partner domestic violence cases, and in other cases where the facts warrant it.

If significant lethality factors are present, some degree of local incarceration, whether served on weekends or on work-release, should be **strongly** considered for **all** defendants.

VIII. SPEEDY PROSECUTION

Prosecutors should prosecute the case as speedily as possible and oppose all unnecessary continuances so as to increase the likelihood of conviction and to protect the victim. If a continuance is granted, it should be brought to the attention of the court and made clear to the defendant on the record that any conditions of bond or orders of protection remain in effect. If there has not been a previous order of protection and the victim desires one, it should be requested from the court.

IX. ISSUANCE OF PROTECTION ORDERS

A. TEMPORARY PROTECTION ORDERS

1. TPOs may be issued for violations of the Ohio Revised Code and for violations of municipal ordinances.

Current law permits the filing of a motion (by the complainant, or in an emergency by the arresting officer if the complainant is unable to file, or by the Court) for a TPO whenever a complaint for domestic violence; or felonious assault, aggravated assault, menacing by stalking, or aggravated trespass involving a family or household member, or any municipal ordinance that is substantially similar to these offenses has been filed. Sec. 2919.26(A) (1). If a victim of the above listed offenses is not a family or household member, a protection order can still be obtained by the filing of a motion for such an order under 2903.213.

2. The victim has the right to be present.

The victim and victim advocate or another person providing support to the victim have the right to be present at all stages on a motion for a TPO. Sections 2919.26(A)(2) and 2930.09.

3. Hearing requirement when an ex-parte protection order is issued.

Existing law permits the Court to issue a TPO as an ex parte order (i.e., without the alleged offender being present). Section 2919.26(D)(1) provides that "the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender."

If a Court issues an ex-parte protection order under '2919.26(D)(1) or 2903.213(D)(2), the Court shall hold a full hearing in the presence of the offender no later than the next court day after arrest or when the offender appears pursuant to summons. The Court may then determine whether the order should remain in effect, be modified, or withdrawn.

4. Issuance of "mutual TPOs" is restricted.

"Mutual TPOs" are severely restricted under Section 2919.26(I): If a TPO has been issued against the defendant, another TPO may not be issued against the complainant (or other family or household member) unless both of the following apply: (a) The defendant has filed a separate complaint for domestic violence or for felonious assault, aggravated

assault, menacing by stalking, or aggravated trespass involving a family or household member, AND (b) The court determines that both the complainant (or other family or household member) and the defendant "acted primarily as aggressors" AND that neither "acted primarily in self defense" AND that, in accordance with the standards and criteria of Sec. 2919.26, it should issue the TPO against the complainant (or other family or household member).

5. Model TPO Order

The Ohio Supreme Court has adopted the attached comprehensive temporary protection order form for use in all courts (see attached form #4 and the attached Dayton Municipal Court Protection Order Form).

6. Civil Protection Order (CPO)

Whether or not a victim has obtained a Temporary Protection Order, prosecutors and victim advocates should also urge a victim to obtain a Civil Protection Order (CPO) through Domestic Relations Court.

C. PROTECTION ORDER ENFORCEMENT

Any violation of a protection order is a significant lethality indicator. Therefore, a prosecutor should promptly and aggressively prosecute any protection order violation as if it were a domestic violence charge, enhancing to the felony level where possible. If the facts warrant it, the prosecutor should recommend some degree of incarceration. Factors to consider in recommending incarceration are the lethality indicators found on page 35 of The Criminal Judicial Response section of this protocol. At the time charges are filed, the prosecutor should take steps to demonstrate sufficient evidence of service of the protection order (i.e., admission, testimony of officer who served it, etc.).

A protection order is granted against the batterer and is meant to control the batterer's behavior. If the batterer is violating a protection order charges should be filed, whether or not the victim requested or in any way facilitated the conduct prohibited by the order. Furthermore, no victim should be prosecuted for aiding or abetting the batterer's violation of a protection order. Prosecution of the victim would only serve to convince the victim not to report future violations and/or acts of domestic violence.

X. ADVOCATE'S ROLE

Prosecutors have a cooperative relationship with victim advocates. Advocates should be permitted to attend hearings with the victims. In fact, the victim has a statutory right to have a victim advocate or another person providing support to the victim be present at all stages on a motion for a TPO. See item VIII A(2) above.

IN THE

COURT OF
CRIMINAL DIVISION

OHIO

STATE OF OHIO

: CASE NO. _____

Plaintiff,

: (Judge _____)

- vs-

:

WAIVER OF COUNSEL

Defendant.

I am the Defendant in this case. I have been fully advised by the Court of the nature of the charge against me and of the penalties involved; as well as the effect of a plea of guilty, no contest, and not guilty. I have also been advised I have the right to a reasonable continuance in order to obtain an attorney; and that if I do not have the money or funds to obtain an attorney, that the Court will obtain a lawyer for me at no cost or obligation to me.

I have also been advised that I have a right to retain an attorney even if I am intending to plead guilty.

I understand these rights, but wish to give them up and proceed at this time without a lawyer to represent me.

Defendant

The Court finds that the Defendant appeared in open Court and, after being fully advised of his/her right to counsel, affirmatively and voluntarily waived that right and chose to proceed at this time without counsel.

Judge

Cc: Prosecutor's Office

FORM # 1

IN THE MUNICIPAL COURT OF DAYTON
MONTGOMERY COUNTY, OHIO
STATE OF OHIO
CITY OF _____

V.

) CASE NO.
)
)
) JUDGE _____
)
)
) PLEA OF GUILTY TO CHARGE
) AND WAIVER OF RIGHTS
)

Before entering a plea of guilty or no contest to the charges brought against me I have had the following rights and points of law explained to me:

1. I have the right to have an attorney and that the court will appoint an attorney for me if I cannot afford one.
2. I have the right to have the nature of the charges and possible penalties explained to me.
3. I have a right to bail.
4. I have the right to have my case tried by a jury or judge.
5. I have a right to a reasonable continuance of my trial if I request.
6. I have the right to question any witnesses who testify against me.
7. I have the right to present witnesses on my behalf and to subpoena them to appear in court.
8. I do not have to testify on my behalf and the state cannot force me to do so.
9. The state must prove all elements of the charges beyond a reasonable doubt.
10. A plea of guilty is a complete admission of the truths of the facts in the Complaint and of my guilt of the charge brought by the state.
11. A plea of no contest is an admission of the truth of the facts in the Complaint but not an admission of guilt, but permits the court to make a finding of guilty or not guilty. Such a plea cannot be used against me in any future civil or criminal proceedings.
12. A plea of not guilty is a complete denial of the facts as stated in the Complaint and will require further proceedings.
13. If I enter a plea of guilty or no contest, I waive all of these rights and the court shall impose sentence without unnecessary delay.
14. If I am not a citizen of the United States, pleading guilty or no contest to the offense that I am charged with may lead to my deportation, exclusion from admission to the United States or denial of naturalization.

These rights and points of law have been explained to me by the court or my attorney. I understand these rights and points of law. I willingly wish to enter a plea of guilty/no contest to these charges. I enter this plea knowingly, intelligently and voluntarily.

My plea is guilty/no contest (circle one).

Defendant's signature

The court finds that the defendant has been apprised of his/her constitutional rights and that the defendant understands them and that he/she has knowingly, intelligently and voluntarily waived them and accepts defendant's plea of guilty/no contest.

Judge

White Copy - File
Yellow copy - Defendant

FORM # 2

**CITY OF DAYTON
DOMESTIC VIOLENCE TASK FORCE
DOMESTIC VIOLENCE PROTOCOL**

SECTION III:

THE ADVOCATE'S RESPONSE

APRIL 2005

**SECTION III
COURT-BASED VICTIM ADVOCATES**

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I. COURT-BASED VICTIM ADVOCACY

Dayton Municipal Court should utilize domestic violence programs to provide court-based victim advocacy, the purpose of which is to make the justice system and legal remedies more accessible to victims of domestic violence. Consistent with the ethical code of the National Organization of Victims, advocates would minimally perform the following functions:

1. Attempt to contact in person, by telephone or in writing all domestic violence victims as soon as possible, ideally not later than at the arraignment or initial appearance stage.
2. Provide information regarding court procedures and legal remedies to the victim, including civil remedies available through Section 3113.31 of the Revised Code, local resources for affordable or free legal counsel, temporary protection orders and enforcement resources for TPOs.
3. Inform and explain to the victim the process of obtaining both criminal and civil protection orders.
4. Communicate regularly with the prosecutor and share with the prosecutor information not in the police report as well as the current status of the relationship between offender and victim, only with the victim's consent.
5. Maintain contact with victim, assist in notifying her of hearings and case status and inform the victim how to contact the jail to check on the release of the offender.
6. Accompany victim to court hearings and arrange for whatever safe witness-waiting areas are available in the court.
7. Make appropriate referral to shelter and other services and, whenever appropriate, inform the victim of compensation potentially available through the Ohio Crime Victims Compensation Program. Advocates will refer victims to an attorney for assistance with the victims compensation application process.
8. Provide emotional support, crisis intervention, safety planning and advocacy to the victim through the entire pendency of the case.
9. Assist with the delivery of TPOs to victims unable to attend arraignments or initial appearances due to hospital stays, physical incapacity, lack of notice, or other reasons.

II. COURT SECURITY

All courts are encouraged to recognize the need for safe and secure witness-waiting areas and interview rooms for domestic violence complainants.

III. ACCELERATED DOCKETING OF DOMESTIC VIOLENCE CASES

All courts are encouraged to consider the accelerated docketing of domestic violence cases to the extent possible.

**CITY OF DAYTON
DOMESTIC VIOLENCE TASK FORCE
DOMESTIC VIOLENCE PROTOCOL**

SECTION IV:

**THE CRIMINAL
JUDICIAL RESPONSE**

APRIL 2005

**SECTION IV
THE CRIMINAL JUDICIAL RESPONSE**

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Ohio courts have an obligation to carry out the legislative goal of protecting victims of domestic violence in Ohio as mandated by the Ohio Supreme Court (*Felton v. Felton* (1997), 79 Ohio St.3d 34), as well as to ensure a fair trial for all parties.

Unlike crimes of violence involving strangers, domestic violence cases deal with violence involving family or household members. Given the intimate relationship between perpetrators and victims, domestic violence cases pose a unique set of issues for the judicial system. The following is a set of guidelines that can be used as a framework for judges responding to domestic violence in those cases that they deem appropriate. The guidelines are not intended to limit either judicial discretion or the range of potential judicial responses to domestic violence. Also, it is recognized that limited court resources and budgetary limitations may adversely impact upon a court's ability to implement portions of this protocol.

I. BOND - CONSIDERATIONS FOR JUDGES and PRE-TRIAL RELEASE OFFICERS

All courts should implement Sections R.C. 2919.251, 2919.271 and 2937.23 governing the setting of bail and domestic violence cases.

A. GENERAL CONDITIONS OF PRE-CONVICTION RELEASE

1. Criminal Rule 46: In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:
 - a) The nature and circumstances of the crime charged;
 - b) The weight of the evidence against the defendant;
 - c) The confirmation of the defendant's identity;
 - d) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;
 - e) Whether the defendant is on probation, a community control sanction, parole, post-release control, or bail.

2. Criminal Rule 46 allows for consideration of all relevant information. A judge or screening officer may consider as relevant the following lethality indicators in setting bail as appropriate. Derived from the findings of the Montgomery County Domestic Violence Death Review Committee, research literature, and the collective experience of the Protocol's authoring committee, the lethality factors should be used as guidance in the determination of dangerousness in individual cases.

<p><u>A. Severity of Violence</u></p> <p><input type="checkbox"/> serious injury</p> <p><input type="checkbox"/> threats to kill</p> <p><input type="checkbox"/> use of weapons</p> <p><input type="checkbox"/> threats with weapons</p> <p><input type="checkbox"/> strangulation/choking of victim</p> <p><input type="checkbox"/> sexual assault/abuse</p> <p><input type="checkbox"/> abuse of animals</p> <p><input type="checkbox"/> sadistic/terrorist/hostage acts</p> <p><input type="checkbox"/> abuse during pregnancy</p> <p><input type="checkbox"/> property damage to intimidate or control</p> <p><input type="checkbox"/> forcible entry to gain access to victim</p> <p><input type="checkbox"/> repeated/escalating violence</p> <p><u>B. Child Endangerment</u></p> <p><input type="checkbox"/> child abuse</p> <p><input type="checkbox"/> violence in presence of child(ren)</p> <p><input type="checkbox"/> threats to abduct child</p> <p><input type="checkbox"/> threats to harm child</p> <p><u>C. Centrality of Victim to Defendant</u></p> <p><input type="checkbox"/> obsessive behavior (following, telephone harassment, monitoring)</p> <p><input type="checkbox"/> stalking</p> <p><input type="checkbox"/> ownership - sees victim as property</p> <p><input type="checkbox"/> isolation of victim (social/physical/financial)</p> <p><u>D. Anti-Social Behavior</u></p> <p><input type="checkbox"/> assaults on others</p> <p><input type="checkbox"/> violence or threats in public</p> <p><input type="checkbox"/> threats/harassment of victim's family/friends</p>	<p><u>E. Failed Community Control of Defendant</u></p> <p><input type="checkbox"/> violated protection/restraining orders</p> <p><input type="checkbox"/> violated Probation/Community Control Sanctions</p> <p><input type="checkbox"/> prior batterer intervention/treatment</p> <p><u>F. Defendant Criminal History</u></p> <p><input type="checkbox"/> numerous police calls</p> <p><input type="checkbox"/> prior arrests for domestic violence</p> <p><input type="checkbox"/> prior charges for domestic violence</p> <p><input type="checkbox"/> prior convictions for domestic violence</p> <p><input type="checkbox"/> charges are pending</p> <p><input type="checkbox"/> other criminal history</p> <p><u>G. Psychological Indicators of Defendant</u></p> <p><input type="checkbox"/> suicidal threats</p> <p><input type="checkbox"/> extreme life stressors (job loss, death in family)</p> <p><input type="checkbox"/> hospitalized and/or treated for depression</p> <p><input type="checkbox"/> hospitalized and/or treated for other mental illness</p> <p><u>H. Other Danger Indicators</u></p> <p><input type="checkbox"/> victim is separating or recently separated</p> <p><input type="checkbox"/> defendant has access to weapons</p> <p><input type="checkbox"/> defendant has weapons training</p> <p><input type="checkbox"/> defendant abuses alcohol/drugs</p> <p><input type="checkbox"/> parties have intimate/romantic relationship</p> <p><input type="checkbox"/> defendant interferes with victim's access to emergency services (pulled phone from wall, etc.)</p> <p><input type="checkbox"/> sudden escalation of abusive/violent behavior</p> <p><input type="checkbox"/> other unusual behavior of defendant</p>
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B. SPECIAL BOND CONSIDERATIONS

If the defendant is charged with domestic violence, or felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass involving a family or household member AND the defendant was previously convicted for any such offenses OR the defendant was subjected to the terms of a TPO or CPO, whether or not it involves the victim of the new charge, before setting bail Sec. 2919.251 **requires the court to consider all of the following** in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46:

1. whether the defendant has a history of domestic violence or a history of other violent acts;

2. the mental history of the defendant;
3. whether the defendant has a history of violating the orders of any court or governmental entity;
4. whether the defendant is potentially a threat to any other person;
5. whether the setting of bail at a high level will interfere with any treatment or counseling that the defendant or the family of the defendant is undergoing.

C. MENTAL EVALUATION AND TPO/CPO VIOLATIONS

1. If the defendant is charged under Sec. 2919.27 with violating a TPO, CPO, SPO (Stalking Protection Order), or SCPO (Stalking Civil Protection Order) and that violation involved conduct by the defendant that caused a family or household member to believe the defendant would cause physical harm to that member or his/her property, Sec. 2937.23 requires the court to determine whether to order a mental evaluation of the defendant pursuant to Sec. 2919.271. If the court decides to issue such an order, the evaluation must occur before bail is set.

If the defendant is charged with menacing by stalking, Section 2919.271 authorizes the court to order a mental evaluation.

2. Section 2919.271 provides that the evaluation shall be completed no later than 30 days from the date the order is entered. The court may order up to 2 additional similar evaluations. Section 2919.271 also permits a court to order a defendant who has been released on bail to submit to such mental examinations.
3. Examiners of the defendant's mental condition are required to file a written report with the court within 30 days after the entry of the court's order. The examiners report must contain the following:
 - a) the findings of the examiner;
 - b) the facts, in reasonable detail, on which the findings are based;
 - c) the opinion of the examiner as to the mental condition of the defendant;
 - d) the opinion of the examiner as to whether the defendant represents a substantial risk of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that placed other persons in reasonable fear of violent behavior and serious physical harm, or evidence of present dangerousness;

- e) the opinion of the examiner as to the types of treatment or counseling that the defendant needs.

D. DENYING BAIL

Effective July 29, 1999, a judge may deny bail to persons accused of certain offenses. Under prior law, pursuant to the Ohio Constitution, a person charged with a capital offense where proof is evident, or the presumption great, was not entitled to bail. This remains unchanged.

Newly enacted R.C. 2937.222, provides for a mandatory hearing upon motion of the prosecuting attorney or the Court to deny bail to other offenders.

Charges applicable: Aggravated Murder (non-capital offense); Murder; Felony 1 or 2; Aggravated Vehicular Homicide (2903.06); F4 OMVI offense (DUI).

E. BOND INVESTIGATION/RECOMMENDATION

1. Every person arrested in Montgomery County for a new domestic violence charge will be screened by the Montgomery County Pretrial Services Department. Based upon the information available, a bond recommendation is made to the court of jurisdiction.
2. The **Screening Officer** preparing the recommendation should consider the following:
 - a. Residence: The address where the defendant will reside if released.
 - b. Employment: If the defendant is employed, where and for how long and/or means of support if unemployed.
 - c. Education: The highest grade completed by the defendant and/or current employment.
 - d. Mental Health: Has the defendant ever been diagnosed with any mental health problems and if so have they ever had any mental health treatment?

- e. Substance Abuse: Does the defendant have any substance abuse problems with either drugs or alcohol?
 - f. Law Enforcement Supplemental: Consider all information included in the supplemental and consider advising the court of additional factors that have become known since the investigation.
3. After verification of defendant based information, the Screening Officer will run a criminal record check on the defendant, compile said record and attempt to secure a written or verbal synopsis of the offense. Based upon the information available, a bond recommendation is then made to the court of jurisdiction.
- a) Pursuant to Criminal Rule 46 (A), bond recommendations are as follows: Personal Own Recognizance (OR); Conditional Own Recognizance (COR); Conditional Own Recognizance: Electronic Home Detention (EHDP); Monetary bond.
 - b) The Screening Officer can recommend that the Court impose any of the following conditions of bail:
 - i. Place the person in the custody of a designated person or organization agreeing to supervise the person;
 - ii. Place restrictions on the travel, association, or place of abode of the person during the period of release;
 - iii. Place the person under a house arrest or work release program;
 - iv. Regulate or prohibit the person's contact with the victim;
 - v. Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;
 - vi. Require a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail;
 - vii. Any other constitutional condition considered reasonably necessary to ensure appearance or **public safety**.
 - c) Because of the ongoing risk of danger and intimidation of witnesses in domestic violence cases, in most cases bond should be recommended that requires the defendant to reside apart from the victim, irrespective of the stated wishes of the defendant and/or complaining witness.

4. If the court decides to release a defendant to the Pretrial Services Department, the person will be supervised according to the following suggested minimum standards:
 - a. Office visits;
 - b. Urinalysis;
 - c. Community-based referrals; e.g., drug and alcohol counseling;
 - d. Home visits, if deemed necessary;
 - e. Monitoring and verification of any specific conditions; e.g., TPOs, substance abuse treatment and/or medications, employment;
 - f. Telephone contacts;
 - g. Tracking and notification of court dates.
5. In addition to the above standards, in situations indicative of high lethality, the court should consider ordering a Juris Monitor. In certain situations, a Juris Monitor should be ordered as a condition of bond or as a condition of electronic home detention. Such situations may include those where the offender is accused of stalking, has violated temporary protection order(s), or where there has been repeated incidents of domestic violence. Such a Monitor is placed in the home of the victim and connected to a phone line. The offender is ordered to wear an ankle bracelet which transmits a signal. If the transmitter comes within a certain range of the victim's home, a call is automatically placed to the monitoring company which, in turn, calls the police. At the same time, a microphone is automatically turned on and the monitoring service records any sound within a certain range of the unit. In addition, the victim is supplied with a handheld unit which has a help button that can be activated if the victim is within range of the unit.
6. At any time during the defendant's supervision, the officer will submit a supplement report to the court informing them of any violations of bond.

II. PROHIBITION AGAINST DISMISSING CRIMINAL CHARGES OVER PROSECUTOR'S OBJECTION -- JUDGES

Pursuant to amended Substitute Senate Bill 98, effective March 13, 1998, a judge of a municipal court, district court, or court of common pleas does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, law director, village solicitor, or other chief legal officer responsible for the prosecution of the case.

III. TEMPORARY PROTECTION ORDERS - JUDGES

1. TPOs may be issued for violations of the Ohio Revised Code and for violations of municipal ordinances.
 - a. Existing law permits the filing of a motion (by the complainant, or in an emergency by the arresting officer if the complainant is unable to file, or by the Court) for a criminal TPO whenever a complaint for domestic violence has been filed or the offense of felonious assault, aggravated assault, menacing by stalking, or aggravated trespass involving a family or household member has been filed. Sub. H.B. 335 expands this list of offenses to include "a violation of a municipal ordinance that is substantially similar" to any of those offenses. Sec. 2919.26(A) (1).
2. The victim has the right to be present.
 - a. The victim and victim advocate or another person providing support to the victim have the right to be present at all stages on a motion for a TPO. Sections 2919.26(A)(2) and 2930.09.
3. The elimination of the requirement for a hearing within 24 hours after the issuance of an ex parte TPO.
 - a. Existing law permits the Court to issue a TPO as an ex parte order (i.e., without the alleged offender being present). Section 2919.26(D)(1) provides that "the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender."
 - b. Section 2919.26(D)(2) provides that "If the court issues a temporary protection order . . . as an ex parte order, it shall

conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender not later than the next day on which the court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons to determine whether the order should remain in effect, be modified, or be revoked." Thus, if a defendant is arrested for domestic violence on a Friday or Saturday, the Court may issue an ex parte TPO and conduct a hearing on the following Monday when the Court is in session.

4. Issuance of "mutual TPOs" is restricted.
 - a. "Mutual TPOs" are severely restricted under Section 2919.26(I): If a TPO has been issued against the defendant, another TPO may not be issued against the complainant (or other family or household member) unless both of the following apply: (a) The defendant has filed a separate complaint for domestic violence or for felonious assault, aggravated assault, menacing by stalking, or aggravated trespass involving a family or household member, AND (b) The court determines that both the complainant (or other family or household member) and the defendant "acted primarily as aggressors" AND that neither "acted primarily in self defense" AND that, in accordance with the standards and criteria of Sec. 2919.26, it should issue the TPO against the complainant (or other family or household member).
5. Modification of TPO's
 - a. TPOs should not be modified or vacated while the case is pending without input from defense counsel, prosecuting attorney, and the victim.
6. Model TPO Order
 - a. The Ohio Supreme Court has developed the attached comprehensive temporary protection order for use in all courts.

IV. DEFENDANT'S RIGHT TO COUNSEL - JUDGES

Defendants charged with Domestic Violence should be encouraged to retain or request an attorney. In addition to the significant issues that such a defendant faces, in order to successfully prosecute a subsequent Domestic Violence incident as a felony, case law has established that prosecutors must prove that the defendant was represented by counsel at the time of his prior conviction or that the defendant knowingly waived his right to counsel at that time. Such proof

is more difficult when the defendant was not represented by counsel due to a substantial risk that a waiver was not properly recorded. Use of a written Waiver of Counsel will avoid unnecessary difficulty in use of prior convictions (see Section II: The Prosecutor's Response, Form #1). In addition, the use of a written plea form will aid in avoiding unnecessary difficulty in use of prior convictions. Such a form is being developed and will be distributed to courts and prosecutors.

V. SENTENCING - JUDGES & PROBATION OFFICERS

A. PRE-SENTENCE INVESTIGATIONS

1. Following a conviction or plea of guilty to domestic violence or other crimes of violence involving family or household members, generally a Pre-sentence Investigation Report (PSI) should be ordered by the court.
2. The probation officer preparing the PSI should make every reasonable effort to contact the victim or victim's advocate to obtain a victim impact statement specifying any aggravating circumstances.
 - a. If the PSI reveals one or more of the following factors, a recommendation of a term of incarceration should be considered:
 - 1) victim suffered **serious bodily injury** or the offender caused any adult or minor child in the household of the offender to reasonably believe that he or she would cause serious bodily injury;
 - 2) offender engaged in, or exhibited a genuine threat of, **forcible sexual activity** to any adult or minor in the household or engaged in any prohibited intrafamilial sexual activity;
 - 3) the offender used a **deadly weapon**, or caused the victim to reasonably believe that he or she would use a weapon;
 - 4) offender has engaged in **on-going intimidation** of the victim by phone, mail or other means, by the offender personally or through a third party;
 - 5) offender, or third party agent of the offender, has **stalked** the victim;
 - 6) offender has engaged in a **pattern of escalating violence**;
 - 7) offender has a **history of domestic violence** or other violent or criminal behavior;

- 8) offender **has previously disregarded a court order** or been **non-compliant with alternatives to incarceration** (e.g., conditions of batterer intervention);
3. Obtain victim input on the need for special conditions of probation or release that will provide for the on-going safety of the victim (e.g., continued absence of the offender, temporary removal of weapons from the household, etc.);
4. Determine if the offender was the victim of a prior act(s) of domestic violence;
5. Arrange for assessment by a batterer intervention program to determine if the offender can benefit from such a program;
6. Arrange for an alcohol and drug evaluation, when indicated.
7. Gather information from the victim and the offender regarding the victim's financial circumstances and their future relationship - i.e., separation, divorce, continuation of living together, whether both have children together, the custody of children, etc. The Court's overriding concern should be for the safety of the victim and other household members. Notwithstanding the victim's financial circumstances or the victim's wishes to resume a relationship with the offender, if the Court determines that the safety of the victim and other household members requires that the offender be separated from them, the Court should order separation as a condition of probation or, when appropriate, a term of incarceration.
8. Determine whether the offense was “committed in the vicinity of a child,” i.e., within 30 feet or within the same residential unit as a child under 18 years of age. This is a factor weighing in favor of imposing imprisonment at the time of sentencing. See Sections 2929.12 and 2929.22.
9. Consider lethality factors (outlined on Page 35) as provided by law enforcement, Pre-Trial Services, and any other source.

B. DANGEROUSNESS AS A SENTENCING CONSIDERATION - JUDGES

1. Sentences for domestic violence offenders should hold the offender accountable and communicate the message that the Court takes this offense very seriously.
2. A judge should consider a term of incarceration if the PSI reveals one or more of the following lethality factors:

- a. Victim suffered **serious bodily injury**, or offender caused any adult or minor child in the household of the offender to believe that he or she would cause serious bodily injury.
- b. Offender engaged in, or exhibited a genuine threat of, **forcible sexual activity** to any adult or minor child in the household or engaged in any prohibited intrafamilial sexual activity.
- c. The offender used a **deadly weapon**, or caused the victim to reasonably believe that he or she would use a weapon;
- d. The offender has continued to engage in **on-going intimidation of the victim** by phone, mail or other means, by the offender personally or through a third party.
- e. The offender, or a third party-agent of the offender, has **stalked the victim**.
- f. The offender has a **history of domestic violence** or other offense of violence.
- g. Offender has engaged in a **pattern of escalating violence**.
- h. The offender has **previously violated court orders** or been **non-compliant with probation or batterer intervention**;
- i. Determine whether the **offense was “committed in the vicinity of a child,”** i.e., within 30 feet or within the same residential unit as a child under 18 years of age. This is a factor weighing in favor of imposing imprisonment at the time of sentencing. See Sections 2929.12 and 2929.22.
- j. A batterer intervention program has assessed the offender as **inappropriate for intervention**.

In addition to the above factors, a judge in determining sentencing should consider the full breadth of lethality indicators, as set forth on page 35 above.

- 3. If a judge imposes incarceration as a condition of probation/CCS, the court should consider ordering long-term batterer intervention as another condition. Batterer intervention should be ordered, rather than anger management.

C. PROBATION/COMMUNITY CONTROL SANCTIONS

1. If the Court deems that the offender is an appropriate candidate for community control sanctions/probation, then:
 - a. Unsupervised community control sanctions/probation should not be granted. Formal, supervised probation/community control sanctions makes the offender more accountable for his or her crime and provides a measure of protection for victims by giving them an officer of the court to contact in the event of subsequent threats or assaults.
 - b. The probation officer should periodically - preferably once a week during the first month, but in no case less than once a month - meet face-to-face with the offender following sentencing. Any modification in this schedule should be approved by the court, in its discretion, following the presentation of documentation to justify the request.
 - c. The probation officer should attempt to contact the victim, by phone and/or letter at least once every sixty (60) days to encourage the reporting of any non-compliance by the offender with the provisions of the court's community control sanction/probation order.
 - d. If the offender is placed on community control, consideration should be given to notifying the law enforcement department having jurisdiction over the area in which the victim and offender live and work of the conditions of the offender's community control, including:
 - i) A condition prohibiting ownership, possession or use of a firearm or deadly weapon;
 - ii) A condition prohibiting offender from being within a specified structure or geographic area;
 - iii) A condition that confines the offender to a residence, facility, or other structure;
 - iv) A condition that prohibits the offender from contacting or communicating with any specified individual (such as the victim);
 - v) A condition that prohibits the offender from associating with a specified individual.

Pursuant to R.C. 2951.08, during a period of probation or community control, a police officer may arrest the offender on

probation or under community control sanction without a warrant if a police officer has reasonable grounds to believe the person has violated or is violating any one of these conditions. Notification from the Probation Department of the conditions placed on offenders convicted of Domestic Violence will help to increase victim safety.

- e. Any non-compliance with the court's community control sanction/probation order, including, but not limited to, allegations of continued harassment (verbal or physical), unauthorized contact, or substance abuse should result in the probation department initiating violation proceedings, including arrest where probable cause of the violation can be established. New acts of domestic violence or other acts of violence or TPO violations generally shall cause the probation department to seek probation revocation.
- f. A court may consider imposing a suspended lengthy term of incarceration to provide added incentive to the offender to comply with the terms of probation.
- g. Generally, a court should grant supervised community control sanctions/probation in misdemeanor cases for a period not less than 1 year and in felony cases for a period not less than 3 years.
- h. A court should consider imposing special conditions of community control sanctions/probation which seek to establish and preserve the safety of the victim and children, including:
 - i) placing restrictions on the offender's movement as needed to protect the victim, other family members, and the community;
 - ii) prohibiting future violence, stalking, threat of violence or any other criminal conduct in relation to a family or household member.
- i. A court should order restitution to the victim, as agreed upon by the parties or as determined by the probation department, including:
 - i) medical costs;
 - ii) counseling costs for both primary victim and child witnesses;
 - iii) replacement of locks, change of locks, replacement of destroyed property;
 - iv) victim moving expenses;

- v) costs of emergency protective shelter or hotel costs for victims fleeing due to violence, threat of violence, stalking or ongoing intimidation for which the defendant is responsible.

D. BATTERER INTERVENTION

1. If the Pre-sentence Investigation Report (PSI) indicates that the offender may benefit from participation in intervention or treatment programs, the Court should consider ordering participation in such programs.
 - a. Court-ordered participation in a batterer's intervention program for a few days or a few weeks is ineffective. Generally, participation in a batterer's intervention program should be for a period not less than 6 months. In serious cases that fall below the threshold for incarceration as outlined on page 42, courts should consider ordering a year of participation in a batterer intervention program. In addition, most offenders can benefit from post-intervention probation supervision for a period of 9 to 12 months.
 - b. The court-ordered batterer's intervention program should contain the "Critical Elements For Court-Ordered Batterer Intervention", listed in item (6) below.
 - c. Couples counseling, family therapy, or mediation are not appropriate treatments/responses in domestic violence cases.
 - d. If the PSI report indicates that the offender was previously a victim of domestic violence, and if the Court determines that treatment of the offender is appropriate, the Court may consider ordering intervention by a domestic violence victim advocacy agency.
2. If the PSI report indicates that the offender is chemically dependent, the Court should consider ordering participation in a substance abuse rehabilitation program.

Note: Substance abuse rehabilitation is not a substitute for batterer intervention. If indicated, the court should order participation in both types of programs.

3. For any type of mandated intervention program, the court should notify the intervention program of the court order requiring successful completion of the program. Successful completion will be evidenced by progress reports from the professionals conducting the intervention. The Probation Officer should periodically communicate with the program to ensure compliance. Programs accepting court mandated offenders are obligated to report to the court the failure of the offender to attend any appointment, including but not limited to the initial contact with the intervention program. The Court should communicate to the defendant that failure to successfully complete the program will result in penalties such as revocation of community control sanctions/probation, incarceration, or other consequences the Court deems appropriate. Failure to maintain an appointment is not privileged communication. See Jenkins vs. Metropolitan Life Ins. Co., 171 Ohio St.557, 1961.
4. In special cases such as felonious assaults, or in cases involving elderly, pregnant, child or handicapped victims, courts should impose a period of extended incarceration.
5. For repeat and felony offenders, the court should consider imposing the maximum period of incarceration, and any additional orders from the protocol which are reasonable.
6. Critical Elements for Court-Ordered Intervention
 - a) The Batterer Intervention Program philosophy should acknowledge that:
 - i. Domestic violence is a crime, not disorder. It may consist of a single act of violence and often it is a pattern of coercive control.
 - ii. The offender, and only the offender, is accountable for the violence.
 - iii. The first priority is victim safety.
 - iv. Primary aggression and self defense and dual battering are distinctly different concepts.

- b) The Batterer Intervention Program should contain the following critical elements:
- i. Provide group sessions with other offenders as the preferred treatment modality. Couples counseling or mediation are not effective interventions.
 - ii. Require clients to waive confidentiality with regard to the Court and to sign a "limited confidentiality" statement with regard to victims. This "limited confidentiality" policy will allow the victim access to information concerning the offender's attendance and progress as it relates to victim safety and predictions of future violence.
 - iii. Have procedures for conducting on-going assessments of the offender's violent propensities. The assessments should be more than offenders' self reports and should include reports from victims, their advocates, or any other source of information about subsequent violence. Procedures for confronting offenders with this information should be coordinated with victims or their advocates so that necessary safety planning can occur.
 - iv. Submit regular and reliable progress reports to appropriate court officials.
 - v. Any and all new threats or offenses disclosed by the batterer should be reported to appropriate court officials. Have procedures for reporting to victims and the court any indicators of increased risk to the victim's safety.
 - vi. Maintain consistent consequences for non-compliant offenders, including procedures for notifying appropriate court officials, as well as victims or their advocates of the noncompliance.
 - vii. Maintain relationships with the local domestic violence agencies which include agreements for on-going monitoring and consultation. (YWCA Shelter & Housing Network or Artemis Center for Alternatives to Domestic Violence)
 - viii. Refer victims to victim advocacy programs and refuse to treat victims using batterer interventions.
 - ix. Refer offenders with concurrent victimization and violence issues to victim programs.

- x. Cooperate with local efforts to create a coordinated community response to domestic violence.

E. DIVERSION

Courts are strongly discouraged from diverting domestic violence cases. Diversion fails to hold the offender accountable, impedes subsequent felony enhancement of domestic violence convictions, and potentially discourages victims from filing charges in the future.