

**SAN MARCOS POLICE DEPARTMENT
POLICIES AND PROCEDURES MANUAL**

Section Title: Family Violence

General Order: 305

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Issuing Authority: *Howard E. Williams*
Howard E. Williams, Chief of Police

I. POLICY

The Department assigns domestic violence and domestic disturbance calls a high priority. The nature and seriousness of crimes committed between family or household members are not mitigated because of the relationships or living arrangements of those involved. Therefore, law enforcement must exercise leadership and caution in responding to domestic violence. An immediate legal response can make a major difference in the disputants' lives. With all due consideration for their own safety, Department personnel responding to a domestic disturbance call will (1) end the conflict; (2) arrest persons when probable cause exists that a crime has occurred; (3) provide safety and security for the crime victim(s), and; (4) refer participants to appropriate agencies to help prevent future occurrences.

II. PURPOSE

The purpose of General Order 305 is to specify Department guidelines for action during incidents that involve family violence, protective orders, or both. This policy is a cooperative effort of the Department and the Hays County District Attorney's Office to:

- A. Enable service providers the ability to serve a greater number of victims of family violence;
- B. Reduce the number of family violence cases through early law enforcement intervention and timely provision of services to victims of family violence; and
- C. Enable the Department to file better cases for family violence with the Hays County District Attorney's Office.

III. DEFINITIONS

- A. Administrative Review – A documented review of an incident or occurrence prepared for the Chief of Police, or his designee, by the Internal Affairs Unit, to determine whether policy, training, equipment, or disciplinary issues should be addressed.
- B. Dating Relationship – A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on consideration of the length of the relationship, the nature of the relationship, and the frequency and type of interaction between the persons involved in the relationship. A casual

acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship.

- C. Dating Violence – An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.
- D. Family – Includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.
- E. Family Disturbance – An act of disorder or an act to destroy the tranquility or composure by a member of a family or household against another member of the family or household that has not yet escalated into an act of family violence.
- F. Family Violence – An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; abuse by a member of a family or household toward a child of the family or household; or dating violence.
- G. Household – A unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.
- H. Member of a Household – Includes a person who previously lived in a household.
- I. Private Premise – A permanent or temporary residence, including but not limited to a house and the grounds immediately surrounding it, an apartment, a hotel room, and a house-trailer.
- J. Reasonable Grounds – That set of facts or circumstances based on reliable, trustworthy information or on personal knowledge or observation that reasonably shows and would warrant an ordinary, prudent person in the same or similar circumstances to believe that a particular person has been guilty of, is threatening, or is about to commit some offense against the law.

IV. GENERAL RESPONSIBILITIES

- A. Preservation of the peace in family disturbances is perhaps the most sensitive area of law enforcement and presents the greatest challenge and risk to officers. To be effective, officers must not only be cautious, but also be firm in their actions and courteous as well as tactful in their manner.
- B. In family disputes, officers are frequently confronted with conditions that appear to be both civil and criminal.
 - 1. Officers should make clear that the Department does not participate in civil matters.

2. Officers confronting civil disputes should offer practical suggestions or refer the parties to the appropriate agencies, remaining aware that the objective is to restore and maintain the peace.
- C. Pursuant to the Texas Code of Criminal Procedure, Chapter 5, Article 5.04, any officer responding to a family disturbance or family/dating violence call will issue the *Notice to Adult Victims of Family Violence*, to any possible adult victim. This form advises family violence victims of their rights and remedies and of the availability of shelter or other community services.
 - D. The procedures that follow are not intended to establish hard and fast rules on how to handle the wide variety of family disputes. Officers must apply common sense and logic in their resolution of family disturbances and should rely on this policy for guidance.

V. OFFICER RESPONSIBILITIES

- A. Patrol Division officers investigating family violence calls will file a family violence report, take pictures, collect evidence and make arrests as necessary and appropriate.
- B. When possible, two officers should be dispatched to family disturbance and family/dating violence calls. Those officers should try to coordinate their arrival at the scene.
- C. The primary officer assigned the call should inquire about any protective order that may be on file for the complainant or any other known persons involved.
- D. People encountered in the immediate vicinity of the scene should be briefly questioned about the incident and the parties involved.
- E. During the initial contact with the occupants in a private premise, the officers should identify themselves, explain the purpose of their presence, and request entry. If the complainant is an occupant of the dwelling, the officers should ask to speak with him/her.
 1. Officers may enter the premises if consent has been given to do so.
 2. When one of the parties to a family dispute requests police intervention, the officers may enter the premises over the objection of the other party.
 3. When one party is locked out by the other party, the officers will not assist the evicted party in forcing entry.
 4. When officers enter a dwelling with the consent of either or both parties, and subsequently both parties request that they leave, the officers will do so, unless the officers have reasonable grounds to believe their presence is necessary to prevent family violence or to affect an arrest.
 5. When officers enter a dwelling with the consent of either or both parties, and subsequently one party requests that they leave, the officers may remain over the objections of the other party, if the officers have reasonable grounds to believe their presence is necessary to prevent family violence or to affect an arrest.
- F. When officers are refused entry to a residence, an attempt should be made to speak with the complainant. The officers may request Communications to call

the complainant. The objective is to ensure the safety of people within the dwelling.

1. The officers should attempt to locate and interview any third party who may be a witness to the dispute to ascertain the degree of the disturbance.
 2. If a breach of the peace occurs, the officer(s) should advise the third party of his right to file a formal complaint.
 3. If the officer has reasonable grounds to believe police intervention is necessary to prevent family/dating violence, the officer should contact his/her supervisor. The officer should move to public property and observe the premises while waiting for the arrival of his/her supervisor.
- G. Officers may forcibly enter a dwelling only under exigent circumstances and when sufficient probable cause exists that immediate police intervention is imperative to prevent the commission of a felony, loss of life, or bodily injury.
1. Officers must evaluate the following elements when considering a forced entry:
 - a. The degree of urgency involved and the time required to obtain a warrant;
 - b. Whether parties involved in the disturbance are armed; and
 - c. Whether the probability of harm to the officers or other persons will increase by a forced or emergency entry.
 2. Upon any type of entry, officers should establish control of the situation by:
 - a. Remaining constantly alert for potential weapons;
 - b. Inquiring about the nature of the dispute;
 - c. Determining if persons are injured, protecting any victim from further injury, and requesting medical treatment for the injured;
 - d. Identifying the parties involved and other persons present; and
 - e. Ensuring the safety of all persons by interviewing the persons in separate areas

VI. NON-ARREST REMEDIES

- A. In situations where family/dating violence or a violation of a court order has not occurred, officers should suggest a temporary separation for the involved parties in an effort to allow the disputant's time to regain their composure.
- B. If counseling is requested by either party involved in the dispute, that party will be referred to the Crime Victim's Coordinator.
- C. If a victim requests assistance in obtaining a protective order, he/she will be referred to Criminal Investigation Division.
- D. If chronic alcoholism is involved in the family disturbance:
 1. The parties may be referred to medical counsel or the appropriate social service agency; or

2. The complainant may be referred to legal counsel regarding the filing of an alcoholic commitment petition.
- E. When officers are requested to enter a private premise and remain while a spouse removes his/her personal effects from the premise, the officers' only responsibility is to ensure neither party assaults the other.
1. If a dispute arises as to what property may be removed, the officer will refer the parties to their attorneys, as violation of community property rights is a civil matter.
 2. If one party alleges a theft or a violation of a property settlement is being committed, or his/her property is being damaged or destroyed, the officer should advise the party to contact his/her attorney.
 3. When damage to property is threatened or has been committed, the officers will not make an arrest since a violation of community property rights is a civil matter.
- F. In situations where one spouse alleges the other is involved in a violation of morals or other lewd act with a third party, the officer cannot enter a premises to obtain evidence. There is no law making adultery a criminal offense in the State of Texas. The complainant will be advised by the officers to consult an attorney.

VII. CUSTODIAL ARRESTS

- A. When an assault is committed in an officer's presence, the officer shall affect an arrest.
- B. When an assault has been committed against a child, and that assault constitutes injury to a child, the officers may affect an arrest.
- C. When an assault has been committed prior to the officers' arrival, the officers should consider affecting an arrest when:
1. A member of a family or household assaults another member of that family or household and bodily injury resulted from the assault;
 2. Bodily injury resulted and the officer has probable cause to believe the actor committed the offense;
 3. The assault was committed with a deadly weapon; or
 4. Serious bodily injury resulted.
- D. When circumstances reasonably show that threatened violence may occur, the officers may affect an arrest to prevent the threatened violence, provided the threat occurs in the officers' presence or view. Officers should remain flexible when dealing with situations involving threats only, since the resourceful application of non-arrest remedies usually enables the officers to settle the immediate dispute and minimize the possibility of violence without affecting an arrest.
- E. When physical injury is threatened against a child but has not been inflicted, the officer should inform the threatening party that he would commit a felony if he carries out the threat. Officers may affect an arrest when circumstances reasonably show it is necessary to prevent the assault.

- F. Officers request their supervisor's guidance in handling situations that center on offenses, threatened, alleged, or committed, involving a child.

VIII. FAMILY DISTURBANCE OR FAMILY/DATING VIOLENCE CALLS INVOLVING OFFICERS

- A. Any officer responding to a family disturbance or family/dating violence call involving a sworn member of the San Marcos Police Department, in addition to following the guidelines listed in this procedure, will request the presence of a supervisory officer.
- B. The supervisory officer notified of a sworn member's involvement in a family disturbance or family/dating violence call will respond to the scene and assess the situation.
- C. If the incident warrants a custodial arrest of a sworn member, the supervisor will notify command officers in accordance with General Order 305.IX.B, below.
 - 1. The highest-ranking command officer to respond to the scene will be the approving authority for any custodial arrest.
 - 2. The supervisor will forward copies of all offense, incident, or supplemental reports, including all details of the call, to the Office of the Chief of Police and to the division commander of the arrested officer.
 - 3. Officers of all ranks responding to calls where officers are involved in family disturbance or family/dating violence calls will submit their reports on an offense, incident, or supplemental report, including all the details of the call.
- D. If the incident does not warrant a custodial arrest of a sworn member, the supervisor assigned to the incident will submit copies of all offense, incident, or supplemental reports to the Division Commander of the officer involved in the disturbance.
- E. The Chief of Police, upon receiving reports of sworn members being involved in family/dating violence incidents, will order an investigation of the incident.
- F. The division commander of any officer involved in a family/dating violence incident or a family disturbance should ensure that the involved officer and his family are made aware of the help that is available through social service agencies.

IX. OFFICERS CHARGED OR CONVICTED OF A CRIME OF FAMILY/DATING VIOLENCE OR WHO ARE SUBJECT TO PROTECTIVE ORDER

- A. In accordance with federal statute, it is unlawful for anyone, including an officer of this Department, convicted of a crime of family/dating violence, including a class C misdemeanor, or who becomes the subject of a protective order, to possess or transport any firearm or ammunition.
- B. Notification Responsibilities
 - 1. Any sworn member who becomes a suspect in a crime of family/dating violence, including a class C misdemeanor, will notify their immediate supervisor in writing as soon as possible.

2. Any sworn member arrested or charged with a crime of family/dating violence, including a class C misdemeanor, will, as soon as practical, through his/her supervisor, notify the Chief of Police.
 3. Any sworn member who becomes the subject of a protective order will immediately notify a supervisory officer who will place the officer on administrative duty pending further investigation.
 4. Any sworn member convicted of a crime of family/dating violence, including a class C misdemeanor, or having a conviction prior to the effective date of this policy, will immediately notify a supervisory officer who will place the officer on administrative duty pending further investigation of the conviction.
- C. Any officer convicted of a crime of family/dating violence will immediately relinquish their department-issued firearms to his/her supervisor.
- D. Any supervisory officer having knowledge of an officer being convicted of a crime of family/dating violence, including a class C misdemeanor, prior to the effective date of this policy will relieve the officer of his firearm.
1. Any supervisory officer relieving a sworn member of a firearm for a conviction of a crime of family/dating violence will document any actions taken in a written report with copies sent to all members in his chain of command.
 2. The sworn member's department-issued firearms will be taken to the Armory and Supply Unit during normal business hours or placed in the Property and Evidence Storage Unit during non-business hours by the supervisory officer taking possession of the firearm.

X. REPORTING RESPONSIBILITIES

- A. An officer who is assigned to investigate a family disturbance or family/dating violence call will complete and submit the appropriate incident or offense report.
- B. When a Class C misdemeanor assault is committed or suspected against a family member or household member or an individual with whom the suspect has or has had a dating relationship, the offense will be reported on an incident report.
1. The offense will be listed as Assault / Family Violence.
 2. The victim will be advised to contact the City of San Marcos Legal Department to file charges.
- C. If the family disturbance or family/dating violence call involves a sworn member of this department, all officers assigned to the call, including supervisors, will submit reports detailing their involvement in the incident.
- D. In all cases that involve the actual or suspected abuse or neglect of a child, officers will submit a copy of the appropriate incident or offense report to the Texas Department of Human Services.