



SOCIAL SCIENCE

Domestic Violence



Domestic Violence

~ CHAPTER 29 ~

Topics and concepts included in this chapter:

1. Psychology of Domestic Violence
2. Cycles of Violence and Why Victims Stay with their Abusers
3. Family Court Act Definition of "Family" & the NYPD's Expanded Definition
4. The Family Court Act Definition of Family Offenses
5. Concurrent Jurisdiction
6. Tactical Considerations and Evidence Based Prosecution
7. Primary Physical Aggressor Law and Must Arrest Situations
8. Procedure when responding to domestic violence calls and Proper preparation of the New York State Domestic Incident Report
9. New York City's response to combat domestic violence
10. Orders of Protection, issuance and enforcement
11. Members of the service involved in domestic incidents

Mandatory Patrol Guide Procedures

Disciplinary Matters

- | | |
|-------------|---|
| P.G. 206-11 | Member of the Service Arrested (Uniformed or Civilian) |
| P.G. 206-19 | Orders of Protection Served on Members of the Service |
| P.G. 206-20 | Orders of Protection Prohibiting Off-Duty Firearms Possession by Uniformed Members of the Service |

Arrests

- | | |
|-------------|--|
| P.G. 208-36 | Family Offenses/Domestic Violence |
| P.G. 208-37 | Family Offenses and Domestic Violence Involving Uniformed or Civilian Members of the Service |



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Command Operations

- P.G. 212-34 Probationary Police Officer, Police Eligible or Civilian Employee Involved in a Police Incident
- P.G. 212-57 Service of Family Court/Supreme Court Orders of Protection by Uniformed Member of the Service

Required Activity Log Entries

Domestic Incidents

1. Spontaneous statements made by victims, offenders, and witnesses.
2. Excited utterances made by victims.
3. Statements or arguments that are overheard.
4. A brief description of the scene.
5. The emotional state and demeanor of the victim and the offender.
6. Names, home telephone numbers, cell phone numbers of all persons present, and witnesses who may have seen or heard the event.
7. Name and tax number of the officer who took digital photos.
8. Date, time, and number of digital photos taken.
9. If no arrest is effected on a misdemeanor or a violation in the officer's presence, explain the details which contributed to that decision and have the complainant/victim sign the activity log.[Write refused if victim refuses to sign activity log.]
10. If the primary physical aggressor could not be determined in cases of misdemeanors, explain what steps were taken to attempt to make such a determination.
11. If disposition is unfounded (10-90F2), officer should explain actions taken and the decision process which lead to the disposition.



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PART I: THE PSYCHOLOGY OF DOMESTIC VIOLENCE

One of the most explosive issues facing the criminal justice system today is how to react to and control interpersonal violence. Until recently, primary attention was placed upon the control of violence committed by strangers. Such acts were properly seen not only as inflicting serious harm, if not fatalities, on their victims but also as challenging the essence of a public order committed to nonviolent resolution of disputes.

Within the last two decades, attention has also focused on what is statistically the greater problem: violence within family structures. As awareness grew of previously unreported incidents of brutal attacks upon intimates and elderly relatives, concerns that first arose over abused children were expanded to encompass other family members.

Domestic Violence - A pattern of intentional *coercive behavior*, which serves to maintain power and control over family/household members, including children, intimate partners or ex-partners. This pattern may include physical, emotional, psychological, economic, and/or sexual abuse and may escalate in frequency and severity over time.

Coercive behavior can include criminal acts such as assault, sex crimes, stalking offenses, property crimes, and child endangerment. Conduct that is not considered criminal in nature by itself may nevertheless form a basis for criminal charges when the behavior instills fear of injury, harm, or is intended to annoy, intimidate, or alarm the person over a period of time. Domestic violence is not usually an isolated incident, but rather a pattern of abuse.

DOMESTIC VIOLENCE FACTS

Domestic violence is a *learned behavior*, not a mental illness or individual pathology. People are abusive because they are taught that it is an effective, acceptable response to stress, frustration, and anger. Men, specifically, may be socialized to believe that aggression equals power and that abuse and control can be justified.

Domestic violence occurs in people of all ages, sexual orientation, ethnic, religious, and social groups. The actual extent of domestic violence may not differ much across social and cultural groups but the rate of official reporting and identification does.

It is clear that both male and female children are affected when they grow up in an abusive environment. The symptoms exhibited by children who witness domestic violence can be similar to those of children who are physically abused.



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Research has shown that battering may first occur or increase during pregnancy. Abusers feel they are losing control when the pregnant partner is focusing on her and the baby's health. According to a study published by the March of Dimes, pregnant women seeking routine prenatal care reported being abused. These women tend to suffer injuries to the stomach, breasts, or pelvic area.

According to the Justice Department, about three out of four spousal assaults occur between people who are divorced or separated. In many cases, the separation process precipitates an increase in the level of violence and harassment. Several studies have indicated that the majority of domestic homicides occur during the separation or divorce process. This phenomenon is easily understood because the abuser's power and control are threatened when a partner leaves.

Most victims stay in abusive relationships due to fear, lack of resources, psychological damage, and the hope that the abuse will stop. More women are killed by their partners after ending the relationship than at any other time.

Of all families experiencing domestic violence, many also experience the effects of substance abuse-related problems. The use and abuse of substances however does not cause violent behavior. Substance abuse and physical abuse are problems that should be dealt with separately. Many batterers use alcohol to explain or excuse their violence and to minimize their responsibility for the violent acts they have committed. This is also true with drug use and stress. Stress, drugs, and alcohol do not cause battering, but batterers often use these as a way to excuse their use of violence.

Abusers tend to harm any person with whom they are in a relationship, regardless of the victim's personality or actions. An abuser needs no provocation to become violent. Violence is part of the abuser's pattern of responding. It is important to understand that their partner, the victim, is not in control of this behavior, nor does the victim cause the partner's behavior.

Studies indicate that batterers will also harm their children. The severity of the abuse of the mother is reflected in the abuse of the child. The abuse of children is more likely when the relationship is dissolving, or when the couple has separated. The aggressor may not wish to relinquish dominance of the partner and/or the children.

Some types of abuse have the potential for escalating into violations of law, for which police officers can make arrests. However, other forms of abuse do not rise to the level of criminal behavior. In order to assist all victims, police officers are required to complete a New York State Domestic Incident Report (D.I.R.) (DCJS 3221) to track all incidents, regardless of whether the conduct complained of is criminal behavior.



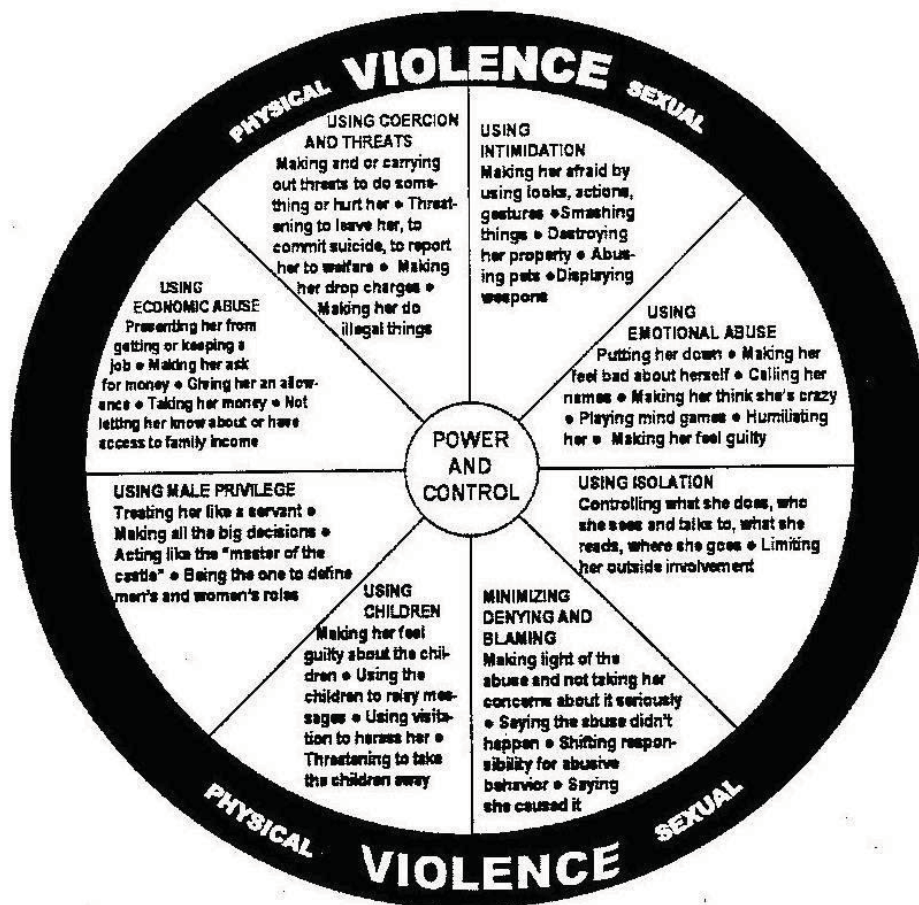
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TACTICS USED BY PEOPLE WHO BATTER TO CONTROL THE LIVES OF THEIR PARTNERS

For the police officer to have a better understanding of domestic violence, it is important to understand the tactics used by abusers against their partners. Developed by the Domestic Abuse Intervention Project of Duluth, Minnesota, the Power and Control Wheel helps us to see how an abuser keeps the victims from leaving the relationship.



Using Coercion and Threats

- Making and/or carrying out threats to do something to hurt the victim
- Threatening to leave the victim/commit suicide/make false allegations
- Making the victim drop charges
- Making the victim engage in illegal activities
- Threatening to "out" an individual on sexual orientation or immigrations status



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Using Intimidation

- Instilling fear
- Destroying property
- Abusing pets
- Displaying weapons

Using Emotional Abuse

- Verbal abuse and insults
- Playing mind games
- Humiliation

Using Isolation

- Controlling who or what the victim sees and does
- Limiting outside involvement
- Using jealousy to justify actions
- Not allowing victim to work

Minimizing, Denying and Blaming

- Making light of abuse
- Denying abuse
- Shifting responsibility for abuse by blaming victim
- Justifying abuse by blaming it on stress, alcohol or drugs

Using Children

- Using children to relay intimidating or threatening messages
- Using visitation to harass
- Threatening to take away children

Using Male Privilege

- Treating victim like a servant
- Making all decisions
- Acting like the “master of the castle”

Using Economic Abuse

- Preventing victim from getting a job
- Making victim ask for money/denying access to money



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- Giving victim an allowance

Sexual Abuse

- Forcing or coercing victim to have sexual relations or performing sexual acts.
- Not allowing victim to make choices about birth control or sexual practices.

PART II: CYCLES OF VIOLENCE

A batterer does not always batter. Sometimes the batterer is loving and caring and at other times, they are threatening and abusive. Domestic violence tends to follow a three (3) - phase cycle. The length of each phase depends on the individuals involved, although the period between violent outbursts tends to be shorter over time. In terms of risk assessment, police officers should be aware that a victim who has left the relationship or has threatened to leave might be in increased danger.

Phase I: Tension Builds – Abuser becomes increasingly agitated; there may be constant arguing or “silent treatment.” Their behavior may be more aggressive and intense regardless of how hard the victim tries to calm them. Victims feel the need to keep the abuser calm and he/she feels like they are “walking on egg shells.”

Phase II: Abusive Incident – Abuser believes that he/she is losing control and may threaten or abuse emotionally, physically, or sexually as well as destroy property. Can last a few minutes to days; violence stops when victim leaves, police are called, or medical attention is needed. Tension is reduced.

Phase III: Reconciliation “Honeymoon” state – Abuser may be apologetic, beg for forgiveness, promises it will never happen again. Abuser may try to “buy back” the victim by showering the victim with flowers, gifts, etc., or being loving and attentive and promising not to hurt again. At this point, some victims may start to believe in the abuser’s apologies and think the abuser can really “change” their behavior. If the reconciliation occurs, the couple having come so close to separation and destruction may experience a very intense, intimate relationship where neither wants to remember the pain of the violence and earlier abuse is denied. Unfortunately, in violent relationships, the cycle inevitable continues as the underlying issue of control reappears.

PROGRESSION OF VIOLENCE

Early on in a relationship, when the controlling behaviors are typically less intense, less severe, and are imposed under the disguise of good intentions, it may be very difficult to clearly identify them as part of a pattern. Often the victim views the first



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violent incident as an isolated incident. This coupled with the batterer's likely remorse and promises to never repeat the behavior can cause a victim to be easily persuaded to stay and "work it out."

Over time, however, the victim may begin to see the repeated promises and apologies as empty, seeing little change (or an increase) in their partner's violence since the first violent incident. If the abuser's "making up" behaviors no longer instill hope and motivate the victim to stay in the relationship, they may look for other ways to maintain control over the victim.

Often, that means the abuser will increase their use of threats, violence or other forms of control, which increases a victim's level of danger and fear – a process known as entrapment. The fear, isolation, and confusion caused by this pattern of abuse can keep a victim on edge and afraid to tell anyone what is happening. This can also make the victim afraid to reach out for help.

WHY VICTIMS STAY

Under the best of circumstances, it is difficult to end a relationship with an intimate partner. Love, extended family, children in common, shared memories, and a sense of commitment to each other are bonds that are hard to break. Victims face the additional risk of physical, emotional and psychological harm, and a justifiable fear that it is more dangerous to leave. In addition, many victims want the violence to stop, but they do not necessarily want the relationship to end.

There are many obstacles to achieving safety with a violent partner, and the choices victims confront are not risk free. The following are reasons some people stay in abusive relationships:

- **Situational:** Economic dependence, social isolation, family pressure, lack of housing alternatives, fear of retaliation, fear of greater danger to the children, lack of job skills, etc.
- **Emotional:** Insecurity of being alone, love, shame and humiliation in the community, exhaustion, learned helplessness, denial of own circumstances, false hope "they will change," etc.
- **Personal Beliefs:** Religious, cultural, and/or family pressure to keep the family together at all costs.



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FACTORS IN DOMESTIC INCIDENTS

A primary distinction that the police officer must draw is whether the incident constitutes a domestic *dispute* or domestic *violence* incident. A domestic dispute involves two or more persons living in a family-type setting where a verbal conflict has arisen, and no law has been violated. A domestic violence incident, however, is an incident that involves two or more persons living in a family-type setting who have engaged in an altercation that *has* violated law.

An act defined by the Penal Law as a crime *is still* a crime regardless of the relationship of the offender to the victim. The offense may arise from a dispute (e.g., argument, screaming matches), but once the conflict reaches a criminal level, it may no longer be handled as merely a dispute.

CREATION OF DEPARTMENT GUIDELINES

Department guidelines define standards for police response to domestic violence situations involving members of the same family or household. They were instituted with two major objectives in mind:

1. To provide a concise explanation of the standards to be followed in domestic violence situations involving (a) felonies, (b) misdemeanors, (c) violations, and (d) Orders of Protection; and
2. To provide police officers with procedures for recording their compliance with these standards.

PART III: DEFINITION OF A FAMILY/ HOUSEHOLD

THE FAMILY COURT ACT

For purposes of properly investigating, referring, or enforcing the law with respect to instances of domestic violence, the following relationships will be considered members of the same family or household as defined in the Family Court Act. These include persons who:

- A. Are legally married to one another; *or*
- B. Were formerly legally married to one another; *or*
- C. Are related by marriage; affinity (e.g., in-laws, etc.); *or*
- D. Are related by blood (consanguinity); *or*



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- E. Have a child in common, regardless of whether such persons have been married or have lived together at any time; *or*
- F. Are not related by blood (consanguinity) or marriage (affinity) and who are, or have been, in an *intimate relationship regardless of whether such persons have lived together at any time.

Note: A common sense standard regarding the totality of the circumstances involving the relationship should be used to determine if an “intimate relationship” exists. Factors a member of the service may consider in determining whether a relationship is an “intimate relationship” include, (but are not limited to): the nature or type of relationship (the relationship between the involved parties does not have to be sexual in nature to be considered “intimate”); the frequency of interaction between persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals solely in a business, educational, or social context shall be deemed to constitute an “intimate relationship.” If unable to determine if the relationship in question is an “intimate relationship,” the member of the service concerned will request the response of the Patrol Supervisor.

Additional factors that may assist in determining the intimacy of a relationship include, but are not limited to: amount of time spent together in either at work or leisure related capacity, shared expenses and/or finances, extent of interaction with family members, etc.

All members of the service are reminded that their primary responsibility is to ensure the immediate and future safety of all parties involved in domestic violence incidents.

THE NYPD EXPANDED DEFINITION

NYPD Expanded Definition - The NYPD has expanded the definition of a family/household to include two other categories to afford persons who have non-traditional family relationships the same procedural protections as those that have traditional family relationships. Accordingly, the NYPD’s definition includes subdivisions “A” through “F” above and persons who:

- G. *Are currently living together in a family-type relationship; *or*
- H. Formerly lived together in a family-type relationship.

***Note:** Roommates who live together merely to share financial burden are NOT considered to be living in a family-type relationship. They will NOT fall under the NYPD expanded definition. (e.g., a man and a woman who shares an apartment so they can



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split the rent and utilities, but have no other interest in each other. Or, two men who share a college dorm room together solely for educational purposes.)

A family/household thus includes: “Common-law” marriages, same sex couples, registered NYC domestic partners, different generations of the same family, siblings, in-laws, persons involved in “intimate relationship” and persons who live or have lived together in family type-relationship.”

PART IV: DEFINITION OF “FAMILY OFFENSES”

Criminal Procedure Law Section 530.11 and Family Court Act Section 812 establish special procedures regarding arrests for specific domestic violence crimes. These crimes, referred to as family offenses, consist of the following:

1. Forcible Touching

- Class A misdemeanor

2. Sexual Misconduct

- Class A misdemeanor

3. Sexual Abuse

- 3rd degree – B misdemeanor
- 2nd degree – A misdemeanor
 - Sub (1)

4. Harassment

- 2nd degree – violation
- 1st degree - class B misdemeanor

5. Assault

- 3rd degree - class A misdemeanor
- 2nd degree - class D felony
- Attempted assault 3rd degree
- Attempted assault 2nd degree

6. Reckless Endangerment

- 2nd degree - class A misdemeanor
- 1st degree - class D felony

7. Disorderly Conduct

- Violation - including acts not committed in a public place



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8. Stalking

- 4th degree - class B misdemeanor
- 3rd degree - class A misdemeanor
- 2nd degree - class E felony
- 1st degree - class D felony

9. Criminal Mischief

- 4th degree - class A misdemeanor
- 3rd degree - class E felony
- 2nd degree - class D felony
- 1st degree – class B felony

10. Aggravated Harassment

- 2nd degree - class A misdemeanor

11. Menacing

- 3rd degree - class B misdemeanor
- 2nd degree - class A misdemeanor

12. Criminal Obstruction of Breathing or Blood Circulation

- Class A misdemeanor

13. Strangulation

- 2nd degree – class D felony
- 1st degree – class C felony

14. Identity Theft

- 3rd degree – class A misdemeanor
- 2nd degree – class E felony
- 1st degree – class D felony

15. Grand Larceny

- 4th degree – class E felony
- 3rd degree – class D felony

16. Coercion

- 2nd degree – class A misdemeanor
 - Sub (1)
 - Sub (2)
 - Sub (3)



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Coercion in the 2nd degree is committed when a person compels or induces another person to engage in, or abstain from, engaging in conduct which the other person has the legal right to abstain from or the legal right to engage in, or compels or induces another person to join a group, organization, or criminal enterprise which the other person has a right to abstain from joining, by means of instilling in them a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or
2. Cause damage to property; or
3. Engage in other conduct constituting a crime.

Some examples of coercion include forcing someone to abstain from attending social functions in order to limit their contact with persons outside the relationship or forcing someone to obtain a line of credit or a car loan in their name for the benefit of the abuser.

Items 14, 15 and 16 have been designated as Family Offenses to provide additional protection to domestic violence victims whose abusers use economic means against them, including the theft of money or important documents such as passports, birth certificates, Social Security cards, health insurance or other benefit cards, bank cards or documents, tax returns, driver licenses, and immigration documents.

PART V: CONCURRENT JURISDICTION

The Family Court and the Criminal Courts have jurisdiction to hear domestic violence related matters. This parallel authority is known as *concurrent jurisdiction*.

There is concurrent jurisdiction in these courts to hear family offenses between family/households as defined in the Family Court Act (“A” through “F,” not including the NYPD expanded definition). When such a family member is arrested on a family offense, although concurrent jurisdiction may exist, the arrested person must be first taken directly to Criminal Court for arraignment. Charges, however, may be brought in either Family Court or the Criminal Courts, and the complainant/victim has the option to change from one court to the other at any time before the verdict or disposition, or to proceed simultaneously in both courts.

It is the responsibility of the assigned or arresting officer to advise the complainant of the option to proceed in one court or both. Before the complainant can make an informed decision, the officer must explain the different nature of the two court systems.

Generally, a Family Court proceeding is a civil proceeding for the purpose of attempting to stop violence, end family disruption and obtain protection. Referrals for