

## 12.6 Domestic Violence, Protective Orders, and Peace Orders

### 12.6.1 Definitions

*Domestic Violence* – also called battering or spouse abuse – is the abusive or violent behavior by a partner in a marriage or other intimate relationship in order to exert power and control over the other partner. Domestic violence may take the form of physical, emotional, verbal, sexual or economic abuse, as well as threats, intimidation and isolation. Physical violence can range from shoving and slapping to assault with a weapon and death. A vulnerable adult or child – someone who lacks the physical or mental capacity to provide for his or her own daily needs - may also be eligible for protection from the Courts.

*Domestic Violence Order/Protective Order* – An Order issued by the courts after a hearing on a petition, ex parte or otherwise, where the court finds that there is reasonable grounds to believe that a person eligible for relief has been abused.

*Interim Domestic Violence Order/Interim Peace Order* (collectively known as *Interim Protective Orders*) – An Order issued after a hearing by a District Court Commissioner when an individual files a petition and the Commissioner finds reasonable grounds that a person eligible for relief has been abused. Interim Orders are issued during non-operational hours of the judiciary (e.g., evenings/nights, weekends, and holidays). *Interim Protective Orders* typically expire after 48 hours or on the next sitting of the bench, at which time a Judge may decide to convert an *Interim Protective Order* into a *Temporary Protective Order*.

*Temporary Protective Order* – An Order issued by a judge after a hearing on a petition, whether ex parte or otherwise, where the judge finds there are reasonable grounds to believe that a person eligible for relief has been abused. Typically, a *Temporary Protective Order* is effective for a period of not more than 7 days; however, it may be extended to effectuate service.

*Final Protective Order* – If the respondent appears before the court at a *Protective Order* hearing or has been served with a *Temporary* or *Interim Protective Order*, or the court otherwise has personal jurisdiction over the respondent, the court may proceed with a *Final Protective Order* hearing. If the court finds clear and convincing evidence that the abuse occurred, the Judge may issue a *Final Protective Order*. A *Final Protective Order* will

remain in effect until the expiration date; however, it may be extended by a judge for cause.

*Peace Order* – An Order issued by a judge as a result of charges initiated by an individual against any other individual who does not meet the criteria (intimate partner, blood relative) for a *Domestic Violence Order/Protective Order* (for example, a friend, acquaintance, or neighbor).

*Juvenile Peace Order* – An Order issued through the juvenile justice system which must be served not only to both juveniles involved, but also to their respective parents or guardians.

#### 12.6.2 Priority of Service

Because of the urgency of this type of document, it is imperative that the Anne Arundel County Sheriff's Office puts high priority on the service of these types of court-ordered and interim documents.

During the course of on-going implementation of Maryland's new domestic violence laws, we have identified some particular details to note regarding service of Protective Orders:

##### 12.6.2.1 Child Custody Provision on Protective Orders

Absent explicit instructions from the court clearly listed on a Protective Order authorizing law enforcement to use "necessary and reasonable force" to accomplish a desired goal (i.e., return the minor child), a deputy attempting to serve or execute a Protective Order, Peace Order, or similar document is expressly prohibited from effecting a forcible entry into a domicile or other structure to search for minor children or the respondent as so specified on the court document. If the Protective Order does not state "law enforcement is authorized to use necessary and reasonable force," consent must be granted by a legally authorized person to conduct a search. The consent can be revoked at any time. Once consent is revoked the search must cease (see General Order 12.3 Search of a Domicile or Other Structure).

In determining what force is "necessary and reasonable" to forcibly take a child, a deputy must consider all existing factors including the physical safety and mental well-being of the child.

The following is a partial transcript from a Maryland Attorney General Opinion dated August 10, 1999:

“...It is beyond dispute that an order to forcibly carry out a child custody order places even the most scrupulous law enforcement officer in a difficult position. In our opinion, the order form should not be construed as diminishing the broad discretion that an officer needs when executing such an order in light of particular circumstances. In volatile situations involving the custody of a child, emotions run high. A person’s initial resistance to a lawful order may recede as emotions cool. A tactful approach by an officer may accomplish more with less emotional or physical damage to the child than a demand for instantaneous compliance and an impulsive resort to force. Accordingly, an officer who reasonably refrains from using force should not be found in violation of the order. Similarly, when there is no suggestion that the child is in danger, the officer cannot be faulted for seeking additional guidance from the court that issued the order...”

#### 12.6.2.2 Firearms Surrender

- Interim Protective Orders

No possession/surrender of firearm restrictions apply.

- Temporary Protective Orders

When serving a Temporary Protective Order, special attention must be given to box #7 on the actual order itself. If this box is checked, firearms must be surrendered to law enforcement. The serving deputy must ask the respondent if he/she has any firearms. If the respondent voluntarily surrenders the firearms to the deputy, the deputy must accept the firearms. It should be noted: the entire order must be read by the serving deputy. Certain Temporary Protective Orders no longer have “boxes” that may be checked.

In lieu of having a box #7 checked, the order may actually state the respondent must surrender firearms to law enforcement. Once received, firearms will be processed according to the established procedures of the Anne Arundel County Police Department. The deputy must also provide the respondent with information explaining the procedure to regain possession of his/her firearms at the conclusion of the protective order. An Anne Arundel County Sheriff’s Office Incident Report must be completed. Reference should be made to both the Domestic Violence Order number as well as the County Police incident number needed to process the firearms.

If the respondent admits they do have firearms in their immediate possession (i.e., in the house), yet refuses to surrender them, the deputy **may not** initiate a search. An arrest should be made for violation of a Protective Order. Contact should immediately be made to the Anne Arundel County Police Department's Domestic Violence Section/Officer (if available) or the shift sergeant explaining the scenario of events. Complete documentation of all actions taken must be recorded. If requested, assistance should be rendered to the police department to expediently recover any firearms (i.e., search warrant).

If the respondent admits owning firearms, but the firearms are not in the respondent's immediate possession (i.e., located at a residence of a 3<sup>rd</sup> party), and the firearms are still located in Anne Arundel County, the serving deputy should make every effort to accompany the respondent to retrieve the firearms. **If retrieval is not possible at the time of service**, the serving deputy must inform the respondent of the ramifications of not surrendering their firearms in a timely fashion. The deputy should also ensure that the respondent is aware of how and where to surrender their firearms (i.e., a respondent should not walk into a law enforcement office brandishing a firearm). **Documentation of the inability to retrieve the firearms is imperative.** Notification must be made to the appropriate Anne Arundel County Police Department's Domestic Violence Officer at the district station in the respondent's area via e-mail and by faxing Sheriff's Office Form #176 DV Surrender of Firearms Surrender Notice advising that a follow up investigation is necessary to ensure the surrender takes place.

In the event the respondent resides within the jurisdiction of the Annapolis City Police Department, notification should be made to an on duty supervisor of the Annapolis City Police Department advising of the service of the order. Notification should include our inability to retrieve the respondent's firearms. Documentation of this notification and the party advised must be included with our return of service.

- Final Protective Order

The vast majority of Final Protective Orders are served in open court and/or mailed to the respondent. However, there may be exceptions to this rule, and, at times, the Sheriff's Office may be required to serve these documents. **ALL** Final Protective Orders require the respondent to surrender his/her firearms to law enforcement. The serving deputy is required to follow the same procedures outlined in the aforementioned "Temporary Protective Orders."

### 12.6.3 Domestic Violence Orders In General

Each service of a Domestic Violence Order will be unique with its own idiosyncrasies. The “Rule of Thumb” is: If there is less than sufficient probable cause to arrest a respondent for violation of a Protective Order, but you have concerns or questions in your mind, or if you believe a follow up may be required to ensure the safety of the petitioner, an incident report should be generated and notification made to a Domestic Violence Officer at the appropriate Anne Arundel County Police Department’s District Station or the Annapolis City Police Department.

### 12.6.4 Interim Protective Orders: Guidelines for Issuing, Tracking, Service, and Execution

Interim Protective Orders are an attempt to fill the civil remedy void created during non-operational hours of the judiciary (e.g. evenings/nights, weekends, holidays, and daily from 2300-0600 hours). They are issued by a Commissioner of the District Court of Maryland and are usually only enforceable until the next sitting of the bench.

#### 12.6.4.1 The Commissioner of the District Court is responsible for the following:

- Upon application to a Commissioner, if a substantial risk to the petitioner is founded, the Commissioner will issue an Interim Protective Order.
- The Commissioner will call the Sheriff’s Office to inform them that an Interim Order has been completed.
- The Commissioner will fax the Interim Order to the Sheriff’s Office Communications Center.
- The Commissioner will then place Service copies of each issued document in a “bin” to await pick-up by a member of the Sheriff’s Office. A Sheriff’s Deputy will pick up Orders on their regular shift for service.

#### 12.6.4.2 The Sheriff’s Office’s evening Operations Clerk is responsible for data entry and faxing requirements from 1500-2300 hours during their regular working hours. The Sheriff’s Office Communications Center is responsible for data entry and faxing Protective Orders only during the following conditions: holidays that the Circuit Court is

closed, weekends, and from 2300-0600 hours daily when Operations is not staffed. Data entry and faxing requirements for the evening Operations Clerk and Communications Center are listed below:

- If an Interim Protective Order was faxed to the Sheriff's Office for service, the Sheriff's Office evening Operations Clerk or Communications Center will log receipt of the faxed document in the "Domestic Violence" (ExParte) Log.
- The Sheriff's Office evening Operations Clerk or Communications Center will enter information from the Interim Protective Order document into the Maryland Electronic Telecommunications Enforcement Resource System (METERS) system.
- The Sheriff's Office evening Operations Clerk or Communications Center will fax Interim Orders to the appropriate county or state agency. During traditionally non-operational hours of the Sheriff's Office (i.e. 2300 - 0600 hours daily), the appropriate primary law enforcement agency, i.e. Anne Arundel County Police Department (AACOPD) or Annapolis Police Department (APD) will provide service or execution coverage.
- The Sheriff's Office evening Operations Clerk or Communications Center will call the respective police agency to confirm with the Station Aide that the fax was, in fact, received.
- After information is logged, entered, faxed, and receipt is confirmed, the Sheriff's Office evening Operations Clerk or Communications Center will place the document in the "Domestic Violence" bin located in the Sheriff's Office Operations Bureau supervisors' office.

12.6.4.3 Officers of the appropriate law enforcement agency are then responsible for the following:

- Officers of the appropriate law enforcement agency will make attempts at service on their copy that they received via fax from the Sheriff's Office.
- Upon completion of service, the participating police officer will fax a return-of-service back to the Sheriff's Office Communications Center.
- If no service has been effected by 0600 hours daily, any copy of an Interim Protective Order in the primary law enforcement

agency's possession (AACOPD/APD) will be shredded by that agency.

#### 12.6.4.4 Arrest Warrants Associated with an Interim Protective Order

In some cases an *arrest warrant* founded on the same circumstances may accompany the Interim Protective Order.

- The Commissioner will not fax the entire warrant to us; the Commissioner will only fax the cover sheet to put us on notice of its existence.
- The Sheriff's Office evening Operations Clerk or Communications Center will fax the cover sheet along with the Interim Protective Order to the appropriate primary law enforcement agency.
- Just as with the Interim Protective Orders, the faxed copy of a warrant cover sheet forwarded to a primary law enforcement agency between 2300 - 0600 hours which remains unserved at 0600 hours will be shredded by that agency.
- The Sheriff's Office evening Operations Clerk or Communications Center will file all Interim Protective Orders and associated actions or documents (e.g., arrest warrant cover sheet) in the "Domestic Violence" bin located in the Sheriff's Office Operations Bureau supervisors' office.

#### 12.6.4.5 Deputies' Responsibilities During On-Duty Hours

During all other hours when Sheriff's Office field units are operational and on duty, the service and execution of Interim Protective Orders will be a shared responsibility of various Sheriff's Office Operations Bureau units.

- Lead will be taken by members of the Domestic Violence Unit, and then by the Warrant Teams on weekends.
- The Domestic Violence Unit and Warrant Teams on duty should inquire with the Commissioner's Offices periodically to insure prompt service attempts on newly-issued Interim Protective Orders.
- Just as with all customary Protective and Peace Orders, Deputies will notify the Sheriff's Communications Center that a document has been served so that a reference may be maintained.

- During their regular working hours, the Deputies may fax paperwork regarding papers that they have served directly back to the courts, and they may also fax Returns of Service to other counties within the State of Maryland. Incidentally, the courts may also fax to out of state agencies for service. Orders served by other agencies are then faxed back to the appropriate court. The courts must be notified of all service of Orders.