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The Police Response to Domestic Violence Incidents

Phillip E. Keith

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MUNICIPAL LAW ENFORCEMENT MANAGEMENT REPORT
No. 1
POLICE RESPONSE TO DOMESTIC VIOLENCE
by Phillip E. Keith

The University of Tennessee
MUNICIPAL TECHNICAL ADVISORY SERVICE
in cooperation with The Tennessee Municipal League
The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and wastewater management.

Each MTAS MUNICIPAL LAW ENFORCEMENT MANAGEMENT REPORT provides an in-depth analysis, discussion, or review of a law enforcement issue of interest to Tennessee municipal officials. These REPORTS are free to Tennessee local, state, and federal government officials and are available to others for $15.00 each. Contact MTAS for a list of recent REPORTS.

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MTAS MUNICIPAL LAW ENFORCEMENT MANAGEMENT REPORT NO. 1

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by

Phillip E. Keith

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ABSTRACT

Within the past few years, domestic violence has come to the forefront in demanding the attention of the criminal justice system. This report explains many of the myths associated with domestic violence, reviews the literature on domestic violence, and provides practical steps for establishing policies and procedures related to domestic violence within law enforcement agencies.

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Dear Municipal Official:

It is a pleasure to present to you this Municipal Law Enforcement Management Report, No. 1, *The Police Response To Domestic Violence*, as prepared by The University of Tennessee's Municipal Technical Advisory Service (MTAS).

This Municipal Law Enforcement Management Report has been prepared to help municipalities understand domestic violence. An explanation of myths and facts associated with domestic violence is presented; a review of literature developed; and steps for establishing policy and procedures for municipal law enforcement officials are outlined.

Special recognition is given to Lieutenant Phillip E. Keith, Contract Law Enforcement Consultant, who has prepared this Municipal Public Safety Management Report. His research and efforts in preparing this report are appreciated.

We would like to acknowledge the funding support for the Municipal Law Enforcement Management Reports provided by the Tennessee Municipal League Risk Management Pool.

Copies of this and other MTAS Municipal Management Reports are available on a complimentary basis to officials of all Tennessee municipalities and on a limited basis to state and federal government offices. Others wishing to obtain copies may do so on a pre-paid basis. An order form can be obtained by contacting our Knoxville office at (615) 974-5301.

We at MTAS hope you find this Municipal Law Enforcement Management Report of assistance to you, and look forward to receiving your comments and suggestions.

Sincerely,

C. L. Overman
Executive Director

CLO:dkl
INTRODUCTION

Within the past few years, domestic violence has come to the forefront in demanding the attention of the criminal justice system. There are many ways to define domestic violence. Within the criminal justice system, it must be defined in terms of applicable laws. Assault, battery, homicide, kidnapping, sexual assault, and trespassing are some of the most frequent crimes involved in domestic violence. There are also other terms that are frequently used interchangeably with domestic violence: battering, spouse abuse, wife beating, and domestic assault. For purposes of this report, domestic violence is assaultive behavior involving adults who are married, cohabitating, or have an ongoing or prior intimate relationship.¹

This report will explain many of the myths and facts associated with domestic violence, review the literature on domestic violence, and provide the criminal justice administrator with practical steps for establishing policy and procedures.

FACTS AND FICTION

A number of myths surround the problem of domestic violence. These myths or misconceptions have kept the public from taking stronger action to prevent domestic violence.

MYTH. DOMESTIC VIOLENCE IS A "FAMILY MATTER." Prior to the 1980's, psychologists and sociologists believed that mediation, not action, was the best way of handling these types of cases. Officials, acting in the best interest of the family, did not interfere. In the 1980's, the pendulum begun swinging in the other direction. It is now accepted that the police should take action against the abuser, and that this violent behavior constitutes a criminal act. The action taken against the abuser should be no different than if the assaultive behavior occurred between two strangers.
MYTH. SPOUSE ABUSE ONLY APPLIES TO WOMEN. Spouse abuse can occur to both males and females; however, it will vary from state to state and depends on the wording of the state's legislation. Although the abuse can occur to either sex, police data generally reflect abuse as reported by the female. In the Minneapolis Domestic Violence Experiment, 98% of the suspects in domestic abuse were males and were either the husband, ex-husband, boyfriend, ex-boyfriend, or other male. In this study, only 2% of the suspects were female. In Tennessee, the Spousal Protection Order can be granted to either the male or female.

MYTH. BATTERED WOMEN LIKE BEING ABUSED. Battered women face enormous pressure to remain in the abusive relationship. Many battered women are unable to support themselves or their family; they have nowhere to go; they lack support from family and friends; and many are threatened with further abuse if they report the abuser or take legal action against the abuser.

MYTH. BATTERERS ARE SICK, POOR, OR ALCOHOLIC. Researchers and clinicians have constantly refuted the notion that batterers are mentally ill. Experts also agree that domestic violence does not know any ethnic, social, economic, or religious boundaries. Domestic violence can occur to anyone. However, because poorer classes of society tend to gain the attention of hospitals, public agencies, and police, it is commonly believed that this happens only to "them." There is evidence to suggest that drug-related problems, especially alcoholism, can be identified in a large portion of violent husbands. Other evidence suggests that there is no casual link between substance abuse and battering.

MYTH. BATTERING IS CAUSED BY AN INABILITY TO EXPRESS ANGER OR HANDLE STRESS. If battering is caused by anger or stress, why doesn't the batterer express these feelings with his boss or with his friends? Why does the batterer tend to abuse his wife or children? It is thought that the batterer is attempting to control or exert pressure on his family.2

FACTS
Some of the facts associated with domestic violence are equally as misunderstood or unknown by society.
FACT. FROM 1978 TO 1982, THE NATIONAL CRIME SURVEY SHOWED THAT ONCE A WOMAN WAS VICTIMIZED BY DOMESTIC VIOLENCE, HER RISK OF BEING VICTIMIZED AGAIN WAS HIGH.

FACT. ALMOST 48% OF ALL DOMESTIC VIOLENCE INCIDENTS AGAINST WOMEN WENT UNREPORTED TO POLICE.

FACT. SEVEN OUT OF TEN INCIDENTS OF DOMESTIC VIOLENCE WERE COMMITTED BY THE WOMAN'S SPOUSE, EX-SPOUSE, BOYFRIEND, OR EX-BOYFRIEND.

FACT. FROM 1978 TO 1982, IT IS ESTIMATED THAT 2.1 MILLION WOMEN WERE VICTIMS OF DOMESTIC VIOLENCE AT LEAST ONCE DURING AN AVERAGE TWELVE MONTH PERIOD.

FACT. DOMESTIC VIOLENCE IS A DEADLY PHENOMENON CLAIMING THE LIVES OF 40% OF THE NATION'S MURDER VICTIMS.

REVIEW OF LITERATURE

The movement against wifebeating, as an organized, effective counterforce, started in England in 1971. The first counterforce began with the opening of the first home for local women who had fled from violent husbands. This quickly spread to the United States where in 1972, the Women's Advocate, Inc. in St. Paul, Minnesota began a telephone information and referral service for women. In 1974, the Women's Advocate opened their first refuge for battered women and children.

The women's movement has made tremendous strides in broadening awareness about domestic violence issues in public institutions and in the community. There has been legislative reform at the state level aimed at protecting battered women, treating domestic violence as a crime, and holding abusers accountable for their acts.

Although the subject of spouse abuse and domestic violence has been studied continuously, two prominent studies are usually cited. The first was conducted in 1973 as a cooperative study between the Kansas City, Missouri Police Department and the Police Foundation. The Kansas City/Police Foundation study was designed to explore the relationship between domestic disturbances and
the violent crimes of homicide and aggravated assault. The study showed that in 90% of the addresses in which a homicide occurred in 1970 and 1971, the police had responded to at least one previous call to that address, and in 50% of the homicides, the police had responded to five or more calls at that address. Data for aggravated assaults were very similar, with the police having responded to calls at that address on one previous occasion in 85% of the aggravated assaults, and five or more times in over 50% of the cases.

The second major research effort concerning domestic violence was conducted from 1981 to mid-1982 and is known as the Minneapolis Domestic Violence Experiment. Researchers sought to determine what the best method of handling domestic violence incidents was--arrest, counseling or advising the parties, or sending the assailant away from home for several hours. Although this study was limited to follow-up on 314 cases, the overwhelming conclusion in Minneapolis was that arrest was more effective in resolving domestic violence situations.

Sherman and Berk, the authors of the Minneapolis Domestic Violence research, caution against using this study to conclude that the best way for police to handle domestic violence is to arrest in 100% of the cases. However, arrest is the prevailing trend being espoused by battered women's groups and victims advocacy groups.

A third area that has opened considerable attention to the issue of domestic violence is a court case filed in 1984 by Tracey Thurman, et al., against the City of Torrington, Connecticut Police Department. A federal jury found that twenty-four of twenty-nine defendants intentionally treated a woman's complaints against her husband less seriously than non-domestic complaints, thus violating her rights to equal protection. Ms. Thurman had made nine complaints against her husband before she was stabbed thirteen times and kicked in the head by him. The jury found the police were negligent in handling her case and awarded her $2.3 million. In 1987, the Torrington Police Department settled the case for $1.9 million. The husband has been sentenced to fourteen years in prison in the criminal case. (Thurman v. City of Torrington, 595 F. Supp. 1521 (1984)).
STATE LEGISLATIVE REVIEW

On July 1, 1976, the State of Tennessee enacted the Spousal Abuse Act which is designed to bring to an end domestic violence through means of a civil protection order (Tennessee Code Annotated (TCA) 36-3-101). The law was originally written so that it applied only to those persons who were married at the time of the assault. This law has since been changed to be available to any adult (over 18 years of age) victim who has been abused by a present or former family or household member. This statute allows the person who is being abused to apply for an Order of Protection through the courts. Through this Order of Protection, the petitioner (person alleging the abuse) can be granted temporary custody of minor children, granted child support, support for the petitioner, shelter or suitable housing, as well as granted relief from further abuse or threatening abuse by the abuser.

Violation of this Order of Protection may subject the respondent (abuser) to punishment for civil contempt and other punishment in accordance with the law.

The part of this law that most affects law enforcement personnel can be found in TCA 36-3-611. For purposes of clarification, this section will be quoted directly because it gives the law enforcement officer the power to arrest without a warrant:

(a) An arrest or violation of an order of protection issued pursuant to this part may be with or without a warrant. Any law enforcement officer shall arrest the respondent without a warrant if:

(1) The officer has proper jurisdiction over the area in which the violation occurred;
(2) the officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and
(3) the officer has verified whether an order of protection is in effect against the respondent. If necessary, the police officer may verify the existence of an order for protection by telephone or radio communication with the appropriate law enforcement department.

(b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge thereof.
Two other Tennessee statutes that address the victims of domestic violence are TCA 39-2-101(b)(5) on aggravated assault and TCA 40-7-103, grounds for arrest by an officer without a warrant. TCA 39-2-101(b)(5) states:

that a person is guilty of aggravated assault if the person has been enjoined or restrained by an order, diversion, or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit a battery against an individual or individuals, attempts to cause or causes bodily injury or commits or attempts to commit a battery against such individual or individuals.

The last statute that concerns domestic violence is TCA 40-7-103. This law provides the law enforcement officer with the power to make arrests without a warrant, and subsection (7) specifically applies to domestic violence cases and spells out the steps that must be taken by law enforcement agencies to provide assistance to the victim.

Under subsection (7)(a), when a law enforcement officer responds to a domestic violence call and finds the victim and alleged assailant are both present, such officer may arrest the alleged assailant without a warrant if:

(i) such officer actually observes the commission of an assault and battery or more serious offense against the victim; or
(ii) such officer has probable cause to believe that an assault and battery or more serious offense against the victim has been committed though not in his presence and that more violence will occur if the alleged assailant is not immediately taken into custody.

This section also includes responding to a domestic violence call in which the alleged assailant is not present. If this is the case, the officer shall:

1. offer to transport the victim to get a warrant and assist the victim in obtaining a warrant;
2. offer to transport the victim to a place of safety (i.e., shelter or residence of a friend or relative); or
3. if the victim refuses the above, the officer shall advise the victim of shelter and other services of the community by providing the victim with a copy of the following statement:
If you are the victim of domestic violence, you can ask the District Attorney General to file a criminal complaint. You also have the right to go to the court having jurisdiction over domestic relations and file a petition requesting an order for protection from domestic abuse, which could include the following: (a) an order restraining the abuser from further acts of abuse; (b) an order directing the abuser to leave your household; (c) an order preventing the abuser from harassing you or coming about you for any reason; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; (e) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

It is also permissible for you to make a citizens arrest of the assailant and I will transport the assailant. The areas crisis line (program), (telephone number), and/or the following domestic violence shelter/programs are available to provide you with services and/or shelter: (program and phone number), (program and phone number).

The last section of this statute requires that the officer make a complete report of the incident to be filed with the officer's supervisor and in a manner that will allow for compilation of data on domestic violence cases.

IMPLICATIONS FOR THE LAW ENFORCEMENT ADMINISTRATION

As can be seen from the review of the literature and a review of the applicable state statutes, the criminal justice administrator needs to set the tone for action on domestic violence cases. Because each city or county is unique, these guidelines are generalities that should be considered in the development of specific criteria for your jurisdiction.

SUGGESTED GUIDELINES

1. DESIGNATE DOMESTIC VIOLENCE CASES AS HIGH PRIORITY. Spouse abuse must be recognized as a serious crime. Domestic violence cases should receive the same priority as any other assault case. Administrators should convey this message from the top down so that the patrol officer knows that the Chief considered this a crime to be taken seriously.
2. ESTABLISH DETAILS, WRITTEN POLICY AND PROCEDURES FOR THE HANDLING OF DOMESTIC VIOLENCE CASES. The policy and procedures for the handling of domestic violence cases should parallel the existing state statutes as well as be reflected in the agency's goals, objectives, and priorities. They should also include standards for monitoring staff behavior.

3. ENSURE EMPLOYEES' FAMILIARITY AND COMPLIANCE WITH WRITTEN POLICIES. This should be accomplished through education and training and can be handled through in-service training or roll-call training. Comprehensive law enforcement training on domestic violence is an important step to improving officer safety as well as ensuring that policy provide needed protection to victims and hold abusers accountable for their violent behavior.

4. COORDINATE WITH OTHER CRIMINAL JUSTICE AGENCIES. In Tennessee, the orders of protection are issued through Chancery and Circuit Courts and enforced by law enforcement agencies. There must be coordination and cooperation between all agencies to ensure that the intent of the statutes is properly followed.

5. COLLECT SEPARATE DATA ON DOMESTIC VIOLENCE INCIDENTS. This requirement is mandated by the statutes for the state. The procedures issued by the department should address the collection of data and allow for domestic violence incidents to be clearly identifiable, and not classified in general categories as assaults or disputes. Data that are collected and analyzed should be disseminated to appropriate agencies.

6. SENSITIZE EMPLOYEES TO THE SUBTLE WAYS IN WHICH THEIR LANGUAGE AND ATTITUDES CAN AFFECT THE PARTIES IN DOMESTIC VIOLENCE CASES. Victims should be treated with empathy and respect. Offenders should be given a clear message that battering is unacceptable, and abusers are accountable for their actions.

7. COORDINATE WITH OTHER COMMUNITY AGENCIES AND PROFESSIONALS THAT HANDLE DOMESTIC VIOLENCE CASES. Criminal justice agencies are just one component of the domestic violence approach. The police department should work with other community agencies and professionals to provide support and assistance for victims. Many jurisdictions have established networks, coalitions, or task forces for domestic violence. These organizations should include criminal justice agencies, family courts, shelter programs, legal mental health agencies,
private counselors, city councils, and county commissioners. Meetings should be held regularly to share ideas, engage in mutual problem-solving, setting priorities, and providing training for employees.
NOTES


2. Ibid, 2-3.


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