



STATE OF CONNECTICUT
DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION
Police Officer Standards and Training Council
Connecticut Police Academy

GENERAL NOTICE 18-07

To: Chief Law Enforcement Officers
Training Officers
Protective Services
Resident Troopers

From: Thomas E. Flaherty
Police Training Academy Administrator

Date: December 11, 2018

Subject: **An Act Concerning Dual Arrests and The Training Required of Law Enforcement Personnel With Respect to Domestic Violence pursuant to Public Act No. 18-5 (Effective January 1, 2019)**

Public Act. No. 18-5 Sec. 3 (a) required the "Division of State Police, the Police Officer Standards and Training Council or municipal police departments, in consultation with the Division of Criminal Justice and an entity representing the state-wide domestic violence coalition to develop a program curriculum which included "factors for determining a dominant aggressor in a family violence case" among other things.

A Committee was convened which developed a Model Curriculum consisting of representatives of the Connecticut Police Chiefs Association, the Chief State's Attorney's Office - Division of Criminal Justice, POST staff, the Connecticut State Police and the Connecticut Coalition Against Domestic Violence.

This Model Curriculum was adopted by the Police Officer Standards and Training Council at its regular meeting on November 8, 2018 and a copy is included along with this General Notice and a copy of Public Act No. 18-5.

Each Police Basic or Review Training program conducted or administered by the Division of State Police, the Police Officer Standards and Training Council or by a municipal Police Department in the state shall provide a minimum of two hours of training on the subject of domestic violence that includes (2) "factors for determining a dominant aggressor in a family violence case" along with five previously defined factors.

Training in this Model Curriculum was provided on Tuesday, December 4, 2018 and a second session will be offered on Monday, December 17, 2018 from 10:00 A.M. to 12 noon. All POST Certified Domestic Violence Instructors have been invited to attend either session. The next session will be taught by Assistant State's Attorney Patrice Palumbo. A copy of the new curriculum will also be distributed to all attendee's at the December 17th session.

POSTC ADOPTED CURRICULUM PA 18-5, NOV. 8, 2018

Public Act No. 18-5 AN ACT CONCERNING DUAL ARRESTS AND THE TRAINING REQUIRED OF LAW ENFORCEMENT PERSONNEL WITH RESPECT TO DOMESTIC VIOLENCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46b-38a of the general statutes is repealed and the following is substituted in lieu thereof (Effective January 1, 2019):

For the purposes of sections 46b-38a to 46b-38f, inclusive:

- (1) "Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members.

Verbal abuse or argument **[shall] does** not constitute family violence unless there is present danger and the likelihood that physical violence will occur.

VERBAL ABUSE OR ARGUMENT IS THE FIRST EXCEPTION TO CT's MANDATORY ARREST POLICY.

(2) "Family or household member" means any of the following persons, regardless of the age of such person:

- (A) Spouses or former spouses;
- (B) parents or their children;
- (C) persons related by blood or marriage;

(D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together;

[SUBSECTION (D) IS MODIFIED TO REMOVE THE CATEGORIES OF PA 18-5 (2)(j) {46b-38b(2)(j)} FROM FAMILY OR HOUSEHOLD MEMBERS IN THE EVENT OF COLLEGES OR UNIVERSITIES OR ROOMING HOUSES CREATING A NEW EXCEPTION TO FV MANDATORY ARREST. SEE DISCUSSION OF PA 18-5(2)(j).]

(E) persons who have a child in common Substitute Senate Bill No. 466 Public Act No. 18-5 2 of 10 regardless of whether they are or have been married or have lived together at any time; and

- (F) persons in, or who have recently been in, a dating relationship.

(3) "Family violence crime" means a crime as defined in section 53a24, other than a delinquent act, as defined in section 46b-120, which, in addition to its other elements, contains as an element thereof an act of family violence to a family or household member. "Family violence crime" does not include acts by parents or guardians disciplining minor children unless such acts constitute abuse.

[TWO MORE MANDATORY ARREST EXCEPTIONS ARE CONTAINED IN THE DEFINITION OF FAMILY VIOLENCE CRIME:

(1) DELINQUENT ACTS

(2) PARENTS OR GUARDIANS DISCIPLINING MINOR CHILDREN THAT DOES NOT CONSTITUTE ABUSE.

(4) "Institutions and services" means peace officers, service providers, mandated reporters of abuse, agencies and departments that provide services to victims and families and services designed to assist victims and families.

(5) "Dominant aggressor" means the person who poses the most serious ongoing threat in a situation involving the suspected commission of a family violence crime.

Sec. 2. Section 46b-38b of the general statutes is repealed and the following is substituted in lieu thereof (Effective January 1, 2019):

(a) [Whenever] Except as provided in subsections (b) **[DUAL COMPLAINTS]** and (c) **[NON-DOMINANT AGGRESSORS]** of this section, whenever a peace officer determines upon speedy information that a family violence crime has been committed within such officer's jurisdiction, such officer shall arrest the person [or persons] suspected of its commission and charge such person [or persons] with the appropriate crime.

The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship [of the parties] between persons suspected of committing a family violence crime, or (3) be based solely on a request by the victim.

Whenever a peace officer determines that a family violence crime has been committed, such officer may seize any firearm or Substitute Senate Bill No. 466 Public Act No. 18-5 3 of 10 electronic defense weapon, as defined in section 53a-3, or ammunition at the location where the crime is alleged to have been committed that is in the possession of any person arrested for the commission of such crime or suspected of its commission or that is in plain view.

Not later than seven days after any such seizure, the law enforcement agency shall return such firearm, electronic defense weapon or ammunition in its original condition to the rightful owner thereof unless such person is ineligible to possess such firearm, electronic defense weapon or ammunition or unless otherwise ordered by the court.

Sec. 2 (cont.)

(b) [No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party. Where complaints are made by two or more opposing parties, the officer shall evaluate each complaint separately to determine whether such officer should make an arrest or seek a warrant for an arrest. Notwithstanding the provisions of subsection (a) of this section, when a peace officer reasonably believes that a party in an incident of family violence has used force as a means of self defense, such officer is not required to arrest such party under this section.]

[NEW] When complaints of family violence are made by two or more opposing persons, a peace officer is not required to arrest both persons.

[NEW EXCEPTION TO MANDATORY ARREST: IF A PEACE OFFICER HAS COMPLAINTS BY TWO OR MORE OPPOSING PERSONS (AND PROBABLE CAUSE FOR BOTH) THE OFFICER HAS DISCRETION TO ARREST ONE OR BOTH]

The peace officer shall evaluate each complaint separately to determine which person is the dominant aggressor.

[IF THE OFFICER HAS DUAL COMPLAINTS WITH PC FOR EACH, THE OFFICER CAN CONDUCT A DOMINANT AGGRESSOR ANALYSIS APPLYING THE FOLLOWING 5 CONSIDERATIONS AND ARREST ONLY THE DOMINANT AGGRESSOR]

In determining which person is the dominant aggressor,

- (1) the peace officer shall consider the need to protect victims of domestic violence,
- (2) whether one person acted in defense of self or a third person,
- (3) the relative degree of any injury,
- (4) any threats creating fear of physical injury, and
- (5) any history of family violence between such persons, if such history can reasonably be obtained by the peace officer.

The peace officer shall arrest the person whom the officer believes to be the dominant aggressor. Substitute Senate Bill No. 466 Public Act No. 18-5

(c) If a peace officer believes probable cause exists for the arrest of two or more persons, in lieu of arresting or seeking a warrant for the arrest of any person determined not to be the dominant aggressor, such peace officer may submit a report detailing the conduct of such person during the incident to the state's attorney for the judicial district in which the incident took place for further review and advice.

[ONCE AN OFFICER HAS CONDUCTED A DOMINANT AGGRESSOR ANALYSIS, THE OFFICER ****MAY*** DECIDE TO SEEK REVIEW AND ADVICE FROM A SA BEFORE DECIDING TO ARREST THE NON-DOMINANT PERSON. THE OFFICER WILL SUBMIT A SWORN POLICE REPORT (OR THE ARRAIGNMENT REPORT OF THE DOMINANT AGGRESSOR ARREST OR A COPY OF THE WARRANT FOR THE DA.) REQUESTING REVIEW AND ADVICE OF A SA. THE REQUEST SHOULD BE MADE BY THE NEXT BUSINESS DAY ON A FORM TO BE DEVELOPED. A SA WILL REVIEW THE REQUEST AS SOON AS PRACTICABLE AND RETURN THE FORM TO THE OFFICER. A REPLY TO SUBMIT A WARRANT SHOULD BE DIRECTED TO THE SAME SA WITH A COPY OF THE FORM. A SYSTEM WILL BE ESTABLISHED TO TRACK THE CORRESPONDENCE.

THE OFFICER CAN DECIDE NOT TO ARREST THE NON-DOMINANT AGGRESSOR OR, IF A REVIEW IS REQUESTED AND THE SA DECIDES NOT TO PROSECUTE THE NON-DOMINANT PERSON, A MANDATORY ARREST IS NOT REQUIRED]

The provisions of this section shall be construed to discourage, when appropriate, but not prohibit, dual arrests.

[THE FINAL OPTION IN SITUATIONS OF DUAL COMPLAINTS ALLOWS OFFICERS TO ARREST BOTH PERSONS BASED UPON PC. THIS FINAL OPTION IS DISCOURAGED BY THE PUBLIC ACT BUT ALLOWED WHEN APPROPRIATE.]

(d) No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate, the arrest of all persons involved in such incident for the purpose of discouraging any request from a person for law enforcement intervention.

[(c)] (e) No peace officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a family violence incident for (1) an arrest based on probable cause; [or for] (2) any conditions of release imposed pursuant to subsection (b) of section 54-63c; or (3) determinations made pursuant to subsection (b) or (c) of this section.

[LIABILITY COVERAGE IS EXTENDED TO DUAL COMPLAINT DECISIONS UNDER SUBSECTIONS (b) AND (c) OF THE PUBLIC ACT]

[(d)] (f) It shall be the responsibility of the peace officer at the scene of a family violence incident to provide immediate assistance to the victim. Such assistance shall include, but need not be limited to:

- (1) Assisting the victim to obtain medical treatment if such treatment is required;
- (2) notifying the victim of the right to file an affidavit for a warrant for arrest;
- (3) informing the victim of services available, including providing the victim with contact information for a regional family violence organization that employs, or provides referrals to, counselors who are trained in providing trauma-informed care;
- (4) referring the victim to the Office of Victim Services; and
- (5) providing assistance in accordance with the uniform protocols for treating victims of family violence whose immigration status is questionable, established pursuant to subsection [(g)] (i) of this section.

In cases where the officer has determined that no cause exists for an arrest, assistance shall include:

- (A) Assistance as provided in subdivisions (1) to (5), inclusive, of this subsection; and
- (B) remaining at the scene for a reasonable time until, in the reasonable judgment of the officer, the likelihood of further imminent violence has been eliminated.

For the purposes of this subsection, "trauma-informed care" means services (i) directed by a thorough understanding of the neurological, biological, psychological and social effects of trauma and violence on a person; and (ii) delivered by a regional family violence organization that employs, or provides referrals to, counselors who: (I) Make available to the victim of family violence resources on trauma exposure, its impact and treatment; (II) engage in efforts to strengthen the resilience and protective factors of victims of family violence who are impacted by and vulnerable to trauma; (III) emphasize continuity of care and collaboration among organizations that provide services to children; and (IV) maintain professional relationships for referral and consultation purposes with programs and persons with expertise in trauma-informed care.

[(e)] (g) (1) Each law enforcement agency shall develop, in conjunction with the Division of Criminal Justice, and implement specific operational guidelines for arrest policies in family violence incidents. Such guidelines shall include, but need not be limited to: (A) Procedures for the conduct of a criminal investigation; (B) procedures for arrest and for victim assistance by peace officers; (C) education as to what constitutes speedy information in a family violence incident; (D) procedures with respect to the provision of services to victims; and (E) such other criteria or guidelines as may be applicable to carry out the purposes of sections 46b-1, 46b-15, 46b-38a to 46b-38f, inclusive, and 54-1g. Such procedures shall be duly promulgated by such law enforcement agency. On and after October 1, 2012, each law enforcement agency shall develop and implement specific operational guidelines for arrest policies in family violence incidents which, at a Substitute Senate Bill No. 466 Public Act No. 18-5 6 of 10 minimum, meet the standards set forth in the model law enforcement policy on family violence established in subdivision (2) of this subsection. (2) There is established a model law enforcement policy on family violence for the state. Such policy shall consist of the model policy submitted by the task force established in section 19 of public act 11- 152 on January 31, 2012, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary, as amended from time to time by the Family Violence Model Policy Governing Council established pursuant to section 46b-38j. (3) Not later than January 15, 2013, and annually thereafter, the chairperson of the Police Officer Standards and Training Council shall provide notice of updates to the model policy, if any, adopted by the council during the prior calendar year, to the chief law enforcement officer of each municipality having a police department, the law enforcement instructor of each such police department, and the Commissioner of Emergency Services and Public Protection. (4) Not later than July 1, 2013, and annually thereafter, each law enforcement agency shall submit a report to the Commissioner of Emergency Services and Public Protection, in such form as the commissioner prescribes, regarding the law enforcement agency's compliance with the model law enforcement policy on family violence for the state. (5) On and after July 1, 2010, each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (A) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or Substitute Senate Bill No. 466 Public Act No. 18-5 7 of 10 other crime has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity, and (B) any subsequent certification required by the victim. [(f)]

(h) The Police Officer Standards and Training Council, in conjunction with the Division of Criminal Justice, shall establish an education and training program for law enforcement officers, supervisors and state's attorneys on the handling of family violence incidents. Training under such program shall: (1) Stress the enforcement of criminal law in family violence cases and the use of community resources, and include training for peace officers at both recruit and in-service levels; and (2) include, but not be limited to: (A) The nature, extent and causes of family violence; (B) factors for determining a dominant aggressor in a family violence case; (C) legal rights of and remedies available to victims of family violence and persons accused of family violence; [(C)] (D) services and facilities available to victims and persons who commit acts of family violence; [(D)] (E) legal duties imposed on police officers to make arrests and to offer protection and assistance, including applicable probable cause standards; and [(E)] (F) techniques for handling incidents of family violence that minimize the likelihood of injury to the officer and promote the safety of the victim. [On and after July 1, 2010, training] Training under such program shall also include, within available appropriations, information on (i) the impact of arrests of multiple parties in a family violence case on the immigration status of the parties; (ii) crime scene investigation and evaluation practices in family violence cases designed by the council to reduce the number of multiple arrests in family violence cases; and (iii) practical considerations in the application of the general statutes related to family violence. [On and after July 1, 2010, such] Such training shall also address, within available appropriations, eligibility for federal T Visas for victims of human trafficking and federal U Visas for unauthorized immigrants who are victims of family violence and other Substitute Senate Bill No. 466 Public Act No. 18-5 8 of 10 crimes. [(g) Not later than July 1, 2010, the]

(i) The Police Officer Standards and Training Council shall establish uniform protocols for treating victims of family violence whose immigration status is questionable, and shall make such protocols available to law enforcement agencies. Each law enforcement agency shall adopt and use such protocols on and after the date they are established by the council.

(j) The provisions of this section shall not apply to persons who are

- (1) attending an institution of higher education and presently residing together in on-campus housing, provided such persons are not in a dating relationship,

[THIS SECTION REMOVES FROM THE CATEGORY OF “RESIDING TOGETHER OR HAVE EVER RESIDED TOGETHER” IN THE DEFINITION OF FAMILY OR HOUSEHOLD MEMBER COLLEGE/UNIVERSITY ROOMMATES. POLICE WHO HAVE PC TO ARREST ONE OR BOTH ROOMMATES ARE NO LONGER MANDATED TO MAKE THE ARREST AS IT IS NO LONGER FAMILY VIOLENCE. HOWEVER; IF THE ROOMMATES FIT WITHIN ANOTHER DEFINITION OF FAMILY OR HOUSEHOLD MEMBER, THE ARREST RETAINS THE FV DESIGNATION AND REMAINS MANDATORY.]

AND

[AND IN THIS SECTION MUST BE READ AS “OR.” IF IT IS NOT READ AS “OR,” THE STATEMENTS ARE CONTRADICTORY.]

- (2) presently residing in a dwelling unit, as defined in section 47a-1, and making payments pursuant to a rental agreement, as defined in section 47a-1, provided such persons are not in a dating relationship.

[THIS PROVISION WAS INCLUDED IN THE PUBLIC ACT TO PREVENT INCIDENTS AT “ROOMING HOUSES” TO FALL WITHIN THE “RESIDING TOGETHER” CATEGORY OF FAMILY OR HOUSEHOLD MEMBER. ONCE AGAIN, IF THE PERSONS MEET ANOTHER CATEGORY WITHIN THE FAMILY OR HOUSEHOLD MEMBERSHIP, THEY ARE RETURNED TO THE FV DEFINITION AND THE MANDATORY ARREST IS REQUIREMENT. THE LANGUAGE WITHIN SUBSECTION (2) IS PROBLEMATIC BECAUSE OF THE PAYMENT REQUIREMENT, THE DWELLING UNIT DEFINITION, AND THE RENTAL AGREEMENT REQUIREMENT. IT IS THE HOPE OF THE SAO, POSTC, AND CCADV THAT THIS LANGUAGE CAN BE RE-VISITED AND CHANGED. HOWEVER, UNTIL CLARIFICATION CAN BE ACHIEVED, POLICE SHOULD BE INSTRUCTED TO ERR ON THE SIDE OF SAFETY, MAKE THE ARREST BASED UPON PROBABLE CAUSE, AND GIVE THE ARRESTEE THE NEXT AVAILABLE COURT DATE FOR THE COURT TO REVIEW THE APPLICABILITY OF SUBSECTION (2)(j).

Sec. 3. Section 7-294g of the general statutes is repealed and the following is substituted in lieu thereof (Effective January 1, 2019): (a) Each police basic or review training program conducted or administered by the Division of State Police within the Department of Emergency Services and Public Protection, by the Police Officer Standards and Training Council established under section 7-294b or by a municipal police department in the state shall provide a minimum of two hours of training on the subject of domestic violence that includes, but is not limited to, the following: (1) Enforcement of criminal laws applicable in cases involving domestic violence; (2) factors for determining a dominant aggressor in a family violence case; (3) techniques for handling incidents of domestic violence which promote the safety of the victim and the officer and which reduce the likelihood of recurrence; [(3)] (4) organizations in the state that offer aid or shelter to victims of domestic violence; [(4)] (5) applicable procedures in the prosecution of cases involving domestic violence; [(5)] (6) orders Substitute Senate Bill No. 466 Public Act No. 18-5 9 of 10 issued by a court pursuant to chapter 815a. The Division of State Police, the Police Officer Standards and Training Council or municipal police departments, in consultation with the [Connecticut Task Force on Abused Women] Division of Criminal Justice and an entity representing the state-wide domestic violence coalition, shall develop a program curriculum. [and shall submit such curriculum to the task force for approval. Individual shelter programs in the task force] A domestic violence agency, as defined in section 52-146k, may also conduct domestic violence training in conjunction with any police training program, pursuant to the guidelines and certification requirements established by the Police Officer Standards and Training Council under section 7-294d. (b) Each police basic training program conducted or administered by the Division of State Police within the Department of Emergency Services and Public Protection, by the Police Officer Standards and Training Council established under section 7-294b or by a municipal police department in the state shall include a course on the recognition and management of child abuse and suicide intervention procedures. Sec. 4. Subdivision (2) of subsection (g) of section 46b-38c of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective January 1, 2019): (2) The Judicial Department may contract with victim service providers to make available, either directly or through referral, appropriate services that include, but are not limited to, the provision of trauma-informed care, as defined in subsection [(d)] (f) of section 46b-38b, as amended by this act. Sec. 5. Section 54-224 of the general statutes is repealed and the following is substituted in lieu thereof (Effective January 1, 2019):

Except as provided in subsection [(d)] (f) of section 46b-38b, as Substitute Senate Bill No. 466 Public Act No. 18-5 10 of 10 amended by this act, the state or any agent, employee or officer thereof shall not be liable for (1) the failure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes, or (2) the failure to provide the victim of a crime with any notice pursuant to any provision of the general statutes. Approved May 14, 2018