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THE WOMEN'S LEGAL RIGHTS INITIATIVE

ALBANIA POLICE PROTOCOL ON DOMESTIC VIOLENCE

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POLICE PROTOCOL ON DOMESTIC VIOLENCE

The goal of domestic violence intervention is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate
- To reduce recidivism and the need to return to the same location repeatedly.
- To prevent serious injury and homicide by intervening at lower levels of assault

Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

- Murder (Articles 76 – 83, 85 of Penal Code)
- Threat (Article 84)
- Torture (Articles 86 and 87)
- Wounding (Article 88/b)
- Termination of pregnancy without consent (Article 93)
- Denial of help (Article 97)
- Causing of suicide (Article 99)
- Abduction (Article 109, 109/a)
- Trafficking (Article 110/1 and Article 114/b, re minors 128/b)
- Trespass (Article 112)
- Forcing into and exploiting for prostitution (Article 114)
- Insult (Article 119)
- Defamation (Article 120)
- Limitation of the freedom of expression/speech, of movement or assembly (Article 261)
- Violation of private life (Article 121)
- Rape (Articles 100-107)
- Other obscene acts (Article 108)
- Abandonment (Article 124)
- Denial of living means (Article 125)
- Illegal taking of child (Article 127)
- Coercion for cohabitation or termination of marriage (Article 130)
- Damage to property or economic well-being (Articles 150-154)
- Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)
- Serious intentional injury (Article 88, 88/a)
- Non serious intentional injury (Article 89)

Other intentional injury (Article 90)
Serious injury due to negligence (Article 91)
Non serious due to negligence (Articles 92)
Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

1. “***Members of the family***” are
 - a. Spouses or cohabitating partners
 - b. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - c. Spouses of persons provided in paragraph b
 - d. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
 - e. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

Communication Procedure

129 Operator/Dispatch

- All calls involving a domestic violence incident in progress should be given the same priority as other emergency calls.
- At least two officers should go to every call.
- The operator should not discuss bringing charges or prosecution. An emergency call is for immediate assistance not legal action.
- No comments should be made that blame the victim or suggest the incident is minor or not important.

Operators should obtain the following information:

- What is the emergency?
- Is the caller the victim?
- If not, did the caller see the incident?
- When did the incident occur or is it now occurring?
- Where is the emergency?
- Are there any injuries?
- Is an ambulance needed?
- Are weapons involved?
- What kind?
- Who is the abuser?

- What is the caller's relationship to the abuser?
- Where is the abuser now?
- What is the physical description of the abuser?
- What is the abuser's name?
- Has anyone involved been drinking or using drugs?
- What is the callers name?
- Is there a protection order against the abuser?
- Have the police been called to this address or these people before?
- Are there any other witnesses?
- What are their names?
- Are children there?
- How old are they?

Patrol Response

Enforcement of Laws

The criminal law should be applied the same in every case where a crime has occurred. The following factors will NOT influence the officer's actions in a domestic violence case:

- The relationship or marital status of the suspect and victim
- Whether the suspect lives or does not live on the premises with the victim
- The lack of a Protection Order
- The potential financial consequences of arrest
- The victims or suspects emotional state (suspects will often be very calm and in control while the victim having just experienced violence may be agitated.)
- The lack of visible injuries on the victim (many injuries are internal or are not visible for 24 to 48 hours).
- The location of the incident i.e. public or private property
- Speculation that charges may not be brought

The officer will not make statements or threats to discourage victims from reporting the domestic violence such as

- you know we have to arrest your husband and he won't be able to work,
- he'll just be more angry,
- we have to arrest you both and who will take care of the children.

The officer should make it clear that the determination whether to bring charges belongs to the prosecutor and not the police or the victim.

Investigation of Domestic Violence Cases

- Officers should conduct a thorough investigation and prepare the report regardless of the wishes of the victim or the presence or absence of the suspect.
- Officers should approach all scenes with caution and look and listen to what is going on before announcing their presence.
- If possible use a tape recorder to note the time and date and record all subsequent activity including suspect, victim and witness statements especially children.
- Determine the location and condition of the victim and suspect.
- Determine if a weapon is involved or in the home or vicinity.
- Provide aid to injured parties or call an ambulance.
- Document the name and contact information for the doctor that the victim has used.
- Determine if others are in the residence or building.
- Separate the suspect, victim and witnesses in sight and hearing before interviewing them.
- Record their statements verbatim not a summary.
- When interviewing children, ask:
 - What happened?
 - Who did this?
 - Where were you when this happened?
 - When did this happen?
 - Where do you go to school?
- Document the emotional state of all persons.
- If both parties claim violence, note the answers to the following questions:
 - Was one party in actual fear of the other?
 - Did one party escalate the level of violence?
 - Was one party physically bigger and stronger than the other?
 - Was there a history of violence by one party against the other or against other persons?
 - Does one party have a history of being the aggressor?
 - Does one party have more serious injuries than the other?
 - Do any injuries appear to be defense wounds or escape wounds e.g. bite marks or scratching?
- Document and photograph all injuries. (Criminal Procedure Code 188)
- Document the condition at the scene using photographs and diagrams. (CPC 188)
- Document any weapons seized.
- Ask who made the 129 call if one was made and if so, get a copy of the tape.

Protection Orders

If there is no protection order, officers should advise the victim of the possibility of a protection order.

If there is a protection order, officers should read the language of the order carefully to see what victim protections were ordered and what restrictions were placed on the suspect.

If the suspect has violated the protection order, the officer should arrest under Criminal Code 320 for interference with a court order.

Written Incident Reports

- On the Victim and Witness sheet, there is a box to check that the incident is domestic violence. The relationship between the parties should be circled.
- Document each element of each offense. Remember there may be more than one.
- Document the violation of the protection order if there is one.
- Document each injury with photos, body maps, and written description.
- Include school information for any children.
- Document and photograph physical evidence such as holes in walls, broken doors, damaged furniture etc.
- Document any history of previous incidents whether or not reported to the police.
- Directly quote victims, suspects and witnesses. Do not summarize.
- Note emotional states of all parties.
- Indicate whether children, elderly people or disabled people were present or injured during the incident.
- Document whether victim was pregnant at the time of the incident.

Special Role of Police in Protection of Victims

- Police departments are one of the responsible authorities under the law. (Article 5)
- The Ministry of Interior is responsible to set up special anti-violence units at police stations and train members of the police force to handle domestic violence cases. (Article 9)
- All agencies are required to coordinate services, establish a responsible person, respond to reports filed by victims, keep records, and protect the victim through information, providing transportation or in certain life endangering cases, providing the protection of a police officer. (Article 10)
- Persons who receive reports and fail to take action are liable for administrative or criminal sanctions under 248 or 251 of the Criminal Code. (Article 10)
- Victims and others may report to the police station and the police must record the report and start an investigation. (Article 11)
- Under the protection order law, police may present petitions for protection orders or emergency protection orders. (Article 15) Police should be extremely careful about doing this so as to empower the victim rather than taking away the victims power of decision making.
- When immediate help is requested, the petition may be presented at the nearest police station. (Article 16) The police unit should contact the prosecutor who is on call. The prosecutor then should contact the judge and get the protection order

- issued. A copy should then be sent immediately to the police and victim in the rural areas.
- The police report may be evidence in court. (Article 18)
 - The police will be sent a copy of the order within 24 hours of its issue. (Article 20, 22)
 - If the court has a hearing on an emergency protection order and it has been filed by the police, the police may be asked to appear at the hearing. (Article 21)

Special Role of Police in Enforcement of Protection Orders

- Under the protection order law, orders are executive titles and go into effect immediately. (Article 22, 26)
- The order is to be carried out immediately by police departments among others. (Article 20, 26)
- Members of the police force, among others, SHALL take all necessary steps to ensure immediate and continuous implementation/execution of protection measures. (Article 26)
- If the respondent actively interferes with or places obstacles in the way of compliance with the order, Article 320 of the Criminal Code can be applied. (Article 26) It is extremely important that police act swiftly in such cases because it is an extremely dangerous time for the victims.
- Issuance of a protection order or emergency protection order does not in any way inhibit beginning criminal proceedings with regard to acts or omissions classified as criminal offenses. (Article 27) This is often very important as a protection mechanism for victims.

Special Considerations by the Police for Victims of Domestic Violence

Some specific things to think about in domestic violence cases include:

- Is a divorce in process? Often the abuser will increase violence at the time of divorce because of a fear of loss of control over the victim.
- The presence of a weapon is a warning of extreme danger. Be sure to confiscate the weapon. Before returning the weapon, check to see if there is a protection order against the person and if so, do not return the weapon until the expiration of the protection order and only then with a court order. (Criminal Procedure Code 217)
- Refer the victims to the local NGOs who give services to victims.

Articles of the Criminal Code to Consider in Domestic Violence Cases

Article 17- Often the offender will claim that he is not responsible because he could not control his actions blaming his wife for making him angry. This is not a valid defense. Ask him what he does when gets angry at his boss? Or his friend? Or his neighbour? Most likely he does not hit them. It is only his wife he hits.

Article 18 – The abuser will often claim he is not responsible because he was drunk. That is not a defense and if done deliberately to justify his beating could be an

aggravating factor. Be sure to take an alcohol reading at the scene or later at the station. It will be very useful if the perpetrator tries to use this for a defense.

Article 50 – Aggravating circumstances can be used when the act is against pregnant women or children or other people who cannot defend themselves such as the elderly or people with disabilities. Aggravation can also be present by taking advantage of family relations to do or cover up the act. Be sure to document if such people are present or injured.

Article 93 – Often domestic violence will begin when the woman becomes pregnant and the abuser will often target the stomach. Be sure to document if she is pregnant, if the stomach seems to have been targeted and what injuries resulted.

Article 102-107 – With all sexual offenses, ask whether the victim gave her consent. Simply being the wife or having previously engaged in sexual relations is not sufficient to claim that consent was given.

Article 134 and 150 – In all theft and destruction of property cases, remember that community property belongs equally to both parties and one does not have the right to take, keep or destroy it. (Family Code, Article 73)

Articles of the Criminal Procedure Code to Consider in Domestic Violence Cases

Article 158 – While generally a family member is not obliged to testify against another family member, if they or another family member has been injured, then they must testify.

Article 251 – Even if the crime or attempt does not meet the requirements of paragraphs 1 or 2, the existence of a protection order should meet the requirements of paragraph 3 to allow immediate arrest. If the officer has previous knowledge of domestic violence between these same people, the perpetrator is a repeat offender, or because of the known danger that domestic violence will escalate, that should also be sufficient to allow mandatory arrest under paragraph 3.

Article 285, 286 - Be very suspicious if the victim seeks to waive the right of complaint or tries to withdraw the complaint. It is very likely fear or threats from the abuser that is causing it. The police investigation should go ahead anyhow to protect the victim and prevent re-occurrence of the violence.

