

Basic Training Module Specifications

<u>Functional Area:</u>	I. Investigation
<u>Subject Area:</u>	H. Investigation of Domestic Violence
<u>Module Title:</u>	2. LAWS REGARDING DOMESTIC VIOLENCE
<u>Hours:</u>	Not less than 3 hours

Notes to Instructor:

This material must be taught by an attorney admitted to the Michigan Bar. MCOLES recommends that the instructors have practical experience working with domestic violence cases. MCOLES also recommends that the instructors successfully complete an MCOLES-approved instructor training course in domestic violence. A list of experienced attorneys, or those who have attended this or similar training, is contained in the Domestic Violence Instructor materials or is available from MCOLES.

The textbook for the domestic violence training objectives is *The Michigan Law Enforcement Response to Domestic Violence* (Findlater, Kramp, & Wolfe, 2007).

Module Objectives start on next page:

I.H.2.1. Demonstrate an Understanding that Domestic Violence is a Law Enforcement Issue.

- a. Describes why domestic violence is a law enforcement issue:
 - (1) domestic violence is a pattern of power and control that includes criminal behavior;
 - (2) law enforcement intervention is critical to beginning the process of stopping the violence:
 - (a) arrest is the first step in the criminal justice process;
 - (b) arrest sends the message that criminal behavior will not be tolerated; and
 - (c) arrest provides immediate safety to the victim, children, and the community and workplace; and
 - (3) domestic violence related homicides can often be prevented.
- b. Identifies that a coordinated community response is the most appropriate intervention in domestic violence because:
 - (1) the assailant is held accountable for the violence;
 - (2) information, support and assistance are provided to the victim; and
 - (3) community systems work together to help keep victims and children safe and to help end the violence.
- c. Identifies the importance of evidence-based prosecution through:
 - (1) thorough investigation;
 - (2) collection and preservation of evidence sufficient to proceed without the victim's testimony;
 - (3) arrest;
 - (4) complete and accurate documentation in a written report; and
 - (5) assistance to the victim.
- d. Identifies that there is liability associated with an officer's failure to respond properly to a domestic violence incident (e.g., violations of constitutional rights, equal protection of law, and due process).

I.H.2.2. Demonstrate an Understanding of Substantive Criminal Law as It Relates to Domestic Violence.

- a. Considers crimes likely to be committed in a domestic violence incident:
- (1) murder;
 - (2) manslaughter;
 - (3) assault, including:
 - (a) assault;
 - (b) assault and battery;
 - (c) aggravated assault;
 - (d) felonious assault;
 - (e) assault with intent to do great bodily harm less than murder, including strangulation;
 - (f) assault with intent to commit criminal sexual conduct;
 - (g) assault with intent to maim;
 - (h) assault with intent to commit murder; and
 - (i) assault on a pregnant woman or injury to the fetus;
 - (4) stalking and aggravated stalking;
 - (5) home invasion;
 - (6) breaking and entering;
 - (7) malicious destruction of property;
 - (8) weapons offenses;
 - (9) criminal sexual conduct;
 - (10) kidnapping/unlawful imprisonment
 - (11) parental kidnapping;
 - (12) arson;
 - (13) child abuse;
 - (14) drug offenses;
 - (15) cruelty to animals;
 - (16) violations of local ordinances;
 - (17) violations of federal domestic violence laws;
 - (18) communications promoting threatening conduct;
 - (19) extortion;
 - (20) obstruction of justice;
 - (21) torture;
 - (22) desertion and non-support;
 - (23) interfering with electronic communication; and
 - (24) human trafficking.
- b. Identifies that Michigan law provides a misdemeanor penalty of imprisonment for not more than 93 days or a fine of not more than \$500, or both, where:
- (1) the assailant is convicted of assault or assault and battery; and
 - (2) the relationship between the assailant and the victim is:
 - (a) spouse or former spouse;
 - (b) resident or former resident of same household;
 - (c) has had a child in common; or
 - (d) in a current or former dating relationship.

I.H.2.2. Demonstrate an Understanding of Substantive Criminal Law as It Relates to Domestic Violence (continued).

- c. Identifies that Michigan law provides an enhanced misdemeanor penalty of imprisonment for not more than 1 year or a fine of not more than \$1,000, or both, where:
 - (1) the assailant is convicted of assault or assault and battery;
 - (2) the relationship between the assailant and the victim is:
 - (a) spouse or former spouse;
 - (b) resident or former resident of same household;
 - (c) has had a child in common; or
 - (d) in a current or former dating relationship; and
 - (3) the assailant has previously been convicted of one of the following crimes committed against a spouse or former spouse, or a resident or former resident of the same household, child in common, or current/former dating relationship:
 - (a) assault or assault and battery;
 - (b) violation of a substantially corresponding local ordinance;
 - (c) aggravated assault;
 - (d) felonious assault;
 - (e) assault with intent to commit murder;
 - (f) assault with intent to do great bodily harm;
 - (g) assault with intent to maim; or
 - (h) a substantially similar crime or ordinance from another state.

- d. Identifies that Michigan law provides an enhanced felony penalty of imprisonment for not more than 5 years or a fine of not more than \$5,000, or both, where:
 - (1) the assailant is convicted of assault or assault and battery;
 - (2) the relationship between the assailant and the victim is:
 - (a) spouse or former spouse;
 - (b) resident or former resident of the same household;
 - (c) has had a child in common; or
 - (d) in a current or former dating relationship; and
 - (3) the assailant has previously been convicted two or more times of the following crimes committed against a spouse or former spouse, or a resident or former resident of the same household or has had a child in common, or current/former dating relationship:
 - (a) assault or assault and battery;
 - (b) violation of a substantially corresponding local ordinance;
 - (c) aggravated assault;
 - (d) felonious assault;
 - (e) assault with intent to commit murder;
 - (f) assault with intent to do great bodily harm;
 - (g) assault with intent to maim; or
 - (h) a substantially similar crime or ordinance from another state.

I.H.2.2. Demonstrate an Understanding of Substantive Criminal Law as It Relates to Domestic Violence (continued).

- e. Identifies that Michigan law provides an enhanced felony penalty of imprisonment for not more than 5 years or a fine of not more than \$5,000, or both, where:
 - (1) the assailant is convicted of aggravated assault;
 - (2) the relationship between the assailant and the victim is:
 - (a) spouse or former spouse;
 - (b) reside or resided together in the same household;
 - (c) has had a child in common; or
 - (d) in a current or former dating relationship; and
 - (3) the assailant has previously been convicted of one or more of the following crimes committed against a spouse or former spouse, or a resident or former resident of the same household or has had a child in common, or current/former dating relationship:
 - (a) assault or assault and battery;
 - (b) violation of a substantially corresponding local ordinance;
 - (c) aggravated assault;
 - (d) felonious assault;
 - (e) assault with intent to commit murder;
 - (f) assault with intent to do great bodily harm;
 - (g) assault with intent to maim; or
 - (h) a substantially similar crime or ordinance from another state.

- f. Identifies that the law enforcement agency shall immediately fingerprint the assailant and shall forward the fingerprints to the state police within 72 hours of the arrest of the assailant in all of the following:
 - (1) felony;
 - (2) misdemeanor assault or assault and battery where the relationship between the assailant and the victim is:
 - (a) spouse or former spouse;
 - (b) resident or former resident of the same household;
 - (c) has had a child in common; or
 - (d) in a current or former dating relationship;
 - (3) any other misdemeanor for which the maximum possible penalty exceeds 92 days imprisonment or a fine of \$1,000, or both; and
 - (4) violation of a Michigan PPO or foreign protection order.

I.H.2.3. Demonstrate an Understanding of the Options Available to the Court in Sentencing and Adjudication in Domestic Violence Cases.

- a. Identifies that the court may delay proceedings and place the assailant on probation without entering a judgment of guilt (MCL 769.4a) where:
 - (1) the assailant pleads guilty to or is found guilty of assault, assault and battery, or aggravated assault;
 - (2) the assailant has not been convicted previously of an assaultive crime as defined by MCL 770.9a(3);
 - (3) the relationship between the assailant and the victim is spouse, former spouse, resident or former resident of the same household, has had a child in common, or in a current or former dating relationship;
 - (4) the prosecutor consents in consultation with the victim;
 - (5) the assailant has not previously used this procedure; and
 - (6) the court contacts the Department of State Police to determine whether the assailant has previously:
 - (a) been convicted of an assaultive crime, assault, or
 - (b) used this procedure.
- b. Identifies that the court shall enter an adjudication of guilt if during probation the assailant:
 - (1) commits an assaultive crime;
 - (2) violates a court order to receive counseling regarding his or her violent behavior; or
 - (3) violates a court order to have no contact with the victim.
- c. Identifies that the court may enter an adjudication of guilt if the assailant violates any other term or condition of probation.
- d. Identifies that if the assailant fulfills the terms and conditions of probation, the court shall discharge the assailant and dismiss the proceedings.
- e. The Department of State Police shall retain a non-public record of an arrest and discharge and dismissal.

Instructor Notes:

A case dismissed under MCL 769.4a can be used to enhance a subsequent case for purposes of MCL 750.81(3) and (4), and MCL 750.81a(3).

I.H.2.4. Demonstrate an Understanding of the Crime of Stalking.

- a. Identifies the elements of stalking as:
 - (1) a willful course of conduct;
 - (2) involving repeated or continuing harassment of another individual;
 - (3) that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested; and
 - (4) that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested (MCL 750.411h).
- b. Defines "course of conduct" as a pattern of conduct composed of 2 or more separate non-continuous acts, evidencing a continuity of purpose.
- c. Defines "harassment" as conduct directed toward a victim that includes, but is not limited to, repeated or continuing un-consented contact that:
 - (1) would cause a reasonable individual to suffer emotional distress;
 - (2) actually causes the victim to suffer emotional distress; and
 - (3) does not include constitutionally protected activity or conduct for a legitimate purpose.
- d. Defines "un-consented contact" as any contact with another individual that is initiated or continued without that individual's consent, or in disregard of that individual's expressed desire that the conduct be avoided or discontinued, and includes, but is not limited to:
 - (1) following or appearing within victim's sight;
 - (2) approaching or confronting the victim in a public place or on private property;
 - (3) appearing at the workplace or residence of the victim;
 - (4) entering onto or remaining on property owned, leased, or occupied by the victim;
 - (5) contacting the victim by telephone, mail, or electronic communication; or
 - (6) placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.
- e. Describes "victim" as an individual who is the target of a willful course of conduct involving repeated or continuing harassment.
- f. Describes "emotional distress" as significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

I.H.2.4. Demonstrate an Understanding of the Crime of Stalking (continued).

- g. Identifies that immediately upon arrest of the assailant for stalking, the law enforcement agency shall fingerprint the assailant and shall forward the fingerprints to the state police within 72 hours after the arrest.
- h. Stalking is punishable as a misdemeanor, including:
 - (1) imprisonment for not more than one year; and/or
 - (2) a fine of not more than \$1,000;
 - (3) enhancement to a 5-year felony and \$10,000 fine, if the victim is less than 18 years old at any time during the offender's course of conduct and the suspect is 5 or more years older than the victim; and
 - (4) probation up to 5 years.

I.H.2.5. Demonstrate an Understanding of the Crime of Aggravated Stalking.

- a. Identifies aggravated stalking as a felony.
- b. Identifies that an individual commits aggravated stalking by engaging in stalking (see I.H.2.4.) where:
 - (1) assailant has previously been convicted of stalking or aggravated stalking; or
 - (2) at least one of the 2 or more separate non-continuous acts:
 - (a) is in violation of a restraining order and the individual has received actual notice of that restraining order, or is in violation of an injunction or preliminary injunction; or
 - (b) is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or
 - (c) includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the victim's household.

Notes to Instructor: A “credible threat” is a threat to kill or injure that causes the victim to reasonably fear for his/her safety or another’s safety.

- c. Identifies that immediately upon arrest of the assailant for aggravated stalking, the law enforcement agency shall fingerprint the assailant and shall forward the fingerprints to the state police within 72 hours after the arrest.
- d. Aggravated stalking is punishable as a felony by:
 - (1) imprisonment for not more than five years; and/or
 - (2) a fine of not more than \$10,000; and
 - (3) enhanced to a 10-year felony and a \$15,000 fine if the victim is less than 18
 - (4) years old at any time during the offender's course of conduct and the suspect is
 - (5) 5 or more years older than the victim; and
 - (6) probation for any term of years, but not less than 5 years.

Notes to Instructor: Those on parole for aggravated stalking are required to be GPS monitored if the victim has registered with Department of Corrections for the entire period of parole.

I.H.2.6. Demonstrate an Understanding of the Authority of a Police Officer in Enforcing Domestic Violence Laws.

- a. Identifies the authority of a police officer to enter the scene when responding to a domestic violence complaint without a warrant based on:
 - (1) consent by a person with authority to consent, including:
 - (a) adult occupants; or
 - (b) child occupants, taking into account:
 - i. age; and
 - ii. area of dwelling to be entered; or
 - (2) exigent circumstances, including:
 - (a) risk of danger to police or others inside or outside the dwelling;
 - (b) imminent destruction of evidence;
 - (c) need to prevent the suspect's escape;
 - (d) hot pursuit; or
 - (e) emergency aid (to determine if aid is needed and to provide aid).
- b. Recognizes the need to document the grounds that justify entry with specific and articulable facts.
- c. Identifies the need for probable cause that a crime was committed and that the premises contains evidence of the crime.
- d. Recognizes that a law enforcement officer should arrest when:
 - (1) a warrant exists;
 - (2) a felony, misdemeanor or ordinance violation is committed in the officer's presence (MCL 764.15 (1) (a)); or
 - (3) probable cause exists to believe:
 - (a) a felony or misdemeanor (punishable by more than 92 days imprisonment) has been committed;
 - (b) a misdemeanor assault, assault and battery, or aggravated assault has been or is being committed, or a violation of a substantially corresponding local ordinance occurred or is occurring, and there is a domestic relationship between the assailant and the victim defined as:
 - i. spouse or former spouse;
 - ii. resident or former resident of the same household;
 - iii. has had a child in common; or
 - iv. in a current or former dating relationship (MCL 764.15c);
 - (c) a misdemeanor has been or is being committed on school property;
 - (d) the person has violated or is violating a condition of release (or foreign condition of release) (MCL 764.15e(1));
 - (e) the person has violated, or is violating, a condition of probation or parole (MCL 764.15(1) (g)); or
 - (f) the person has violated or is violating a Michigan PPO or a foreign protection order (see I.H.2.10).

I.H.2.7. Demonstrate an Understanding of a Domestic Relationship Personal Protection Order (PPO).

- a. Identifies that a domestic relationship Personal Protection Order (PPO) is a court order issued by the circuit court prohibiting certain conduct.
- b. Identifies that a violation of a PPO is criminal or civil contempt of court punishable by imprisonment of up to 93 days and/or a \$500 fine.
- c. Identifies that an individual (the petitioner) may obtain a domestic relationship PPO only if there is a domestic relationship between the petitioner and the person restrained or enjoined (the respondent) defined as (MCL 600.2950):
 - (1) spouse or former spouse;
 - (2) reside or resided together in the same household;
 - (3) has had a child in common; or
 - (4) has or has had a dating relationship.
- d. Recognizes that the existence of a domestic relationship will be determined by the court before the court issues the PPO.
- e. Identifies conduct that can be restrained or enjoined by a domestic relationship PPO as:
 - (1) entering onto premises;
 - (2) assaulting, attacking, beating, molesting, or wounding a named individual;
 - (3) threatening to kill or physically injure a named individual;
 - (4) removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction;
 - (5) purchasing or possessing a firearm;
 - (6) interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined;
 - (7) interfering with petitioner at petitioner's place of employment or engaging in conduct that impairs petitioner's employment relationship or environment or place of education;
 - (8) having access to information and records of a minor child that will inform respondent of child's or petitioner's address, telephone, or employment information; or
 - (9) engage in conduct prohibited by the stalking laws; or
 - (10) any other specific conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence (this may include stalking).

I.H.2.7. Demonstrate an Understanding of a Domestic Relationship Personal Protection Order (PPO) (continued).

- f. Recognizes that to obtain a domestic relationship PPO the adult petitioner must:
 - (1) go to court and file a petition, on a form provided without charge by the court, requesting a domestic relationship PPO; and
 - (2) provide evidence in support of the request demonstrating probable cause to believe the respondent may commit one or more of the acts that can be prohibited by the PPO (see I.H.2.7.e.).

I.H.2.8. Demonstrate an Understanding of a Non-Domestic Stalking Personal Protection Order (PPO).

- a. Identifies that a non-domestic stalking Personal Protection Order (PPO) is a court order issued by the court prohibiting stalking behavior.
- b. Identifies that a violation of a PPO is criminal or civil contempt of court punishable by imprisonment of up to 93 days and/or a \$500 fine.
- c. Identifies that a domestic relationship is not required for a non-domestic stalking PPO (MCL 600.2950a)

Notes to Instructor:

In a domestic relationship, stalking is included in a domestic relationship PPO (see I.H.2.7.e.).

- d. Identifies that conduct that can be restrained or enjoined by a non-domestic stalking PPO includes, but is not limited to:
 - (1) following or appearing within the sight of an individual;
 - (2) approaching or confronting that individual in a public place or on private property;
 - (3) appearing at the workplace or residence of that individual;
 - (4) entering onto or remaining on property owned, leased, or occupied by that individual;
 - (5) contacting that individual by telephone, mail, or electronic communication;
 - (6) placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; or
 - (7) purchasing or possessing a firearm.
- e. Recognizes that to obtain a non-domestic stalking PPO the petitioner must:
 - (1) go to court and file a petition, on a form provided without charge by the court, requesting a non-domestic stalking PPO; and
 - (2) provide evidence in support of the request demonstrating that the respondent has engaged in stalking.

I.H.2.9. Demonstrate an Understanding of the Court Procedures Related to Personal Protection Orders (PPOs).

- a. Recognizes that the circuit court must:
 - (1) issue a domestic relationship PPO if the court determines that there is probable cause to believe the respondent may commit one or more of the acts that can be prohibited by the PPO;
 - (2) state immediately in writing the specific reasons for refusing to issue the PPO; and
 - (3) not refuse a petition solely due to the absence of a police, medical, or agency report or due to the absence of physical signs of abuse or violence.
- b. Recognizes that the circuit court must:
 - (1) issue a non-domestic stalking PPO if the court determines that the respondent has engaged in stalking; or
 - (2) state immediately in writing the specific reasons for refusing to issue the PPO.
- c. Recognizes that a PPO (domestic relationship or non-domestic stalking) shall be issued by the circuit court ex parte (without notice to the respondent) if it clearly appears from specific facts shown that:
 - (1) immediate and irreparable injury, loss or damage will result from delay required to give notice; or
 - (2) notice itself will precipitate adverse reaction before a PPO can be issued.
- d. Recognizes that a PPO shall not be made mutual unless both parties have properly petitioned the courts.
- e. Recognizes that the respondent may file a motion, on a form provided without charge by the circuit court, to modify or terminate an ex parte PPO:
 - (1) within 14 days after being served with or receiving notice of the PPO; or
 - (2) for good cause shown, after 14 days.
- f. Identifies that the circuit court must schedule a hearing on a motion to modify or terminate a PPO within:
 - (1) 14 days after the filing of the motion; or
 - (2) 5 days (expedited hearing) after the filing of the motion if the PPO prohibits the purchase or possession of a firearm and the respondent is a:
 - (a) person who is issued a license to carry a concealed weapon for purposes of performing duties related to employment or business;
 - (b) certified police officer;
 - (c) sheriff or deputy sheriff;
 - (d) member of the Michigan department of state police; or
 - (e) local corrections officer, department of corrections employee, or federal law enforcement officer who carries a firearm during the normal course of employment.

I.H.2.9. Demonstrate an Understanding of the Court Procedures Related to Personal Protection Orders (PPOs) (continued).

- g. Recognizes that the clerk of the court that issues a PPO shall immediately:
 - (1) file a true copy of the PPO with the law enforcement agency designated by the court on the PPO to enter the PPO into the LEIN;
 - (2) immediately provide the petitioner with at least two true copies of the PPO;
 - (3) inform the petitioner that the petitioner may take a true copy of the PPO to the designated law enforcement agency for immediate entry onto the LEIN;
 - (4) notify the designated law enforcement agency when the clerk receives proof that the respondent has been served with the PPO;
 - (5) notify the designated law enforcement agency when the PPO has been terminated, modified, or extended by court order;
 - (6) notify the employing law enforcement agency of the PPO, if respondent is a law enforcement officer;
 - (7) notify the CCW board in respondent's county about the PPO, if it prohibits purchasing or possessing a firearm;
 - (8) notify the state department of corrections of the PPO, if the respondent is an employee; and
 - (9) notify the friend of the court (FOC) if the respondent is identified in pleadings as the person who may have access to FOC records.

- h. Recognizes that the petitioner must ensure:
 - (1) respondent is served with the PPO; and
 - (2) proof of service is provided to the clerk of the court that issued the PPO.

I.H.2.10. Demonstrate an Understanding of Enforcement of Domestic Relationship and Non-Domestic Stalking Personal Protection Orders (PPOs).

- a. Identifies that a Personal Protection Order (PPO) in Michigan is effective when signed by a judge, even before served.

- b. Identifies that a PPO is immediately enforceable anywhere in Michigan by any law enforcement agency that has:
 - (1) received a true copy of the PPO;
 - (2) been shown a copy of the PPO; or
 - (3) verified the existence of the PPO in the LEIN.

- c. Identifies that officers may give a verbal notification in situations other than when responding to a call alleging a violation of a PPO (e.g., traffic stops).

I.H.2.10. Demonstrate an Understanding of Enforcement of Domestic Relationship and Non-Domestic Stalking Personal Protection Orders (PPOs) (continued).

- d. Identifies that if the individual restrained or enjoined has been served, a law enforcement officer should arrest if probable cause exists to believe:
 - (1) a domestic relationship PPO or non-domestic stalking PPO exists;
 - (2) the PPO states on its face that violation subjects the violator to immediate arrest and criminal contempt punishable by not more than 93 days and/or a fine of not more than \$500; and
 - (3) the individual is in violation of the PPO by engaging in or having engaged in the conduct restrained or enjoined by the PPO (MCL 764.15b(1)).

- e. Identifies that if the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a PPO must:
 - (1) serve the individual restrained or enjoined with a true copy of the PPO; or
 - (2) provide the individual restrained or enjoined actual verbal notice of the:
 - (a) existence of the PPO;
 - (b) specific conduct restrained or enjoined;
 - (c) penalties for violating the PPO; and
 - (d) location where the individual restrained or enjoined may obtain a copy of the order; and
 - (3) complete the proof of service form or proof of verbal notice form and provide a copy to the:
 - (a) victim;
 - (b) law enforcement agency that entered the PPO in the LEIN; and
 - (c) court that issued the PPO.

- f. Identifies that after being served or provided notice of the PPO at the scene, the individual restrained or enjoined shall be given an opportunity to immediately comply with the PPO before the law enforcement officer makes a custodial arrest for violation of the PPO.

- g. Identifies that the failure to immediately comply with the PPO shall be grounds for an immediate custodial arrest.

- h. Identifies that in the presence of conflicting orders, such as custody or parenting-time orders, officers must enforce a valid PPO.

- i. Identifies that a thorough criminal investigation should be conducted whenever there is an alleged violation of a PPO.

- j. Recognizes that an arrest should be made for violation of any criminal law even when the assailant is also arrested for violation of a PPO.

I.H.2.10. Demonstrate an Understanding of Enforcement of Domestic Relationship and Non-Domestic Stalking Personal Protection Orders (PPOs) (continued).

- k. Demonstrates a working knowledge of the procedures following an arrest for violation of a PPO, including:
 - (1) the individual arrested shall be brought before the court in the county where the violation occurred within 24 hours to answer to a charge of contempt for violation of the PPO (MCL 764.15b(2));
 - (2) the family division of circuit court for each county of this state has jurisdiction to conduct contempt proceedings based upon a violation of a PPO issued by the circuit court of any county of this state;
 - (3) if a family court judge is not available within 24 hours after arrest, the individual shall be brought within 24 hours before the district court judge (or magistrate if district court is not open within 24 hours of arrest) who will set bond and order the individual to appear before the circuit court; and
 - (4) the court of arraignment shall notify the court that issued the PPO that the issuing court may request that the individual be returned to that county at the expense of the requesting county to stand trial.
- l. Identifies the requirement to prepare a written report (e.g., standard domestic violence incident report form) documenting all facts of the investigation even if no arrest is made (see I.H.2.13.d.).

I.H.2.11. Demonstrate an Understanding of Enforcement of Foreign Protection Orders (FPOs)

- a. Recognizes that law enforcement officers may rely on any protection order that appears to be a foreign protection order (FPO), that is provided to the officer from any source, if the order appears to contain all of the following:
 - (1) the names of the parties;
 - (2) issue date (which is prior to the date enforcement is sought);
 - (3) terms and conditions against respondent;
 - (4) name of the issuing court;
 - (5) signature of, or on behalf of, judicial officer; and
 - (6) no obvious indication that the order is invalid.
- b. Observes that the inability to verify the FPO in LEIN or NCIC is not grounds for the officer to refuse to enforce the order, unless it is apparent that the order is invalid, and that:
 - (1) the officer may rely on the statement of the petitioner that the order shown remains in effect; and
 - (2) the officer may rely only on the statement of the petitioner or respondent that the respondent has received notice of the order.

I.H.2.11. Demonstrate an Understanding of Enforcement of Foreign Protection Orders (FPOs) (continued).

- c. Determines that a person seeking enforcement of a FPO and does not have a copy of the order, the officer shall attempt to verify the order through:
 - (1) LEIN or NCIC;
 - (2) administrative message;
 - (3) the court that issued the order;
 - (4) the law enforcement agency in the issuing jurisdiction; or
 - (5) the issuing jurisdiction's protection order registry.
- d. Describes law enforcement responsibilities when enforcing FPOs:
 - (1) upon arrest, officers must take the violator's fingerprints and forward them to the Michigan State Police within 72 hours;
 - (2) a person who refuses or resists giving fingerprints is guilty of a misdemeanor punishable by imprisonment of not more than 90 days and/or a \$500 fine;
 - (3) officers must complete the standard domestic relationship report form, or a substantially similar form; and
 - (4) officers and courts must follow Michigan's PPO enforcement procedures for violations of FPOs in Michigan, including penalties and reimbursement for enforcement expenses.
- e. Recognizes that law enforcement officers acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order.

I.H.2.12. Demonstrate an Understanding of Personal Protection Orders (PPOs) and the Effect on Firearm Purchase or Possession.

- a. Identifies that a PPO (domestic relationship or non-domestic stalking) may prohibit an individual from purchasing or possessing a firearm.
- b. Identifies that if an individual prohibited by a PPO from purchasing or possessing a firearm has been served and is in possession of a firearm, the officer should:
 - (1) arrest the individual; and
 - (2) seize firearms as evidence, including all firearms:
 - (a) in the possession of the individual;
 - (b) in plain view; and
 - (c) found during a valid search.
- c. Identifies that if an individual prohibited by a PPO from purchasing or possessing a firearm has not been served and, after being served or provided notice of the PPO, chooses to comply, the officer may take possession of the firearm for safe keeping.

I.H.2.12. Demonstrate an Understanding of Personal Protection Orders (PPOs) and the Effect on Firearm Purchase or Possession (continued).

- d. Identifies that if an individual is prohibited by a PPO from purchasing or possessing a firearm, there are no exceptions, including:
 - (1) police officers, and
 - (2) persons with a concealed weapon permit.

- e. Identifies that an individual prohibited by an ex parte PPO from purchasing or possessing a firearm may file a motion to modify or terminate the PPO and request a hearing (see I.H.2.9.d.).

- f. Identifies that the circuit court shall schedule a hearing on a motion to modify or terminate a PPO within:
 - (1) 14 days after the filing of the motion; or
 - (2) 5 days (expedited hearing) after the filing of the motion if the PPO prohibits the purchase or possession of a firearm and the respondent is a:
 - (a) person who is issued a license to carry a concealed weapon for purposes of performing duties related to employment or business;
 - (b) certified police officer;
 - (c) sheriff or deputy sheriff;
 - (d) member of the Michigan department of state police; or
 - (e) local corrections officer, department of corrections employee, or federal law enforcement officer who carries a firearm during the normal course of employment.

- g. Identifies that upon entry of proof of service into the LEIN of any PPO (domestic relationship or non-domestic stalking; with or without a prohibition on the purchase or possession of a firearm), the Department of State Police must mail a letter to the individual restrained or enjoined stating that:
 - (1) a PPO was entered into the LEIN on a certain date;
 - (2) the individual cannot obtain a license to purchase a pistol or obtain a concealed weapon license until the PPO is removed from the LEIN; and
 - (3) the individual may request that the state police correct or expunge inaccurate information entered into the LEIN. (MCL 28.422b)

- h. Recognizes that federal law provides that a person who has been convicted of a domestic violence misdemeanor may not purchase or possess a firearm or ammunition.

- i. Recognizes that federal law prohibits a person, other than an on-duty law enforcement officer, from purchasing or possessing firearms or ammunition when a PPO or a conditional pretrial release order is entered.

Instructor Notes: For a summary of the firearms prohibitions, under state and federal law, see page 144 of the *Michigan Law Enforcement Response to Domestic Violence*.

I.H.2.13. Demonstrate an Understanding of Probable Cause (Reasonable Cause) as It Relates to Domestic Violence.

- a. Identifies that the Michigan standard for probable cause (reasonable cause) requires only those facts and circumstances sufficient to cause a fair minded person of average intelligence to believe that the suspected person may have committed or is committing a crime.
- b. Identifies that the probable cause determination does not require:
 - (1) that it is more probable than not that a crime has been committed;
 - (2) corroborating physical evidence; however, the presence of physical evidence bolsters the existence of probable cause; or
 - (3) that the officer conducts a mini-trial to determine the truth.
- c. Identifies that to establish probable cause the officer should consider factors such as:
 - (1) statements by the victim, assailant, children or other witnesses;
 - (2) demeanor of victim, assailant, children or other witnesses;
 - (3) the dispatcher's information;
 - (4) physical evidence that a crime occurred;
 - (5) aggressive or threatening behavior by the assailant;
 - (6) information gathered by investigating wounds to determine:
 - (a) offensive wounds, and
 - (b) defensive wounds;
 - (7) property in the house damaged or broken;
 - (8) brandishing of weapons;
 - (9) the existence of a Personal Protection Order (PPO); and
 - (10) the existence of a Foreign Protection Order (FPO).
- d. Identifies that in determining probable cause the officer should NOT consider the following factors:
 - (1) the lack of a PPO or FPO;
 - (2) the fact that no arrests were made previously;
 - (3) that the victim does not want the assailant arrested or prosecuted;
 - (4) the officer's belief that there will be no prosecution;
 - (5) verbal assurances by either party that the violence will stop;
 - (6) the possibility of reprisals against the victim;
 - (7) the race, ethnicity, sexual orientation, social class and/or occupation of the victim or the assailant;
 - (8) threats by the assailant to sue the police; or
 - (9) negative consequences to the assailant's status in the community.

I.H.2.13. Demonstrate an Understanding of Probable Cause (Reasonable Cause) as It Relates to Domestic Violence (continued).

- e. Identifies that a finding of probable cause is not precluded by:
 - (1) denial by either party that violence occurred; or
 - (2) a lack of visible bruises or injuries.

- f. Identifies that officers should not arrest an individual if the officer has probable cause to believe the individual was acting in lawful self-defense or in the lawful defense of another person.

- g. Identifies that a person may lawfully use:
 - (1) whatever force the person honestly and reasonably believes is necessary for self-protection or to protect another person from danger; and
 - (2) deadly force when the person honestly and reasonably believes oneself or another person is in imminent danger of being killed, seriously injured or forcibly sexually penetrated (MCL 780.971-974).

- h. Identifies that in determining whether the individual honestly and reasonably believed that the force used was necessary, the officer should consider the facts and circumstances as they appear to the individual. Officers should consider:
 - (1) any history of domestic violence between the individuals;
 - (2) offensive and defensive wounds;
 - (3) the size, strength, and bulk of the parties;
 - (4) the apparent ability of each party to do what was alleged;
 - (5) witness statements (including children); and
 - (6) other evidence (e.g., physical and circumstantial).

- i. Identifies that a person has no duty to retreat:
 - (1) from an assault in one's home;
 - (2) from a forcible entry of one's home; or
 - (3) pursuant to Michigan's Self-Defense Law (MCL 780.951).

- j. Identifies that where there is probable cause to believe that the crimes are committed against each other, and neither was acting in self-defense, the officer should determine who to arrest by considering:
 - (1) the intent of the law to protect victims of domestic violence;
 - (2) the degree of injury inflicted on the individuals involved;
 - (3) the extent to which the individuals have been put in fear of physical injury to themselves or other members of the household;
 - (4) any history of domestic violence between the individuals; and
 - (5) the intent of the law that officers should not make dual arrests to avoid conducting a thorough criminal investigation;

I.H.2.14. Demonstrate an Understanding of the Procedural Requirements in Responding to a Domestic Violence Incident.

- a. Identifies the requirement to provide victims the written notice, after investigating or intervening in a domestic violence incident, required by MCL 764.15c which must include the following (see I.H.3.12.):
 - (1) name and telephone number of the responding police agency;
 - (2) name and badge number of the responding officer; and
 - (3) a prescribed statement informing the victim of the:
 - (a) right to obtain a copy of the police incident report;
 - (b) right to go to court and file a petition requesting a Personal Protection Order (PPO); and
 - (c) local domestic violence shelter program and other resources that provide victims information about services and legal rights.
- b. Identifies the requirement to provide or arrange for emergency medical assistance to victims, regardless of whether an arrest is made (MCL 776.22 (3) (f). See I.H.3.12.
- c. Identifies the requirement to provide the victim within 24 hours of the initial contact with the information required by the Crime Victim's Rights Act (MCL 780.753), including:
 - (1) availability of emergency and medical services, if applicable;
 - (2) availability of victim's compensation benefits and the address of the crime victim's compensation board;
 - (3) address and phone number of the prosecuting attorney; and
 - (4) required statement regarding information on the status of the case.
- d. Identifies the requirement to prepare a written report after investigating or intervening in a domestic violence incident, or a violation of a PPO or FPO, even if no arrest is made, documenting all facts of the investigation, including (MCL 764.15c) (see I.H.3.14.):
 - (1) address, date, and time of the incident;
 - (2) name, address, home and work telephone numbers, race, sex, and date of birth of:
 - (a) victim;
 - (b) assailant; and
 - (c) witnesses, including children;
 - (3) information describing the assailant and whether there is a PPO issued against assailant;
 - (4) relationship of any witness to victim or assailant;
 - (5) name of person who called the law enforcement agency;
 - (6) relationship of victim and assailant;
 - (7) whether drug or alcohol use was involved and by whom;

I.H.2.14. Demonstrate an Understanding of the Procedural Requirements in Responding to a Domestic Violence Incident (continued).

- (8) narrative about the incident and the scene, describing:
 - (a) the incident and what led up to it;
 - (b) whether and how many times assailant physically assaulted victim;
 - (c) any weapon or object used;
 - (d) injuries sustained by the victim and how injuries were sustained;
 - (e) property damage; and
 - (f) if victim sought medical attention, information about transportation of victim, admittance to hospital or clinic for treatment, and name and telephone number of attending physician;
 - (9) description of previous domestic violence incidents between assailant and victim; and
 - (10) date and time of the report, and name, badge number, and signature of the officer completing the report.
- e. Identifies that a “domestic violence incident” means an incident reported to a law enforcement agency involving allegations of:
- (1) a PPO or FPO violation; or
 - (2) a crime committed by an individual where the relationship between the assailant and the victim is:
 - (a) spouse or former spouse;
 - (b) a resident or former resident of the same household;
 - (c) has had a child in common; or
 - (d) in a current or former dating relationship.
- f. Identifies that the law enforcement agency shall retain the completed report in its files (MCL 764.15c(3)).
- g. Identifies that the law enforcement agency shall also file a copy of the written report with the prosecuting attorney within 48 hours after the domestic violence incident is reported to the law enforcement agency (MCL 764.15c(3)).
- h. Identifies that when an arrest is made for assault, assault and battery, violation of a substantially corresponding local ordinance, or aggravated assault, the assailant shall not be released by the officer on interim bond, but shall be brought before a magistrate for arraignment or bond as soon as possible where the relationship between the assailant and the victim is:
- (1) spouse or former spouse;
 - (2) a resident or former resident of the same household;
 - (3) has had a child in common; or
 - (4) in a current or former dating relationship.

I.H.2.14. Demonstrate an Understanding of the Procedural Requirements in Responding to a Domestic Violence Incident (continued).

- i. Identifies the requirement, when an arrest is made for violation of conditional release (conditional bond), to prepare a "complaint of violation of conditional release" pursuant to MCL 764.15e, containing (see I.H.3.10):
 - (1) officer's name and badge number;
 - (2) statement of verification;
 - (3) statement of conditions;
 - (4) statement of probable cause that assailant violated the conditions.

Module History:

Revised	6/98
Reviewed	1/00
Revised	1/01
Revised	5/02
Revised	1/03
Revised	1/10
Revised	1/16