

**RESPONDING TO A  
DOMESTIC VIOLENCE CALL**



**A QUICK REFERENCE GUIDE FOR  
MISSISSIPPI LAW ENFORCEMENT  
REVISED SEPTEMBER 2021**



# KEY STATUTORY PROVISIONS

1

- §93-21-21(1): Violation of a DAPO or Condition of Bond (see p8)
- §97-3-7(3): Simple Domestic Violence (see p7)
- §97-3-7(4): Aggravated Domestic Violence (see p12)
- §97-3-7(5): Domestic Violence 4th or Subsequent (see p13)
- §97-3-107(1): Stalking (see p7)
- §97-3-107(2): Aggravated Stalking (see p14)
- §97-35-51: Obstruction of Emergency Assistance (see p3)
- §97-45-15: Cyberstalking
- §99-3-7(3): Mandatory Warrantless Arrest
- §99-5-37: Mandatory Appearance, Setting Bond, Violations of Bond Conditions (see pp10, 16)

## COMMON ACRONYMS

**DAPO - Domestic Abuse Protection Order**  
**ADV - Act of Domestic Violence**  
**UOR - Uniform Offense Report**

## QUICK REFERENCE

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<b>Investigative Process</b>	<b>pp4-5</b>
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## STABILIZE THE SITUATION

The first priority of officers responding to a domestic violence-related call will be to stabilize the situation and ascertain safety for all involved.

### APPROACH THE AREA WITH CAUTION!

Safety is your first priority.

Obtain relevant history from dispatch (Ex. reported weapon possession or use, threats to officers, prior violent history of either party). Valuable information can be obtained by searching the MS DAPO Registry and statewide UOR database.

Separate both parties if possible while maintaining officer safety.

If entry to the location where the 911 call originated is denied, make efforts to investigate. If questions remain, call supervisor for appropriate on-scene guidance.

Call for back-up if necessary.

**NOTE:** If it appears that there has been any interference with the complainant seeking law enforcement, medical or other emergency assistance, this may be evidence of a separate misdemeanor pursuant to § 97-35-51, **Obstruction of Emergency Assistance.**

# THE INVESTIGATIVE PROCESS

Once the scene is stabilized, LEO may begin to investigate. The goal of an effective law enforcement investigation is to help the LEO establish probable cause of a crime and make a decision whether an arrest is appropriate under the circumstances.

## STEPS IN THE INVESTIGATION

1

### INTERVIEW THE PARTIES/ WITNESSES

- Conduct while parties are separated (out of sight lines and hearing range).
- Interview victim as if (s)he will be unavailable for court.
- Ask direct questions based on observations.
- Interview alleged abuser on scene.
- Interview children when legally appropriate and in a manner that will cause the least amount of trauma to the child.
  - 1) Find a comfortable place.
  - 2) Get on the child's level & establish rapport.
  - 3) Ask simple questions first.
  - 4) Explain your purpose.
  - 5) Get child's version of events.
- Interview neighbors, relatives, & other household members.

*Obtaining statements from the involved parties on-scene or as soon after the alleged crime as possible reduces the ability of the abuser to threaten or coerce the victim to minimize or deny the event.*

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## 2

### OBSERVATIONS OF LAW ENFORCEMENT OFFICER

**LEO observations of the scene are important to determining probable cause.** Look for any signs that violence may have occurred. Observe the emotional state of the victim and alleged abuser, and witnesses present. Photograph the scene and parties, particularly any visible injuries to either party. Collect and process as evidence items that were used to commit violence.

- Signs of break-in (Ex. Broken door frames, locks, windows)
- Scene in disarray (Ex. Overturned furniture, damage to real and/or personal property)
- Weapons (Ex. Broken bottles, glass, baseball bats, knives)

## 3

### EVALUATE ALLEGED ABUSER'S BEHAVIOR & OTHER EVIDENCE

**Many abusers exhibit behaviors to intimidate, gain and maintain control over their victim. Observation of these behaviors may serve as part of a valid probable cause determination. Some of these behaviors include:**

- 1) Minimizing, denying, & blaming
- 2) Emotional abuse
- 3) Economic abuse
- 4) Coercion and threats
- 5) Arrogance/Superiority
- 6) Intimidation
- 7) Use of children as a threat
- 8) Isolation

LEO's observations of these behaviors should be evaluated along with party and witness statements, physical signs of abuse, history of prior abuse, the scene, etc. LEO may want to ask for previous address(es) to assist in checking prior history. LEO or dispatch should always check the UOR database. Ask if there are any DAPOs in effect and, if so, ask to see copies or have dispatch check the MS DAPO registry or NCIC for status, terms, and conditions of the order(s).

## THE ARREST DECISION

§99-3-7(3)(a) states that a **LEO SHALL** make an arrest when the officer establishes probable cause that:

- a misdemeanor or felony that is an act of domestic violence (ADV) or a knowing violation of a DAPO has occurred, and
- the crime occurred within the 24-hour period before the arrest is made.

For purposes of this guide and pursuant to §99-3-7(5), a misdemeanor or felony that is an ADV means that one or more offenses has occurred and the perpetrator and victim have a domestic relationship.

### **Domestic relationship is statutorily defined:**

- Current or former spouses
- Child of current or former spouses
- Persons living as spouses or who formerly lived as spouses
- Child of persons living as spouses or who formerly lived as spouses
- Parent, grandparent, child, grandchild, or someone similarly situated to the defendant
- Persons who have a current or former dating relationship
- Persons who have a biological or legally adopted child together

### **Applicable offenses are:**

- Simple Domestic Violence
- Simple Domestic Violence 3rd
- Aggravated Domestic Violence
- Aggravated Domestic Violence 3rd
- Felony Domestic Violence 4th or subsequent
- Disturbance of the peace crimes
- Stalking
- Aggravated Stalking

*If these criteria are met, the duty to make an arrest exists **WHETHER OR NOT A WARRANT** has been issued and whether or not the victim wishes to press charges. Many factors influence this determination. The following 4 questions may assist the LEO. If the answer to all is "yes," then an arrest should be made if possible.*

1

**IS THE CRIME REPORTED AN ADV OR VIOLATION OF A DAPO?****Act of Domestic Violence (ADV)****Simple Domestic Violence (§ 97-3-7(3)(a)):**

(I) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;

(II) Negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm;

(III) Attempts by physical menace to put another in fear of imminent serious bodily harm.

**Simple Domestic Violence 3rd (§ 97-3-7(3)(b)):**

At the time of the commission of the offense in question, abuser has 2 prior convictions, whether against the same or another victim, within 7 years, for any combination of SDV or aggravated DV or substantially similar offenses under the law of another state, Native American Tribe or U. S. Territory.

**Aggravated Domestic Violence (§ 97-3-7(4)(a)):**

See definition on page 12.

**Aggravated Domestic Violence 3rd (§ 97-3-7(4)(b)):**

See definition on page 12.

**Felony Domestic Violence 4th or Subsequent (§ 97-3-7(5)):**

See definition on page 13.

**Stalking (§ 97-3-107(1)):**

Purposefully engaging in a course of conduct, directed at a specific person, or making a credible threat, when one knows or should know that the conduct would cause a reasonable person to fear for his or her safety, the safety of another person, or to fear damage or destruction to his property, if the crime is committed by a person against someone in one of the above relationships to him or her.

**Aggravated Stalking (§ 97-3-107(2)):**

See definition on page 14.

**To be characterized as an ADV, the parties must be in 1 or more of the relationships indicated on p6.**



# DISTURBANCE OF THE PEACE CRIMES

**NOTE:** that the definitions below are paraphrased. See MS Code for full text.



## **Disturbance by Offensive Conduct § 97-35-9:**

Disturbance of peace of any family or person by loud or unusual noise or tumultuous or offensive conduct.

## **Disturbance by Abusive Language or Indecent Exposure § 97-35-11:**

Use of abusive, profane, vulgar or indecent language or indecent exposure at dwelling house or yard of another in presence or hearing of family or owner.

## **Disturbance in Public Place § 97-35-13:**

Occurs at a business or other public place and includes, but is not restricted to, loud or offensive talk, making of threats or attempts to intimidate, or any other conduct that causes a disturbance or threatened disturbance of the peace.

## **Disturbance of the Public Peace or the Peace of Others § 97-35-15:**

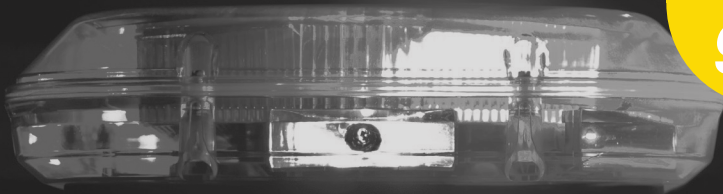
Any person who disturbs the public peace, or the peace of others by violent, loud, insulting, profane, indecent, offensive, or boisterous conduct or language, or by intimidation, or seeking to intimidate any other person or persons, or by conduct either calculated to provoke a breach of the peace, or by conduct which may lead to a breach of the peace, or by any other act.

## **Violation of a Civil or Criminal DAPO (§ 93-21-21(1) or § 97-3-7(11)(d)):**

*Must be a knowing violation and orders shall be enforced, whether issued by the courts of Mississippi pursuant to M.C.A. §§ 97-3-7(11) or 93-21-1, et seq., or issued by the courts of another state, U.S. Territory, or Tribal Authority.*



SHERIFF



*Though Unauthorized Disclosure of Intimate Visual Material (“revenge porn”) is not within the definition of ADV, it is a crime often perpetrated within a current or former domestic relationship and should be charged when appropriate. (§§ 97-29-64 and 97-29-64.1)*

2

### **DOES PROBABLE CAUSE EXIST THAT AN ADV OR A KNOWING VIOLATION OF A DAPO OCCURRED?**

Probable Cause arises when the facts and circumstances within an officer’s knowledge, or of which he has reasonably trustworthy information, are sufficient to justify a person of average caution in the belief that a crime has been committed and that a particular individual committed it. It is more than bare suspicion but less than evidence that would justify conviction.

3

### **DID THE ADV OR VIOLATION OF A DAPO OCCUR WITHIN THE PAST 24 HOURS?**

**The twenty-four (24) hour period is calculated from time of the incident to time of arrest. If at the time of actual arrest, more than 24 hours has passed since the incident occurred, LEO must have a warrant to arrest.**

Ex: LEO arrives on the scene of a reported simple domestic assault at 11:00 pm and it is alleged the crime occurred at 10:00 pm on the same day, this is within the 24-hour period and the duty to arrest without a warrant is triggered. If the same LEO arrives on the scene at 11:00 pm and it is reported that the crime occurred at 10:00 pm the day before, this is outside the 24-hour period and a warrant must be issued before an arrest can be made (unless LEO has some other authority to make a warrantless arrest). If the arrest cannot be effectuated before the 24-hour window closes (ex: suspect left the scene), an arrest can still be made, but must be with a warrant.



4

#### **IS ARREST THE APPROPRIATE RESPONSE?**

If probable cause exists that an ADV or violation of a DAPO has occurred, MS law requires that an arrest be made, with or without a warrant. Where there exists probable cause that 2 or more parties have committed an ADV or accuse each other of such, MS law also requires LEO to attempt to determine the principal aggressor.

*Arrest is presumed the **INAPPROPRIATE RESPONSE** for a party who is not a principal aggressor. This is the exception to the mandatory duty to make an arrest – where the party may have committed an ADV but is determined to **NOT** be the **PRINCIPAL AGGRESSOR**. (§ 99-3-7(3)(b)). See p11 for steps in identifying the Principal Aggressor.*

**NOTE:** While a violation of a condition of bond imposed pursuant to § 99-5-37 is considered a separate misdemeanor under § 93-21-21 (1) (c), a LEO is not mandated to make a warrantless arrest, but such arrest is discretionary under the circumstances.

## ESTABLISHING THE PRINCIPAL AGGRESSOR

Often in domestic violence-related matters, LEOs face “he said, she said” situations, with both parties alleging the other inflicted some physical harm. Both parties may (but not always) have visible injuries. LEOs are required to determine which party was the principal aggressor **BEFORE** making an arrest.

**PRINCIPAL AGGRESSOR** = the most significant aggressor, or the party posing the most serious ongoing threat.

**Principal Aggressor** does not necessarily mean the first aggressor. Never assume that when both parties have injuries, the person with the least serious injuries is the aggressor, or that the person with the most severe injuries is the victim. (§ 99-3-7(3)(b))

### HOW TO DETERMINE PRINCIPAL AGGRESSOR? § 99-3-7(3)(c)

**Consider the following factors:**

- evidence from the parties and witnesses
- the history of domestic abuse between the parties
- the likelihood of future injury to each party
- the intent of the law to protect victims from continuing abuse
- whether one person acted in self defense
- any other information deemed relevant by the officer


*Include in your report that you considered the foregoing in making your Principal Aggressor determination. Remember, this only arises when there is probable cause that more than 1 person committed an ADV or accuses each other of such.*

## AGGRAVATED DOMESTIC VIOLENCE/STRANGULATION

§ 97-3-7(4)(a): A person is guilty of aggravated DV who

- (I) Attempts to cause serious bodily injury to another, or causes such an injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;
- (II) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or
- (III) Strangles, or attempts to strangle, a person with whom they are in a domestic relationship.

**NOTE:** Domestic Relationship is defined on p6.



**“Strangle”** means to restrict the flow of oxygen or blood by intentionally applying pressure on the neck or throat or chest of another person by any means, or to intentionally block the nose or mouth of another person by any means.

**NOTE:** Often there will be no visible injury from the strangulation. Where visible injury exists, it is crucial that the LEO take photographs. Even where there is no visible injury, LEO should document any symptoms of strangulation observed or reported by the victim, including (but not limited to): raspy voice, loss of voice, spitting/drooling, difficulty swallowing or pain when swallowing, dizziness, headache, difficulty breathing, memory lapse or incoherence, and involuntary urination/defecation. **ALWAYS** encourage a victim of strangulation to seek medical attention, it may result in internal injuries that can lead to death.

§ 97-3-7(4)(b): A person is guilty of the felony aggravated DV 3rd who commits aggravated DV and who, at the time of the commission of the offense in question, has 2 prior convictions, whether against the same or another victim, within 7 years, for any combination of aggravated DV or SDV 3rd or substantially similar offenses under the law of another state, Native American Tribe, or U.S. territory.

## FELONY DOMESTIC VIOLENCE 4TH OR SUBSEQUENT

### **Sentencing for fourth or subsequent domestic violence offense**

**(§ 97-3-7(5)):** Any person who commits an offense defined in subsection (3) or (4) of this section, and who, at the time of the commission of that offense, has at least 3 previous convictions, whether against the same or different victims, for any combination of offenses defined in subsections (3) and (4) of this section or substantially similar offenses under the law of another state, of the U.S., or of a federally recognized Native American Tribe, shall, upon conviction, be sentenced to imprisonment for not less than 15 years nor more than 20 years.

## CRIMINAL PROTECTION ORDER

### **§ 97-3-7(11):**

**(a)**

Upon conviction of SDV, SDV 3rd, aggravated DV, aggravated DV 3rd, or DV 4th or subsequent, the court shall be empowered to issue a criminal Protection Order, prohibiting the defendant from contact with the victim. The court may include in the Order any other condition available under §93-21-15 that is permissible for a civil DAPO.

**(d)**

It shall be a misdemeanor to knowingly violate any condition of a criminal Protection Order. Upon conviction for a violation, the defendant shall be punished by a fine of not more than \$500.00 or by imprisonment in the county jail for not more than 6 months, or both.

- **Municipal and Justice court may issue criminal Protection Orders for a period not to exceed 1 year. Circuit and County courts may issue such Orders for any period of time deemed necessary.**
- **Violation of a Civil or Criminal DAPO: Violation of such an order is a direct violation of the court, and may indicate an escalating situation. Officers should enforce both MS and foreign orders by making arrests when appropriate.**

## AGGRAVATED STALKING

**§ 97-3-107(2)(a):** A person who commits acts that would constitute the crime of Stalking as defined in §97-3-107(1)(a) is guilty of felony Aggravated Stalking if any of the following circumstances exist:

(I) At least one of the actions constituting the offense involved the use or display of a deadly weapon with the intent to place the victim of the Stalking in fear of death or great bodily injury to self or a third person;

(II) Within the past 7 years, the perpetrator has been previously convicted of Stalking or Aggravated Stalking under this section or a substantially similar law of another state, political subdivision of another state, of the U.S., or of a federally recognized Indian Tribe, whether against the same or another victim; or

(III) At the time of the offense, the perpetrator was a person required to register as a sex offender pursuant to state, federal, military, or tribal law and the victim was under the age of 18.

**Aggravated Stalking** is a Domestic Violence crime only when a domestic relationship exists between the perpetrator and victim. See p6 for domestic relationship definition.

If the Aggravated Stalking offense is an ADV, mandatory arrest pursuant to **§ 99-3-7(3)(a)** applies. If there is no domestic relationship between the perpetrator and victim, the general arrest procedures for crimes which are felonies is applicable. (**§ 99-3-7(1)**)

**Stalking and Cyberstalking** can significantly increase the risk to the victim in certain cases. Reports of this behavior must be taken seriously. Advise victims to keep logs, records, or recordings, photos, and electronic communications.

POLICE LINE - DO NOT CROSS

Whether or not an arrest is made, prepare a report documenting the basis for LEO decisions and actions, including the investigation and probable cause and/or Principal Aggressor findings. This is important for 2 reasons:

1

**IMMUNITY - §§ 93-21-27, 93-22-11, and 99-3-7** all provide immunity for LEO actions taken in good faith based upon probable cause or lack of probable cause, in enforcing a protection order, making a warrantless arrest, or failing to make an arrest. Without proper documentation, it will be difficult to establish the good faith defense.

2

**PROSECUTION** - For many reasons, Domestic Violence victims often choose not to participate in the prosecution, either by recanting earlier statements or testifying on behalf of the accused. Without a victim's testimony, prosecutors must rely on other admissible evidence which may include LEO testimony, who is often the complainant, and physical evidence gathered during the investigation. Lack of a thorough and complete report can hamper efforts to prosecute and hold the offender accountable.

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**A thorough report should contain, at a minimum, the names and contact information for the parties and witnesses, a narrative description of the facts, and LEO's probable cause and Principal Aggressor (where warranted) determinations. MS law requires the use of a standardized report form for the following offenses:**

- Simple DV
- Simple DV 3rd
- Aggravated DV
- Aggravated DV 3rd
- DV 4th or subsequent
- Violation of a Criminal Protection Order
- Stalking (domestic and non-domestic)
- Aggravated Stalking (domestic and non-domestic)
- Violation of a Civil DAPO
- Violation of a §99-5-37 Bond Condition



## FILE AFFIDAVIT

If LEO determines probable cause exists that a misdemeanor or felony ADV has been committed within the past 24 hours, LEO becomes the complaining witness and **SHALL** file the affidavit – even if LEO is unable to make an arrest within the 24-hour period. (§ 99-3-7(6))

**It does not matter if the victim does not want to press charges or the victim has failed to cooperate with law enforcement in the past.**

If more than **24 hours** have passed since occurrence of the crime, it is not mandatory that LEO file the affidavit on behalf of the victim, but it is **within LEO's discretion to do so**. If an arrest cannot be made during the 24-hour period, a warrant must be issued before making the arrest.

## MANDATORY APPEARANCE

In any arrest for an ADV, for a knowing violation of a bond condition imposed pursuant to §99-5-37 or for knowing violation of a MS or foreign DAPO, no bail shall be granted until the arrested person appears before a judge of the court of competent jurisdiction, which may be by telephone. Predetermined bail schedules may not be used in lieu of contact with a judge. The judge may determine it is necessary to impose a 24-hour hold/"cooling off" period, and may determine if any other conditions should be placed on the bond such as a "no-contact" condition.

**NOTE:** *The defendant MAY NOT be held in violation of his right to an initial appearance. Every person in custody shall be taken, without undue delay, and in no event later than 48 hours after arrest, before a judge for an initial appearance.*



# DUTIES TO ASSIST THE VICTIM

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- **§ 93-21-28** requires LEO to provide assistance to victims of domestic violence (regardless of whether any criminal investigation or charges are pending). This may include escorting a victim to his or her place of residence to collect necessities.
- **Victims' Bill of Rights** - It is mandatory for LEOs to provide the Victims' Bill of Rights and local resources to the victim within 72 hours of reporting the ADV. (§99-43-7) LEOs can obtain materials for this purpose by contacting the Attorney General's Office or downloading them at:

[www.AttorneyGeneralLynnFitch.com](http://www.AttorneyGeneralLynnFitch.com)

**If the victim refuses to accept the information, LEO should note in the report such refusal and where the LEO left the information.**

- **Domestic Violence Shelters** - Often, even when there is no probable cause a crime has been committed, LEO may experience concern for the safety of the victim. While you cannot force a person to leave their home, you can provide information for them to use later when they are ready. The Attorney General's Office can provide information for your geographic area and a directory of victim resources throughout the state can be found at:

[www.AttorneyGeneralLynnFitch.com/victimservices/](http://www.AttorneyGeneralLynnFitch.com/victimservices/)

**Contact the Attorney General's Office  
Bureau of Victim Assistance**

**601.359.6766 or [victimassistance@ago.ms.gov](mailto:victimassistance@ago.ms.gov)**



# LETHALITY ASSESSMENT PROTOCOL

**WHEN RESPONDING TO A DOMESTIC VIOLENCE CALL, ASK THE VICTIM THE FOLLOWING QUESTIONS TO HELP DETERMINE THE POTENTIAL LETHALITY OF A SITUATION:**

- Has he/she ever used a weapon against you or threatened you with a weapon?
- Has he/she threatened to kill you or your children?
- Do you think he/she might try to kill you?
- Has he/she ever tried to choke you?
- Does he/she have a gun or can he/she get one easily?
- Is he/she violently or constantly jealous or does he/she control most of your daily activities?
- Have you left him/her or separated after living together or being married?
- Is he/she unemployed?
- Has he/she ever tried to kill himself/herself?
- Do you have a child that he/she knows is not his/hers?
- Does he/she follow or spy on you or leave threatening messages?
- Has he/she ever forced you to have sex when you did not wish to do so?

## **YOU CAN SAVE A LIFE BY ASKING THESE QUESTIONS**

These questions, and the actions the answers may trigger, are part of a **Lethality Assessment Protocol (LAP)**, which involves collaboration with your local domestic violence service provider and/or shelter. If you receive a “yes” answer for any of the first 4 questions or a “yes” answer for the majority of the remaining questions, LEO should attempt to put the victim in immediate contact with the service provider/shelter by phone. The Attorney General’s Office has more information on the LAP.

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