

***Superseded 5/4/2022***

**77-36-2.2 Powers and duties of law enforcement officers to arrest -- Reports of domestic violence cases -- Reports of parties' marital status.**

- (1) The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law.
- (2)
  - (a) In addition to the arrest powers described in Section 77-7-2, when a peace officer responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the peace officer shall arrest without a warrant or shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.
  - (b)
    - (i) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section.
    - (ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.
  - (c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section 77-36-2.1.
- (3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:
  - (a) any prior complaints of domestic violence;
  - (b) the relative severity of injuries inflicted on each person;
  - (c) the likelihood of future injury to each of the parties; and
  - (d) whether one of the parties acted in self defense.
- (4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement.
- (5)
  - (a) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more parties, shall submit a detailed, written report specifying the grounds for not arresting any party or for arresting both parties.
  - (b) A law enforcement officer who does not make an arrest shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence.
- (6)
  - (a) A law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer's disposition of the case.
  - (b) From January 1, 2009 until December 31, 2013, any law enforcement officer employed by a city of the first or second class responding to a complaint of domestic violence shall also report, either as a part of an incident report or on a separate form, the following information:
    - (i) marital status of each of the parties involved;

- (ii) social, familial, or legal relationship of the suspect to the victim; and
  - (iii) whether or not an arrest was made.
- (c) The information obtained in Subsection (6)(b):
  - (i) shall be reported monthly to the department;
  - (ii) shall be reported as numerical data that contains no personal identifiers; and
  - (iii) is a public record as defined in Section 63G-2-103.
- (d) The incident report shall be made available to the victim, upon request, at no cost.
- (e) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.
- (7) The department shall compile the information described in Subsections (6)(b) and (c) into a report and present that report to the Law Enforcement and Criminal Justice Interim Committee during the 2013 interim, no later than May 31, 2013.
- (8) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it, and shall be identified by a law enforcement agency code for domestic violence.