

CANTON'S COMMITMENT TO COMBAT FAMILY VIOLENCE

In recognition of October as Domestic Violence Awareness Month, the Canton Police Department will publish a weekly series of articles about family violence. This is the second of the four articles.

A Police Officer's Role at the Scene of an Incident Involving Family Violence.

What happens when the police are called?

Most police departments clearly understand the importance of responding quickly to calls about domestic violence. The first thing police officers must do when they arrive is to make sure that no further injury will occur.

The police must then gather facts about what happened so that they can decide what to do. They may talk to anyone who was part of the incident, or who witnessed or heard the incident. They will look to see if there is any "physical evidence," such as bruises or blood on a person, torn clothing, or broken dishes or furniture. Based on what the officers hear or see, and the witnesses' and victims' statements, they will decide if a crime has been committed and whether anyone should be arrested.

Will the police remove my partner from my home?

If your partner has no legal right to be at your home, the police are likely to tell him/her to leave, whether or not he/she is arrested. But if your partner does have the legal right to be at your home then the police will only remove your partner if there is a court order saying he/she can't be there, or if they make a custodial arrest, which is explained later.

If you are not sure whether your partner has a legal right to be at your home, you should talk to a lawyer.

When will the police make an arrest?

Sometimes the police will arrest a person when they come to the scene; sometimes they will arrest him/her later, and sometimes never. In almost all family violence cases, the police must arrest anyone they believe has committed a crime, based on the facts.

The facts that the police will look at may include what the people involved say happened, what any witnesses say, what injuries can be seen, or whether there is any other evidence of threats or physical fighting. An arrest can be made based simply on a reliable statement from a victim or witness, even without physical evidence or visible injuries. If, based on the facts, it is more likely than not that a person has committed a crime, then there is "probable cause" to make the arrest.

Are there different kinds of arrest?

Yes, there are several ways an arrest can be made. A *custodial arrest* occurs when the police take the accused into custody, take him/her to the police station, and "book" him/her.

In a *summons arrest* or *citation arrest*, an accused is not taken into custody or brought anywhere by the police. Instead, the police give the person arrested a summons or citation (like a traffic ticket) that tells him/her what he/she is charged with and when he/she must be in court.

If the crime is a misdemeanor, then either a summons/citation arrest, or a custodial arrest must be based on speedy information (the arrest must be made soon after the crime happened). If a number of hours have passed since the misdemeanor happened, and the police have not made an arrest, then they must get an arrest warrant to make an arrest.

This kind of arrest is called a *warrant arrest*.

Misdemeanor: a crime punishable by up to one year in jail.

Felony: a crime punishable by more than one year in jail.

If the police need an arrest warrant to make the arrest, how do they get one?

To get an arrest warrant, the police officer must write an application and attach a sworn statement (from the officer, the victim, or a witness) and submit it to the prosecutor, also known as the State's Attorney. The prosecutor must approve the warrant, and then present it to a judge. The judge will sign the arrest warrant if she/he believes there is probable cause to believe that a crime has been committed. A judge's signature on an arrest warrant allows the police to find the person named and to arrest him/her. The process of getting an arrest warrant can take anywhere from a few days to a few weeks. A victim can also apply for a warrant. A victim can usually do this through the police department or she/he can ask a prosecutor or advocate for help.

With what crime will the person be charged?

The police could charge him/her with many different crimes for the same incident. For example, if he/she comes to your house when he/she has no right to be there, and hits you when he/she is there, he/she might be charged with criminal

trespass (for being at your house without a right to be there and without your permission), or he/she might be charged with assault (for hitting you); he/she could also be charged with both. He/she might also be charged with breach of peace or creating a public disturbance, which are less serious offenses.

What if I don't want my partner arrested?

In most circumstances, if a police officer finds enough facts to indicate that a family violence crime has probably occurred, he or she must arrest your partner, even if you don't want him/her arrested. The police will not arrest if there is no obvious evidence of a crime.

If a person is arrested, will he go to jail?

There are two different times when a person who is arrested might go to jail. First, at the time a person is arrested, he/she might be held in jail until he/she meets the bond or agrees to the conditions of release set by the police, bail commissioner or judge.

Second, a person who is found guilty of a crime might be sentenced to jail by the judge. Most people convicted of crimes, however, are not put in jail. Whether a jail sentence is ordered will depend on many things, including what the prosecutor and the judge think about the case.

Will the police arrest me? If they do, what should I do?

If, during the incident, you hit, assaulted, or threatened your partner in any way, you may also be arrested. If the police believe you were partly responsible for creating a loud public scene, they might arrest you for creating a public disturbance even if you were not violent.

If you used force against your partner in self-defense, the police may decide not to arrest you, or they may arrest you and suggest that you explain that your actions were in self-defense when you get to court.

If you are arrested, it is often best to hire an attorney, or to get a friend or family member to hire an attorney for you. In deciding whether to hire an attorney, you should think about the cost of the attorney, the seriousness of the charge, and the implications of a possible criminal record. (You should not have the same attorney as your partner.) If the judge thinks you are too poor to pay for an attorney, he or she will let you apply for a free attorney called a public defender. Although many people represent themselves in court without an attorney, you will probably do better in court if you have an attorney.

What else should the police do?

- The police must determine whether you need medical assistance and then help you get it if necessary.
- They should tell you about services available, including the nearest domestic violence agency and the Family Violence Victim Advocate. They should also explain to you, if your partner is arrested, that he/she will be in court the next business day, and that you can request a protective order.
- Whether or not an arrest is made, the police may not leave the scene until it is clear that there will not be further immediate violence.

For additional information- call the Canton Police Department at 860-693-7972.

