

**MODEL CODE ON
DOMESTIC AND FAMILY VIOLENCE**

CHAPTER 1

GENERAL PROVISIONS

Section 101. Construction.

The Model Code on Domestic and Family Violence must be construed to promote:

1. The protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner;
2. The prevention of future violence in all families; and
3. Batterer accountability

COMMENTARY

The Model Code was crafted to facilitate parallel ordinance development with respect to domestic and family violence among the municipalities and unincorporated area of St. Louis County. The enactment of similar codes by all jurisdictions will enhance both the uniformity and quality of justice for victims and perpetrators of domestic and family violence throughout the area.

Sec. 102. Definitions.

Unless the context otherwise requires, as used in the Model Code:

1. “Domestic or family violence” means the occurrence of one or more of the acts listed under §201, and done by a family or household member, but does not include acts of self-defense.
2. “Family or household members” include:
 - (a) Persons who are current or former spouses;
 - (b) Persons who live together or who have lived together;
 - (c) Persons who are dating or who have dated;
 - (d) Persons who are engaged in or who have engaged in a sexual relationship;
 - (e) Persons who are related by blood or adoption;
 - (f) Persons who are related or formerly related by marriage;
 - (g) Persons who have a child in common; and
 - (h) Minor children who are 17 years of age or under of a person in a relationship that is described in paragraphs (a) through (g) can be included as victims.
 - (i) Minor children who are 17 years of age or under of a person in a relationship that is described in paragraphs (a) through (g) can be included in the list of perpetrators.
3. “Program of intervention for perpetrators” means a specialized program that:

Accepts perpetrators of domestic or family violence into batterer intervention programs that are members of the Association of Batterer

- Intervention Programs to satisfy court orders, and offer them classes or instruction.
4. “Program for victims of domestic or family violence” means a specialized program for victims of domestic or family violence and their children that provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education, or training.
 5. “Safety plan” means a written or oral outline of actions to be taken by a victim of domestic or family violence to secure protection and support after making an assessment of the dangerousness of the situation.

COMMENTARY

Domestic or family violence as defined in subsection 1 identifies the conduct that is commonly recognized as domestic or family violence. The definitions and reference to §201 incorporate assaultive and non-violent conduct that injures or attempts injury.

Subsection 2 identifies the persons to be protected by the various remedies set forth in the Model Code. The definition of family or household member is broad. Cohabitation is not a prerequisite for eligibility; and the relationship between the victim and the perpetrator need not be current. The Code recognizes that violence may continue after the formal or informal relationship has ended.

Subsection 3 defines a program of intervention for perpetrators. The definition contemplates that the services provided for perpetrators of domestic or family violence pursuant to this Code be those designed specifically and exclusively for this distinct class of offenders.

The programs for victims of domestic or family violence defined in subsection 4 are designed to offer specialized advocacy and assistance. The Code addresses these programs throughout, particularly related to referrals by the justice and health care systems, as well as safety planning for victims, supportive services, and advocacy.

Subsection 5 briefly defines a safety plan. The code anticipates that professionals throughout the justice, health, education and social services systems will refer victims to a domestic violence service provider to educate victims about how to assess risk, to devise effective protection strategies, and to gain community assistance for implementation.

CHAPTER 2

CRIMINAL PENALTIES AND PROCEDURES

Sec. 201. “Offense involving domestic or family violence” defined.

An “offense involving domestic or family violence” occurs when a family or household member as defined in §102 commits one or more of the following crimes as listed under this Chapter against another family or household member:

1. Domestic Assault;
2. Domestic Destruction, Damage, Vandalism of Property;
3. Domestic Petty Larceny;
4. Domestic Possession of Stolen Property;
5. Domestic Peace Disturbance;
6. Domestic Stalking;
7. Domestic Trespass;
8. Domestic Harassment;
9. Domestic Tampering;
10. Violation of Orders of Protection.

COMMENTARY

This section enumerates the range of criminal conduct employed by many perpetrators of domestic or family violence. The Model Code offers this detailed list to underscore the breadth of crimes and fear-inducing or harmful conduct undertaken by perpetrators of domestic or family violence.

The list of crimes encompassed within the definition of “crimes involving domestic or family violence” may be altered by municipal code drafters and must be modified to conform to a municipality’s system of classification.

Sec. 202. Adult Abuse – Definitions.

As used in these ordinances, the definitions of Abuse as found in §455.010 RSMo, shall apply unless the context clearly indicates otherwise:

1. *Abuse* includes but is not limited to the occurrence of any of the following acts, attempts, or threats against a person who may be protected under a valid protective order issued by the State of Missouri or any other state within the United States.
 - (a) *Assault*. Purposely or knowingly placing or attempting to place another in fear of physical harm;
 - (b) *Battery*. Purposely or knowingly causing physical harm to another with or without a deadly weapon.
 - (c) *Coercion*. Compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;
 - (d) *Harassment*. Engaging in a purposeful or knowing course of conduct involving more than one (1) incident that alarms or causes distress to another person and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner. Such conduct might include, but is not limited to:
 - (i) Following another about in a public place or places;
 - (ii) Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;

- (e) *Sexual assault.* Causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress;
- (f) *Unlawful imprisonment.* Holding, confining, detaining or abducting another person against that person's will;
- (2) *Adult.* Any person eighteen (18) years of age or older or otherwise emancipated;
- (3) *Court.* The circuit or associate circuit judge or a family court commissioner;
- (4) *Ex parte order of protection.* An order of protection issued by a court before the respondent has received notice of the petition or an opportunity to be heard on it;
- (5) *Family or household member.* Spouses, former spouses, persons related by blood or marriage, persons who are presently residing together or have resided together in the past, a person who is or has been in a continuing social relationship of a romantic nature with the victim, and persons who have a child in common regardless of whether they have been married or have resided together at any time;
- (6) *Full order of protection.* An order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;
- (7) *Order of protection.* Either an ex parte order of protection or a full order of protection;
- (8) *Petitioner.* A family or household member or a person who has been the victim of domestic violence who has filed a verified petition under the provisions of RSMo 455.020 (1994);
- (9) *Respondent.* The family or household member or person alleged to have committed an act of domestic violence, against whom a verified petition has been filed;
- (10) *Stalking.* When a person purposely and repeatedly harasses or follows with the intent of harassing another person. As used in this subdivision, "harass" means to engage in a course of conduct directed at a specific person that serves no legitimate purpose, that would cause a reasonable person to suffer substantial emotional distress. As used in this subdivision, "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct".

Sec. 203. Child Protection Orders Definitions.

As used in these ordinances, the following definitions as found in §455.501 RSMo shall apply, unless the context clearly indicates otherwise:

- (1) **"Abuse"**, any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by an adult household member, or stalking of a child. Discipline including spanking, administered in a reasonable manner shall not be construed to be abuse;

- (2) **“Adult household member”**, any person eighteen years of age or older or an emancipated child who resides with the child in the same dwelling unit;
- (3) **“Child”**, any person under eighteen years of age;
- (4) **“Court”**, the circuit or associate circuit judge or a family court commissioner;
- (5) **“Ex parte order of protection”**, an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;
- (6) **“Full order of protection”**, an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;
- (7) **“Order of protection”**, either an ex parte order of protection or a full order of protection;
- (8) **“Petitioner”**, a person authorized to file a verified petition under the provisions of sections 455.503 and 455.505 RSMo;
- (9) **“Respondent”**, the adult household member, emancipated child or person stalking the child against whom a verified petition has been filed;
- (10) **“Stalking”**, purposely and repeatedly harassing or following with the intent of harassing a child. As used in this subdivision, **“harassing”** means engaging in a course of conduct direct at a specific child that serves no legitimate purpose, that would cause a reasonable adult to believe the child would suffer substantial emotional distress. As used in this subdivision, **“course of conduct”** means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of **“course of conduct”**;
- (11) **“Victim”**, a child who is alleged to have been abused by an adult household member.

Sec. 204. Violation of orders of protection issued pursuant to the [Adult] Abuse Laws §455.010 to 455.085 and 455.500 to 455.538 RSMo. issued to a family or household member or victim of stalking, is hereby prohibited.

Violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner’s dwelling unit, of an ex parte order of protection of which the respondent has notice is hereby prohibited. Violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner’s dwelling unit, of a full order of protection is hereby prohibited. Violation of the terms and conditions of an ex parte order of protection for a child with regard to abuse, child custody, or entrance upon the premises of the victim’s dwelling unit, of which the respondent has notice, is hereby prohibited. Violation of the terms and conditions of a full order of protection for a child regarding abuse, child custody or entrance upon the premises of the petitioner’s dwelling unit, is hereby prohibited.

COMMENTARY

The Model Code specifies those violations of orders of protection that subject a perpetrator to arrest and criminal prosecution, in addition to subjecting the perpetrator to other criminal and civil contempt proceedings and sanctions. This section of the Model Code authorizes the intervention of the criminal court process for certain violations of orders of protection.

Sec. 205. Duties of law enforcement officer to victim of domestic or family violence; required notice to victim.

1. A law enforcement officer who responds to an incident involving domestic or family violence shall use all reasonable means to protect the victim, hold the perpetrator accountable and prevent further violence, including but not limited to:
 - (a) Taking the action necessary to provide for the safety of the victim and any family or household member.
 - (b) Confiscating any weapon involved in the alleged domestic or family violence.
 - (c) Transporting or obtaining transportation for the victim and any child to a shelter or place of safety.
 - (d) Assisting the victim in removing essential personal effects.
 - (e) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.
 - (f) Giving the victim immediate and adequate notice of the rights of victims, as contained in Missouri law and as provided under the Constitution, and of the remedies and services available to victims of domestic or family violence.
2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give a written notice to the adult victim substantially as follows:
 - A. If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request and the officer shall assist you in providing for your safety, including facilitating the obtaining of an order of protection when courts are closed. You may also request and the officer shall assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request and the officer shall assist you in obtaining medical treatment. The officer shall provide you with a copy of the report at no cost from the law enforcement department.
You may ask the prosecuting attorney to file a criminal complaint. However, the decision whether or not to prosecute ultimately lies with the prosecutor. You also have the right to file a petition in St. Louis County Circuit Court requesting an order for protection from domestic or family violence.

- B. Any full or ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from abuse or stalking and may include:
- (1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner;
 - (2) Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is:
 - (a) Jointly owned, leased or rented or jointly occupied by both parties; or
 - (b) Owned, leased, rented or occupied by petitioner individually; or
 - (c) Jointly owned, leased, rented or occupied by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief pursuant to this section by reason of the absence of a property interest in the dwelling unit; or
 - (d) Jointly occupied by the petitioner and a person other than respondent; provided that the respondent has no property interest in the dwelling unit; or
 - (3) Temporarily enjoining the respondent from communicating with the petitioner in any manner or through any medium.
- C. Mutual orders of protection are prohibited unless both parties have properly filed written petitions and proper service has been made in accordance with sections 455.010 to 455.085.
- D. When the court has, after a hearing for any full order of protection, issued an order of protection, it may, in addition:
- (1) Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued;
 - (2) Establish a visitation schedule that is in the best interests of the child;
 - (3) Award child support in accordance with supreme court rule 88.01 and chapter 452, RSMo;
 - (4) Award maintenance to petitioner when petitioner and respondent are lawfully married in accordance with chapter 452, RSMo;
 - (5) Order respondent to make or to continue to make rent or mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the petitioner or other dependent household members;
 - (6) Order the respondent to pay the petitioner's rent at a residence other than the one previously shared by the parties if the if the respondent is found to have a duty to support the petitioner and the petitioner requests alternative housing;
 - (7) Order that the petitioner be given temporary possession of specified personal property, such as automobiles, checkbooks, keys, and other personal effects;
 - (8) Prohibit the respondent from transferring, encumbering, or otherwise disposing of specified property mutually owned or leased by the parties;

- (9) Order the respondent to participate in a court-approved counseling program designed to help batterers stop violent behavior or to participate in a substance abuse treatment program;
 - (10) Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the petitioner by a shelter for victims of domestic violence;
 - (11) Order the respondent to pay court costs;
 - (12) Order the respondent to pay the cost of medical treatment and services that have been provided or that are being provided to the petitioner as a result of injuries sustained to the petitioner by an act of domestic violence committed by the respondent.
- E. The forms you need to obtain an order for protection are available from the St. Louis County Circuit Clerk. The resources available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters are available from the St. Louis County Police Department and the Adult Abuse Office. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount is less than \$3,000.00.
3. The written notice:
- (a) Must not include the addresses of shelters, unless the location is public knowledge.
 - (b) Must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

COMMENTARY

Law enforcement officers are the gatekeepers of the criminal justice system. The response of law enforcement is pivotal for both the victim and the perpetrator. Subsection 1 enumerates specific responsibilities assigned to officers in a situation where domestic or family violence is alleged.

Subsection 2 sets forth the comprehensive, written notice that a responding officer must give to a victim of domestic or family violence. An officer may be the first to inform a victim that there are legal and community resources available to assist him or her. Written notice is required because a victim may not be able to recall the particulars of such detailed information given verbally, particularly because the information is transmitted at a time of crisis and turmoil. This written menu of options, from law enforcement intervention to filing criminal charges, seeking an order for protection, acquiring safe shelter and counseling, and recovery for the losses suffered from the violence, permits a victim to study and consider these options after the crisis.

Paragraph (a) of subsection 3 makes it explicit that the written notice must not reveal the street address of shelters unless the location is public knowledge. In many communities,

shelters are located in confidential or quasi-public locations in order to impede retaliatory violence, stalking, and kidnapping by perpetrators which endangers all residents and staff of shelters. Paragraph (b) of subsection 3 requires that written notice be given to the victim in his or her native language where it is practical to do so. In those municipalities where significant portions of the residents are not English-speaking, it is preferred that these rights and options be translated into their languages.

Sec. 206. Violation of Protective Orders and Arrest Therefor. 1. When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to an offense involving domestic violence, as defined in these ordinances, against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting officer. When the officer declines to make arrest pursuant to this subsection, the officer shall make a written report of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made and any other pertinent information. Any law enforcement officer subsequently called to the same address within a twelve-hour period, who shall find probable cause to believe the same offender has again committed a violation as stated herein against the same or any other family or household member, shall arrest the offending party for this subsequent offense. The primary report of nonarrest in the preceding twelve-hour period may be considered as evidence of the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

2. When a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order being entered, has committed an act of abuse in violation of such order, the officer shall arrest the offending party-respondent whether or not the violation occurred in the presence of the arresting officer. Refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

3. When an officer makes an arrest he is not required to arrest two (2) parties involved in an assault when both parties claim to have been assaulted. The arresting officer shall attempt to identify and shall arrest the party he believes is the primary physical aggressor. The term "primary physical aggressor" is defined as the most significant, rather than the first, aggressor. The law enforcement officer shall consider any or all of the following in determining the primary physical aggressor:

- (1) the intent of the law to protect victims of domestic violence from continuing abuse;
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury or harm;
- (3) The history of domestic violence between the persons involved.

No law enforcement officer investigating an incident of domestic violence shall threaten the arrest of all parties for the purpose of discouraging requests of law enforcement intervention by any party. Where complaints are received from two (2) or more opposing parties, the officer shall

evaluate each complaint separately to determine whether he should apply for issuance of charges.

No law enforcement officer shall base the decision to arrest or not to arrest on the specific request or consent of the victim or the officer's perception of the willingness of a victim or of a witness to the domestic or family violence to testify or otherwise participate in a judicial proceeding.

4. In an arrest in which a law enforcement officer acted in good faith reliance on this section, the arresting and assisting law enforcement officers and their employing entities and superiors shall be immune from liability in any civil action alleging false arrest, false imprisonment or malicious prosecution.
5. When a person against whom an order of protection has been entered fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.
6. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.
7. Violation of the terms and conditions with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit, of an ex parte order of protection of which the respondent has notice or of a full order of protection is hereby prohibited.
8. Good faith attempts to effect a reconciliation of a marriage shall not be deemed tampering with a witness or victim tampering.
9. Nothing in this section shall be interpreted as creating a private cause of action for damages to enforce the provisions set forth herein.

The drafters of the Model Code offer section 206, concerning arrest of perpetrators of crimes involving domestic or family violence. Section 206 provides for presumptive, warrantless arrest when a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic or family violence. Arrest appears to be an important deterrent to future domestic or family violence. The employment of presumptive or mandatory arrest practices may prevent domestic homicide. Arrest also conveys clear messages to victims, perpetrators, and the community that domestic or family violence will not be tolerated and that perpetrators will be held accountable.

COMMENTARY

It is the policy determination of the drafters that arrest is a critical intervention against violence in intimate relationships and is an intervention that is underemployed in many jurisdictions, even in those with preferred or mandatory arrest laws. Simple and comprehensive arrest authority will cause decisive intervention and reduce the significance of extralegal factors in decisions concerning arrest.

This section provides guidance to law enforcement for assessment of the claims of mutual violence. Officers are directed to consider certain factors about whether a person is the primary aggressor and then about whether the presumption in favor of arrest and charging the other person is overcome by the facts and circumstances as the officer understands them to be. In making dual arrest, officers may place victims at accelerated risk and often immunize perpetrators from accountability. This section provides instruction for focused investigation and informed decision-making, while continuing to vest discretion in the officer and offering some protection from liability when the officer acts within the parameters of the Code.

This section contains explicit injunctions against practices that undermine the policy of presumptive arrest for crimes involving domestic or family violence. It prohibits threatening or suggesting the possible arrest of all parties to discourage requests for intervention by law enforcement. The arrest decision is to be reached by an officer based solely on probable cause, and the decision may not be formed by extraneous, extralegal factors. These two factors are explicitly excluded from consideration in arrest decisions in crimes involving domestic or family violence. These exclusions are articulated in numerous state statutes and law enforcement policies on domestic or family violence.

This section requires an officer who has not arrested an alleged perpetrator or who made a dual arrest decision to submit a written report explaining the reasons for that decision. This requirement provides a vehicle for supervisors to monitor the practices of those law enforcement officers who do not arrest alleged perpetrators of domestic violence and those who arrest both parties related to a complaint. Such reports will furnish supervisors the information necessary to provide corrective action and to secure consistent compliance with ordinance and departmental policy. Consistent documentation by responding officers will facilitate adherence to department policy. Careful law enforcement practice will reduce exposure to department liability and will improve the prevention efforts of the justice system.

Sec. 207 Domestic Assault. No person shall commit an act of domestic assault. A person commits such an act if he does any of the following:

- (1) The person attempts to cause or recklessly causes physical injury to a family or household member; or
- (2) With criminal negligence the person causes physical injury to a family or household member by means of a deadly weapon or dangerous instrument; or
- (3) The person purposely places a family or household member in apprehension of immediate physical injury by any means; or
- (4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to a family or household member; or
- (5) The person knowingly causes physical contact with a family or household member knowing the other person will regard the contact as offensive; or
- (6) The person knowingly attempts to cause or causes the isolation of a family or household member by unreasonably and substantially restricting or

limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

COMMENTARY

The definition recognizes that abusive persons jeopardize partners and family members by threatening physical harm or acting in a manner to instill apprehension. Use of the word "apprehension" in paragraph (3) includes the kind of apprehension that is specific to domestic violence.

Sec. 208. Domestic Destruction, Damage, Vandalism of Property. A person shall not willfully destroy, damage or injure any property of a family or household member of any kind whatsoever which does not belong to the said person.

Sec. 209. Domestic Petty Larceny. No person shall steal, take, or carry away any article of value which is the property of a family or household member.

Sec. 210. Domestic Unlawful Possession - Buying, Receiving or Possessing Personal Property Which Has Been Unlawfully Taken From Another. 1. No person shall buy or in any way receive or possess any personal property which has been unlawfully taken from a family or household member.

2. Proof that any personal property has been unlawfully taken from the possession or control of a family or household member and that within six (6) months after said unlawful taking said property has been in the possession or under the control of the accused shall be deemed sufficient evidence to authorize conviction unless possession of said property is satisfactorily explained by proof that either:
 - (a) Before buying or receiving or coming into possession of said property, a diligent and good faith inquiry was made as to the source of said property sufficient to provide a reasonable belief that said property had not been taken unlawfully from another; or
 - (b) The property was acquired at a price and under circumstances sufficient to provide a reasonable belief that said property had not been taken unlawfully from another; or
 - (c) the accused complied with Section 447.010 of the Revised Statutes of Missouri relating to the duty of persons finding lost property.

Sec. 211. Domestic Disturbance of the Peace. It shall be unlawful to unreasonably and knowingly disturb or alarm any family or household member by: threatening or offensive language addressed in a face-to-face manner to that individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient; or by physically threatening or challenging or fighting that person.

Sec. 212. Domestic Disturbance of the Peace – Loud Noise. 1. It shall be unlawful to play any radio, music player such as a "boom box," tape cassette, disc player, television, audio system or musical instrument in a manner or at a volume that disturbs the peace of

any other reasonable family or household member; except, however, that nothing herein shall be construed to prohibit an otherwise lawful public concert or public performance.

2. It shall be unlawful to speak, shout, sing or create any noise at a volume that disturbs the peace of any other reasonable family or household member, except that nothing herein shall be construed to prohibit the summoning of assistance in an emergency.
3. For the purpose of prosecution under this section, it shall be presumed that any speech, song or noise, or the playing of any radio, music player such as a "boom box," tape cassette, disc player, television, audio system or musical instrument, is disturbing to the peace of another reasonable family or household member if the volume is such that it is plainly audible to persons more than fifty (50) feet away from the source of the noise.

Sec. 213. Domestic Trespassing. 1. No person without lawful authority, or without the expressed or implied consent of the family or household member or his agent, shall enter any building or enter on any enclosed or improved real estate, lot or parcel of ground; or being upon the land of another, shall fail or refuse to leave the same when requested so to do by the family or household member lawfully in possession thereof, his agent or representative.

2. For the purpose of this section, "implied consent," as it relates to persons making deliveries on private property, extends only to sidewalks or other identifiable walkways, where available, and does not extend to lawns or other private property if such a sidewalk is available.

Sec. 214. Domestic Harassment. No person shall, for the purpose of frightening or disturbing another family or household member:

1. Communicate in writing or by telephone a threat to commit any felony or act of violence; or
2. Make a telephone call or communicate in writing and use coarse language offensive to one of average sensibility; or
3. Make a telephone call anonymously; or
4. Make repeated telephone calls to the same person or telephone number.

Sec. 215. Domestic Stalking. 1. As used in this section, the following terms shall mean:

- (1) *Course of conduct.* A pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." Such constitutionally protected activity includes picketing or other organized protests.
- (2) *Credible threat.* A threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause physical injury to, a person.
- (3) *Harasses.* To engage in a course of conduct directed at a specific person that serves no legitimate purpose, that would cause a reasonable person to

suffer substantial emotional distress, and that actually causes substantial emotional distress to that person.

2. Any person who purposely and repeatedly harasses or follows with the intent of harassing another family or household member or harasses another family or household member, and makes a credible threat with the intent to place that person in reasonable fear of death or serious physical injury commits the violation of stalking which is hereby prohibited.

Sec. 216. Domestic Tampering With a Witness – Domestic Tampering With a Victim. 1. A person commits the violation of domestic tampering with a witness if, with purpose to induce a witness who is a family or household member or a prospective witness who is a family or household member in an official proceeding to disobey a subpoena or other legal process, or to absent himself or avoid subpoena or other legal process, or to withhold evidence, information or documents, or to testify falsely, he:

- (1) Threatens or causes harm to any person or property; or
 - (2) Uses force, threats or deception; or
 - (3) Offers, confers or agrees to confer any benefit, direct or indirect, upon such witness; or
 - (4) Conveys any of the foregoing to another in furtherance of a conspiracy.
2. A person commits the violation of “domestic victim tampering” if, with purpose to do so, he prevents or dissuades or attempts to prevent or dissuade any person who is a family or household member who has been a victim of any ordinance violation or a person who is acting on behalf of any such victim from:
- (1) Making any report of such victimization to any peace officer, or state, local or federal law enforcement officer or prosecuting agency or to any judge;
 - (2) Causing a complaint, indictment or information to be sought and prosecuted or assisting in the prosecution thereof;
 - (3) Arresting or causing or seeking the arrest of any person in connection with such victimization.

Sec. 217. Authority of law enforcement officer to seize weapons. Incident to an arrest for a crime involving domestic or family violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.
2. May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

COMMENTARY

The Model Code grants law enforcement broad authority to seize weapons pursuant to an arrest for domestic or family violence. Weapons seizure is both evidence collection and crime prevention. The prevention element may be significantly higher in crimes of domestic and family violence because the recidivism rate is greater for these perpetrators

and the risk for lethal recidivism is highest for victims in the context of domestic or family violence. Recognizing the peril posed by weapons, the Model Code directs law enforcement to confiscate weapons incident to all arrests for crimes involving domestic or family violence. In subsection 1, seizure of all weapons used or threatened to be used in the commission of a crime is mandated.

In subsection 2, when officers conclude that a weapon must be confiscated to protect law enforcement, victims of violence, or others, they are authorized to seize any weapon that is in plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons authorized in this section is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation pursuant to this section.

Sec. 218. Written procedures for prosecution of domestic and family violence; purpose. On or before _____, the prosecuting attorney in _____ shall develop or adopt and put into effect written procedures for attorneys who prosecute crimes of domestic and family violence concerning:

1. Effective prosecution of such crimes; and
2. The protection and safety of victims of domestic and family violence.
3. Holding batterers accountable.

COMMENTARY

This section requires prosecuting attorneys to establish by an appointed time specialized procedures for the prosecution of crimes involving domestic and family violence. These written procedures may include guidelines for case management, charging and arraignment, advocacy and safety planning for victims, investigation and evidence collection, trial preparation, intervention with reluctant victims and witnesses, plea negotiations, trial strategy, sentencing, interface with batterer treatment programs, post-disposition practice, press relations, task force participation, and data collection and analysis.

Sec. 219. Dismissal of criminal case prohibited because civil compromise reached.

A court shall not dismiss a criminal case involving domestic or family violence for the sole reason that a civil compromise or settlement is reached.

COMMENTARY

The Model code rejects state statutes and prosecution practice which permit or compel dismissal of crimes of domestic and family violence when a civil compromise, adjustment, or settlement is presented to the criminal court. While appropriate for tort claims, civil reparation is misused as a dismissal device in cases involving crimes of domestic and family violence.

Sec. 220. Rights of victims of domestic or family violence; duty of prosecutor to inform victim of rights.

1. A victim of domestic and family violence is entitled to all rights granted to victims of crime as found in §595.200 to 595.218 RSMo including but not limited to the right to:
 - (a) Be informed of all hearing dates and continuances.
 - (b) Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm.
 - (c) Be present at sentencing and address the court.
 - (d) Be advised by the court of conditions of probation or parole required to ensure the safety of the victim and other family or household members.
 - (e) Restitution for losses sustained as a direct consequence of any criminal conduct.
 - (f) Apply for victims' compensation and to be informed of procedures for applying.
2. An attorney prosecuting a crime involving domestic or family violence shall notify the victim of domestic or family violence of the victim's rights set forth in this section.
3. Although the prosecutor has the right to subpoena a victim, coercive measures should not be threatened or taken against the victim (ie: arrest, jail, etc.) to ensure compliance.
4. A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement. Release of a defendant from custody must not be delayed because of the requirements of subsection 1.

COMMENTARY

Subsection 1 enumerates the rights of victims of domestic and family violence crimes related to court or prosecution process and to compensation for losses occasioned by the criminal conduct. It specifies that victims of domestic and family violence are entitled to the rights accorded other victims of crime.

Subsection 2 requires that the prosecutor notify victims of these rights. For notice to be meaningful, it should be actual, timely, and written in a language in which the victim is competent.

Subsection 4 requires prosecutors to give notice of disposition of an allegation or charge of domestic or family violence to the victim of the alleged crime. This provision does not impinge on the broad discretion of prosecutors in decisions concerning the filing of charges or plea agreements, but it does provide for informing victims about the outcomes of cases in which they have interests. Notice is critical to victims of domestic or family violence who often defer pursuit of other legal safeguards in reliance on the protective remedies they hope to achieve through prosecution. This reliance may be to their detriment if victims are not given timely notice that the safeguards sought will not be obtained through prosecutions. The "reasonable efforts" of prosecutors should include

the establishment of a system for notice that accomplished actual notice in a timely manner. This section also ensures that the accused's right to liberty not be subordinated to the victim's right to notice of disposition.

Sec. 221. Advocate-victim privilege applicable in cases involving domestic or family violence.

1. Except as otherwise provided in subsection 2, a victim of domestic or family violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:
 - (a) The victim; or
 - (b) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.
2. The privilege does not relieve a person from any duty imposed pursuant to state laws on child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect pursuant to state law.
3. As used in this subsection, "advocate" means an employee of or volunteer for a program for victims of domestic or family violence who:
 - (a) Has a primary function of rendering advice, counseling, or assistance to victims of domestic or family violence; supervising the employees or volunteers of the program; or administering the program;
 - (b) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

COMMENTARY

The drafters concluded that the confidentiality of communications between advocates and victims is fundamental to the relationship and to the safety planning, education, and counseling that occurs therein, all of which are paramount to the protection of victims of domestic and family violence. Subsection 1 establishes a privilege of confidential communication between advocates and victims and an advocate-victim testimonial privilege. The privilege extends to all oral and written communications between and by either. It encompasses all communications made in the course of the advocacy relationship, including those made in the presence of third parties also participating in the advocacy or other victim services of the domestic or family violence program. It includes all documents relating to the victim created by either during the course of advocacy and other service delivery. Neither the victim nor the advocate may be compelled to disclose these oral or written communications. The privilege may be waived only by the victim. Any waiver is binding on the advocate. The privilege expires upon the death of the victim.

Subsection 2 carves out an exception to the privilege related to mandatory reporting of child abuse and neglect and testimony or production of evidence in proceedings related thereto. The scope of the exception is to be construed in light of the state law on child abuse and neglect.

Subsection 3 identifies the limited class of advocates for whom the privilege is operative. This class includes persons employed or serving as volunteers in a service and advocacy program for victims of domestic or family violence and those providing assistance to victims in the court-related programs, who provide direct services, support, assistance, or advocacy to victims, who are supervised therein and who have completed the requisite hours of professional training designated in state statute.

Sec. 222. Conditions of probation for perpetrator convicted of crime involving domestic or family violence; required reports by probation department.

1. Before placing a perpetrator who is convicted of a crime involving domestic or family violence on probation, the court shall consider the safety and protection of the victim of domestic or family violence and any member of the victim's family or household.
2. The court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the court, including but not limited to:
 - (a) Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member.
 - (b) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly.
 - (c) Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member.
 - (d) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances.
 - (e) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon.
 - (f) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator.
 - (g) Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment; and/or an evaluation for such intervention or treatment.
 - (h) Directing the perpetrator to pay restitution to the victim.
 - (i) Imposing any other condition necessary to protect the victim of domestic or family violence and any other designated family or household member or to rehabilitate the perpetrator.
3. The perpetrator shall pay the costs of any condition of probation.

4. The court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection 2, including by way of compliance reviews and these violations may serve as a basis for revoking probation.
5. The probation department shall immediately report to the court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court or probation department, and any threat of harm made by the perpetrator.
6. The probation department shall establish policies and procedures:
 - (a) For the exchange of information concerning the perpetrator with the court and the victim; and
 - (b) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection 2.

COMMENTARY

Subsection 1 requires courts to evaluate whether a victim and members of the victim's family or household can be protected adequately against further violent criminal conduct of the perpetrator by sentencing the defendant to a term of probation which is conditioned by the safeguards set forth in subsection 2. Where a court concludes that one cannot reasonably expect that the defendant will desist, probation should not be granted.

In consideration of the required assessment of subsection 1, subsection 2 authorizes the court to impose enumerated conditions on a suspended sentence or probation to protect the victim and family or household members of the victim, to facilitate perpetrator desistance and rehabilitation, to promote the financial restoration of the victim, and to ensure compliance with the conditions. The court is given broad discretion to craft other conditions to safeguard victims and designated family or household members or to rehabilitate the perpetrator.

Subsection 3 requires perpetrators to pay the costs of any condition imposed.

Subsection 4 compels courts to establish guidelines for review of probation violations to ensure accountability of perpetrators participating in probation programs tailored for domestic and family violence offenders. Policies and procedures for responding to reports of noncompliance with conditions of probation enhance the uniformity, formality, consistency, and reliability of probation services and of charging decisions related to reported violations.

Subsection 5 requires the probation department, or another designated office, in each jurisdiction to report to the court and to the victim any assaults, threats, and violations of conditions by the perpetrator. Prompt reporting facilitates both safety and accountability. The drafters of the Code contemplated that probationers in this program are not career criminals or perpetrators of severely injurious violence, but persons who, confronted with the serious, adverse consequences of violence, may choose to desist from violent criminal

conduct. Swift, certain, and explicit consequences for violation of the terms and conditions of probation increase the deterrent power of the probation program.

Subsection 6 requires that the probation department or designated office establish a system for communication to enforce the conditions of probation imposed by the court. This mandate necessarily entails a system for monitoring compliance of perpetrators admitted to this specialized probation. Formal, routine monitoring is essential for both safety and accountability. Paragraph (a) directs the agency to establish explicit procedures for response to the data obtained pursuant to the monitoring system. Again, the more public and predictable the response procedures and the more adverse and certain the consequences of noncompliance, the greater the anticipated deterrence. Paragraph (b) requires the agency to develop and implement a system for exchange of communication with the court and the victim about safety, compliance and proceedings related to noncompliance with any terms or conditions of probation.

Sec. 223. Required written policies and procedures.

On or before insert appropriate date, each law enforcement agency shall develop or adopt and put into effect written policies and procedures concerning:

1. The effective response of the agency to cases involving domestic and family violence.
2. Enforcement of the Model Code and other applicable state statutes concerning domestic and family violence.
3. Protection and safety of the victims of domestic violence and other family and household members.
4. Coordination with hospitals and programs for victims of domestic or family violence.

COMMENTARY

The Model Code recognizes the importance of written policies and procedures for law enforcement agencies. Policies and procedures help put into effect law enforcement curricula on intervention in domestic and family violence. Protocols inform all employees of a law enforcement agency of the philosophy of the department, of appropriate standards for practice, and of strategies to avoid liability for improper response in crimes involving domestic and family violence. However, policies and procedures are not self-implementing; thus, the Code requires that the law enforcement agency put them into effect, which entails dissemination, education, and supervision.

Subsection 1 requires an enumeration of guidelines related to response to the crime scene. Such guidelines may include, but are not limited to, dispatch priority and process on domestic and family violence calls, investigation, evidence collection, arrest, notice and assistance to victims, seizure of weapons, procedures when arrest is not made, methods for processing the accused, assessment of risk, methods for input on conditions of release, follow-up with victims, report writing, and strategies to maximize officer safety. It is imperative that such guidelines are followed regardless of the occupation of the

perpetrator (including when said perpetrator is a fellow police officer or employee of the government).

Subsection 2 requires the law enforcement agency to apply the Model Code and law relevant to law enforcement practices. Direction for the chief executive about application of the law is vital to enforcement of the law.

Subsection 3 instructs that the agency's policies and procedures must detail the breadth of law enforcement assistance to victims. Policies and procedures include but are not limited to transportation to shelter or medical treatment, assistance in regaining possession of the home or removing essential personal effects from the home, obtaining telephonic protection orders, enforcing orders for protection, and any other action necessary to ensure the safety of the victim and any family or household member. Written procedures will direct officers in the efficient, yet comprehensive, performance of same.

Subsection 4 calls for coordination among law enforcement, programs for victims of domestic or family violence, and hospitals. Coordination is important because each agency and service provider is involved with victims at a time of crisis when victims may require extraordinary assistance for safe and secure survival. Coordination among these agencies promotes early intervention, enhances information and referral, ensures that victims are apprised of legal and community options, reinforces safety planning, maximizes resources, and underscores the fact that the best results are achieved by collective efforts.