

Domestic Violence

Psychology of Domestic Violence

Nearly half of Americans at some point experience an episode of domestic violence – physically or psychologically abusive or coercive behavior.

Domestic violence can escalate quickly. Since police must respond to these calls without delay – often with minimal information – officers need to understand the traits and psychology of the abusers and victims with whom they'll interact.

➤ **Actions of Domestic Violence Abusers.** Abusers attempt to control their victims physically and emotionally in a variety of ways:

- creating situations to cause embarrassment, humiliation, and debasement;
- forbidding ordinary actions and behaviors like shopping or visiting friends;
- withholding information and resources like money, food, and medicine;
- sabotaging careers by taking car keys, making excessive phone calls the spouse's workplace, or issuing frequent insults;
- cruel name-calling ("stupid," "ugly," "fat," "worthless," and so on); *and increasingly*
- the use of digital technology to spy upon conversations and travels; control household temperature and lighting; *or* issue commands from afar through internet-connected "smart home" devices.

➤ **Actions of Domestic Violence Victims.** Both abusers and victims become skilled at hiding the presence of domestic violence. However, an accumulation of the following indicators may signal that an individual suffers from domestic abuse:

- frequent use of sunglasses, heavy makeup, and long clothing to disguise injuries;
- excessive apologies, self-deprecating comments, and unlikely excuses;
- frequent complaints about headaches, chronic pain, or stomach problems,
- growing dependence upon sleep, alcohol, or drugs (both illegal and prescribed);
- a general lack of spontaneity and withdrawal from social activities;
- inability to access vehicles, cash, or credit cards;
- discussions of suicide or an actual attempt; *and*
- anxious refusals of intervention attempts by family, friends, or police.

➤ **Dynamics of Aggressor-Victim Relationships.** Abusers typically need or desire to *control* others, thus boosting their sense of personal power and importance. They frequently view themselves as victims of unfair employers, societal forces, and insufficiently appreciative partners.

Often, aggressors are jealous of people who are more intelligent, confident, or who earn more money. It's common for abusers to lash out at family suspected of "thinking they're better than me."

Victims who tolerate such abuse may do so out of low self-esteem, a sense of helplessness, or they may perceive the abuse as the cost of protecting their children, or keeping them housed, clothed, and well-fed. Such relationships are dysfunctional and are often permanently harmful.

Abusive Acts – Domestic Setting

The General Assembly has created two deterrents to abuse in *domestic* environments:

- **orders of protection** that direct specific individuals to stop performing prohibited acts *and*
- **criminal penalties** for individuals who perform prohibited acts or violate the terms of orders of protection.

Court-Ordered Protection

The *Illinois Domestic Violence Act* (hereafter *Act*) provides ***court-ordered protection*** against a number of different acts, regardless of whether the act is a separately listed crime under Illinois law.

Statutory Definitions

⇒ **Domestic Violence & Abuse.** The term ***domestic violence*** is defined as “abuse,” and the term ***abuse*** means:

- ***physical abuse,***
- ***harassment,***
- ***intimidation of a dependent,***
- ***interference with personal liberty, or***
- ***willful deprivation.***

The term ***abuse*** does ***not*** include “***reasonable*** direction of a minor child by a parent or person *in loco parentis*.” (750 ILCS 60/103(1,3))

⇒ **Physical Abuse.** The term ***physical abuse*** includes ***crimes*** such as simple battery and aggravated battery and also ***sexual abuse*** and means:

- ***knowing or reckless use of physical force, confinement, or restraint or***
- ***knowing, repeated, and unnecessary sleep deprivation or***
- ***knowing or reckless conduct that creates an immediate risk of physical harm.*** (750 ILCS 60/103(14)) ⇒ **Harassment.** The term ***harassment*** means ***knowing conduct*** by the abuser that:
- is ***not necessary*** to accomplish a purpose that is ***reasonable under the circumstances and*** • would ***cause emotional distress*** to a ***reasonable person and***
- ***does cause emotional distress*** to the victim.

“Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:”

- creating a disturbance at petitioner’s place of employment or school;
- repeatedly telephoning petitioner’s place of employment, home, or residence;
- repeatedly following petitioner about in a public place or places;
- repeatedly keeping petitioner under surveillance by remaining present outside his/her home, school, place of employment, vehicle, or other place occupied by petitioner or by peering in petitioner’s windows;
- improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner’s from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence; ***or***
- threatening physical force, confinement, or restraint on one or more occasions. (750 ILCS 60/103(7))

⇒ **Intimidation of a Dependent.** The term ***intimidation of a dependent*** means “subjecting a person who is dependent because of age, health[,] or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse . . . regardless of whether the abused person is a family or household member.” (750 ILCS 60/103(10))

⇒ **Interference with Personal Liberty.** The term ***interference with personal liberty*** means “committing or threatening physical abuse, harassment, intimidation[,] or willful deprivation so as to compel another to engage in conduct from which [he/she] has a right to abstain or to refrain from conduct in which [he/she] has a right to engage.” (750 ILCS 60/103(9))

⇒ **Willful Deprivation.** The term ***willful deprivation*** means “willfully denying a person who because of age, health[,] or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental[,] or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forgo such medical care or treatment.” (750 ILCS 60/103(15))

Victims – Family or Household Members

Persons who are entitled to the protection under the *Act* are referred to as “family or household members.” The term ***family or household members*** includes:

- ***spouses;***
- ***former spouses;***
- ***parents, children, stepchildren,*** and other persons ***related by blood or by present or prior marriage;***
- persons who ***share*** (or ***formerly*** shared) a ***common dwelling;***
- persons who have (or allegedly have) a ***child in common;***
- persons who ***share*** (or allegedly share) a ***blood relationship through a child;***

- persons who have (or have had) a ***dating or engagement relationship***; • persons ***with disabilities*** and their ***personal assistants; and • caregivers***.

Neither “a casual acquaintanceship nor ordinary fraternization between [two] individuals in business or social contexts shall be deemed to constitute a dating relationship.” (750 ILCS 60/103(6))

➤ **Evidence of Dating.** If there is evidence of a long-term social/loving commitment, the two persons are “family or household members” under the statute because they:

- are involved in a “dating relationship” ***and***
- are involved in neither “a casual acquaintanceship nor ordinary fraternization between two individuals in business or social context.” (*People v. Johnson*, 793 N.E.2d 774)

➤ **High-Risk Adults.** “In the case of a high-risk adult with disabilities, ‘family or household members’ includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.” (750 ILCS 60/103(6))

Court Orders of Protection

Petition for Protection – Non-Criminal Abuse/Harassment

A family or household member who is a victim of a ***non-criminal*** action can petition a judge to order the family or household member abuser to stop engaging in the non-criminal abuse.

The primary vehicle for providing remedies to the victim is a court ***order of protection***, often referred to as an “O.P.,” which is served on the abuser. (750 ILCS 60/214)

➤ **Orders of Protection – Enforcement.** The law provides for enforcement of orders of protection in a variety of ways. Most provisions of orders of protection are considered to be “civil” in nature. Only a court can enforce these ***civil, non-criminal*** provisions by means of contempt proceedings.

Some provisions of an order of protection are enforceable by the police through arrest powers. (750 ILCS 60/223)

These “criminal provisions” are listed in this ***Reference & Review*** under the section “**Crimes – Orders of Protection.**”

Petition for Protection – Victims of Non-Consensual Sexual Conduct/Penetration – Civil

No Contact Order

Judges are also authorized to issue emergency ***civil no contact orders*** to prevent potential injury to:

- “any person who is a victim of non-consensual sexual conduct or non-consensual sexual penetration, including a single incident of non-consensual sexual conduct or non-consensual sexual penetration” ***or***
- “a person on behalf of a minor child or an adult who is a victim of non-consensual sexual conduct or non-consensual sexual penetration but, because of age, disability, health, or inaccessibility, cannot file the petition.” (740 ILCS 22/201)

Investigative Recommendation – Civil Remedies

In dealing with cases involving couples, the complainant should always be thoroughly interviewed to determine the true nature of the past and current relationship.

Officers should also be alert to situations that involve non-criminal conduct by an abuser. There will often be situations in which an abuser does things to the victim for which they can’t be arrested. However, even if the conduct is ***non-criminal***, it may constitute ***abuse*** (which includes harassment) under the *Act*, and the victim may receive protection through the issuance of an order of protection.

In cases involving ***harassment***, the victim should always be thoroughly interviewed to establish what effect the conduct of the abuser had on them.

Agency’s Duties – Investigations

Every law enforcement agency in the State of Illinois is ***required*** to develop, adopt, and implement ***written policies*** regarding arrest procedures in domestic violence incidents.

The sheriff of every county in Illinois is required to forward copies of all orders of protection issued in their county to the Illinois State Police. Information regarding orders of protection must be recorded in the LEADS system for reference by law enforcement officers. (750 ILCS 60/301.1, 302)

Officers’ Duties – Investigations

Mandatory Report

Officers are *required* to write an investigative report for *every bona fide* (good faith) allegation of an incident of *abuse, neglect, or exploitation between* family or household members. The written report must include:

- the *victim's statements* regarding the *frequency and severity of prior incidents* of abuse, neglect, or exploitation by the same suspect *and*
- the *“number of prior calls* for police assistance to prevent such further abuse, neglect, or exploitation” *and*
- the *disposition of the investigation*. (750 ILCS 60/303(a))

➤ **Written Report – Purpose.** The written report is intended to provide a reliable source of information to attorneys and court personnel in providing legal remedies to the victim of domestic violence.

Special Assistance to Victims of Domestic Violence

Officers must render aid and assistance to the victims of domestic violence. The statute clearly mandates that officers immediately use all reasonable means to prevent further harm to the victim at the hands of the abuser.

“Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer *shall immediately use all reasonable means* to prevent further abuse, neglect, or exploitation, including”:

- *arresting* the suspect *“where appropriate”*;
- *seizing and taking inventory of any weapons* “if there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations”;
- *accompanying the victim* “to his[/]her *place of residence* for a reasonable period of time to remove necessary personal belongings and possessions”;
- *“offering* the victim... *immediate and adequate information* (written in a language appropriate for the victim or in Braille or communicated in appropriate sign language), which shall include a summary of the procedures and relief available to victims of abuse... and the *officer's name and badge number”*;
- *“providing* the victim with *one referral* to an accessible service agency”;
- *advising* the victim “about *seeking medical attention and preserving evidence* (specifically including photographs of injury or damage to clothing or other property)” *and* • “providing or arranging *accessible transportation* for the victim of abuse (and, at the victim's request, any minors or dependents in the victim's care) *to a medical facility* for treatment of injuries or to a *nearby place of shelter* or safety; or, after the close of court business hours, providing or arranging for transportation for the victim (and, at the victim's request, any minors or dependents in the victim's care) to *the nearest available circuit judge or associate judge* so the victim may file a petition for an emergency order of protection.... When a victim of abuse chooses to leave the scene of the offense, it shall be presumed that it is in the best interests of any minors or dependents in the victim's care to remain with the victim or a person designated by the victim, rather than to remain with the abusing party.” (750 ILCS 60/304(a))

Arresting the Suspect – Not Mandatory

Arrests under the *Act* are *not mandatory*. Officers have legal discretion regarding arrests for: •
criminal offenses against protected persons *and*

- criminal violations of orders of protection.

However, whether or not an arrest is made, an officer must still render aid and assistance to the victim *and* prepare the required written report.

➤ **If No Arrest Is Made – Added Duties for Officers.** A statement by a victim of abuse that they *do not* want to pursue a complaint or that they are unsure whether to pursue a complaint *doesn't excuse* an officer from the *mandatory report* requirement.

When an arrest isn't made, officers must describe in the report the reasons that an arrest wasn't made, such as:

- *insufficient* evidence of:
 - criminal activity *or*
 - the *identity* of the perpetrator or perpetrators *or*
- statements by the initial complainant that they *do not wish* prosecution. The officer must:
- inform the victim of their right to “request that a criminal proceeding be initiated where appropriate, including specific times and places for meeting with [personnel at] the State's Attorney's Office, a warrant officer, or other official in accordance with local procedure” *and*
- advise the victim “of the importance of seeking medical attention and preserving evidence (specifically including photographs of injury or damage and damaged clothing or other property).” (750 ILCS 60/304(b))

➤ **Investigative Recommendation.** Some law enforcement agencies have established internal policies that mandate arrests in criminal domestic violence cases when there is sufficient evidence. Officers should always follow their department policy in deciding whether to make an arrest.

Crimes – Orders of Protection

Violation of Special *Criminal* Provisions of Orders of Protection

A violation of an order of protection is a *crime* (Class A misdemeanor), enforceable by an arrest, *only* when the respondent, *contrary* to the terms of an order of protection, does *any of the following*:

- commits *further* abuse, neglect, or exploitation, as defined in the *Act*;
- *enters or remains* in any residence or household granted *exclusively* to the petitioner;
- *violates* a *stay away provision* of the order;
- *is present* at a *protected residence* or household *while under the influence* of alcohol or drugs *and presents a threat* to the well-being and safety of the petitioner or the petitioner’s children;
- *possesses a firearm*;
- commits the offense of *child abduction*;
- otherwise commits a *crime against a person protected by the order*; *or*
- any of the above actions that are contained in a valid order of protection authorized under the laws of another state, tribe, or U.S. territory. (750 ILCS 60/214(b)(1,2,3,14,14.5); 750 ILCS 60/223(a)(1,2); 720 ILCS 5/12-30)

➤ **Stay Away – Statutory Definition.** The term *stay away* means “for the respondent to refrain from both physical presence and non[-]physical contact with the petitioner whether direct, indirect (including, but not limited to, telephone calls, mail, e[-]mail, faxes, and written notes), or through third parties who may or may not know about the order of protection.” (750 ILCS 60/103(14.5)) ➤ **Enhanced Penalty.** A violation is a Class 4 felony if the defendant has any prior conviction for:

- violation of an order of protection *or*
- domestic battery *or*
- any of the following offenses *when* they have been committed *against a family or household member*:
 - first degree murder,
 - attempt to commit first degree murder,
 - aggravated domestic battery,
 - aggravated battery,
 - heinous battery,
 - aggravated battery with a firearm,
 - aggravated battery of a child,
 - aggravated battery of an unborn child,
 - aggravated battery of a senior citizen,
 - stalking,
 - aggravated stalking,
 - criminal sexual assault,
 - aggravated criminal sexual assault,
 - kidnapping,
 - aggravated kidnapping,
 - predatory criminal sexual assault of a child,
 - aggravated criminal sexual abuse,
 - unlawful restraint,
 - aggravated unlawful restraint,
 - aggravated arson, *or*
 - aggravated discharge of a firearm. (720 ILCS 5/12-3.2(b); 720 ILCS 5/12-30(d))

Arrest – Violation of Any Special *Criminal* Provision of an Order of Protection or Civil No Contact Order

A person may be arrested when they either:

- violate any of the *special criminal provisions* that are contained in either:
 - a *valid order of protection* issued under Illinois law (or the laws of another state, tribe, or U.S. territory) – *after* they either:
 - have *been served* with the order *or*
 - have *knowledge of the terms* of the order *or*
- violate the terms of a *civil no contact order*. (720 ILCS 5/12-30; 740 ILCS 22/301(a))

➤ **Orders – Validity.** All orders must be presumed valid “where an order is *certified* and *appears authentic* on its face.” (720 ILCS 5/12-30(a))

➤ **Investigative Recommendation.** When responding to calls involving an alleged violation of an order of protection, officers should always:

- verify that the order is still valid (not revoked) *and*
- ensure that the suspect has been served with the order or that they are otherwise aware of its existence and terms.

Officers should also carefully review the terms of any order of protection that is allegedly violated. The victim will often have a copy of the order with them, or the contents of the order can be obtained from the LEADS system.

Violent Crimes – Domestic Setting

When officers gather sufficient evidence of any substantive crime, such as assault and battery, a warrantless arrest can be made.

When the alleged crime also constitutes domestic violence, officers must comply with all the previously listed requirements during the investigation.

Investigative Recommendation – On-Scene Investigation of Complaints of Crimes

Officers must be sure that there is a factual basis (probable cause) for *each* element of a crime before an arrest is made.

Officers must interview all victims, complainants, and witnesses with care to determine:

- their competency (they have good sight and hearing, and an accurate mental understanding of what is happening to them and their surroundings) *and*
- their credibility (they have a reputation for telling the truth) *and*
- their bias for, or against, the potential arrestee.

Whenever possible, neighbors should be interviewed to compare the claims by the complainants. Any inconsistencies should be noted and evaluated.

If other statements by witnesses indicate that the complainant is inaccurate in his/her claims, then the version of events by the complainant cannot be used as a basis for making an arrest.

➤ **Investigative Report – On-Scene.** Officers should make a first draft of their written report immediately after the abuser is safely in custody. This will ensure that all of the facts relating to accusations by complainants and witnesses are recorded while they are fresh. When officers are able to review their notes on the scene, they are more likely to consider additional questions that might be appropriate for any of the witnesses. If necessary, they can ask the questions before the witnesses leave the scene or have an opportunity to change their stories.

If the statements by the witnesses are in total conflict and officers are unable to determine if the suspect has committed a crime, the draft report should also include a description of the statements, and the observations by officers upon which the conclusion of *unbelievability* was based.

➤ **Follow-Up Investigation.** In some cases, it will be necessary to contact people who are not on the scene to corroborate statements or to gather additional information about previous criminal activity.

If new evidence is gathered, it may strengthen the case against a suspect or arrestee. This information should be added to the investigative report.

If the investigation shows that the complainant did not give an accurate account of the events and that there is not sufficient evidence to support an arrest, the suspect should be released from custody immediately. If the person is in jail, steps should be taken to contact the prosecutor to arrange for release as soon as possible.

➤ **Investigative Report – Final Draft.** A detailed report will provide the prosecutor with complete information about the events and will allow them to fully evaluate the case and to plan an effective prosecution.

Officer Protection

Officers must be very cautious in all domestic violence cases. *First*, they must protect themselves from *physical* danger. *Second*, they must take care regarding their exposure to both *civil* and *criminal liability*.

➤ **No Civil Liability for Negligence.** If an officer or agency negligently causes injury in a domestic violence setting, there can be no civil liability because the *Act* “bars recognition of a cause of action sounding in ordinary negligence.” (750 ILCS 60/305; *Calloway v. Kinkelaar*, 659 N.E.2d 1322)

➤ **Duty of Officers to Assist Victims.** The Illinois Supreme Court has ruled that there is a *duty* on all law enforcement officers to “promptly undertake all reasonable steps to assist” victims of domestic violence. (*Calloway v. Kinkelaar*, 659 N.E.2d 1322) ➤

Civil Liability – Willful or Wanton Conduct. There may be liability for the injuries to a victim of domestic violence if:

- officers *breach* their *duty to the victims* of domestic violence by *conduct that is willful or wanton and*

- that conduct is the *proximate cause* of the *injuries*. (*Doe v. Calumet City*, 641 N.E.2d 498; *Calloway v. Kinkelaar*, 659 N.E.2d 1322)

The term *willful or wanton conduct* means “a course of action [that] shows an actual or deliberate intention to cause harm or which, if not intentional, shows an *utter indifference* to or *conscious disregard* for the safety of others or their property.” (745 ILCS 10/1-210)

➤ **Investigative Recommendation – Thorough Investigation.** If there is probable cause to arrest the offender, officers should give serious consideration to making the arrest. Officers must always use good procedures and have facts that constitute *probable cause* to believe that:

- the *particular person* •
committed the crime.

If an arrest can’t be made (e.g., due to flight by the offender or inability to locate them), the report should document the efforts to make an arrest and the reason that no arrest was made.

When there are immediate threats to the victim and no arrest is made, officers should take extra care to ensure the safety of the victim.

➤ **Investigative Recommendation – Detailed Report.** In domestic violence cases, officers should protect themselves against the possibility that the victim will change their mind. Therefore, they must *document* all the facts that support their actions.

In addition to the information that the law requires written reports to contain, all domestic violence reports should also document in detail the steps that were taken to *render aid* to the victim to protect them from further harm by the abuser.

➤ **Civil Liability – Statutory Protection.** The statute states: “Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this *Act* shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of *willful or wanton* misconduct.” (750 ILCS 60/305)

This *doesn’t* provide extra protection. The same principles apply in all law enforcement situations.

The statute doesn’t prevent a person from filing a lawsuit that alleges that officers didn’t act in good faith.

Interfering with the Reporting of Domestic Violence

Elements of Crime

It is a Class A misdemeanor for a person, *after* having *committed* an act of domestic violence, to:

- *knowingly prevent* or *attempt* to prevent
- the *victim* of (or a *witness* to) • the *act of domestic violence*
- *from* any of the following:
 - *calling* a 9-1-1 emergency telephone system *or*
 - *obtaining medical* assistance *or*
 - *making a report* to any law enforcement official. (720 ILCS 5/12-3.5)

➤ **Investigative Recommendation.** Before an arrest can be made for this crime, officers must have sufficient facts to support a probable cause belief that:

- the person *has committed* an act of domestic violence *and then*
- the domestic violence perpetrator committed a separate act to prevent the victim or witness from reporting.

Evidence of each of the elements may be obtained through interviews of:

- the victims and witnesses of both domestic violence and interfering as well as
- the receivers of the incomplete reports, such as dispatchers, telephone operators at medical facilities, and law enforcement personnel.

Domestic Conflicts – Access to Residence – Spouse

Domestic Disputes – Access to Residence

Spouses and other family or household members who share a residence may become involved in disputes over the access and use of the residence. Actual or threatened violence may also occur during the course of disputes.

Often, officers are called by one spouse for protection from possible violence when they try to gain access to the residence.

Legal Access to Residence – Spouses

Generally, spouses have full access rights to the marital residence.

➤ **Legal Access to Residence – “Joint Tenants.”** Each joint tenant has a legal right to access and occupancy, unless modified by agreement or court order.

When any residence has been purchased or rented in joint tenancy, none of the joint tenants can legally prevent any of the others from entering or remaining on the premises.

➤ **Investigative Recommendation.** When investigating disputes between spouses regarding occupancy rights to a residence, officers should carefully interview each spouse regarding:

- current marital status *and*
- current status of court proceedings between them, including the existence of any outstanding court orders that may have changed possessory rights in the residence *and*
- ownership interests in the residence, including history of purchase and loans for the house.

If the residence is rented, the terms of the lease may be examined or the landlord consulted.

If one spouse claims that the other has no legal right to occupancy, that spouse should be allowed to explain their reasons for that belief.

Changed Legal Status – Surrender

In some cases, one joint tenant will voluntarily surrender their rights to occupancy. The surrender may be accompanied by a monetary settlement between the remaining tenants. In such cases, there is usually a signed document describing the change and terms of future action, including limited access.

➤ **Changed Legal Status – Court Action.** In many cases, one tenant will seek a change in the legal rights regarding a residence and will obtain a court order. The court order should describe the respective rights of the parties, including access to the premises for limited purposes, such as retrieval of personal property, visitation with children, or inspection pending sale.

Threat to Prevent Access by Joint Tenant – Criminal Assault

If a resident threatens the use of force to prevent a joint tenant from legally entering the premises where the joint tenant has a right to be, that resident may have committed criminal assault.

➤ **Criminal Resisting/Obstructing.** If a joint tenant invites an officer into their residence to conduct an official investigation (such as assault), the officer has a legal right to enter. If any person, including another joint tenant, interferes with that entry and investigation by trying to stop the entry, they commit criminal resisting/obstructing.

➤ **Threat to Allow Access in Violation of Court Order.** If a resident commits a criminal assault in response to an attempt by a joint tenant to enter a residence, pursuant to *an injunction for protection* that also specifically authorizes entry, that resident may be arrested.

➤ **Investigative Recommendation.** In many cases, the resisting spouse or joint tenant is mistaken about the legal right of access by the other tenant. Once the legal rights/responsibilities are explained, they may agree to allow access.

If the resister then commits a crime in the presence of officers, a warrantless arrest can be made.

A detailed report, describing all the facts that supported all the elements of the crime, should be prepared. If the State's Attorney's Office declines prosecution, the report can be used in defense of claims of illegal arrest.