



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **DOMESTIC ABUSE**

SCOPE: All Department Personnel
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statutes: 968.075

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Temporary Restraining Orders

PURPOSE: The purpose of this Policy & Procedure is to establish guidelines and procedures for members of the Elkhart Lake Police Department for the protection of victims in domestic violence situations; the identification of predominant aggressors in domestic violence situations; and the enforcement of restraining orders. The application of this Policy & Procedure proposes to deter future acts of domestic violence; to minimize return calls to the Department, and to reduce the potential for injuries to victims and Officers.

This Policy & Procedure consists of the following numbered sections:

- I. DEFINITIONS
- II. POLICY
- III. PROCEDURE
- IV. RESTRAINING ORDERS
- V. FOREIGN PROTECTION ORDERS

I. DEFINITIONS

- A. DOMESTIC ABUSE: means any of the following acts engaged in by an adult person against his or her spouse, former spouse or adult relative or against an adult with whom the person resides or formerly resided or against any adult with whom the person has created a child:
1. Intentional infliction of physical pain, physical injury or illness.
 2. Intentional impairment of physical condition.
 3. A violation of SS 940.225(1), (2), or (3), Wis. Stats; [Sec. 940.225(1), sexual assault first degree; SS 940.225(2), second degree sexual assault; SS 940.225(3), third degree sexual assault].
 4. A physical act or threat in conjunction with a physical act which may cause the other person reasonably to fear imminent engagement in the conduct described under Subsections (a)(1), (2) or (3) above.
- B. RELATIVE: means parent, grandparent, step-parent, brother, sister, first cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, child, stepchild, foster child, father-in-law, mother-in-law, daughter-in-law or son-in-law.
- C. PREDOMINANT AGGRESSOR: The most significant, but not necessarily the first aggressor in a domestic abuse incident.
- D. MANDATORY ARREST FOR DOMESTIC ABUSE VIOLATIONS: Under SS 968.075(2) an arrest will be made whenever an Officer has probable cause to believe that a person is committing, or has committed a crime of domestic abuse and there is sufficient reason to believe that there is a possibility of continued violence against the victim or there is evidence of physical injury to the alleged victim and the person to be arrested caused the injury.
1. If the Officer's reasonable grounds for belief are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest only if the report is received within 28 days after the day the incident is alleged to have occurred.
- E. MUTUAL DOMESTIC ABUSE VIOLATIONS: In those instances where there is probable cause to believe that more than one person has committed a crime of domestic abuse against each other, the officer should arrest the "*Predominate* aggressor". In attempting to determine the "*predominate* aggressor", officers should determine the most significant, but not necessarily the first, aggressor in a domestic abuse incident. They should consider the relative degree of injury or fear inflicted, and any history of domestic abuse between the parties (when that can be reasonably determined).
1. To determine the predominate aggressor, the officer should consider the

following strategies;

- a) History of domestic abuse between the parties, if it can be reasonably ascertained by the officer and any information provided by witnesses regarding that history.
 - b) Statements made to witnesses.
 - c) The relative degree of injury inflicted by the parties.
 - d) The extent to which each person present appears to fear any party.
 - e) Whether any party is threatening or has threatened future harm against another party or another family member or household member.
 - f) Whether either party acted in self-defense or in defense of any other person.
2. If it is determined that a crime of domestic abuse has been committed and the suspect has left the scene, a reasonable effort should be made to locate this person.

F. DECISION NOT TO ARREST:

1. Officers are not to base a decision not to arrest solely on whether or not the victim indicates consent to any subsequent prosecution or on the relationship(s) of the persons involved. Nor can "no arrest" decisions be based solely on the absence of visible injury or impairment.
2. In determining whether to arrest a party, should consider whether the party was acting in self-defense or in the defense of others.
3. Unless the arrest is mandatory, it is generally not appropriate to arrest anyone...other than the predominate aggressor.

G. REQUIRED REPORTS: All domestic abuse cases in which a suspect has been arrested shall be charged under WI State Statutes. An incident report shall be filed with the District Attorney's Office for all domestic cases, including those for which no arrest has been made. (WILEAG CORE 18-6.3.9.4)

1. If it is determined that a crime of domestic abuse has been committed and the suspect has left the scene, a reasonable effort should be made to locate this person. If the suspect cannot be located within 24 hours of the incident or after the report is received, a copy of the incident report shall be forwarded to the District Attorney's Office for review.
3. All domestic abuse incidents that do not result in an arrest shall be compiled and forwarded to the Sheboygan County District Attorney's Office. This compilation shall occur annually at a minimum or at intervals determined by the Department and/or the Sheboygan County District Attorney's Office.

H. PROTECTION ORDER: refers to any injunction or other order issued by a court, including criminal or civil orders of protection, regardless of form, content, length, layout, or name (such as stay away, restraining, criminal, and emergency or temporary protection orders or injunctions), issued for the purpose of preventing the following:

- Violent or threatening acts against another person
- Stalking or harassment of another person
- Contact or communication with another person
- Physical proximity to another person

I. OFFICER IMMUNITY: A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not arrest an alleged offender, if the decision is made in a good faith effort to comply with WI State Statute 968.075.

II. POLICY

This Policy & Procedure recognizes that domestic violence is not a private matter, but involves serious criminal offenses against the State of Wisconsin whose prosecution does not depend upon the willingness of a victim to prosecute. The intent of this Policy & Procedure is twofold:

109861888. To maximize protection for victims of domestic violence; and

109861889. To hold predominant aggressors accountable for their violent behavior.

This Policy & Procedure recognizes that violent behavior will neither be excused nor tolerated regardless of the relationship of the persons involved. Therefore, an Officer shall make an arrest supported by probable cause and take a person into custody according to procedures of this Policy & Procedure.

The Department shall establish and maintain a working relationship with professionals from community organizations with expertise in the recognition and handling of domestic violence. Whether or not an arrest is made in a domestic violence incident, an Officer shall ask potential victims of domestic abuse if they would like to be contacted by one of these organizations. The Officer shall then advise that agency of the incident, giving the victim's name, address and phone number.

III. PROCEDURES

A. Dispatch Information.

The fundamental responsibility of the dispatcher is to obtain as much information as possible under the circumstances presented from the complainant and to

keep assigned officers as fully informed as is possible based on the information available to the dispatcher.

1. The individual taking the complaint should relay to the officer as much information concerning the dispute as possible, including, where possible, if known:
 - a) The exact location of the dispute.
 - b) The nature of the dispute.
 - c) If a weapon is involved or if physical violence has occurred.
 - d) If there have been previous calls to that address and/or difficulties with named subjects that may indicate a recurring problem.
 - e) Past history of violence to responding officers or the use of weapons.
2. Whenever possible, a minimum of two (2) officers will be dispatched to a domestic disturbance. This may require removing an officer from lower priority calls. In extreme situations where only one officer is available, the officer should be informed that he/she is responding alone and that a second unit will be sent as soon as possible.

A. Responding Officers **(WILEAG CORE 18-6.3.9.1)**

1. Conflict of interest/personal relationship.
 - a) Enforcement personnel who are given a domestic disturbance call wherein they feel they may have a conflict of interest, i.e.... personal relationship, will so advise a supervisor and request another unit be assigned.
2. Whenever possible two Officers shall respond. Whenever appropriate, wait for both Officers to arrive at the scene before approaching the disturbance location. (Keep in mind the potential need for immediate law enforcement intervention to prevent serious injury or death).
3. Stabilize the situation. Protect against further acts of violence where appropriate.
4. Care for any injured.
5. If children are present - Remove any children from the area and keep them in a safe place away from the dispute and enforcement actions that may be taken involving either of their parents.
 - a) Take care to protect children from further trauma and/or anguish.

- b) Attempt to contact the closest relative to provide care if there are children under the age of 17.
- c) If possible do not arrest a parent in front of their children.
- d) Obtain a statement from the children as to what they observed, any verbal or physical abuse or other violence that they may have seen leading up to the incident and in the past directed at the children, the parents or pets.
- e) Forward a copy of the incident report to Human Services within 24 hours or the first morning of the next business day if the event took place on a weekend or holiday.
- f) If the disposition of a dispute leaves minors in the home without a responsible adult, officers are to contact the County Department of Health and Social Services for temporary arrangements.

In disputes over the custody of children which involve an injunction or temporary restraining order, Department policy is to be followed.

- g) When an officer is aware of a potential emotional stress and/or neglect that the minors may be suffering, a referral should be made. Statements made by the children, or by the parents, as well as the officer's own observations should be reduced to writing and the report forwarded to the Social Services worker.
- h) In the event that a child appears to be the victim of physical and/or sexual abuse, the officer is to take immediate action. Ascertain the well-being of the child and provide medical treatment if warranted.

It is the individual officer's responsibility to notify County Social Services as soon as possible of the incident, regardless of day or night. Obtain as much information as possible from the child, taking special care to be reassuring, non-threatening, and sensitive so as not to add to the emotional trauma the child will already be suffering. If at all possible, obtain statements from the other parties involved. It may be necessary to take temporary custody of the child to secure a safe living environment at the time.

6. Make a complete investigation at the scene.

- a) Investigation should include obtaining written statements from the victim, suspect, children and other potential witnesses. (It is essential that statements be obtained at the scene whenever practicable).

(1) Have the victim include a brief statement relating to non-consent for any injuries incurred.

- b) Ensure that the following information is noted:

- (1) Description of injuries.
 - (2) Include photograph(s) whenever possible.
 - (3) Medical treatment.
- c) Property damaged.
 - d) Witness(es).
 - e) All other evidence obtained or informed about.
 - f) Attempt to ascertain any history of domestic abuse and/or alcohol/drug abuse.
 - g) Obtain a medical records release whenever possible.
 - h) Complete a Domestic Abuse Victim Worksheet and attach it to the incident report.
 - i) Document whether or not the victim requested/allowed release of their personal information to Regional Domestic Abuse Services.
 - j) Notify the jail that the arrest is a domestic abuse related charge.

B. Arrests **(WILEAG CORE 18-6.3.9.2)**

1. Whenever probable cause exists that a crime or violation of state law has been committed, an arrest shall be made.
 - a) Arrests shall be made for violations of domestic abuse injunctions, child abuse restraining orders or injunctions, harassment restraining orders or injunctions, or a foreign protection order, and/or temporary restraining order when the following conditions exists:
 - (1) The Agency has a certified copy of an injunction or restraining order (containing a judge's signature) on file for the party suspected of being in violation; (it is not a defense for the subject to state that he/she was let in or given permission to enter if he/she has knowledge of the court order).
 - (2) The Officer shall make an inquiry to dispatch in order to obtain information concerning the "status" of any domestic abuse injunction/temporary restraining order to determine whether the document is "served" or "not served" as entered into the State of Wisconsin TIME System.
2. Arrests are mandatory when there are circumstances requiring arrest under the mandatory arrest analysis (the Officer has reasonable basis for believing

that continued domestic abuse against the alleged victim is likely *and/or* there is evidence of physical injury to the alleged victim)

3. For purposes of this Policy & Procedure, arrest shall be defined as custodial arrest.
4. Pro Arrest Policy: In cases where an Officer has probable cause that a crime has been committed which *does not meet* the requirements of mandatory arrest (i.e. the Officer has reasonable basis for believing that continued domestic abuse against the alleged victim is likely and/or there is evidence of physical injury to the alleged victim) an arrest should be made of the predominant aggressor.

C. Procedures upon Arrest for Domestic Abuse **(WILEAG CORE 18-6.3.9.3)**

1. **CONTACT PROHIBITION:** SS 968.075(5) prohibits a person who has been arrested for domestic abuse from having contact with the alleged victim for a period of 72 hours following the arrest. Nor can anyone other than attorneys for the parties and law enforcement members contact the alleged victim on the arrested person's behalf.

Whenever probable cause exists that a person has violated this contact prohibition, an arrest shall be made.

- a) If a person arrested for domestic abuse commits an act of domestic abuse during this 72-hour no contact period and the act is considered a crime, that act is then classed as a felony under WI State Statute 968.075.
2. **WAIVER OF CONTACT PROHIBITION:** At any time during the 72 hour period following the arrest the alleged victim may waive the contact prohibition. To do this the victim must complete the Waiver of Contact Prohibition in the Domestic Abuse Packet, or complete a Waiver.
3. **INFORMING THE ARRESTEE:** If the arrested party is released from custody less than 72 hours after arrest for domestic abuse, the person releasing the subject will inform that person orally and in writing of the contact prohibition.

The "Conditional Release" form must be completed and read to the subject being released. The subject must sign this form, indicating acknowledgment. If the subject refuses to sign, they cannot be released prior to the end of the 72 hour contact prohibition period.

4. **INFORMING THE VICTIM:** In cases of domestic abuse arrests and where otherwise warranted, the arresting law enforcement agency shall be notified of the suspects pending release.
5. **VIOLATION OF CONTACT PROHIBITION:** Unless there is a wavier signed by the victim, during the 72 hours immediately following an arrest for a

domestic abuse incident, the arrested person shall avoid contacting the victim as per WI State Statute 968.075(5).

If the arrested person intentionally violates the 72-hour no contact provision, they shall be arrested under WI State Statute: 968.075(5)(a).

6. **NO IMMEDIATE RELEASE:** No person arrested for a domestic abuse violation and jailed shall be released from custody until that person has gone before a judge, posted bond, or if the release is ordered by the District Attorney's Office.
7. **AVAILABILITY OF SERVICES:** Whether or not an arrest is made, all victims shall be provided information on the availability of community domestic abuse services including shelters and services dealing with domestic violence and sexual assault so the victim will be able to obtain an emergency shelter, a restraining order, and/or any other remedies available to them by law.

When a victim chooses any or all of these domestic abuse services, the Officer shall provide those agencies with the victim's name, address, and phone number and assist the victim in making arrangements to accommodate their safety and rights.

- a) All victims shall be notified of the availability of these services along with a written notice of their Chapter 950 rights within 24 hours of contact.
- b) The notification to victim(s) of all of their rights and services available to them shall be included in the Elkhart Lake Police Department brochure for Information for Victims of Crime, which shall be provided to each victim.
- c) The Department is permitted to share information on domestic violence incidents with domestic violence victim services organizations and their representatives and shall share statistical information with organizations seeking grants that provide domestic violence services.

D. Special Circumstances Associated with Domestic Disputes.

1. **Weapons.** If a weapon is present and constitutes a clear and present threat of violence, officers are to impound the weapon and see that it is properly tagged and stored in evidence.

The owner should be informed of the method to reclaim the property at a later date.

Any weapons used in the commission of a crime must be confiscated as evidence. Whenever a weapon is removed from the home, documentation must be presented in the report.

2. **Refused Entry.** When officers are refused entry into a residence after being dispatched to a call, the Chief of Police or Officer-in-charge (OIC) is to be

notified and kept advised to the situation as it develops (not necessarily before action occurs). The dispatcher will attempt to contact the occupants by phone.

If probable cause exists that a crime has been, is being, or is about to be committed, forced entry may be used when there is no other reasonable alternative. The exigent circumstances, all relevant information, including statements from witnesses, the officer's visual and audio observations, and any damage resulting to the property, should be contained in the officer's report.

IV. RESTRAINING ORDERS

- A. WI State Statute 813.12(7) provides for mandatory arrest for violation of a domestic abuse restraining order/injunction and ss. 813.125(6) provides for mandatory arrest for violation of a harassment restraining order/injunction.

109861890. Confirmation of Existence: Before making an arrest for violation of a temporary restraining order or a permanent injunction, a Officer shall contact the Dispatch Center where a check shall be made of their records to determine:

That the temporary restraining order or permanent injunction has been served on the defendant and,

That the temporary restraining order or permanent injunction has not expired.

109861891. Mandatory Arrest Required by Law: If investigation confirms that a domestic abuse restraining order/injunction or harassment restraining order/injunction is in effect, and there is probable cause to believe that the suspect violated any part of the court order, the Officer shall arrest the suspect and take him/her into custody.

The arrest must be made even if the victim permitted the suspect to return contrary to the restraining order or injunction. No private person can authorize the violation of a court order, including the victim. (SS 813.12(7) and 813.125(6)).

Failure to make the mandatory arrests may subject Officers to civil and criminal liability and disciplinary action.

V. FOREIGN PROTECTION ORDERS

- A. WI State (806.247) and Federal (18USC2265) laws require full faith and credit for foreign protection orders. Therefore, Officers must enforce valid foreign protection orders as if they were issued by the local court.

1. Officers can verify a foreign order is enforceable in the following ways:

- a) The Officer sees a certified hard copy of the order.

- b) The order is entered into the TIME system.
 - c) The Officer has communication with other authorities who can confirm the existence and validity of the order.
2. When the respondent claims no service of a protection order; and the Officer cannot verify service, no arrest should occur and the Officer shall:
- a) Verify the existence of an order.
 - b) Explain the terms of the order to the respondent, and provide a copy of the order, when possible.
 - c) Explain the consequences of future violations.
 - d) Notify the issuing authority that the respondent has received notice and/or a copy of the order and of any arrests made.
3. Interstate travel to violate an order of protection, to stalk any petitioner or member of their immediate family, or to commit domestic violence constitutes Federal crimes. In addition to any applicable state charges, the offender should be referred to the U.S. Attorney's Office, Eastern District of Wisconsin.

Michael Meeusen
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

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