



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **OFFICER INVOLVED DOMESTIC ABUSE**

SCOPE: All Department Personnel

DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statutes: 968.075

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Temporary Restraining Orders

PURPOSE: This Policy & Procedure recognizes that the profession of law enforcement is not immune from members committing domestic abuse against their intimate partners. The purpose of this Policy & Procedure is to establish procedures for handling acts of domestic abuse committed by any sworn officer of the Elkhart Lake Police Department and for implementing prevention strategies. This Policy & Procedure will provide agency executives, officers, and all Department employees guidance in addressing incidents where one (or more) party to a reported domestic abuse incident is an employee, whether sworn or civilian, of any rank in the Department.

This Policy & Procedure consists of the following numbered sections:

- I. DEFINITIONS
- II. POLICY
- III. PROCEDURE

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.

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.
2. If the incident is determined to be non-violent in nature and no arrest is made, a Non-Violent Domestic Referral Form shall be completed and forwarded to the District Attorney's Office.

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.
- J. DOMESTIC ABUSE/OFFICER INVOLVED: refers to an act or pattern of abuse perpetrated by a police officer upon his or her intimate partner not done in defense of self or others, including but not limited to the following:
- Bodily injury or threat of imminent bodily injury
 - Sexual battery
 - Physical restraint
 - Property crime directed at the victim
 - Stalking
 - Violation of a court order of protection or similar injunction
 - Death threats or death
- K. INTIMATE PARTNER OF A POLICE OFFICER: Is any person who meets one or more of the following criteria:
- Is or was legally married to the police officer
 - Has a child in common with the police officer
 - Has or had a dating relationship with the police officer
 - Is specified as an intimate partner by state law
 - Is cohabitating or has cohabitated romantically with the police officer
- L. LAW ENFORCEMENT AGENCY: means a governmental unit of one (1) or more persons employed by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to arrest for crimes while acting within the scope of the authority.

II. POLICY

- A. Federal law prohibits police officers convicted of qualifying misdemeanor domestic abuse crimes from possessing firearms.

It is the policy of the Elkhart Lake Police Department that Officers found guilty of a qualifying domestic abuse crime through criminal proceedings shall be terminated.

III. PROCEDURE

- A. While prioritizing the safety of victims, this Policy & Procedure is designed to address prevention through hiring and training practices, provide direction for intervention when warning signs of domestic abuse are evident, institutionalize a structured response to reported incidents of domestic abuse involving officers, and offer direction for conducting the subsequent administrative and criminal investigations.

Components of the policy include:

1. Prevention and Training
2. Early Warning and Intervention
3. Incident Response Protocols
4. Victim Safety and Protection
5. Post Incident Administrative and Criminal Decisions.

- B. Prevention and Training

The Department will adhere to a zero tolerance policy towards officer involved domestic abuse and will not tolerate any violations of this Policy & Procedure. The Department will provide ongoing training to every member of the Department on domestic abuse throughout all phases of each member's career.

1. Prevention through Collaboration
 - a) Training in this area is encouraged for all officers. Additional training on this topic will be completed as provided through in-service training.
2. Training Topics – Through in-service training as outlines in (a) above, all officers should receive comprehensive instruction covering the following topics:
 - a) Understanding Domestic Abuse

- b) Departmental Domestic Abuse
 - (1) Response Protocol
 - c) Warning Signs of Domestic Abuse by Officers
 - d) Victim Safety
 - e) Federal Domestic Abuse Laws
3. Ongoing Training - Departments may use a variety of training techniques including in-service, training roll call, FTO, ride-alongs, and training bulletins to regularly reinforce standards of effective response protocol.

C. Early Warning and Intervention

1. Pre-hire Screening and Investigation

- a) The Department shall conduct thorough background investigations of all potential new employees using address history, driver's record, protection order database and any other appropriate resource.
- b) All candidates shall be asked if they have engaged in or been investigated for domestic abuse and asked about any past arrests, suspended sentences, diversion programs, convictions, and protection orders related to elder abuse, child abuse, sexual assault, stalking, or domestic abuse.
- c) Those candidates with a history of perpetrating abuse (to include: elder abuse, child abuse, sexual assault, stalking, or domestic abuse) should be screened out at this point in the hiring process.
- d) Candidates shall be clearly informed of the Department's position of zero tolerance concerning domestic abuse by officers.

2. Post Conditional Offer of Employment

- a) The psychological screening of all viable candidates will focus on indicators of abusive tendencies in their background.
- b) The Department has a no hire decision in the case of a candidate with tendencies indicative of domestic or any other abusive behavior.

3. Post Hire Intervention

- a) When new officers are hired, the Department shall contact their intimate partner or family members to introduce the information in this Policy & Procedure and other relevant Policy & Procedures to them.

- b) The Department may also engage in periodic outreach to officers and their intimate partner or family members with any new information on this Policy & Procedure, the point of contact within the Department and referrals for local support services.

4. Department Responsibilities

- a) The Department shall maintain cross jurisdictional communication to ensure timely notification of an incident involving an officer.
- b) The Department shall, either in response to observed warning signs or at the request of an officer, intimate partner, or other family member, provide non-punitive avenues of assistance before an act of domestic abuse occurs.
- c) The Department shall inform officers of the procedure for seeking confidential referrals, either internally or externally, to confidential counseling services.
- d) A disclosure on the part of any officer, intimate partner or family member to any member of the Department that an officer has personally engaged in domestic abuse will be treated as an admission or report of a crime and shall be investigated both administratively and criminally.

5. Officer Responsibilities

- a) Officers are encouraged to take personal responsibility in seeking confidential referrals and assistance from the Department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.
- b) Officers who engage in the following actions will be subject to discipline up to or including dismissal:
 - (1) Failure to report knowledge of abuse or abuse involving a fellow officer or the Chief.
 - (2) Failure to cooperate with the investigation of a police officer domestic abuse case (except in the case where that officer is the victim).
 - (3) Interference with cases involving themselves or fellow officers
 - (4) Intimidation or coercion of witnesses or victims (i.e., surveillance, harassment, stalking, threatening, or falsely reporting).

- c) Officers who learn they are the subject of a criminal investigation, regardless of jurisdiction, are required to immediately notify their supervisor and to provide notice of the court dates, times, appearances, and proceedings. Failure to do so may result in discipline up to and including dismissal.
- d) Officers who learn they are the subject of any protective order proceeding, whether or not the order is issued and regardless of jurisdiction, shall immediately notify the Chief and provide a copy of the order, if issued.

If subject to a qualifying protection order, the officer shall surrender all firearms unless Department policy allows for possession of the primary service weapon. Failure to do so may result in discipline up to and including dismissal.

D. INCIDENT RESPONSE PROTOCOLS

1. Department Wide Response

- a) The Department shall accept, document, and preserve all calls or reports, including those made anonymously, regarding domestic abuse as on the record information.
- b) All reports of possible criminal activity implicating police officers in domestic abuse shall be documented in accordance with the policies governing the handling of reports of domestic abuse involving civilians.
- c) The Chief shall be notified of all these types of incidents.
- d) All such incident reports shall be made available by the Department to the victim without cost.

2. Communications Response

Comments: This section will conform to policies of the Sheboygan County Communications Center.

- a) Communications officers/dispatchers shall be instructed to assign a high priority to all domestic abuse calls, including those that involve or appear to involve a police officer of any Department.
- b) Communications officers/dispatchers shall immediately notify the supervisor on duty and the dispatch supervisor of any domestic abuse call received that involves, or appears to involve, a police officer, regardless of the involved officer's jurisdiction.

- c) Communications officers/dispatchers shall prepare and preserve documentation of the facts and circumstances of the call, including the 911 tape, for use in potential administrative or criminal investigations.
- d) Communications officers/dispatchers shall have available current contact information of local domestic abuse victim advocacy organizations for on scene supervisors to provide to victims.

3. Patrol Response

- a) Upon arrival on the scene of a domestic abuse call or incident involving a police officer, the primary patrol unit shall immediately notify dispatch and request an officer of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.
- b) Upon arrival on the scene of a domestic abuse call or incident involving an officer or agency member, the primary patrol unit shall immediately notify the Chief or designee.

The Chief and/or officer shall immediately request an outside law enforcement agency respond and take control of the scene/investigation.

- c) The responding officers shall perform the following actions:
 - (1) Obtain needed medical assistance.
 - (2) Address the immediate safety of all parties involved.
 - (3) Secure the scene and preserve evidence.
 - (4) Note all excited utterances, admissions, and/or incriminating statements.
 - (5) Make an arrest if probable cause exists.

4. Supervisor Response

- a) A supervisor of higher rank shall report to the scene of all police officer domestic abuse incidents. The remaining portions of section 4 apply to incidents involving police officers, excluding Elkhart Lake Officers. If the incident involves a Elkhart Lake Officer the requested outside law enforcement agency shall assume control.
- b) The on-scene supervisor shall assume command and ensure that the crime scene is secured and that all evidence is collected.

Photographic and/or video documentation of the parties involved and scene shall be recorded where such resources are available.

- c) The supervisor shall inquire as to the safety of all children present at the time of the incident and all children in the household. As appropriate and necessary, the children should be interviewed separately from other parties.
- d) In cases where probable cause exists, the supervisor shall ensure an arrest is made.
- e) If the alleged offender has left the scene and probable cause exists, the supervisor shall perform the following actions:
 - (1) Exhaust all reasonable means to locate the alleged offender.
 - (2) Ensure that an arrest warrant is sought, if unable to locate the alleged offender.
 - (3) Document all subsequent actions in a timely manner.
- f) In the event that the victim has left the scene, the supervisor shall make every effort to follow through on the investigation and attempt to locate the victim.
- g) Arrest of both parties involved in a domestic abuse incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the dominant aggressor is made in accordance with state law.
- h) Whenever an officer is arrested, the supervisor shall relieve the accused officer of all service weapons regardless of whether the officer is a member of the responding Department.
- i) Where allowable under federal, state, or local ordinances, all other firearms owned or at the disposal of the accused officer shall be seized for safety reasons.
- j) The command staff officer shall inquire whether the victim wants any firearms removed from the home for safekeeping by the Department and make arrangements as necessary.
- k) The on-scene supervisor shall ensure the victim is informed of the following:
 - (1) The judicial process and victim rights.
 - (2) The Department's policy on police officer domestic abuse, procedure

and cross jurisdictional responsibilities as they apply.

- (3) The standard of probable cause for arrest.
 - (4) Procedures for obtaining protective orders.
 - (5) Victim compensation.
 - (6) The availability of an on-scene advocate
 - (7) The availability of confidential transportation to a location that can provide improved victim safety.
 - (8) Community resources and local domestic abuse victim service.
 - (9) The option to remove firearms for safekeeping
- l) Whenever a police officer involved domestic abuse call does not result in an arrest or a warrant is not sought, the on-scene supervisor shall explain in a written report which shall be submitted to the District Attorney's Office within 24 hours of the time the Department was notified of the event.
 - m) The supervisor shall notify the Chief of Police and the accused officer's immediate supervisor as soon as possible. In the event that the officer is from another jurisdiction, the supervisor shall ensure that the accused officer's Chief of Police is notified. All notifications and attempts to notify shall be documented.

5. Additional Critical Considerations

- a) When responding to a domestic abuse complaint involving a police officer from another jurisdiction, all responding officers, investigators, and supervisors shall follow the same procedures that are to be followed in responding to a domestic abuse complaint involving an officer from their own Department.
- b) In the event that the report incident involves the Chief of Police, the supervisor shall immediately notify the District Attorney and the individual in government who has direct oversight for the Chief of Police.
- c) In responding to domestic abuse incidents where the victim is a police officer, standard domestic abuse response and investigation procedures should be followed.
- d) In responding to domestic abuse incidents where the parties involved are both police officers, standard domestic abuse response and investigation procedures should be followed. After probable cause and dominant aggressor are determined, an arrest should be made and all service weapons of the accused officer confiscated.

If a protective order is issued against an officer, additional firearms seizure may be required under state law.

6. Department Follow-Up

- a) In a timely manner, the Chief shall ensure that all officers who responded to a police officer domestic abuse call are debriefed. The debriefing shall include the following:
 - (1) A review of Department confidentiality guidelines.
 - (2) A direct order prohibiting discussion of the incident outside of the official inquiry.
 - (3) A clear delegation of assignments
- b) Follow-up investigators shall proactively seek out information on existing protective orders and, if found, shall enforce them and any applicable state and federal firearms laws and determine whether the officer violated Department policy by failing to report the protective order.
- c) Arrest warrants charging police officers with domestic abuse and protective orders issued at a later time shall be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, firearms shall be seized if allowed by the Department and decisions about service weapons will be made.
- d) In the event the protection order expires or the victim asks that it be discontinued, the Department shall still conduct a thorough administrative investigation.
- e) Following the reported incident, the Department shall designate a member of the command staff to perform the following duties:
 - (1) Conduct a danger assessment of the accused officer to determine the potential for further abuse and inform the victim of the possibility of danger regardless of the outcome of the assessment.
 - (2) Act as a principal point of contact to keep the victim apprised of all developments.
 - (3) Ensure that safety planning and danger assessment is made available to the victim.

- (4) Report the findings of the danger assessment to the Chief who will make decisions concerning appropriate sanctions, administrative actions, and referrals for the accused officer.

E. VICTIM SAFETY AND PROTECTION

1. Departments shall work with community resources and advocacy agencies to connect victims and their children with appropriate services.
2. **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.
3. The command staff designated as principal contact for the victim, shall inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.
 4. All officers shall be aware of possible victim/witness intimidation or coercion and the increased danger when the victim leaves an abusive partner. The designated principal contact shall assist the victim and children in safety planning and caution the victim to be alert to stalking activities.
 5. If an officer suspects intimidation or coercion of the victim/witness is occurring, the officer shall prepare a written report to be delivered immediately to the supervisor in charge of the case through the chain of command.
 - a) In order to determine whether the victim/witness is being intimidated or coerced, the supervisor in charge shall seek out secondary

sources of information.

- b) Given the possibility that a victim will recant or choose not to participate in court proceedings, supplemental evidence shall be sought out and preserved.

F. POST INCIDENT ADMINISTRATIVE AND CRIMINAL DECISIONS

The Department shall conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic abuse in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case, the Department shall uphold all administrative decisions.

If the facts of the case indicate that domestic abuse has occurred or any Department policies have been violated, administrative action shall be taken independent of any criminal proceedings as soon as practicable.

The Department will adhere to and observe all necessary protocols to ensure an accused officer's Departmental, union, and legal rights are upheld during the administrative and criminal investigations.

1. Administrative Investigations and Decisions

The responsibility to complete the administrative investigation of a police officer domestic abuse incident shall rest with the Chief. The Chief shall request mutual aid from an outside law enforcement agency to conduct the administrative investigation.

- a) Regardless of whether an arrest was made on scene, the investigating official shall conduct an independent and comprehensive administrative investigation using standard elements of criminal investigations. Victims and witnesses shall be re-interviewed and their statements recorded; crime scene evidence, photographs, and medical records accessed; and 911 tapes reviewed.
- b) Where sufficient information/evidence exists, the Department shall take immediate administrative action against the accused officer that may include removal of badge and service weapons, sanctions, suspension or termination.
- c) When an investigation of an incident uncovers officers who had knowledge of abuse on the part of another officer but failed to notify the Department or engaged in actions intended to interfere with the investigation or conceal in any manner any wrong doing on the part of another officer, the Department shall investigate those officers and take disciplinary action and criminally charge as warranted.
- d) The Chief shall determine whether and when the accused officer should be issued an administrative leave.

- e) If Department policies and/or administrative leave are violated or sufficient concern exists regarding a violation, the Department shall initiated an independent administrative investigation, seize firearms as allowed under Department policy as soon as practicable, and take disciplinary action up to and including dismissal.
- f) In determining the proper course of administrative action, the Chief shall consider factors including the level of danger an officer poses as indicated by the outcome of the danger assessment of the officer, the officer's history of compliance with Departmental rules, prior written or verbal threats, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.
- g) If the accused officer is assigned enforcement duties while the administrative and/or criminal investigations are under way, those duties should not include response to domestic abuse calls.
- h) If the Chief determines through an administrative investigation that the officer violated Department policy, regardless of whether the officer plead "no contest" in response to criminal charges, the Chief may employ the full range of administrative sanctions. Any officer determined though an administrative investigation to have committed domestic abuse shall be terminated from the Department.

2. Criminal Investigations and Decisions

The responsibility to complete a criminal investigation of an incident of police officer domestic abuse shall rest with the Chief who shall request an outside law enforcement agency to conduct the criminal investigation.

- a) The investigating official shall conduct criminal investigations as would be the case for any other criminal violations.
- b) In accordance with the officer's and victim's privacy rights, the investigation official or agency shall conduct sufficient interviews (taped) of family members, friends, neighbors, colleagues, and others who may have information regarding criminal charges.
- c) Even though an initial report may already exist concerning a police officer, reports of any subsequent or additional criminal or non-criminal incidents, which may include fellow officers engaging in surveillance or intimidation of the victim, shall be documented in separate incident reports, assigned a case number, cross-referenced with the original case number and investigated thoroughly.
- d) The Department shall completely investigate the charges and where warranted seek prosecution even in cases where the victim recants.

- e) The Department shall establish a liaison to work with the prosecuting attorney for each case. This officer shall present all the information to the prosecuting attorney for action and ask that decision about the adjudication of the case be made in a timely manner.
- f) As with any other case for criminal prosecution, the investigating officer shall request filing of court papers/complaints.
- g) Any officer convicted through criminal proceeding of a domestic abuse crime shall be terminated from the Department.

3. Termination Procedures

- a) Upon the decision to terminate an officer, the Chief shall do the following in accordance with Department policy, state law, and Police Commission procedures:
 - (1) Notify the officer, in writing, of the effective date of termination.
 - (2) Inform the officer of the available support services, to include counseling.
 - (3) Ensure that the victim is notified in a timely manner and offered available assistance, to include safety planning.
 - (4) Notify Wisconsin Department of Justice, Training and Standards Bureau within 30 days and inform them of the reason for termination.
- b) Federal law prohibits anyone convicted of a misdemeanor domestic abuse crime from possessing firearms. The Department shall ensure compliance with federal law.

Michael Meeusen
Chief of Police

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

Initial 06/01/2015