

UW Whitewater Police



Domestic Abuse

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Special Instructions:

Approved By:
Chief Kiederlen

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3

I. Purpose

The official response of the UW-Whitewater Police Department is to recognize that domestic abuse involves serious criminal offenses. The intent of this policy is two-fold: to maximize protection for victims of domestic abuse, and to hold the predominant aggressor accountable for their abusive behavior.

II. Definitions

Predominant Aggressor: The most significant, but not necessarily the first, aggressor in a domestic abuse incident.

Domestic Abuse: Domestic abuse means any of the following:

- a. Intentional infliction of physical pain, physical injury or illness.
- b. A violation of S.S. 940.225 (1), (2), or (3) (sexual assault)
- c. Intentional impairment of physical condition
- d. A physical act that may cause the other person to reasonably fear imminent engagement in the conduct described above.

Domestic abuse applies when engaged in by an adult against his or her spouse, former spouse, against an adult with whom the person resides, or formerly resided.

Domestic abuse applies when engaged in by an adult against an adult with whom the person has created a child.

III. Policy

This policy recognizes that violent behavior will neither be excused nor tolerated regardless of the relationship of the persons involved. Domestic abuse is not a private matter, but a crime against the State of Wisconsin whose prosecution does not depend upon the willingness of a victim to prosecute. Therefore, an officer shall **make an arrest supported by probable cause and take a person into custody according to the procedures of this policy.**

IV. Procedure

A. Probable Cause to Arrest:

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1. An officer shall attempt to determine if probable cause exists that a crime is being or has been committed. Probable cause refers to that quantum of evidence, which would lead a reasonable officer to believe that the defendant probably committed a crime. The probable cause standard applied in a domestic abuse incident is no different from the standard applied in other offenses.
 2. **Mandatory investigative strategies to be used in determining the Predominant Aggressor are, but not limited to,** the following:
 - a. Bodily harm or pain to the victim. A decision not to arrest may not be based solely upon the absence of visible indications of injury or impairment.
 - b. Statements of the victim, including non-consent to the offense. This interview is to be conducted outside the presence of the suspect. Written or taped statements are to be obtained whenever possible.
 - c. Statements of family members, friends, neighbors, or other witnesses. These interviews are to be conducted outside the presence of the suspect. Written or taped statements are to be obtained whenever possible.
 - d. Statements of the suspect. Written or taped statements are to be obtained whenever possible.
 - e. Observations of the scene and the victim.
 - f. Previous calls at the same location or with the same parties.
 - g. Previous threats/offenses against the victim by the suspect. Officers should check for the existence of a restraining order against the suspect, via the Communications Center.
 - h. There is no legal requirement that an officer witness the crime-probable cause can be established by reliable hearsay information.
 - i. Marriage is not a bar to prosecution for sexual assault.
 - j. An officer should consider whether the party acted in self-defense, or in defense of any other person.
- B. Circumstances Requiring Arrest (S.S. 968.075(2)):
1. If probable cause exists to believe that a crime is being or has been committed, an officer SHALL ARREST and take a person into custody if any of the following circumstances are present:
 - a. The officer has reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
 - b. There is intentional infliction of physical pain, physical injury, or illness and if the complaint is received 28 days after the day the incident is alleged to have occurred.
 - c. A person has violated one of the following:
 - i. A domestic abuse restraining order or injunction;
 - ii. A child abuse restraining order or injunction;
 - iii. A harassment restraining order or injunction;
 - iv. A foreign protection order.

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- d. Note: Officers should be aware of S.S. 968.075 (6m), Officer Immunity, which states that officers are immune from civil and criminal liability arising out of a decision to arrest or not arrest if the decision is made in a good faith effort to comply with this section.

C. Predominant Aggressor

1. An officer who has reasonable grounds to believe that both parties committed domestic abuse against each other should arrest the person whom the officer believes to be the Predominate Aggressor. In determining who is the Predominant Aggressor, an officer should consider the intent of this policy to protect victims of domestic violence, the relative degree of injury inflicted on the persons involved experienced by each party, the relative degree of fear and any history of domestic abuse between these persons.
2. Section "a" above does not prevent an officer from arresting both parties when the officer has reasonable grounds to believe both have committed domestic abuse.
3. An officer's decision as to whether or not to arrest may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident.
4. The victim is not required to sign a complaint or request that the case proceed towards prosecution.
5. If the suspect is not at the scene, the officer shall attempt to locate him/her. If the defendant cannot be located, the officer shall request an ATL (attempt to locate) immediately via the Communications Center. After all investigative efforts to locate the suspect are exhausted; the officer shall forward the case file to the District Attorney's office requesting charges.
6. If an arrest is demanded by one or both parties and insufficient grounds for arrest exist, the officer should explain the limits of his/her authority. The demand(s) for arrest must be noted in the officer's reports along with the officer's reason(s) for non-arrest.
7. An officer shall arrest and take a person into custody if the officer has probable cause to believe that the person violated the 72-hour no-contact prohibition (see section on Notice of Rights).

D. Officer Involved Domestic Abuse

1. If an officer responds to a report of alleged Domestic Violence involving one of this department's officers, or full-time staff, the responding officer shall secure the scene, separate the parties, and request another agency to investigate the incident.
2. The responding officer shall notify a supervisor via telephone. Prepare a written report prior to ending his/her shift.

E. Report Writing and Required Documents

1. A complete statement from the victim.
2. Domestic Abuse packet filled out.
3. A medical release from the victim.
4. Photographs of the victim's injuries.

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5. Information from witnesses such as neighbors, children or other citizen witnesses who can provide evidence of trial of the case.
6. Excited utterances, admissions against interest, and other informal statements of the defendant, as well as formal statements.
7. Because of the high correlation between domestic violence and child abuse, the officer should always be alert to evidence of child abuse. Note names and ages of children, whether they were present when the incident occurred and the time of contact. Also note whether the children were placed in protective custody and to whom a referral was made.
8. History of abuse as obtained from Sheriff/Police Department, victim, witness, and other sources.
9. Notify crime victim advocate as appropriate (APFV, PAVE, District Attorney's Office Victims Witness Coordinator).
10. FAX information to APFV or PAVE.
11. If the officer does not make an arrest when the officer has probable cause to believe that a person is committing or has committed a crime, the officer shall prepare a written report, stating why the person was not arrested, and forward the report to the appropriate District Attorney's office upon completion of the investigation. Also see attached Memo from Walworth County District Attorney's Office date May 15, 2014.

F. Notice of Rights

1. Contact Prohibition

- a. An officer shall notify the alleged victim that during the 72-hours immediately following and arrest for a domestic abuse incident, the arrested person shall avoid the residence of any premises temporarily occupied by the alleged victim and avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.
- b. At any time during the 72-hour period, the alleged victim may sign a written waiver, thus negating the 72-hour no-contact prohibition. The victim must be notified of the possible procedure. Notification of the waiver should be done outside the presence of the arrested person.
- c. An officer shall verbally notify the victim of the procedure for releasing the arrested person and the likelihood and probable time of the arrested person's release.
- d. The arrested person shall be informed orally and in writing of a waiver of the 72-hours no-contact prohibition and provision of S.S. 939.621.
- e. The arrested person must be informed orally and in writing of the 72-hour no-contact prohibition, stating that he/she understands the requirements, the consequences of violating the requirements and that an enhanced penalty exists for a second domestic abuse offense committed during the 72-hour period immediately following the arrest for the first domestic abuse

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incident. The provision of this paragraph (d). Shall be the responsibility of the arresting officer.

- f. The arrested person refuses to sign the notice, he/she MAY NOT BE RELEASED FROM CUSTODY prior to the 72-hours from the time of his/her arrest.
 - g. If the arrested person intentionally violates the 72-hour no-contract prohibition, an officer shall arrest under S.S. 968.075 (5) (a) (2). The offender SHALL be charged with bail jumping and any other appropriate charges for alleged violation(s).
2. Availability of Services
- a. Whether or not an arrest is made, it is recommended that the officer advise the victim of the availability of shelter and other services including Association of the Prevention of Family Violence-APFV (Walworth and Jefferson County) or Protect Advocate Validate Educate - PAVE (Jefferson County).
 - b. The officer will also read or have the victim read the following statement from our Crime Victim Information Form: "If you are the victim of domestic abuse, you may contact a domestic abuse victim service provider to plan for your safety and take steps to protect yourself, including filing a petition under s 813.12 Wisconsin Statutes for a domestic abuse injunction or under 813.125 for a harassment injunction."

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Attachment A. Memo from Walworth County DA Office



District Attorney

Daniel A. Necci
District Attorney

Joshua P. Grube
Deputy District Attorney

Diana M. Dostahoo
Haley J. Ren
Estee E. Scholts
Assistant District Attorneys

Loretta S. Melnot
Amy L. Los
Victim/Witness Services

Judicial Center
1800 County Road NN
PO Box 1001
Elkhorn, WI 53121
262.741.7198 tel
262.741.7200 fax

Memorandum

TO: All Walworth County Law Enforcement Agencies
FROM: Daniel A. Necci, District Attorney
DATE: May 15, 2014
RE: 2013 Wisconsin Act 323 / Domestic Abuse Reporting

As you are aware, Wisconsin Statutes s. 968.075(9)(a)1-2, (b) requires that each district attorney shall submit an annual report to the department of justice listing all of the following:

1. The number of arrests for domestic abuse incidents in his or her county as compiled and furnished by law enforcement;
2. The number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents

Clearly, PROTECT allows us to make such a report quite easily. I do note, though, that the statute requires ALL arrests. If, for some reason, my office does not receive notice of all arrests from your jurisdiction, consider this my directive to be informed of all arrests.

Additionally, beginning on April 18, 2014, 2013 Wisconsin Act 323, requires that the district attorney now provide, "The number of responses law enforcement made that involved a domestic abuse incident that did not result in an arrest."

Therefore, please consider this memorandum my directive that each and every agency in Walworth County provide to my office documentation of each and every law enforcement response to a domestic abuse incident that DID NOT result in an arrest from April 18, 2014, and on into perpetuity.

While I recognize that this is an onerous task and apologize for the same, I ask you all to recognize that the decision to require such information did not come from my office, but from the state legislature.