

MARSHALL POLICE DEPARTMENT POLICY		TITLE: DOMESTIC ABUSE	
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POLICY SOURCE: Chief Lee Hellenbrand			TOTAL PAGES: 8
SPECIAL INSTRUCTIONS:			

I. PURPOSE

The purpose of this policy is to establish guidelines for responding to domestic abuse with a particular focus on violent criminal conduct, deterring the defendant from committing continuing acts of violence, creating general deterrents to the crime of battery and reducing potential injuries to the involved parties and to assigned officers.

II. POLICY

It is the policy of the Marshall Police Department to thoroughly investigate all domestic abuse incidents and make arrests when a crime or violation of an ordinance has occurred. Through early and certain conflict resolution, it is intended that the inherent danger for all involved parties can be lessened and the frequent escalation of domestic abuse can be greatly reduced.

III. DISCUSSION

The Marshall Police Department must frequently deal with domestic abuse. Officers should always be aware that the potential for continued violence exists and that they may find themselves dealing with volatile and irrational combatants.

IV. DEFINITIONS

A. Domestic Abuse: Any of the following engaged in by an adult person (17 years of age or older) against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has created a child, whether or not they ever resided together.

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of Section 940.225(1), (2) or (3), Wis. Stats. (Sexual assault, excluding 4th degree.)
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under sub. 1, 2 or 3.

B. Predominant Physical Aggressor: Most significant aggressor, but not necessarily the first aggressor, in a domestic abuse incident. When determining the "predominant physical aggressor," the officer should consider the intent of this policy to protect victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved

and any history of domestic abuse between the persons, if that history can be reasonably ascertained by the officer.

V. PROCEDURE

A. Initial Call Reception

1. Upon receipt of a domestic related call, the Communications Center shall attempt to ascertain the following information:
 - a. The location of the dispute. (i.e. House #, Apt #, house color, outside lights on, etc.)
 - b. The extent of injuries, to determine if an ambulance needs to be dispatched.
 - c. The number and names of the parties involved.
 - d. Weapon involvement or availability.
 - e. Whether any of the disputants are intoxicated.
 - f. Whether there are any children involved or present.
 - g. The relationship of the caller to the disputants.
 - h. The existence of court injunctions or temporary restraining orders.
 - i. Master name data, if available.

B. Initial Officer Response

Caution should be exercised in approaching the location of a domestic dispute and in handling the incident itself. The first responding officer should wait until a backup officer arrives at the scene before entering the site of the incident unless circumstances require immediate action.

C. Officer Intervention

1. Initial Encounter
 - a. Assess the environment to include a safe approach (weapons, occupants, tension level, etc.).
 - b. Determine if medical assistance is needed or desired by either party.
 - c. Maintain third-party neutrality.
 - d. Separate and isolate all parties involved.
2. Interviewing All Involved Parties
 - a. De-escalate and neutralize the situation (remove potential weapons).

- b. Determine the type of threat, pain inflicted, or injuries present
- c. Ask about prior domestic abuse incidents.

3. Evaluation of Reasonable Grounds

- a. Officers must evaluate each incident and determine whether or not a crime has occurred.
- b. If the officer's reasonable grounds are based upon a report of an alleged domestic abuse incident, the officer is required to make a custodial arrest if the report is received within 28 days of when the incident is alleged to have occurred.
- c. Investigations involving victims of domestic abuse, who are seventeen years of age and younger, should be treated as a child protection investigation and the investigating officer should involve the appropriate department of human services.
- d. Officers shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and the person's actions constitute the commission of a crime; and either or both of the following circumstances are present:
 - (1) The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
 - (2) There is evidence of physical injury to the alleged victim.

4. Additional considerations for determining reasonable grounds include the following:

- a. Statements from the victim, including non-consent.
- b. Statements from family members, friends, neighbors and the suspect.
- c. Observations of the scene and the victim.
- d. Previous acts of domestic abuse involving the same parties.
- e. Previous threats/offenses against the victim by the suspect.
- f. Verbal or written statements made by the suspect.

5. Elements Necessary for a Battery Arrest

- a. An act causing bodily harm, i.e. injury and/or pain (visible injury is not required for an arrest to occur).
- b. An act done with intent to cause bodily harm.
- c. An act done without the consent of the person harmed.

6. Mandatory Arrest

- a. On occasion, officers will encounter a victim who is too afraid of the other disputant to make a formal complaint. Likewise, officers deal with victims, who desire, or even demand, enforcement action, only to recant at a later date. The officer is responsible for determining if the essential elements of a crime are present and will ultimately decide if an arrest shall be made.
- b. An officer's decision as to whether or not to arrest under this policy may not be based upon the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident.
- c. An officer's decision not to arrest may not be based solely upon the absence of visible indications of injury or impairment.
- d. The Office of the District Attorney will review each police report referred to their office and determine if a sufficient amount of probable cause exists to issue a criminal complaint. The fact that a victim may change his or her mind about the desirability of prosecuting after the initial complaint will not be a controlling factor for the District Attorney and the case will progress through the criminal justice system regardless of a request to drop the charges (In order to assist the District Attorney, officers should make an effort to obtain written statements from all parties involved).
- e. If the suspect is not on the scene and cannot be located within a reasonable amount of time, the investigating officer shall complete the investigation and refer the report to the District Attorney's Office requesting the issuance of a complaint and warrant or summons.
- f. When the officer has reasonable grounds to believe that adult spouses, former spouses, or other adult persons that reside or have resided together or have created a child, are committing or have committed domestic abuse against each other, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be the predominant physical aggressor.
- g. If reasonable grounds to arrest have been established, but the officer feels that, due to unusual circumstances, an immediate arrest would be inappropriate, she or he shall notify a supervisor. In cases where reasonable grounds to make a custodial arrest exist, but an arrest is not made, the officer shall document in the offense report the reasons for not making a custodial arrest. The report shall then be forwarded to the District Attorney's Office.

7. Booking Procedure

- a. Police officers shall, subsequent to arrest; book the defendant at the Dane County Jail where the cash bond identified by the bond schedule will be applied. If the defendant has violated any other criminal laws; e.g., criminal damage to property, criminal trespass to dwelling, harassment, intimidation of victim or witness, she or he may also be charged with those additional offenses.
- b. State Statute 969.07 specifies that a defendant, who is a danger to the safety of others, does not have to be released on bail prior to an initial

appearance before a judge. The "danger to the safety of others" must be caused by a "physical condition" such as intoxication.

8. Follow-up activities

- a. If the victim shows evidence of being injured, color photographs should be taken at the scene or hospital. Consideration should also be given to photographing injuries a few days after the incident when the injuries may be more visible.
- b. If property damage has occurred, it should be photographed (at the discretion of the officer).
- c. The officer should provide victims with the Information for Victims Rights/Victim Services Pamphlet.
- d. The officer should encourage the victim to complete the department Domestic Abuse Victim Worksheet, if applicable.
- e. The officer shall inform the victim that the Domestic Abuse Shelter may provide assistance if the victim would like to obtain a temporary restraining order or court injunction pursuant to Section 813.12, Wis. Stats. Any adult family or household member may seek the order against another adult family or household member.
- f. Provide directions and/or transportation to the shelter for all female victims and their children, if needed.

D. Contact Prohibitions Following an Arrest

1. Dane County

72 Hour No Contact Prohibition

- a. During the 72 Hours immediately following the arrest of a suspect for a domestic abuse crime, upon the request of the victim(s), the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, 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. The officer responsible for the arrest of a suspect for a domestic abuse crime shall complete and notify the alleged victim of abuse of the existence of the 72-hour no contact prohibition. She or he shall also explain the procedure for enforcement of the order and provide a copy of the form to the victim.

The victim does have the right, at any time during the 72-hour period, to sign a written waiver of the contact prohibition. Should the victim wish to waive the contact prohibition after the officer has completed the initial investigation, the victim should report to the Marshall Police Department and sign a written waiver of those rights.

- c. The jail official that releases a person arrested for a domestic abuse crime from custody less than 72 hours after the arrest, shall inform the arrested person orally and in writing of the consequences of violating the no contact prohibition. The arrested person's release shall be

conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person. Should the arrested person violate the contact prohibition, he/she should be arrested for violation of State Statute 968.075 (5)(e), Wis. Stats.

E. Violation of Restraining Orders

1. Officers should ascertain whether or not there is a temporary restraining order or court injunction, issued pursuant to Chapter 813 of the Wisconsin Statutes, in effect at the time of the incident by:
 - a. Asking the victim if an order exists.
 - b. Running an NCIC record check.
 - b. Checking through the Sheriff's Department in the county where the order would have been issued.
2. Prior to enforcement action, the officer must determine; (1) if the order has actually been served on the defendant and; (2) if the time period for the restraining order or injunction has expired. If the restraining order or court injunction has expired, it will not be enforced. If the restraining or court order has not been served, the officer shall advise the suspect of its existence and of its content.
3. If there is probable cause to believe the suspect has violated a valid injunction or restraining order, the officer shall arrest the suspect.
4. Violation of the temporary restraining order or injunction is a misdemeanor, Section 813.12(8), Wis. Stats., and officer's shall arrest and confine an individual whom the officer believes has violated the restraining order or injunction.
5. No person, including the petitioner (victim), can authorize the violation of a court order. A temporary restraining order is not voided if the respondent (alleged abuser) is admitted into a dwelling that the order directs him or her to avoid 813.12 (3)(c).
6. The petitioner (victim) does not violate the court order if he or she admits into his or her residence a person specified under the order to avoid the residence 813.12 (8)(b).
7. Should either party wish to leave the premises, officers may assist them in doing so. Absent exceptional circumstances, if a party is ordered off the premises and subsequently violates that or any other lawful order, the subject will be arrested.
8. The Court or Family Court Commissioner may order officers to accompany the petitioner (victim) and assist in placing him or her in physical possession of the residence or otherwise assist in serving the restraining order or injunction.

F. Gun Prohibition

1. When a Temporary Restraining Order is served upon a respondent (abuser), the respondent is provided with notice that a hearing will be held in 7 days to determine if the issuance of a Court Injunction for up to two years is needed to protect the victim. The respondent is also informed when the Temporary Restraining Order is issued that should a Court Injunction be granted at the subsequent hearing, it shall be illegal for the respondent to possess any firearms.

The firearm's restriction does not apply, unless and until, a Court Injunction is issued.

2. It is illegal (a felony) for a person to possess a firearm if a Domestic Abuse or Child Abuse Court Injunction has been issued against them. Should such an order be granted, the judge shall order the respondent (abuser) to surrender his/her weapons to;
 - a. The sheriff of the county in which the action was commenced;
 - b. The sheriff of the county in which the respondent resides;
 - c. To another person designated by the respondent and approved by the court.

G. Non-criminal Domestic Disputes

1. It is the policy of the department that an arrest for domestic abuse will be made when a crime has been committed. Officers may issue citations for ordinance violations when a corresponding state statute does not exist or the amount of reasonable grounds is insufficient for a custodial arrest for a crime.
2. If communal property has been damaged, officers should recognize that an arrest for criminal damage to property might not be appropriate due to a possible defense of co-ownership of the property.
3. When investigating domestic disputes that do not involve criminal activity, officers may suggest that one or more of the involved parties leave the premises.

H. Required Offense Reports

1. Officers shall prepare a thorough narrative offense report outlining all the elements of reasonable grounds to provide the District Attorney with all the information necessary for future prosecution.
2. If possible, a written statement will be obtained from the victim. If the victim cannot or will not give a written statement, the officer can take a statement and include it in his or her report.

Issued: Sept 16, 2015.
Lee Hellenbrand, Chief of Police