



CITY OF MADISON POLICE DEPARTMENT  
STANDARD OPERATING PROCEDURE



**Domestic Abuse**

Eff. Date 02/28/2020

**Purpose**

This outlines procedures to be used for conducting investigations of domestic abuse pursuant to Wisconsin State Statute 968.075(1)(a).

**Procedure**

**MANDATORY ARREST (WI STATE STATUTE 968.075)**

The officer **will** arrest and take a person into custody if ALL of the following apply:

1. The officer, after investigating the incident, has **probable cause** to believe that the person's actions constitute the commission of a crime, and
2. The relationship is considered domestic under the law:
  - Spouse
  - Former spouse
  - Adults residing together
  - Adults formerly residing together
  - Adults with children in common; and
3. The suspect's acts constitute **DOMESTIC ABUSE**:
  - Intentional infliction of physical pain, physical injury, or illness **OR**
  - Intentional impairment of physical condition **OR**
  - 1st, 2<sup>nd</sup>, or 3rd Degree Sexual Assault **OR**
  - A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subs 1, 2, or 3.
4. The officer has evidence of **PHYSICAL INJURY** to a victim or reasonably believes there is a likelihood of continued abuse.
5. Crime was reported within 28 days of its occurrence.

***In circumstances meeting the mandatory arrest requirements, the suspect SHALL be taken to the Dane County Jail for booking if the suspect is present. Citations shall NOT be issued in these cases.***

**AT LARGE SUSPECTS**

1. Officers should attempt to locate and take domestic abuse suspects into custody.
2. If the suspect cannot be located, then the officer shall complete a probable cause affidavit, booking sheet, and 72-Hour No Contact Provision. The date and time of arrest should be left blank on the 72-Hour No Contact Provision if the suspect is not in custody.
3. The PC affidavit, booking sheet, and 72-Hour No Contact Provision shall be forwarded to the OIC's office.
4. When the suspect is taken into custody, the officer will read the probable cause affidavit and attempt to interview the suspect regarding the incident. If probable cause still exists after this interview, the suspect shall be taken to the Dane County Jail (DCJ) and booked in.
5. Once the suspect is taken into custody, the date and time of arrest should be completed on the 72-Hour No Contact Provision. The victim should be notified of the date and time of arrest, and this notification should be documented on the 72-Hour No Contact Provision. If unable to contact victim to make this notification, then the officer should document the attempt to contact the victim in their report.

## ARREST FACTORS

1. An officer's decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.
2. Additionally, the victim's consent, willingness to engage in prosecution, or relationship with the suspect are NOT factors in the arrest decision.

## DISCRETIONARY ARREST (PRO-ARREST)

1. In cases involving Intimate Partner Violence, officers should make a physical arrest if a crime has been committed, even if the circumstances do not meet mandatory arrest requirements.

## REPORT REQUIRED WHERE NO ARREST

1. Officers shall complete a report on all domestic violence calls. The report shall be completed prior to the end of their shift unless a supervisor approves for the report to be held.
2. The domestic abuse arrest law requires a law enforcement officer who does not make an arrest in a domestic abuse incident, but has probable cause to make an arrest, to prepare a written report prior to the end of his or her tour of duty stating why the person was not able to be taken into custody.
3. The report will be sent to the District Attorney's Office for review to determine whether the person involved in the incident should be charged with the commission of a crime.
4. Please refer to the "AT LARGE SUSPECTS" portion for procedure.
5. While Statute 968.075 (Domestic Abuse Incidents) compels reasonable efforts to locate and arrest suspects who have committed acts of domestic abuse, there will be limited instances when this is not possible. (Hence, the need to forward a copy of the officer's incident report to the District Attorney's Office.) Examples where an arrest may not be immediately plausible:
  - a. Reasonable efforts to locate and arrest the suspect are unsuccessful.
  - b. The suspect is located, but due to incapacitation from alcohol and/or drug use, the suspect is placed under protective custody and conveyed to Detox.
  - c. The suspect has been committed under the standard for an emergency detention.
  - d. The suspect has received injuries necessitating an overnight admission to a hospital. Consult with the Officer-in-Charge to determine whether a guard should be posted.
6. When probable cause exists to arrest a domestic abuse suspect who is at large, the reporting officer will:
  - a. Enter suspect information and charges into SharePoint.
  - b. Complete a probable cause affidavit and consider having a sergeant or commander review the probable cause affidavit.
  - c. Complete the 72 Hour No-Contact paperwork.
  - d. Complete a Dane County Booking form.
  - e. Complete the required Leap Referral Form and Danger Assessment Form in instance of Intimate Partner Violence (IPV) (See below).
  - f. Forward the Booking form and Probable Cause Affidavit to the OIC.

## MUTUAL DOMESTIC ABUSE

When the officer has **probable cause** to believe that persons in a domestic relationship are committing or have committed domestic abuse against each other, the officer should not arrest both persons, but should only arrest the predominant aggressor.

**Predominant Aggressor** means the most significant, but not necessarily the first, aggressor in a domestic abuse incident. In determining who is the predominant aggressor, an officer should consider:

1. The intent of the law to protect victims of domestic violence;
2. The relative degree of injury or fear inflicted on the persons involved;

3. Any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer;
4. Statements of witnesses; and
5. Whether either party acted in self-defense or in defense of any other person.

**Self-defense:** A person may use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person.

## PAPERWORK

When a DOMESTIC ABUSE arrest occurs, officers shall complete a 72-Hour No Contact Provision and provide the victim with a Victim Rights Information Form (VRI). In cases of Intimate Partner Violence (IPV) officers shall also complete the Danger Assessment and Law Enforcement Advocate Program (LEAP) ~~Leap~~ Referral.

## 72-HOUR NO CONTACT PROVISION

1. Unless there is a waiver by the alleged victim, during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person is required to:
  - a. Avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim; and
  - b. Avoid contacting or causing any person, other than law enforcement officers and either party's attorney to contact the alleged victim.
2. At any time during the 72-hour period specified above, the alleged victim may sign a written waiver of the 72-hour No Contact Provision. The Madison Police Department (MPD) will have Change of Status forms available for this purpose. Copies of the 72-hour No Contact Provision and the Change of Status forms shall be provided to the suspect, Dane County Communication Center, Dane County Jail, and MPD Records.
3. The officer responsible for the arrest of a person for a domestic abuse incident will ensure that the alleged victim is notified of the No Contact Provision.

## VIOLATION OF 72-HOUR NO CONTACT PROVISION

1. Violation of the 72-Hour No Contact Provision is a new crime. If an officer has probable cause to believe the 72-Hour No Contact Provision has been violated, the offender shall be arrested and taken to the Dane County Jail.
2. A new case number is required for the new violation.
3. A new 72-Hour No Contact Provision should be completed by the investigating officer.
4. If the Danger Assessment and LEAP were completed following the initial arrest, those forms do not need to be completed again.

Arrest for a Violation of 72-Hour No Contact is mandated by WI State Statute 968.075

## NOTIFICATION TO VICTIMS-VICTIM RIGHTS' INFORMATION FORM

These requirements are mandated by Chapter 950 of the WI State Statutes.

If law enforcement has reasonable grounds to believe that a person is committing or has committed domestic abuse, they must inform the victim of the following:

1. The availability of all shelters and services dealing with domestic violence and sexual assault issues in the victim's community.
2. Providing the victim with a statement that reads substantially as follows, "If you are the victim of domestic abuse, you may contact a domestic violence victim service provider to plan for your safety and take steps to protect yourself, including filing a petition under 813.12 of the Wisconsin Statutes (domestic abuse or harassment injunction)."

3. Provide victims with written notice of their Chapter 950 rights within 24 hours of contact.
4. Chapter 950 of the Wisconsin Statutes also allows law enforcement to share information with victim service organizations.

***These mandated requirements are met by providing victims with a Victim Rights Information Sheet (VRI). Notification to victims should be documented in the report.***

## **LEAP REFERRAL**

Law Enforcement Advocate Program (LEAP) referrals should be made for victims of Intimate Partner Violence (IPV). IPV can be physical, sexual, or psychological harm by a current or former spouse/significant other, individuals who have a child in common, and/or stalking victims. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy.

1. If there is probable cause to make an arrest for an intimate partner domestic violence incident, the LEAP Referral Form should be completed.
2. At the end of the arresting officer's shift, the LEAP referral form should be placed in the LEAP mailbox in their respective District. A DAIS advocate will contact the victim as soon as possible the next business day following a weekend or holiday.
3. The district PRT will scan the LEAP form to the LEAP O: drive folder. The scanned forms will be forwarded to the DAIS Crisis Response Advocate and the Crisis Intervention Services Manager by the Executive Section LEAP PRT.
  - a. A District Detective Lieutenant will retain possession of the LEAP referral form for 30 days, or until acknowledgement from DAIS advocate that the referral form has been received. Once acknowledgement is received, the LEAP referral form will be destroyed.

## **DANGER ASSESSMENT**

A Danger Assessment Form should be completed for victims of Intimate Partner Violence (IPV). IPV can be physical, sexual, or psychological harm by a current or former spouse/significant other, individuals who have a child in common, and/or stalking victims. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy.

The Danger Assessment is a predictor of lethality for the victim and the relationship. The more behaviors noted by the victim, the higher the danger is for the victim. The five questions at the top are the highest predictors of lethality.

1. The completed Danger Assessment Form will be included with the arresting officer's original report as an attachment.
2. The Danger Assessment Form will be forwarded to the Dane County District Attorney's Office along with the case intake.
3. The responses on the Danger Assessment should be taken into consideration by detective lieutenants reviewing the case to determine appropriateness of case assignment.

## **INCREASED PENALTY FOR CERTAIN DOMESTIC ABUSE OFFENSES 939.621**

If a person commits an act of domestic abuse as defined in s. 968.075 (1)(a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than two years if the crime was committed during the 72 hours immediately following an arrest for a domestic abuse incident, as set forth in 968.075 (5)(c). The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the original arrest. The penalty increase under this section changes the status from a misdemeanor to a felony.

## **CHILDREN PRESENT DURING DOMESTIC ABUSE CRIMES**

1. Note the names, ages, custodial parents, and addresses of all children and whether they were present when the domestic incident occurred.

2. Children should be interviewed as potential witnesses about the current incident, history of abuse, and abuse toward any other members of the household.
3. If the disposition of a dispute leaves minors in the home without a responsible adult, the officers are to contact the Dane County Department of Human Services for temporary arrangements.
4. Due to the high correlation between domestic violence and child abuse, children should be checked for signs of child neglect or abuse. In the event that a minor child appears to be the victim of physical and/or sexual abuse, it is the responsibility of the officer to take immediate action, including notifying the Dane County Department of Human Services (261-KIDS) within 12 hours of report of the incident per Wisconsin Statute 48.981(3).

## WEAPONS SEIZURE

1. Weapons used in the commission of a crime should always be seized as evidence.
2. Weapons shall be seized from any individuals prohibited from possessing a firearm.
3. Possession of a firearm by a convicted felon is prohibited by Wisconsin State Statute 941.29 and Federal Regulation 18USC 922(g).
4. Possession of a firearm by a domestic abuse or child abuse respondent is prohibited for the duration of the injunction. If a respondent is in possession of a firearm, this is a felony offense. The respondent should be arrested for Possession of a Firearm (941.29 (1m)(f) and the weapon should be seized, and photographed.
5. Safekeeping. If you are on the scene of a domestic and no weapons were used in the commission of a crime, you should still ask about access to weapons. If the victim is a spouse, ask if they would like you to take the weapons (marital property) for safe-keeping while the case is pending.
6. Possession of a firearm OR ammunition by a person prohibited from possession by federal regulations. (See below)

## FEDERAL GUN VIOLATIONS

It is a federal offense for a person, **convicted** of a crime classified as a crime of domestic violence, to possess a firearm; Federal Regulations 18USC911 (g)(9).

Under this law, qualifying domestic violence crimes are those where:

- There was use or attempted use of physical force
- There was threatened use of a deadly weapon
- It is a crime against a partner in a domestic relationship
- It is a child abuse crime-

The law was effective September 30, 1996 and convictions are retroactive from that date.

Mandatory arrest does not apply to violations of the federal gun regulation. If the officer has information that the subject has been arrested for a crime prohibiting possession of a firearm and is in possession of or owns a firearm, the officer should:

1. Document evidence of the previous domestic violence conviction in their report.
2. Seize the weapon IF the officer has legal access to the weapon.
3. Document evidence that the subject knowingly possessed the firearm.
4. Photograph the firearm that was seized.

A copy of the report should be forwarded to the appropriate federal agency.

## LAW ENFORCEMENT INVOLVED DOMESTIC VIOLENCE

The following procedure shall be adhered to when investigating domestic abuse that involves law enforcement personnel.

Responding to domestic abuse incidents involving law enforcement personnel poses increased dangers to responding officers due to the involved personnel's potential access to firearms, as well as knowledge by the potentially involved law enforcement personnel regarding police tactics and the law.

When responding to domestic abuse incidents involving law enforcement, the following procedures shall be followed:

1. Once officers arrive on scene of a domestic abuse incident involving law enforcement, the officer should contact dispatch and request a supervisor, regardless of the involved officer's jurisdiction.
2. A supervisor of higher rank than the involved officer(s) should respond to the scene.
3. When an officer is arrested, the supervisor shall attempt to seize firearms.
4. If the incident involves the chief of police, an outside agency should be contacted to take lead on the investigation.
5. In responding to domestic violence incidents where the victim is a law enforcement officer, standard domestic violence response and investigation procedures should be followed.

### **TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS (WI STATE STATUTE 813.12)**

There are four different types of injunctions that can be granted in Dane County: Domestic Abuse, Harassment, Child Abuse, and Individuals at Risk.

Domestic Abuse injunctions are typically granted for four years, but can be granted up to ten years. Ten-year injunctions are granted where the petitioner has presented a preponderance of evidence that there is a substantial risk that the respondent may commit 1<sup>st</sup> or 2<sup>nd</sup> Degree Homicide, or 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Degree Sexual Assault, or 1<sup>st</sup> Degree or 2<sup>nd</sup> Degree Sexual Assault of a Child against the petitioner.

Knowingly violating a Temporary Restraining Order (TRO) or Injunction is a misdemeanor under Wisconsin law and the police officer should:

1. Verify that the TRO/injunction exists, either through Data or DCJ records.
2. Determine whether the TRO/injunction has been served. This information can be obtained through Data or Spillman.
3. Determine the specific restricted granted in the TRO/injunction.
4. Serve the TRO/injunction to the suspect if it has not been served, noting date, time of service, and officer name on the back of the TRO copy. Additionally, notify dispatch of the date and time of service. Attach a copy of this form to your report. The victim's copy of the TRO/Injunction can be used to serve notice to the suspect.
5. **CONSTRUCTIVE KNOWLEDGE:** In cases where the suspect was served with the TRO and failed to show for the injunction hearing, the injunction is automatically granted. If the suspect had been served with the TRO, then the suspect has constructive knowledge that an injunction was granted. Therefore, the suspect should be considered on notice of the injunction and shall be arrested for any violations.
6. The officer will make an arrest for a violation of the order when there is an order in existence, the order has been served, and there is probable cause to believe that it was knowingly violated.
7. If the officer is arresting for the violation of a Domestic Abuse Injunction, this constitutes a new domestic abuse crime under WI State Statute 968.075, so a 72-Hour No Contact Provision shall be completed.
8. If an officer has probable cause to believe the injunction has been violated more than once, then a charge of stalking should be considered. The officer should obtain a new case number and offer the Danger Assessment and LEAP forms.
9. A Violation of a TRO or injunction may or may not constitute a new crime under WI State Statute 968.075. If the nature of the contact is benign, then it might result in only a violation of the injunction or TRO. If the nature of the contact involves additional crimes, then the Mandatory Arrest procedure shall be followed.

**STALKING (WI STATE STATUTE 940.32(2))**

If an officer develops probable cause that a stalking has occurred and mandatory arrest requirements are met, then an arrest shall be made in accordance with Wisconsin State Statute 968.075. Stalking behaviors are an indication of high lethality of the relationship, and should be taken seriously.

**STALKING WARNING LETTER**

In cases where mandatory arrest does not apply, a Stalking Warning Letter may be issued to the suspect. The Stalking Warning Letter can be issued by other jurisdictions or by telephone. Officers shall document in the report that the Stalking Warning Letter was issued, and a copy should be attached to the officer's report.

It is **NOT** necessary that the Stalking Warning Letter be issued prior to an arrest for Stalking.

The safety of the victim should be considered when determining to make an arrest or not for an offense of Stalking.

Officers shall document and collect any and all evidence related to the stalking behavior, including but not limited to, text messages, emails, voicemails, social media posts, letters, cards, gifts, and video.

Other offenses related to, or potentially involved in Stalking, include, but are not limited to, Criminal Damage to Property, Unlawful Use of the Telephone or Computerized System, Intimidation of a Victim, Harassment, Representations Depicting Nudity, Invasion of Privacy, and Violation of a Domestic Abuse Injunction.

**STRANGULATION/SUFFOCATION (WI STATE STATUTE 940.235)**

In cases of Strangulation that meet the mandatory arrest criteria, officers shall make an arrest. Officers should consider that consent is not a criminal element of Strangulation.

**Procedure**

1. Victims of strangulation should be encouraged to respond to Meriter ER for medical assistance and a Forensic Nurse Exam. Strangulation injuries are often not visible, so medical care is important for the victim's well-being. The forensic exam is important for prosecution of offenders. Officers shall assist transporting victims to Meriter ER if needed.
2. Visible injuries should be documented and photographed. Ligatures, or any other type of physical evidence used in the commission of a Strangulation or Suffocation, should be collected.
3. Documentation of all signs and symptoms of strangulation is critical due to the lack of visible injuries in the majority of strangulation cases. A list of signs and symptoms of strangulation can be found on the back of the Danger Assessment. This guide can be used to facilitate a detailed interview.
4. If the suspect is present on scene and willing, a buccal standard should be obtained from the suspect when it is known that the victim will be responding to Meriter ER for a Forensic Nurse Exam (FNE).
5. Officers sent to Meriter to collect a strangulation FNE kit should place the kit into MPD property according to the MPD property room guidelines.

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