



CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE



Domestic Abuse

Eff. Date 01/15/2019

Purpose

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

Procedure

ARREST DISPOSITION - MANDATORY ARREST

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, 2nd 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.

ARREST DISPOSITION - DISCRETIONARY ARREST (PRO-ARREST)

1. In most circumstances, which do not meet **MANDATORY** arrest requirements, an officer should arrest and take a person into custody if the officer has probable cause to believe that the person is committing or has committed domestic abuse and the person's actions constitute the commission of a crime.
2. 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.
3. Additionally, an officer's decision on whether or not to arrest in **NON-MANDATORY** arrest circumstances may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the parties.

REPORT REQUIRED WHERE NO ARREST

1. The domestic abuse arrest law requires a law enforcement officer who does not make an arrest in a domestic abuse incident, to prepare a written report prior to the end of his or her tour of duty stating why the person was not arrested.
2. 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.
3. 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.
4. When probable cause exists to arrest domestic abuse suspect who is at large, the reporting officer will:
- a. Enter suspect information and charges into SharePoint.
 - b. Probable cause affidavit will be completed.

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 does not have to arrest both persons, but should arrest the person whom the officer believes to be 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.

CHILDREN

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 within 12 hours of report of the incident per Wisconsin Statute 48.981(3).

CONTACT PROHIBITION; WAIVER

1. Under the domestic abuse arrest law, 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 attorneys for the arrested person and alleged victim, to contact the alleged victim.
2. A law enforcement officer is required to arrest and take a person into custody, if the officer has probable cause to believe that the person has violated the "no contact" requirements.

3. 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 waiver forms available for this purpose. If a waiver of the no-contact provision has been signed by the victim, the officer will provide one copy of this waiver to the victim, one copy will be submitted to the Patrol file in the OIC's office, one copy is provided to the suspect (if located), police data and remaining copies are forwarded with the officer's incident report.
4. 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.

NOTIFICATION TO VICTIMS

If law enforcement has reasonable grounds to believe that a person is committing or has committed domestic abuse, they must advise the victims of this crime 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. The Act 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. Notification to victims should be documented in the report.

LEAP REFERRAL / DANGER ASSESSMENT

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. The Domestic Violence Danger Assessment Form should be completed. The original Danger Assessment form will be included in the case file as an attachment.
3. At the end of the arresting officer's shift, the LEAP referral form and a copy of the Danger Assessment form are to 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.
4. The District PRT will scan the LEAP referral and Danger Assessment forms 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. The 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.

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.

WEAPONS SEIZURE

1. Weapons used in the commission of a crime should always be seized as evidence.
2. Possession of a firearm by a felon is prohibited and is a felony.
3. Possession of a firearm by a domestic abuse or child abuse respondent is prohibited for the duration of the injunction. If a respondent has a firearm, that is a felony. The respondent should be arrested and the weapon should be seized.
4. 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.
5. Possession of a firearm OR ammunition by a person prohibited from possession by the **Lautenberg Gun Ban**.

LAUTENBERG GUN BAN

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), Lautenberg Domestic Gun Ban.

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 the incident. If the officer has information that the subject has been arrested for a qualifying crime and is in possession of or owns a firearm, the officer should attempt to obtain evidence of conviction.

If such evidence is obtained, the officer may seize the suspect's firearm, only if the officer has legal access to the weapon.

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

LAW ENFORCEMENT INVOLVED DOMESTIC VIOLENCE

For handling matters of domestic violence and abuse involving law enforcement officers and for implementing prevention strategies, this procedure will provide law enforcement executives and MPD employees guidance in reporting and responding to and investigating domestic violence incidents involving agency employees and law enforcement officers, thereby discouraging and reducing acts of domestic violence by employees of law enforcement agencies.

Responding to domestic abuse incidents involving law enforcement poses increased dangers to responding officers due to access to firearms, as well as knowledge regarding police tactical response and the law.

When responding to domestic abuse incidents involving law enforcement, the following procedures should 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 officers should respond to the scene.
3. When an officer is arrested, the supervisor shall attempt to take 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

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

1. Contact data to determine that the TRO/injunction exists.
2. Determine whether the TRO/injunction has been served and its specific contents.
3. 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.
4. When the order has been served, the suspect should be advised to obey the order. Failure to comply with the order will result in the arrest of the suspect for the violation of the order.
5. 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.

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