



POLICY & PROCEDURE

HOLMEN POLICE DEPARTMENT

SUBJECT:	DOMESTIC ABUSE	NUMBER:	4.7
		ISSUED:	09/07/2016
SCOPE:	All Department Personnel	REVIEWED:	01/28/2017
DISTRIBUTION:	Policy & Procedure Manual		
REFERENCE:	WI §968.075	WILEAG 4TH EDITION STANDARDS: 6.3.9.1, 6.3.9.2, 6.3.9.3, 6.3.9.4	

INDEX AS: Responding officers' actions
 The circumstances for mandatory arrest a possible offender.
 Victim Information
 Reports

PURPOSE: The purpose of this Policy & Procedure is to establish guidelines and procedures to the members of the Holmen Police Department for the protection of victims in domestic violence situations; the identification of predominant aggressors in domestic violence situations; and the enforcement of restraining orders. The application of this Policy & Procedure proposes to deter future acts of domestic violence; to minimize return calls to the Department, and to reduce the potential for injuries to victims and officers.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURES
- IV. RESTRAINING ORDERS
- V. FOREIGN PROTECTION ORDERS

I. POLICY

The Holmen Police Department maintains that the nature and seriousness of crimes committed between family/household members are not mitigated solely because of the relationships or living arrangements of those involved. It is the policy of this Department that domestic violence is not a private matter, but involves serious criminal offenses that will be treated with the same consideration as violence in other enforcement contexts and, consistent with this policy, that officers combine the use of appropriate community services with enforcement of the law to (1) break the cycle of domestic violence by preventing future incidents or reducing the frequency and/or

seriousness of such incidents, (2) protect victims of domestic violence and provide them with support, and (3) promote officer safety when dealing with domestic abuse situations.

II. DEFINITIONS

DOMESTIC ABUSE: Has the meaning specified in WI §968.075(1)

LAW ENFORCEMENT AGENCY: Has the meaning specified in WI §165.83(1)(b)

PREDOMINANT AGGRSSOR: Means the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

PROBABLE CAUSE: refers to that quantum of evidence which would lead a reasonable police officer to believe that the suspect probably committed a crime. It is not necessary that evidence be sufficient to prove guilt beyond a reasonable doubt, nor must it be sufficient to prove that guilt is more probable than not. It is only necessary that the information lead a reasonable officer to believe that guilt is more than a possibility. This belief may be predicated in part upon hearsay information.

FOREIGN PROTECTION ORDER: Any temporary or permanent injunction or restraining order issued by any civil or criminal court in the United States (including the District of Columbia, a commonwealth, territory, or possession of the U.S., and Indian Tribes) for the purpose of preventing abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts, or violence by or to a person.

VINE: Wisconsin's "Victim Information and Notification Everyday system."

III. PROCEDURES

A. (6.3.9.1) Whenever possible, a minimum of two (2) officers will be dispatched to a domestic disturbance. Officers should wait for backup unless circumstances dictate an immediate entry into the residence to prevent serious injury or death.

1. Approach the scene remembering that it may be potentially dangerous.
2. Make a legal entry into the residence.
 - a. If entry onto private property is refused - don't go away.
 - 1) Be persistent - knock again. Convey to the person that this attitude is understandable but that the officer is required to make sure there are no serious problems. Indicate that after a short opportunity to look around and ask a few questions and the investigation indicates no problems exist, the officer will leave.

- 2) If no response is received from within the residence have the dispatcher attempt to contact the occupants by phone.
 - 3) If probable cause exists that a crime has been, is being, or is about to be committed, forced entry may be used when there is no other reasonable alternative. The exigent circumstances, all relevant information, including statements from witnesses, the officer's visual and audio observations, and any damage resulting to the property, should be contained in the officer's report.
- b. If the initial disturbance call was made by a third party but both parties to the domestic dispute refuse to admit the officer, a breach of peace may have occurred. The officer should be persistent and minimal action should include:
- 1) Inform the parties that a call has been received regarding their conduct.
 - 2) Request voluntary compliance or attempt to determine if exigent circumstances would allow forced entry.
 - 3) After entry to a dwelling on the consent of either or both parties, and subsequently, both parties request the officers to leave, the officers must leave unless they have reasonable grounds to believe that their continued presence is necessary to prevent serious bodily injury.
 - a. Check the scene for potential hazards to both yourself and others.
 - b. Physically separate parties involved in domestic violence.
 - c. Restore order by gaining control of the situation.
 - d. Take control of all weapons used or threatened to be used in the crime.
 - e. Assess the need for medical attention and call for medical assistance if indicated.

B. Make a complete investigation at the scene.

1. Investigation should include obtaining written statements from the victim, suspect, children and other potential witnesses. In particular, note any excited utterances, admissions against interest, and other informal statements as well as formal statements. (It is essential that statements be obtained at the scene whenever practicable).
 - a. Victim should include a brief statement relating to the non-consent for any injuries incurred, threats and/or actions by the suspect against them;
 - b. a detailed description of alleged illegal acts should be obtained;

2. Specific description of the victim's injuries should be recorded and photographed;
 - a. if medical attention is necessary, a statement regarding the treatment should be included in the report.
 - b. A medical release form should be completed for the appropriate County at the time of the initial interview.
 3. Document and photograph any property damaged. Note if a particular item belonged to one of the parties.
 4. Appropriate evidence should be collected and processed;
 5. Determine if there is a history of police calls, threats, or physical abuse and/or alcohol/drug abuse incidents involving the parties.
 6. Check for existing restraining orders or injunctions.
 7. Provide the appropriate County Domestic Violence Shelter information for victim services whether or not an arrest is made. The officer should advise the parties involved of the availability of domestic abuse services; and in particular give the victim immediate notice of the availability of shelter services through the appropriate County Domestic Abuse Intervention Shelter.
 8. Call the appropriate County Domestic Violence Shelter (New Horizons) to inform them of the incident regardless of an arrest was warranted.
- C. If the offender has left the scene and a crime has been committed, the officers will do the following:
1. Search the immediate area,
 2. Obtain information from victims and witnesses as to where the offender might be,
 3. Notify the LEDC to put out an attempt to locate message with appropriate suspect information and any vehicle information.
- D. If children are present - Remove any children from the area and keep them in a safe place away from the dispute and enforcement actions that may be taken involving either of their parents.
1. Take care to protect children from further trauma and/or anguish.
 2. Attempt to contact the closest relative to provide care if there are children

under the age of 17.

3. If possible do not arrest a parent in front of their children.
4. Obtain a statement from the children as to what they observed, any verbal or physical abuse or other violence that they may have seen leading up to the incident and in the past directed at the children, the parents or pets.
5. If the disposition of a dispute leaves minors in the home without a responsible adult, officers are to contact the appropriate County Department of Health and Human Services for temporary arrangements.
6. When an officer is aware that a child appears to be a victim of physical and/or sexual abuse, potential emotional stress, or neglect, the officer will take appropriate action in accordance with Department Policy 2.1, Reporting of Child Abuse.

E. (6.3.9.2) Mandatory Arrest

1. The officer shall arrest and take a person into custody if:
 - a. the officer, after investigating the incident, has probable cause to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and
 - b. any of the following circumstances are present:
 - 1) The officer has a reasonable basis for believing that there is a possibility of continued violence against the victim; and
 - 2) There is evidence of physical injury to the victim.
 - 3) The person is the predominant aggressor.
 - 4) **Domestic Relationship:** Any adult perpetrator (17 years of age or older in a domestic relationship with another person as described below:
 - Spouse
 - Former Spouse
 - Adult with whom perpetrator resides with
 - Adult with whom the perpetrator has created a child in common with.
 - Adult boyfriend/girlfriend
 - Adult boyfriend/girlfriend in a dating relationship as defined (a romantic or intimate social relationship, but not to include a casual relationship)

Domestic Abuse: Any of the following engaged in by persons in a domestic relationship:

- Intentional infliction of physical pain, physical injury or illness.
 - Intentional impairment of physical condition. o A violation of section 940.225(1)(2) or (3) of the Wisconsin State Statutes (excluding 4th degree sexual assault)
 - A physical act which may cause the other person to reasonably fear imminent engagement in the conduct described in 1, 2 or 3.
 - *Persons Under Age of 17:* Domestic situations involving one or more persons under the age of 17 should be handled on an individual basis to see if they fall under the guidelines established in Chapter 948 of the Wisconsin State Statutes
2. The alleged domestic abuse incident must be reported within 28 days after the incident is alleged to have occurred unless mitigating circumstances prevented the victim from reporting.
 - a. If there are no mitigating circumstances then the officer will document the incident and make referrals to the DA and Domestic Violence Shelter Facility.
 3. An arrest shall be made under the above requirements even if the victim expressly indicates a desire not to prosecute or indicates an unwillingness to cooperate.
 4. The decision to make a mandatory arrest will not be affected by the relationship of the parties, i.e. marriage is not a bar to prosecution for sexual assault. 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.
 5. If the above circumstances exist and the suspect is not present, the officer will make a reasonable effort to locate and take the suspect into custody as provided in III.C. above.
 6. For purposes of this Policy & Procedure, arrest shall be defined as custodial arrest and the arrested person must be booked in the La Crosse County Jail and the jail personnel will be told that the arrest is a domestic abuse related incident.

F. Determining the predominant aggressor:

1. Unless the arrest is mandatory, it is generally not appropriate to arrest anyone...other than the primary aggressor. Dual arrests should be avoided, if possible.

2. In order to protect victims from continuing domestic abuse, officers shall consider all of the following in identifying the primary aggressor:
 - a. The 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 by witnesses.
 - c. The relative degree of injury inflicted on 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 or household member.
 - f. Whether either party acted in self-defense or in defense of any other person under the circumstances described in WI §939.48.

G. Procedures upon Arrest for Domestic Abuse

1. **CONTACT PROHIBITION** WI §968.075(5) prohibits a person who has been arrested for domestic abuse from having contact with the alleged victim for a period of 72 hours following the arrest. Nor can anyone other than attorneys for the parties and law enforcement members contact the alleged victim on the arrested person's behalf.
 - In La Crosse County this prohibition is extended to the initial court appearance
 - a. Officers should let the arrested party know of this contact prohibition at the time of arrest.
 - b. If the arrested party for domestic abuse is released from custody before the prohibited contact period has expired, the person releasing the subject will inform that person orally and in writing of the contact prohibition.
 - c. Whenever probable cause exists that a person has violated this contact prohibition, an arrest shall be made.
 - 2) If a person arrested for domestic abuse commits an act of domestic abuse during the first 72 hours after arrest, that act is then classed as a felony under WI §939.621. This applies whether or not the victim waived the no-contact provision.
 - 3) If a person arrested for an act of domestic abuse has two (2) or more prior domestic abuse convictions within the previous ten (10) years, that act is then classed as a felony under WI §939.621. A prior domestic abuse conviction includes crimes where a court imposed a

domestic abuse surcharge or waived a domestic abuse surcharge. A good indicator of whether a surcharge was imposed or waived may be found on an offender's CCAP record under the "View history and details of Charge(s)/Sentence(s)" link, where a count may be modified with the descriptor "Domestic Abuse." Furthermore, the victim of the current act that is the subject of the enhancer does not need to be the same victim(s) as in the prior acts.

2. **WAIVER OF CONTACT PROHIBITION** At the time of the arrest, the alleged victim must be made aware of the no contact prohibition and that they may, at any time during the no contact period following the arrest, waive the contact prohibition by going to the County Jail to complete the available waiver form.
3. (6.3.9.3) **INFORMING THE VICTIM PENDING PERPETRATOR RELEASE**
 - a. Victims should be provided the appropriate VINE information to allow them to keep track of the incarcerated perpetrator.
 - b. The County Jail will notify the appropriate Domestic Violence Shelter of the pending release so the shelter can contact the victim.
 - c. In cases of domestic abuse arrests and where otherwise warranted, it is recommended that the arresting law enforcement agency be notified of the suspects pending release.

H. Required Reports

1. An incident report shall be filed with the District Attorney's Office for all domestic cases in which a suspect has been arrested.
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. 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.
3. (6.3.9.4) If an officer does not make an arrest under this section when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested.
 - a. The report shall be submitted to the District Attorney's office in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

- b. Issuance of a Non-Traffic Citation (NTC) is NOT in compliance with the mandatory arrest law. The District Attorney will make appropriate decisions regarding issuance of an NTC.

- C. Photograph scene and injuries to the victim when applicable.
NOTE: There may be a need to take photographs of the victim's injuries 24 hours following the incident. This shall be reported in the investigating officer's report.

- D. Obtain a medical release from the victim when applicable.
If there are signs of physical abuse or neglect to the children, protective services shall be notified and made aware of such observations

- I. Special Circumstances Associated with Domestic Disputes.
 - 1. Conflict of interest/personal relationship - Officers who respond to a domestic disturbance call wherein they feel they may have a conflict of interest, (i.e.... personal relationship), will so advise the other responding officer(s).

 - 2. Weapons. If a weapon is present and constitutes a clear and present threat of violence, officers are to impound the weapon and see that it is properly tagged and stored in evidence. The owner should be informed of the method to reclaim the property at a later date and provided a property receipt. Any weapons used in the commission of a crime must be confiscated as evidence. Whenever a weapon is removed from the home, documentation must be presented in the report.

 - 3. Custody of Children - Domestic disturbances concerning the custody of children are extremely complicated.
 - a. Where both parties have custody of a child, the officer has no authority to act when one party claims the other has taken the child from the other party.

 - b. In all custody disputes, efforts will be made to preserve the peace and to ensure the safety of the child(ren). Parties should be encouraged to resolve the dispute through consultation with the attorneys and the court involved in the custody.

 - c. When one party has taken a child from another party who has legal custody through a court order and has demonstrated intent to take the child out of state and deprive the party of custody, the officer may make a custodial arrest under WI §948.31(2). This arrest will prevent the child from being taken out of state and allow for a full investigation to be made.

 - d. Officers do not normally have the authority to enforce orders made relating

to custody of a child, (e.g. where one party is ordered not to contact another party, visitation orders, etc.). Such court orders can only be enforced when there is specific order from the court ordering the police to take a specific action or as provided in WI §948.31(3).

- e. Officers have authority to act in situations where ordinance or statutes have been violated.
4. Removal of Personal Property - When an officer is called to a disturbance in which one party has decided to take personal property from the home; the officer's actions are limited to standing by and preserving the peace while the property is being removed. In the event of a dispute over property ownership, the parties involved shall be advised the matter is civil in nature and the property will stay unless a court document identifies ownership.

IV. RESTRAINING ORDERS AND INJUNCTIONS

A. WI §813.12(7) provides for mandatory arrest for violation of a domestic abuse restraining order/injunction and WI §813.125(6) provides for mandatory arrest for violation of a harassment restraining order/injunction.

- 1. Confirmation of Existence: Before making an arrest for violation of a Restraining Order or an Injunction, officers shall confirm through the La Crosse County Public Safety Communication Center the following:
 - a. That the Restraining Order or Injunction has been served on the respondent and,
 - b. That the Restraining Order or Injunction has not expired.
- 2. The arrest must be made even if the victim permitted the suspect to return contrary to the restraining order or injunction. No private person can authorize the violation of a court order, including the victim. (WI §813.12(7) and §813.125(6)).
- 3. Failure to make the mandatory arrests may subject Officers to civil and criminal liability and disciplinary action.

V. FOREIGN PROTECTION ORDERS

A. WI §806.247 and Federal Title 18 U.S.C. 2265 require full faith and credit for foreign protection orders. Therefore, officers must enforce valid foreign protection orders as if they were issued by the local court.

- 1. Officers can verify a foreign order is enforceable in the following ways:
 - a. The officer sees a certified hard copy of the order.

- b. The order is entered into the TIME system.
 - c. The officer has communication with other authorities who can confirm the existence and validity of the order.
 2. When the respondent claims no service of a protection order; and the officer cannot verify service, no arrest should occur and the officer shall:
 - a. Verify the existence of an order.
 - b. Explain the terms of the order to the respondent, and provide a copy of the order, when possible.
 - c. Explain the consequences of future violations.
 - d. Notify the issuing authority that the respondent has received notice and/or a copy of the order and of any arrests made.
 3. Interstate travel to violate an order of protection, to stalk any petitioner or member of their immediate family, or to commit domestic violence constitute Federal crimes. In addition to any applicable state charges, the offender should be referred to the local office of the Federal Bureau of Investigation (FBI).
- B. FOREIGN NATIONALS - Refer to the "WISCONSIN DEPARTMENT OF JUSTICE GUIDE FOR LAW ENFORCEMENT CONTACTS WITH FOREIGN NATIONALS" located on WILENET. This provides guidance to Law Enforcement agencies on various treaty obligations concerning the rights of foreign nationals in the U.S. to be assisted by consular officials.

Shane Collins
Police Chief

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

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