

GENERAL ORDER

PORT WASHINGTON POLICE DEPARTMENT

SUBJECT: DOMESTIC VIOLENCE		NUMBER:	6.3.6
		ISSUED:	5/7/09
SCOPE:	All Police Personnel	EFFECTIVE:	5/7/09
DISTRIBUTION:	General Orders Manual	<input checked="" type="checkbox"/> RESCINDS	I-3-89 34.2
		AMENDS	
REFERENCE:	WI Statutes §§ 813.12(7), 813.125(6), 939.621, 968.075	WILEAG 3 RD EDITION STANDARDS: 6.3.9	

INDEX AS:

- Domestic Abuse
- Domestic Disputes
- Domestic Violence
- Family Trouble
- Harassment
- Restraining Order

PURPOSE: The purpose of this Order is to establish guidelines and procedures for the protection of victims, the identification of the Predominant Aggressor in domestic abuse/violence situations, and the enforcement of restraining orders. The application of this Order proposes to deter future acts of domestic abuse/violence, to minimize return calls to the police, and to reduce the potential for injuries to victims and officers.

This Order consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. ASSIGNMENT OF OFFICERS
- IV. PROCEDURES
- V. REPORT WRITING
- VI. NOTICE OF RIGHTS
- VII. RESTRAINING ORDERS

I. POLICY

A. This Order recognizes that domestic abuse/violence is not a private matter, but involves serious criminal offenses against the state of Wisconsin the prosecution of which does not depend upon the willingness of a victim to prosecute. The intent of this Order is twofold:

- 1. To maximize protection for victims of domestic abuse/violence; and

2. To hold the Predominant Aggressor accountable for their violent behavior.
- B. This Order recognizes that abusive/violent behavior will neither be excused nor tolerated regardless of the relationship of the persons involved. Therefore, an officer shall make an arrest supported by probable cause and take a person into custody according to the procedures of this Order.
 - C. This department shall establish and maintain a working relationship with professionals from community organizations with expertise in the recognition and handling of domestic abuse/violence. Whether or not an arrest is made in a domestic abuse/violence incident, an officer may make a referral to a community organization and encourage both parties to seek assistance.

II. DEFINITIONS

Predominant Aggressor: The most significant, *but not necessarily the first*, aggressor in a domestic abuse incident. (Act 104 – Effective 04/01/06). This new law reflects the legislative intent to *protect victims from arrest*.

- A. “Domestic abuse” means any of the following engaged in by an adult 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 a child in common:
 1. Intentional infliction of physical pain, physical injury or illness.
 2. Intentional impairment of physical condition.
 3. A violation of law amounting to first, second, or third degree sexual assault.
 4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subsecs. A.1, 2 or 3, above.
- B. “Foreign protection order” means any temporary or permanent injunction or order of a civil or criminal court of the United States (including the District of Columbia, a commonwealth, territory, or possession of the U.S.), of an Indian tribe or of any other state issued for preventing abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to a person, other than support or custody orders.

III. ASSIGNMENT OF POLICE OFFICERS

- A. The appropriate response to a domestic violence incident is the assignment of two (2) police officers.

- B. If the call taker determines that a weapon is involved, either by threatened use or actual use, a shift supervisor or senior officer shall be notified immediately. The supervisor or senior officer may request that additional officers be assigned as he or she deems appropriate.

IV. PROCEDURES

A. Probable Cause to Arrest

1. An officer shall attempt to determine if probable cause exists to conclude that a crime is being or has been committed. Probable cause refers to that quantum of evidence which would lead a reasonable police officer to believe that the suspect probably committed a crime. The probable cause standard applied in a domestic abuse/violence incident or in a harassment incident is no different than the standard applied with regard to other offenses.
2. Factors to be used in determining whether probable cause exists include, but are 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 injury or impairment.
 - b) Statements of the victim, including his/her non-consent to the offense. This interview shall be conducted outside the presence of the suspect. Written statements should be obtained where applicable. Officers shall request the victim to fill out a "72-Hour No Contact Prohibition" form.
 - c) Statements of family members, friends, neighbors or other witnesses. These interviews shall be conducted outside the presence of the suspect. Written statements should be obtained where applicable.
 - d) Statements of the suspect. Written statements should be obtained where applicable.
 - e) Personal observations of the scene and the victim.
 - f) Previous calls at the same location or with the same persons.
 - g) Previous threats/offenses against the victim by the suspect. Officers should check for the existence of a restraining order against the suspect by contacting the dispatcher.
 - 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 another human being.

B. Mandatory Arrest: §§ 939.621 and 968.075, Stats.

1. A law enforcement officer shall arrest and take a person into custody if:
 - a) The officer has reasonable grounds 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) The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely, and/or there is evidence of physical injury to the alleged victim; and
 - c) If the officer's reasonable grounds for belief under subsec. B.1.a), above, are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest only if the report is received, within 28 days after the day the incident is alleged to have occurred, by the officer or the police department. However, this department has a pro-arrest policy if the officer has probable cause that a crime of domestic abuse has been committed which does not meet the requirements of MANDATORY arrest. Example: The incident occurred more than 28 days ago, or the parties are involved in a dating relationship and not living together. If all the other elements for mandatory arrest are met, officers are encouraged to make an arrest and file the appropriate charges.

Additionally, arrest is mandatory if an officer has probable cause that 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; or
 - iv. A foreign protection order.
2. For purposes of this Order, "custody" shall mean transporting the person to the Ozaukee County Jail for the purpose of booking, providing information of conditional release, and issuance of summons, as applicable. All persons arrested for domestic abuse incidents shall be taken into custody and remain in custody until they receive a bail and condition-setting hearing before a judge.

- a) The Ozaukee County Jail shall be given the original "Victim Notification of No Contact Prohibition" form that is signed by the alleged victim, prohibiting the arrested person from contacting the victim within a 72-hour period. A copy of the form shall be included in the police report and complaint.
 - b) If the alleged victim decides to **WAIVE** the "Victim Notification of No Contact Prohibition," then the original form that the victim signed indicating the waiver shall be delivered to the jail personnel at the time that they accept custody of the arrested person. A copy of the form shall be included in the police report and complaint.
 - c) If prior to termination of the 72-hour "No Contact Prohibition" period the victim waives the No Contact provision, the jail shall be advised of the waiver.
3. The Ozaukee County Sheriff's Department - Jail Division, is responsible for having the arrested person sign an acknowledgment of the "No Contact Prohibition," stating that he/she understands its requirements, the consequences of violating the requirements, and that an enhanced penalty exists for a second domestic abuse offense committed during the 72 hours immediately following an arrest for the first domestic abuse incident.
- a) If the arrested person refuses to sign the notice, he/she may not be released from custody.
 - b) The Ozaukee County Sheriff's Department shall furnish the Port Washington Police Department with a copy of the conditional release and the "No Contact Prohibition" form.
 - c) If/when a DVI arrestee is going to be released and the "No Contact Prohibition Form" has been signed, the Ozaukee County Sheriff's Department will notify our department prior to the release. The Port Washington Police Department will in turn contact the victim either by phone or in person and notify victim that the arrestee has been released.
- C. An officer who has reasonable grounds to believe that both parties committed domestic abuse against each other does not have to arrest both persons, but should arrest the person whom the officer believes to be the Predominant Aggressor, not necessarily the person acting first, or striking the first blow.
1. In determining who is the Predominant Aggressor, an officer should consider:

- a) The intent of the law and this Order (i.e., to protect victims of domestic abuse/violence);
 - b) The relative degree of injury inflicted on each of the parties involved;
 - c) The relative degree of fear inflicted on the persons involved and any history of domestic abuse between these persons;
 - d) Differences in the size, weight, and strength of the persons; and
 - e) Acts of self-defense by either party.
2. Section "C" above does not prevent an officer from arresting both parties when the officer has reasonable grounds to believe both have committed domestic abuse. Dual arrest may be used in extreme cases when the Predominant Aggressor cannot be determined. However, Section "C" encourages the officer to arrest only one party (the Predominant Aggressor). **The shift supervisor shall be contacted prior to making a dual arrest.**
- D. 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.
- E. The victim is not required to sign a complaint or request that an arrest be made.
- F. If the suspect is not present at the scene, the officer shall attempt to locate the suspect. If the suspect cannot be located in a reasonable amount of time, an arrest warrant shall be applied for.
- G. If an arrest is demanded by one or both of the parties and there are insufficient grounds for such an arrest, the officer shall explain the limits of his/her arrest authority. The demand(s) for arrest must be noted in the incident report along with the officer's reason(s) for not making the arrest.
- H. A law enforcement officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated the 72-hour "No Contact Prohibition." (See Section VI, below.) In accordance with Act 104, release of the predominant aggressor is NOT permitted until the person posts bail or appears before a judge or commissioner for an initial appearance. A criminal complaint report will be prepared and delivered to the District Attorney's office.

1. If this contact results in another act of domestic abuse, the suspect shall be arrested and charged under the provisions of §939.621, Stats., increasing the status of the crime from a misdemeanor to a felony. The appropriate criminal complaint shall be completed by the officer and delivered to the District Attorney's office.
- I. Officer-involved Domestic Violence. When an officer responds to a report of alleged Domestic Violence involving one of our officers, the responding officer shall follow the following directive:
 1. Secure the scene, separate the parties, and require an outside agency (Ozaukee County Sheriff's Department or neighboring law enforcement agency) to investigate the incident.
 2. Notify the on-duty shift commander BY PHONE of the incident. Prepare a written report prior to ending his/her shift.
 3. The on-duty Shift Commander shall immediately notify the Chief of Police or his/her designee by phone of the incident.
 - J. Intentional failure to make a mandatory arrest where probable cause exists may subject officers to civil and criminal liability and disciplinary action. A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not arrest an alleged offender, if the decision is made in a good faith effort to comply with the law.
 - K. Under circumstances in which no domestic abuse has occurred, an officer may still find a potentially volatile situation exists based on the existence of other evidence. If the investigation develops probable cause that disorderly conduct has occurred, an officer is not precluded from arresting on that charge if the officer reasonably believes that an arrest is necessary to prevent further problems from developing after officers leave the scene.
 - L. If a municipal ordinance violation is committed while an officer is present, the officer has the discretion to decide whether an arrest or a warning is the most appropriate course of action to take under the circumstances.

V. REPORT WRITING

- A. A domestic abuse/violence report should contain the following:
 1. Statements made by the victim.
 2. A medical release form from the victim where applicable.
 3. Photographs of the victim's injuries. Photographs are best if taken within 24 hours after the incident.

4. Statements from witnesses other than the victim, such as neighbors, children or other citizen witnesses who can provide evidence at a trial.
 5. Excited utterances, admissions against interest, and other informal statements of a suspect, in addition to formal statements.
 6. Due to the high correlation between domestic abuse/violence and child abuse, officers should always be alert for evidence of child abuse. The names and ages of all children present when the incident occurred, the time of contact, whether the children were placed in protective custody, and to whom a referral was made should be noted in the officer's report.
 7. History of domestic abuse/violence as obtained from central records, victims, witnesses and other sources.
- B. If an officer does not make an arrest 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 incident report stating why the person was not arrested.
1. The decision not to arrest shall be reviewed by the shift supervisor or senior officer, prior to the final report being forwarded to the District Attorney's office.
- C. If an arrest is made or contemplated, the incident type shall be based upon the most serious offense which has occurred.
- D. If there is a violation of a 72-hour No Contact provision, but no additional domestic abuse/violence incident, the violation shall be documented on a Supplemental Report under the corresponding incident number.
- E. If there is a violation of a 72-hour No Contact provision along with an additional domestic abuse/violence incident:
1. The new domestic abuse/violence incident shall be documented under a new incident number.
 2. The No Contact provision violation shall be documented on a Supplemental Report under the corresponding incident number.
- F. The reports for the 72-hour No Contact violation arrest and the domestic abuse/violence arrest should be completed and forwarded to the District Attorney's office immediately after investigation of the incident is completed.
- G. When an arrest is made, an arrest record shall be prepared for each charge.

VI. NOTICE OF RIGHTS

A. Contact Prohibition

1. An officer shall notify the alleged victim that during the 72 hours immediately following an arrest for domestic abuse/violence, the arrested person shall avoid the residence of the alleged victim 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 the alleged victim, to contact the alleged victim. The officer shall also notify the alleged victim of the procedure for releasing the arrested person and the likelihood and probable time of the arrested person's release.
2. At any time during the 72-hour period, the alleged victim may sign a written waiver of the requirements of the 72-hour no contact provision, thus negating the 72-hour no contact prohibition. The officer shall notify the alleged victim of the possibility of, procedure for and effect of such waiver. Notification of the waiver shall be done outside the presence of the arrested person. Waiver forms shall be made available at the police department; they shall not be carried by field officers.
 - a) If the alleged victim elects to sign a waiver, he/she is responsible for getting themselves to the police department. An alleged victim shall not be transported to the department by officers for the purpose of signing a waiver form.
3. The arrested person shall be informed orally and in writing of a waiver of the 72-hour No Contact provision. In the event a waiver is not filed, the arrested person shall be informed orally and in writing of the requirements of the 72-hour No Contact provision, the consequences of violating the requirements, and the provisions of § 939.621, Stats. The arrested person shall sign an acknowledgment on the written notice that he/she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of §939.621, Stats. providing for an increased penalty for a second domestic abuse offense committed during the 72-hour no contact period. The provisions of this paragraph (3.) shall be the responsibility of the Jail.
4. If the arrested person refuses to sign the notice, he/she CANNOT BE RELEASED FROM CUSTODY prior to 72-hours from the time of his/her arrest, but must be held for court.
5. If the arrested person signs the notice, they may be released from custody.

B. Availability of Services

1. Whether or not an arrest is made, an officer shall advise the victim of the availability of shelter and other services available in the county. Officers of the Port Washington Police Department, while at the scene of any domestic abuse incident, shall provide the victim with the domestic hotline phone number (i.e., Advocates of Ozaukee County at [262] 284-6902 or [262] 375-4034). This is done to provide the victim with immediate support and services. If no telephone is available, the hotline should be notified by an officer from the most expedient location. Whether or not an arrest has been made, the officers shall advise the victim of the availability of the domestic abuse service and provide him/her with the applicable telephone number(s).

VII. TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

- A. § 813.12(7), Stats. provides for mandatory arrest for violation of a domestic abuse temporary restraining order (effective up to 14 days, or, if extended, up to 28 days) or an injunction (effective up to 4 years). § 813.125(6), Stats. provides for mandatory arrest for violation of a harassment temporary restraining order (effective up to 7 days, or, if extended, up to 14 days) or an injunction (effective up to 2 years).

1. Confirmation of Existence: An officer may confirm the existence of such temporary restraining order or injunction by being presented with a copy of the same by a petitioner. However, before making an arrest for violation of a temporary restraining order or an injunction where no copy of such order or injunction is presented, an officer shall contact the Dispatch Center where a check shall be made of its records, police department records and/or Ozaukee County Sheriff's Department records to determine:
 - a) That a temporary restraining order or an injunction exists and has not expired; and,
 - b) In the case of a domestic abuse injunction, that the respondent named in the injunction has been served with a copy of the injunction; provided, however, that pursuant to § 813.12(7)(c), Stats. a respondent who did not appear at a hearing at which the court ordered an injunction but who was served with a copy of the petition and notice of the time for hearing has constructive knowledge of the existence of the injunction, and shall be arrested for violation of the injunction regardless of whether he/she has been served with a copy of the injunction.

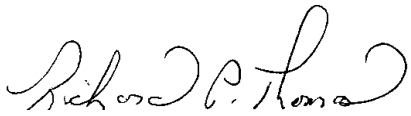
2. **Mandatory Arrest Required by Law:** If investigation confirms that a domestic abuse temporary restraining order or injunction, or a harassment temporary restraining order or injunction is in existence, and the officer has probable cause to believe that the suspect has violated any part of the court order, the officer shall arrest the suspect and take him/her into custody.
 - a) An arrest must be made even if the victim permitted the suspect to return to the household, to have communication, contact, etc. contrary to the temporary restraining order or injunction. No person can authorize the violation of a court order, including the victim. (§§ 813.12(7) and 813.125(6), Stats.)
 - b) Failure to make a mandatory arrest may subject officers to civil and criminal liability and disciplinary action.

B. Foreign Protection Orders

1. State (§ 806.247, Stats.) and Federal (18 U.S.C. § 2265) laws require full faith and credit for foreign protection orders. Therefore, officers shall enforce valid foreign orders as if the order were an order of a court of this state.
2. Officers can verify a foreign protection order is enforceable as follows:
 - a) The officer sees or is presented with a hard copy of the order.
 - b) The order is entered into the TIME system.
 - c) The officer has communication with other appropriate authorities who confirm the existence and validity of the order.
3. When a respondent claims that he/she has not been served with a copy of a foreign protection order and the officer cannot verify service, no arrest should occur and the officer shall:
 - d) Verify the existence of an order.
 - e) Explain the terms of the order to the respondent, and provide a copy of the order, when possible.
 - f) Explain the consequences of future violations of the order.
 - g) Notify the issuing authority that the respondent has received notice and/or a copy of the order, and of any arrests made.

4. Interstate travel to violate an order of protection, to stalk any petitioner or member of his/her immediate family or to commit domestic violence constitutes a federal crime. In addition to any applicable state charges, the offender should be referred to the U.S. Attorney's Office for the Eastern District of Wisconsin.

APPROVED:



Chief Richard P. Thomas

Revised 5/6/10

DATE:

5/6/10
