



MODEL DOMESTIC VIOLENCE POLICIES AND PROCEDURES

Wisconsin Department of Justice
Wisconsin Crime Victims Council
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INTRODUCTION

The purpose of the guide is to provide an at-a-glance overview of the most critical aspects of investigating and prosecuting domestic abuse in Wisconsin. The Statewide Prosecutor Education and Training Program and the Office of Crime Victim Services originally developed the guide. The Wisconsin Crime Victims Council with a work group of judges, prosecutors, law enforcement and victim advocates revised the document in July of 2002. The Wisconsin Chiefs of Police Association, Sheriff's/Deputy Sheriff's Association, IACLEA, Badger Sheriff's Association, Police Executive Group and the Wisconsin District Attorney's Association were provided with a draft and an opportunity to submit suggestions to the work group. The revised version contains new information and clarifies or updates information in light of legislative or policy changes that have occurred since the guide was first written.

In addition to the policy and procedures outlined below, prosecutors and law enforcement are strongly encouraged to participate in and take a leadership role within their local Coordinated Community Response (CCR) Team.

LIMITATIONS

For practical purposes, the content and detail provided in this document is limited. It is should be used by professionals as a supplement to their agency's policy.

ACKNOWLEDGEMENTS

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CONTACT INFORMATION

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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 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; and,
 - i. master name data, if available.
2. Communications Center personnel shall evaluate the information received and dispatch police personnel accordingly. When preliminary information indicates that both disputants are present or there is a potential for violence, the assignment will be given to two or more officers. If there is a question whether or not to dispatch police personnel, the decision shall be deferred to an operations supervisor.
3. An unwillingness on the part of the caller to provide any requested information will not preclude the dispatch of police personnel.
4. The Communications Center shall make responding officers aware of all available information surrounding the incident.

PRELIMINARY INVESTIGATION

A. INITIAL CONTACT

1. Assess the scene to ensure a safe approach. Officers must be aware of weapons, occupants, tension levels, etc.
2. Officers should request entry into the home and ask to see the person who is the subject of the call. The police should not reveal the caller's name or whereabouts.
3. If access to the victim is refused, and the officer believes the victim to be in imminent danger, officers must persist in investigating until access to the victim is gained.
4. Determine if medical assistance is needed or desired by either party.

B. RECORD INITIAL OBSERVATIONS, INCLUDING:

1. how the call originated (e.g. victim, neighbor, relative, etc.) and the time and nature of the dispatch (e.g. family trouble, battery, cutting, etc.);
2. names of all officers and any emergency medical personnel who responded to the scene as well as the address;
3. any physical evidence at scene: broken furniture or objects, torn clothing, blood stains, damage to phone, broken doors or windows, smashed dishes, etc.;
4. the presence of weapons and any prohibitions in place prohibiting the possession of weapons;
5. parties who are loud or abusive in the officer's presence;
6. any injuries (including pain suffered) to victim or witnesses, (Investigate and document the physical and emotional condition of any children present, whether or not they make statements concerning the assault.);
7. any abuse or threatened abuse to animals;
8. state of intoxication: Indicate if one or both parties had been drinking and/or using illegal drugs and the officer's judgment of the level to which the party is impaired by alcohol or an illegal drug;
9. the physical appearance of the parties (disheveled, messy or disturbed hair, swollen or red eyes, blood, crying, catching breath or heavy breathing, clothes torn, etc.);
10. the emotional state of parties upon arrival at scene (angry, upset, hysterical, excited, sad, scared, lonely, embarrassed, fearful, afraid, calm, nervous, sobbing, shaking, threatening, etc.); and,
11. voice tone and inflection of parties.

C. INTERVIEW VICTIM(S), SUSPECT, CHILDREN PRESENT AND OTHER WITNESSES

1. VICTIM INTERVIEW

- a) Inquire about previous domestic incidents, prior threats/offenses (violent or otherwise) against victim by suspect, prior restraining orders or incidents of stalking.
- b) Ask detailed questions about previous incidents of verbal, physical and sexual abuse in the home and relationship.
- c) Inquire if there are any court orders limiting contact.
- d) Inquire when and where victim can be safely contacted, such as at place of work.
- e) Record names, addresses, and phone numbers of two relatives or friends of the victim who will know victim's whereabouts in 6-12 months.
- f) Inquire about the presence of children and their exposure to the incident (and previous incidents).
- g) Create well-drawn diagrams of the scene in addition to photographs, ask victim to mark the diagram where the events occurred .
- h) Have the victim mark an anatomical diagram to show where blows were struck and where injuries are located.

- i) Obtain release of victim's medical report for treatment of injuries related to domestic violence or sexual abuse arising out of this relationship.
- j) Inform victim of the following:
 - The 72 hour no contact provision and the right to waive it (§ 968.075(5));
 - That the decision to arrest or to proceed with the criminal case is not the victim's decision;
 - Their rights as a crime victim and availability of crime victim compensation; and,
 - Any attempt to coerce or encourage the victim to recant or alter their statement should be reported to law enforcement and may be a crime.

2. INTERVIEWING CHILD WITNESSES

- a) Identify and interview all children in the home and document where they were during the incident.
- b) All verbal children should be interviewed alone and in an age appropriate manner. They should be asked about the current incident and any prior incidents of abuse.
- c) Document the child's statements and demeanor and record all "excited utterances."
- d) Determine if there is a history of physical, sexual or serious emotional abuse of the child or anyone in the home.

3. GENERAL GUIDELINES FOR INTERVIEWING PARTIES

- a) Consider safety issues of law enforcement and others throughout the course of the entire investigation.
- b) Separate victim, suspect and witnesses, including child witnesses. Conduct interviews separately and document statements. Do not rely solely on victims' self-written statements.
- c) Note physical description of both victim and suspect.
- d) No personal opinions should be documented nor made to the parties.
- e) If child abuse has occurred, notify Child Protective Services as required by Wis. Stat. §.948.
- f) List full names, addresses, phone numbers (home and work) and dates of birth for **ALL** witnesses and potential witnesses present.
- g) Statements made for the purposes of medical diagnosis and treatment may also be admissible at court. List names and telephone numbers of paramedics or emergency responders who may be potential witnesses. At hospital or clinic, list names of nurses, social workers treating physicians, etc. If any evidence is collected by medical personnel such as photographs taken, list that information.
- h) Statements by the suspect before and after Miranda must be documented.

D. CONTACT LOCAL DOMESTIC ABUSE SHELTER OR ADVOCACY AGENCY

1. Give victim information about the agency, OR
2. Follow process established by the local Coordinated Community Response Team.
3. Review a 24-hour safety plan with the victim. Recognize that each incident is unique and requires an individualized plan.

E. CRIME SCENE EVIDENCE COLLECTION

1. Take photographs of the crime scene, property damage, and any injuries.
2. Collect, and inventory any item used as a weapon or damaged property at the crime scene.
3. Gather written evidence of prior abuse (i.e. cards, letters, emails).
4. Discussion of arrests should not take place until all evidence is gathered.

ARREST

A. ELEMENTS OF THE MANDATORY ARREST LAW

1. Arrest is **mandatory** when all of the following elements are present (§. 968.075):
 - a) The officer has reasonable grounds (probable cause) to believe that the suspect is committing, or has committed **domestic abuse**, defined as:
 - 1) intentional infliction of physical pain, physical injury or illness;
 - 2) intentional impairment of physical condition;
 - 3) violation of sexual assault statutes, §. 940.225 (1), (2), or (3); or,
 - 4) a physical act that may cause the other person reasonably to fear imminent engagement in the conduct described above.
 - b) Domestic abuse was committed by an adult person against his/her:
 - 1) spouse or former spouse;
 - 2) an adult with whom the person resides or formerly resided; or,
 - 3) an adult with whom the person has a child in common.
 - c) The officer has probable cause to believe the suspect's actions constitute a crime;
 - d) The officer believes that continued domestic abuse against the alleged victim is likely, and/or there is evidence of physical injury to the alleged victim; and,
 - e) The report was received within 28 days after the alleged incident.
2. Issuance of a **non-criminal citation** is **not** in compliance with the mandatory arrest law. Refer all domestic abuse incidents to the district attorney, who will make the appropriate charging decision.

B. DETERMINE THE PRIMARY PHYSICAL AGGRESSOR

Primary Physical Aggressor refers to the person whom the investigating officer determines has engaged in criminal behavior and was not acting in a manner consistent with self-defense. The Primary Physical Aggressor is not necessarily the first person to strike another. For example, in some cases involving a history of domestic violence, a battered person may commit a minor assault on the batterer, and the batterer responds with excessive force. The following flowchart outlines the decision-making process in determining primary physical aggressor.

[FLOWCHART ILLUSTRATING DECISION-MAKING PROCESS inserted here]

1. Factors to determine the **primary physical aggressor** are (§ 968.075(3)(a)1.b.):
 - a) relative degree of injury or fear inflicted on the persons involved; and
 - b) history of domestic abuse between the individuals involved, if known.

2. Other factors to consider are:
 - a) differences in age, size, and weight, as well as strength and skill of each party;
 - b) acts of self-defense by either party;
 - c) seriousness of injuries, including an investigation of offensive vs. defensive wounds;
 - d) motive to lie and credibility of each party;
 - e) corroboration of statements;
 - f) use of alcohol and/or illegal or prescription drugs;
 - g) identity of 911 reporting party, as well as the timing of the cross-complaint;
 - h) existing temporary restraining order, injunction or other no contact order;
 - i) admissions and confessions;
 - j) presence of “power and Controlling” behavior such as emotional and verbal abuse, financial abuse, isolation of one party from a meaningful support network, using children as pawns, controlling means to transportation or disabling access to telephones and other forms of manipulation;
 - k) criminal history, including a determination of whether one party is on probation/parole status;
 - l) consideration of legal defenses: self-defense, defense of others/property, ejection of trespasser, mistake, accident, etc.

3. The decision on which party to arrest should not be based solely on visible injuries, the victim's history of prior complaints, or which party called the police.

C. DETERMINE WHETHER ARREST IS APPROPRIATE.

1. An officer **may** arrest with probable cause even if it is not a mandatory arrest situation.
2. The following factors should **NOT** be considered when making an arrest:
 - a) whether the victim will cooperate with prosecution (§ 968.075(3)(a)1.c.);
 - b) the relationship of the person involved in the incident (§ 968.075(3)(a)1.c.);
 - c) the absence of visible indications of injury or impairment (§ 968.075(3)(a)1.d.);
 - d) potential financial consequences of arrest; or,
 - e) verbal assurance that violence will cease.
3. Consider whether the individual acted in **self-defense**: A person must have a reasonable fear of bodily injury to justify the use of force. A person may not use more than necessary force nor continue the force once the threat has ceased or been withdrawn.

Note: Self-defense is often more difficult to determine in cases of domestic violence and requires careful investigation. The experiences of battered persons may lead them to believe that such action was necessary to defend themselves from an impending violent attack, similar to a law enforcement officer's use of force based on the officer's experience and knowledge.

4. Use **dual arrest** only in extreme cases when the primary physical aggressor cannot be determined. Contact supervisor for approval before making a dual arrest.
5. Dual arrest when children are present:
 - a) Identify responsible relatives or friends who can care for the children;
 - b) Conduct background check of person(s) identified; and,
 - c) If no suitable person is able to care for the children, contact CPS.
6. If Suspect is not on the Scene: A **suspect at large** may pose a danger to the victim. Reasonable efforts should be made to locate the suspect in the area or in frequented places. If the suspect is committed a domestic abuse crime but is not taken into custody, but the suspect committed a domestic crime, the officer should obtain a warrant. Under no circumstances should an officer fail to prepare a crime report or fail to seek a warrant when probable cause exists simply because the suspect left the scene.
7. **Where reasonable grounds exist to believe a crime has been committed but no arrest is made**, prepare a written report stating why no arrest was made and forward it to the district attorney immediately after investigation is completed (s. 968.075(4)).
8. If no arrest is made, privately ask the victim if he or she would like to be escorted from the scene and taken to a shelter or other safe location. Provide victim with domestic violence resources, if available.

D. HOLD THE OFFENDER IN CUSTODY AFTER ARREST

1. Cite all the crimes that were committed in the course of the incident.
2. Persons arrested for a felony should be held in custody pending initial appearance.
3. Persons arrested for a misdemeanor should be held in jail pending a bail hearing unless the offender posts bail and is released.
4. Require cash bail, rather than a signature bond.

5. Arrest for domestic violence is prima facie evidence that the suspect poses a danger (§ 969.01(4)).
6. The following additional **non-monetary conditions of bail** should also be requested:
 - a) no direct or indirect contact with victim's residence, premises temporarily occupied by the victim, or work place. 3rd party contact with the victim at the defendant's request is also strictly prohibited;
 - b) no contact with children in the household;
 - c) no possession or consumption of alcohol or drugs;
 - d) no possession of dangerous weapons;
 - e) compliance with medical treatment, if appropriate;
 - f) no violation of any other laws;
 - g) no contact with other witnesses; and,
 - h) a written, signed bond.

7. **Jail personnel** who release suspect less than 72 hours after the arrest must inform the suspect orally and in writing of the requirements of § 939.621 [*Increased penalty for certain domestic abuse offenses*]. If the suspect refuses to sign an acknowledgment on the written notice that they received notice of, and understand the requirements of § 939.621 the suspect **may not** be released from custody, pursuant to § 968.075(5)b1.

FOLLOW UP INVESTIGATION

A. COLLECT ADDITIONAL EVIDENCE

1. Take photographs of injuries approximately two days after incident to exhibit changes in injury as well as the long-term effects of abuse. Contact or meet victim at a safe location if necessary, such as a place of work.
2. Obtain all available medical reports after receipt of medical release from the victim.
3. Obtain copy of 911 recording or other communications with police or emergency dispatch center.
4. Note who called dispatcher; interview if not already completed.

B. PREPARE POLICE REPORT

1. Include all statements and evidence gathered at the scene and afterward; evidence does not exist if not in the police report.
2. Victim's statement about injury should be considered evidence of injury.
3. Maintain objectivity; do not include personal opinions about the victim or suspect, their statements, or actions.
4. Review jury instructions to ensure that all elements of the crimes involved are included.
5. Document any past history of abuse; include all reports of prior incidents, restraining orders, and a complete criminal history of the suspect, including relevant juvenile history.
6. Attach a copy of any current restraining order or no contact order from the court.
7. Include information about the presence of children and any statements made by children present, including excited utterances.

C. REFER CASE TO DISTRICT ATTORNEY'S OFFICE

1. Have law enforcement supervisor review case prior to submission to the district attorney's office.
2. If suspect is in custody, refer the case to the district attorney by the time of the bail hearing.
3. If suspect is not in custody, refer the case to the district attorney within 48 hours of the incident.
4. If the report has probable cause but no arrest was made, forward the report to the district attorney.
5. When law enforcement has questions regarding the prosecutor's charging decision, the officer should contact the district attorney.

PROSECUTION

A. ESTABLISH A PRESUMPTION IN FAVOR OF PROSECUTION IN DOMESTIC VIOLENCE CASES

1. The decision not to prosecute a domestic abuse offense, should not be based upon (see §. 968.075(7)(a)):
 - a) solely the absence of visible indications of injury or impairment;
 - b) the victim's consent to any subsequent prosecution of the other person involved in the incident; or,
 - c) the relationship of the persons involved in the incident.
2. Use vertical prosecution (the same prosecutor handles the entire case).
3. Proceed with prosecution unless the case cannot be proven; the decision to prosecute is based on evidence, not on the cooperation of the victim.
4. Include the words "Domestic Abuse" in the complaint next to the charge, and the language that the act "constitutes Domestic Abuse as that term is defined in Wis. Stat. §. 968.075(1)(a)."
5. Review all domestic violence cases and reports, and provide a charging decision or refer for follow-up within 14 days of receiving the police report.
6. Comply with victims rights requirements and obtain input from the victim
7. Give priority to domestic violence cases and oppose continuances.
8. Consider all relevant charges and prosecute those that are provable.
9. Review police reports in which no arrest is made, and decide if prosecution is warranted.

B. COMMUNICATION WITH LAW ENFORCEMENT

1. Forward case-specific memos to law enforcement to inform them of the need for further investigation.
2. Discourage dual arrest as a practice.
3. Notify law enforcement of the charging decision, why a suspect was not charged and the disposition of the case.

C. SENTENCING

In making sentencing recommendations, consideration should be given to all of the following:

- a) request sufficient probation to meet treatment needs;
- b) payment and successful completion of abuser treatment;
- c) request domestic abuse surcharge;
- d) alcohol and drug abuse assessment (AODA) and compliance with treatment recommendations;
- e) complete and pay for a batterer's education program;

- f) complete and pay for parenting classes specific to the effects of witnessing violence on children;
- g) require any appropriate "no contact" provisions (mandatory);
- h) comply with any counseling deemed appropriate by probation agent;
- i) obtain psychological evaluation and comply with any treatment recommendations, including compliance with medications recommended by a treating physician;
- j) no possession of firearms (mandatory);
- k) restitution (mandatory);
- l) perform community service hours specifically related to the effects/impact of violence on individuals, systems and the community; and,
- m) jail or prison.

DEFERRED PROSECUTION AGREEMENTS

A. USE OF DEFERRED PROSECUTION AGREEMENTS

1. Deferred prosecution agreements (DPA) are appropriate where:
 - a) the charge is a misdemeanor;
 - b) there is no physical injury, or only a minor injury;
 - c) the defendant has no prior violent criminal record;
 - d) there was no use, or threat of use of weapons; and,
 - e) the defendant does not have a history of contact with law enforcement for domestic violence.

2. Local Deferred prosecution agreements should:
 - a) be written with all conditions clearly expressed, including the grounds for revocation;
 - b) require an admission of guilt to the crime(s) covered by the agreement, in order that on revocation it is understood that the only thing remaining is for the case to proceed to sentence and conviction; and
 - c) be used only if there are adequate resources to monitor and ensure compliance.