

SECTION SMP

SMP-H DOMESTIC ABUSE / ORDER FOR PROTECTION

SMP-H: DOMESTIC ABUSE AND ORDER FOR PROTECTION

Section SMP-H.10 Purpose

To provide members of the Avon Police Department with essential guidance upon the legal and practical considerations involved in responding to domestic disturbances.

Section SMP-H.11 Dispatcher Procedures

The dispatcher who receives a domestic violence call is instrumental in providing the responding officers with vital information that could save the victim's and the officer's life. The dispatcher will give a domestic violence call the same priority as any other life-threatening call and shall dispatch at least two officers to every incident.

- A. In addition to information normally gathered, an effort shall be made to determine and relay the following information to responding officers:
 - 1. Nature of assaultive or aggressive behavior that has already occurred;
 - 2. Whether weapons are involved and if there are any firearms in the residence;
 - 3. Whether the suspect is present and, if not, the suspect's description and possible whereabouts;
 - 4. Whether the offender is under the influence of drugs or alcohol;
 - 5. Whether there are any children present;
 - 6. Whether the victim has a current Order for Protection or Restraining Order; and
 - 7. Whether the offender has previously been arrested for assaultive behavior.
- B. Dispatchers shall not cancel police response to a domestic violence complaint based solely on a follow-up call from the residence requesting a cancellation of the police response.

Section SMP-H.12

Responding Officer Procedure

- A. Initial Response
 - 1. 911 hang-up calls shall be handled as domestic disturbances until determined otherwise.
 - 2. An officer shall not enter a residence alone where a domestic disturbance has been reported, unless immediately necessary to protect a person from serious bodily harm and such an entry can be made without an unnecessary risk to the officer.

- B. Entry to Private Residences in Response to a Domestic Disturbance
 - 1. If the original call originated from the residence, consent to enter a residence shall be presumed until officers have made personal contact with the parties and verified there is no immediate danger of physical injury to any person at the residence.
 - 2. Officers will not forcibly enter a residence in response to a domestic disturbance unless the original call or other independent facts demonstrate a realistic concern for the physical safety of persons present at the residence.
 - 3. If the original call to a residence was not initiated by a person at the residence, entry into the residence must be by consent of a person present or based upon a reasonable and articulable belief that such an entry is necessary to prevent injury or death to an occupant.
 - 4. The consent of any one party to enter or remain in the residence is adequate to provide for the officers' continued presence; however, officers must leave the residence if both parties insist that the officers leave, unless other independent basis exists to remain at the scene.
 - 5. Where the persons at the residence, including the person who made the initial call to the police department, refuse to admit the responding officers, the responding officers shall respect the parties' wishes, unless other independent basis exists to remain at the scene.

6. Where one resident has been locked out of the home by another resident, the officers shall not assist the evicted party in forcing entry into the residence, unless other independent basis exists.
 - a. Responding officers must make a reasonable inquiry into the evicted resident's status or right to consent to an entry before any action is taken under this provision.
 - b. Where a forcible entry is to be made, the evicted resident must be present to provide the continuing consent necessary to lawfully enter the premises.
7. Where the initial call of a domestic disturbance is made by a person who is not a resident of the home or is not present at the home, responding officers shall not presume that there is any consent for them to enter the home.
8. Where the original call originates from the residence, responding officers may insist upon speaking with the person initiating the call or should otherwise determine the whereabouts and physical condition of the original caller. Entry into the home over the objections of one of the residents for the purpose of determining the physical well-being of the person who initially called 911 may be appropriate, but must be evaluated upon the totality of the circumstances known to the responding officers, to include:
 - a. Any evidence or facts indicating that a person at the residence may be in need of immediate first aid or medical attention.
 - b. Any evidence or facts indicating a possibility that a person at the residence may be the victim of serious bodily harm if immediate action is not taken.
 - c. Any evidence or facts indicating that the physical well-being of children at the residence might be in jeopardy or that their caretakers are unable or unwilling to provide appropriate care and such neglect may have an immediate impact upon the children's well-being.

C. On-Scene Investigation

When responding to a domestic disturbance, the officer shall:

1. Restore order by gaining control of the situation.
2. Take immediate control of all weapons used or threatened to be used in the crime.
 - a. Voluntary placement of any weapons not immediately implicated in the incident should be sought. Any weapons taken into custody shall be made safe and property inventoried at the Police Department.
3. Assess the need for medical attention and call for medical assistance, if indicated.
4. Interview the parties as quickly as possible. All attempts will be made to interview all suspects, victims, and witnesses immediately after the event has happened. No one is allowed to leave the scene until officer has attempted to take a taped statement from them.
5. Arrest the offender when probable cause and legal authority exists to make an arrest.
 - a. ***Where there are indications that both parties assaulted each other, efforts should be made to develop a reasonable basis to believe who was the primary aggressor. The following factors may be relevant to this determination:***
 - 1.) Comparative extent of any injuries inflicted;
 - 2.) Fear of physical injury because of past or present threats;
 - 3.) Actions taken to protect oneself;
 - 4.) The history of domestic abuse perpetrated by one party against the other.
 - 5.) Existence or previous existence of Orders for Protection.

6. Collect and record evidence and, where appropriate, take color photographs of injuries and property damage.
7. Give the victim a copy of the incident report number.
8. If the offender has left the scene and a crime has been committed, the officer will:
 - a. Conduct a search of the immediate area;
 - b. Obtain information from the victim and witnesses as to where the offender might be.

D. Arrest

1. Officers will make an arrest when probable cause and legal authority exists to make an arrest. Probable cause arrest authority exists for the following crimes:
 - a. Domestic Assault- Minn. Stat. Section 629.341(1), where the assault has occurred within the **preceding seventy-two hours** to any one of the following:
 - 1) Spouse and former spouses;
 - 2) Parents and children;
 - 3) Persons related by blood;
 - 4) Persons who are presently residing together or who have resided together in the past;
 - 5) Persons who have a child in common regardless of whether they have been married or have lived together at any time;
 - 6) A man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
 - 7) Persons involved in a **significant romantic or sexual relationship**.

- b. Violations of Orders for Protection-MN Stat. 518B.01, where the restrained person has violated a provision excluding the restrained person from the petitioner's residence or place of employment.
 - c. Harassment Restraining Order-MN Stat. 609.748, where the restrained person has violated a temporary restraining order or a restraining order by harassing the petitioner.
 - d. Violation of Conditional Release-MN R.Crim.P 6.03, Subd. 2, where a party has violated the conditions of release previously established by a Court.
2. An arrested person must be transported to the Stearns County Jail and booked.
 3. Officers should emphasize to the victim and the offender that the criminal action is being initiated by the state and not the victim.

E. Victim Assistance/Crime Prevention

1. When an arrest is made or an arrest could have been made but for the absence of a perpetrator, an officer shall make a call to 253-6900 or fax a copy of the Assault form to Anna Marie's at 253-5563. The officer shall provide the Helpline Advocate with the following information:
 - a. The victim's name, race, date of birth, address, phone number, and any alternate phone numbers that will facilitate a follow-up contact with the victim.
 - b. The defendant's name, race, date of birth, and address. If the defendant has been arrested, the facility where the defendant will be held pending a court appearance.
 - c. The relationship of the victim to the defendant.
 - d. A brief description of the incident and whether weapons were used in the assault.

- e. Whether there are any children in the home and whether special consideration is necessary to assure their continued safety.
- f. Immediate assistance the officer feels might benefit the victim, including sheltering, and whether the victim has been advised by the officer that Community Advocacy will be contacting the victim and offering immediate information and support.

*If an officer, upon contacting the Anna Marie's Advocate, is able to immediately connect the victim with the advisor, the officer is relieved of providing the above information.

- 2. Officers shall provide the following assistance to the victims, batterers, and, where appropriate, the children:
 - a. Provide the victim with referral information for legal and social assistance and support and the "Notice of Rights" required by statute;
 - b. Secure medical treatment for victims;
 - c. Ensure the safety of the children;
 - d. Remain at the scene until satisfied that there is no threat to the victim; and
 - e. Remain on the scene to preserve the peace as one person removes personal property.

F. Documentation

- 1. Domestic violence will be documented in the following manner:
 - a. When no arrest or report has been written:
 - 1) Will complete the information sheet for review.
 - b. When an arrest is made or an offense has taken place:
 - 1) An Offense Report;

- a) The offense report submitted by an officer for a domestic assault shall indicate that Anna Marie's was contacted or the reason why no such contact was made.
 - (b) The Domestic Assault form shall be faxed as soon as possible.
- 2) A Conditional Release;
 - 3) Victim Notification card was provided to victim. If they refuse refuse to accept information it should be detailed in report.
 - 4) Obtain a copy of the 911 tape call.