

SECTION SMP

SMP-I DOMESTIC VIOLENCE

SMP-I: DOMESTIC VIOLENCE

Section SMP-I.10 Purpose

It is the policy of this agency to reduce the incidence and severity of domestic violence. This will be achieved by providing the victims of domestic violence with support through a combination of strict enforcement of domestic abuse laws and referrals to appropriate community services. Arrests will be made when probable cause and lawful authority exists. We will ensure that officers are prepared to respond to and effectively deal with domestic violence calls for service through effective training and support.

Section SMP-I.11 CONSTITUTIONAL ISSUES CONCERNING ENTRIES TO PRIVATE RESIDENCES

When responding to a domestic disturbance, responding officers must be conscious that their right to enter or stay in a person's home is directly related to the following recognized exceptions to the warrant requirement of the Fourth Amendment of the U.S. Constitution:

1. **CONSENT-** When evaluating this exception the following factors shall be considered relevant:
 - a. When responding to a call from a person who is at the residence, responding officers may assume that the person has the lawful authority to consent to the officers' presence until the lack of such authority is reasonably demonstrated.
 - b. If invited by an occupant, officers may enter the residence, even though another resident objects.
 - c. 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.
 - 1). 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.
 - 2). 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.
 - d. 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 residence.

- e. Where the responding officers have entered a residence as specified above and subsequently been asked to leave by the persons involved in the domestic dispute, the officers shall leave the residence, **unless other independent basis exists** to remain at the residence.
- f. 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.

2. **EMERGENCY EXCEPTION-** When evaluating this exception, responding officers must evaluate the "totality of the circumstances" to determine whether an emergency exists and may consider the following factors relevancy of which shall be made clear in any report performed:

- a. 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.
 - 1). An 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 all circumstances known to the responding officers.
- b. Any evidence or facts indicating that a person at the residence may be in need of immediate first aid or medical attention.
- c. 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.
- d. 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.

Section SMP-I.12

Domestic Assault

A. The following criminal statutes are frequently applicable to domestic disturbance situations:

1. 609.224 - Assault in the Fifth Degree (Misd.)

Note: A second offense within five years against the same victim or a second offense within two years against any victim is a gross misdemeanor or two convictions within five years against the same victim or two convictions within two years against any victim is a Felony.

2. 609.223 - Assault in the Third Degree (Felony)
3. 609.222 - Assault in the Second Degree (Felony)
4. 609.221 - Assault in the First Degree (Felony)
5. 609.713 - Terroristic Threats (Felony)
6. 609.746 - Interference with Privacy (Misd.)
7. 609.748 - Harassment; Restraining Order (Misd.)
8. 518B.01 - Violation of Order for Protection (Misd.)

Note: A second offense within two years is a gross misdemeanor.

9. 518.131 - Violation of a Domestic Relations Restraining Order

Section SMP-I.13

Arrest at Domestic Disturbances

1. The following general rules of arrest are applicable to all domestic disturbances:

- a. Felonies - a peace officer may make a probable cause arrest upon any felony. Minn. Stat. Section 629.34, Subd. 1(c).

- b. Misdemeanors and Gross Misdemeanors - A peace officer may make an arrest for offenses committed in the officer's presence. (No probable cause arrests) Minn. Stat. Section 629.34, Subd. 1(c).

Note: The general rules of arrest specified herein are applicable to all misdemeanor and gross misdemeanor violations unless there is specific probable cause arrest authority granted under another statute.

- 2. Probable cause arrest authority under Minn. Stat. Section 629.341 Domestic Violence for misdemeanor and gross misdemeanor assaults:
 - a. The offense must have occurred within the preceding *seventy-two* hours.
 - b. The victim must be one of the following listed persons:
 - 1). Spouse or former spouse; or
 - 2) Parents and children;
 - 3). Person with whom the suspect resides or has previously resided.
 - 4) Persons who have a child in common regardless of whether they have been married or have lived together at any time;
 - 5) 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
 - 6) Persons involved in a significant romantic or sexual relationship
- 3. Probable cause arrest authority under Minn. Stat. Section 518B.01, Subd. 14 for misdemeanor and gross misdemeanor offenses for a Violation of an Order for Protection:

- a. The Order for Protection must have been served upon the restrained party.
- b. The person restrained has violated one of the following restrictions within the Order for Protection:
 - 1). provision excluding the person from the petitioner's residence; or
 - 2). provision excluding the person from the petitioner's place of employment.
- c. The following additional issues must be considered when enforcing an Order for Protection (Minn. Stat. Section 518B.01):
 - 1). It is not uncommon for the Petition and the Order to be attached to each other, yet the only enforceable portion of the document is the Order. The Petitioner "prayer for relief" is not the Court's order.
 - 2). An "ex parte" order (initial order issued solely upon the Petitioner affidavit without the presence of the other party, the Respondent) **is only valid for 14 days**. An ex parte order can be extended an additional 14 days under certain conditions; however, a separate order extending the original order must be attached.
 - 3). An Order for Protection, the actual order issued after a hearing, **expires after two years**. A lesser period may be specified; however, after two years, a new order must be obtained.
4. Probable cause arrest authority under Minn. Stat. Section 609.748, Subd. 6 for misdemeanor offenses for violating a Harassment Restraining Order:
 - a. The Restraining Order must have been served upon the restrained party or the restrained party must have knowledge of the order;

- b. The person restrained has violated the restrictions of the Restraining Order; and
 - c. The officer can verify the existence of the order.
5. **Mandatory detention** under Minn. Stat. Section 629.72 (Applicable to arrests under Minn. Stat. Section 609.224, Assault in the Fifth Degree):
- a. Where a party to a domestic disturbance is arrested for assaulting a spouse or other person with whom the arrested party resides, the arrested party **must be transported to jail.**
 - b. The provisions of Support Services Procedure 502 concerning the release of persons arrested for domestic assault shall be applicable to the terms and condition of release of all persons.
6. Probable cause arrest authority under Minn. R.Crim.P. 6.03, Subd. 2 for Violation of a Conditional Release:
- a. The defendant has violated the conditions of release from a prior offense; and
 - b. It is impractical to secure a warrant or

Section SMP-I.14 Non-witnessed Misdemeanor Arrest of an Assailant

1. If the officer discovers a physical assault has occurred and the victim shows signs of injury, the officer shall arrest the assailant within the parameters of an Non-witnessed Misdemeanor Domestic Assault (MSA 629.341).

- a. The victim resided with the assailant at one time.
- b. The assault occurred within *twenty-four* hours of the time of arrest.

The officer must photograph the visible injuries and document any medical treatment received, including copies of medical records and pre-hospital patient intake forms. Full identity of emergency medical personnel who may treat a victim at the scene should be included in the officer's report.

There must be independent corroboration the injuries were caused by the suspected assailant. This corroboration **includes**:

- a. Injuries observed by a person other than the victim.
- b. A medical report that indicates injuries.
- c. Witnesses who saw the crime occur.
- c. Witnesses who heard noises indicating a domestic violence incident was taking place, i.e., screams, furniture being thrown, etc.
- e. A 911 tape with the victim/witness/suspect's s statement.
- f. Physical evidence present, i.e., weapons, broken furniture, disarray, torn clothing.
- g. Present sense impressions of the victim.
- h. Excited utterances.
- i. Statements made for purposes of medical diagnosis or treatment.
- j. Admission of the suspect.

2. If the officer has probable cause to believe an assault occurred, though there are no visible signs of injury; he/she may opt to arrest the assailant at his/her discretion, within the parameters of MSA 629.341 if any of the following conditions exist:

- a. Arrests with no signs shall have a citizen arrest form signed by victim before arrest will be made.

- b. Assaults of a greater severity shall be handled in the normal fashion.
- c. A person convicted of fifth degree assault against the same victim may be charged with a gross misdemeanor 5th degree Assault.

If there is little or no independent corroboration, a full victim's cooperation standard will be used. "Victim cooperation" refers to the willingness of the victim to testify under oath regarding the incident alleged in the police report.

3. Cases which do not meet either the independent corroboration standard or the victim cooperation standard will not be charged or prosecuted.

Cases should not be presented for prosecution until:

- a. Corroborating witnesses have been interviewed.
- b. Names, addresses and phone numbers of all witnesses are included in the report.
- c. A complete criminal history of the defendant is included in the report.
- d. A copy of the 911 tape has been ordered.
- e. Relevant medical reports have been obtained.
- f. Reports of prior incidents, especially convictions of domestic violence by this same defendant are attached.
- g. Photographs of the victim's injuries are available.

Section SMP-I.15

Domestic Related Issues

A. Child Custody Issues

1. Court Orders issued under the following statutes may contain provisions dealing with the right to physical custody of minor children:

- a. Minn. Stat. Chapter 518 - Divorce and Dissolution
- b. Minn. Stat. Section 518B.01- Orders of Protection
- c. Minn. Stat. Chapter 257- Paternity

Note: The father of a child born out of wedlock has no right to custody or visitation until such right is established in a paternity proceeding.

- d. Minn. Stat. Chapter 260 - Juvenile Court and Neglect and Dependency Court (child in need of Protective Services) jurisdiction.

Note: The only provisions that are deemed to be crimes (misdemeanors) are under Minn. Stat. 518 and 518B.01; however, a violation of any of the above provisions may involve a violation of Minn. Stat. Section 609.26, **DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS.**

2. Disputes involving allegations that one party has violated the terms of a Court Order dealing with custody or visitation of minor children shall be dealt with in the following manner:

- a. If there is reliable evidence that the well-being of the child(ren) is in immediate jeopardy, an officer may take the child(ren) into custody.
 - 1). A report will be filed with the Stearns County Child Protection Agency.
 - 2). The children may be turned over to the appropriate custodial parent, subject to the restrictions contained in clause c, below.
- b. If there is probable cause to believe that a violation of Minn. Stat. Section 609.26, **DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS**, is occurring and the child(ren) is being permanently removed from the state of Minnesota, an officer may act pursuant to that statute to

arrest the party detaining the child and return the child to the custodial parent, subject to the restrictions contained in clause c, below.

- c. Pursuant to clause a or b, above, a child shall not be returned to a custodial parent where it is likely that the child would be removed from the state of Minnesota. In all such instances, the child shall be transported to the nearest shelter.
- d. In all other instances, the parties will be advised that they must pursue their civil remedies via the Court's contempt process to resolve the dispute.
 - 1). An officer shall make an information report upon the circumstances, but the officer will advise the parties it will not be dealt with as a criminal matter.
 - 2). If the dispute arises under an Order for Protection, the parties will be advised that the County's domestic abuse workers will assist them in dealing with the contempt order. Otherwise, the parties should be advised to contact their respective attorneys.

B. Removal and Destruction of Property

1. Where the parties to a domestic reside together or are currently married, an officer shall not arrest a party or physically restrain a party to prevent the removal or destruction of property unless a Court Order exists restraining the party from the premises.
2. Since the issuance of a Judgment and Decree in a dissolution action effects a final determination of all property issues between parties who were previously married to each other, the removal or destruction of property by one party of property awarded to the other party under the Judgment and Decree may be dealt with as any other criminal matter.
 - a. Where the facts and circumstances are not clear or a party's right to specific property is not clearly evidenced in the Judgment and Decree, the parties should be advised to consult their attorneys.

3. Where parties have previously lived together but no longer reside together, the facts and circumstances must be evaluated to determine whether any crime has occurred. In such situations, the following facts may be considered relevant:
 - a. how long the parties lived together;
 - b. how long the parties have been separated;
 - c. whether they jointly acquired the residence where the dispute is occurring via lease or purchase; and
 - d. whether the questioned property clearly belongs to one party or the other.

Although disputes over personal property may be difficult to deal with and the parties should generally be referred to their attorneys to deal with such issues, the fact that one party is trespassing upon the other party's residential property to accomplish the removal or destruction of property may be addressed separately.

Section SMP-I.16 Potential Use of Weapons in Domestic Disputes

1. When a firearm or other dangerous weapon is present at the scene of a domestic dispute and the officers perceive, or are informed by one of the disputants that the weapon may be used in the dispute, the officers shall:
 - a. Request that the weapon be placed in their custody;
 - b. Search for and remove the weapon from the residence if one of the parties requests that they do so; or
 - c. Seize the weapon if it is in plain view and alternate remedies have not been effective in alleviating the potential threat of serious violence.
2. When a weapon is taken into custody under the preceding section, the officers shall issue a receipt to the owner.
 - a. If no receipt was provided at the time the weapon was taken, a receipt will be given to a party upon their initial inquiry concerning the status of the weapon.

3. Any weapons taken hereunder shall be promptly placed in the Police Department property room and held for safekeeping.
 - a. A person seeking the return of a weapon taken in a domestic shall petition the Chief/Sergeant of Police for the return thereof.
 - b. The Chief/Sergeant of Police will authorize the return of weapons taken from a domestic under the following circumstances:
 - 1). When ordered to return the weapon by a Court of competent jurisdiction (If any criminal charges have been made as a result of a domestic, an Order specifically directing that the weapon be returned should be requested of the judge finally adjudicating those charges);
 - 2). When arrangements have been made to the Chief/Sergeants satisfaction to assure that the weapon will not be a threat in any future domestic; or
 - 3). As otherwise determined by the Chief of Police.

Section SMP-I.17

Reports

1. A Domestic Card will be completed upon all domestic disturbance situations, irrespective of whether there has been any potential for physical violence.
 - a. Officers shall take reasonable efforts to obtain home and work telephone numbers for each party to a domestic as well as to provide minimal information concerning the details of the incident to assure appropriate follow-up.
2. Where there has been a potential threat of physical violence, whether mutually induced or threatened or implied by one party, an offense or information report shall be submitted upon the incident by one of the responding officers.
3. Pursuant to Minn. Stat. Section 629.341, Subd. 3, all victims of domestic abuse must be given the following Notice of Rights:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an order for protection for domestic abuse. The order could include the following:

- (1) an order restraining the abuser from further acts of abuse;
- (2) an order directing the abuser to leave your household;
- (3) an order preventing the abuser from entering your residence, school, business, or place of employment;
- (4) an order awarding you or the other parent custody of or visitation with your minor child or children; or
- (5) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."
 - a. The notice must include the resource listing, including telephone number, for the area battered women's shelter.
 - b. An officer's report shall specifically indicate that the Notice of Rights was provided to the victim as required by law.
 - c. If victim refuses to take the notice card officers shall note this in their report.

Section SMP-I.18

Additional Victim Notifications

1. Where a party to a domestic has been arrested, Minn. Stat. Section 629.72, Subd. 6 specifies that upon the release from custody of a person arrested for a domestic assault, the victim shall immediately be notified of the following information:
 - a. the conditions of release, if any;
 - b. the time of release;
 - c. the time, date, and place of the next scheduled court appearance of the arrested person and the victim's right to be present at the court appearance; and

- d. the location and telephone number of the area battered women's shelter.

The facts and circumstances involved in the making of or any attempts to make the required notification shall be documented upon reports related to the arrest and detention or upon forms specifically provided for that purpose.

2. Where custody of party arrested for a domestic assault has been transferred to the Stearns County Sheriff's department, information concerning the method and means of reaching the victim shall be provided to the Sheriff's Department to facilitate such notification.