

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

1.0 INTRODUCTION AND PURPOSE:

1.1 Introduction:

The City of Winona and its Police Department recognize domestic abuse as a serious problem in today's society. This agency's policy is to protect victims of domestic abuse by making an arrest whenever it is authorized and by ensuring that its peace officers have a complete understanding of the law governing this area.

Peace officers will utilize this policy in response to calls where there may be domestic abuse. This policy prescribes courses of action peace officers should take in response to a domestic call. This agency will aggressively enforce these laws without bias and prejudice based on race, marital status, sexual orientation, social class, age, disability, gender, religion, creed or national origin.

1.2 Purpose:

The principal purpose of this policy is to establish guidelines and procedures to be followed by peace officers in law enforcement's response to domestic abuse. Additionally, this policy intends:

1.2.1 To prevent future incidents of domestic abuse by establishing arrest rather than mediation as the preferred law enforcement response to domestic abuse;

1.2.2 To afford maximum protection and support of victims of domestic abuse through a coordinated program of law enforcement and victim assistance;

1.2.3 To ensure that the same law enforcement services are available in domestic abuse cases that are available in other criminal cases;

1.2.4 To reaffirm peace officers' authority and responsibility to make arrest decisions in accordance with established probable cause standards;

1.2.5 To promote peace officer safety by ensuring that they are as fully prepared as possible to respond to domestic calls;

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

1.2.6 To complement and coordinate efforts with the development of domestic abuse prosecution plans, so that law enforcement, prosecution and advocacy will be more efficient and successful;

1.2.7 To promote law enforcement's accountability to the public in responding to domestic abuse;

1.2.8 To document allegations of domestic abuse so there can be meaningful prosecution and delivery of victim services.

2.0 DEFINITIONS:

For the purposes of this policy, the words and phrases in this section have the meanings given to them, unless another intention clearly appears.

2.1 Domestic Call means a request for assistance to a law enforcement agency in general regard to: 1) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or 2) terroristic threats (M.S. 609-713, subd.1) or criminal sexual conduct in the first through fourth degree, committed against a family or household member by a family member or household member (M.S. 518B.01, subd 2(a)).

2.2 Domestic Abuse Program means a public or private intervention project or advocacy program which provides support and assistance to the victims of domestic abuse.

2.3 Child or Minor means a person under the age of 18.

2.4 Family or Household Members means spouses, former spouses, parents and children, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time, and persons involved in a significant romantic or sexual relationship. It also includes a man and woman if the woman is pregnant and man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

3.0 DISPATCHING THE CALLS:

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

3.1 Receiving the Domestic Call:

Upon receiving a domestic call, the dispatcher will assign the call a high priority. The dispatcher should assign at least two officers to a domestic call. If only one officer is available, all reasonable attempts should be made to obtain another officer to assist the officer who was initially dispatched.

3.2 Information to be obtained:

3.2.1 The dispatcher receiving a domestic call should attempt to elicit from the caller and communicate to the responding peace officers as much of the following information as possible:

3.2.1.1 The nature of the incident.

3.2.1.2 The address of the incident, including apartment number, etc.

3.2.1.3 The telephone numbers where the caller can be reached and an alternative telephone number.

3.2.1.4 If weapons are involved or present in the dwelling.

3.2.1.5 If someone is injured and the nature of the injury.

3.2.1.6 Information about the suspect including whether the suspect is present, description, direction of flight, mode of travel, etc.

3.2.1.7 Relationship between the caller and the suspect.

3.2.1.8 If there has been prior abuse or prior calls involving these individuals.

3.2.1.9 If there is an Order for Protection.

3.2.1.10 If children are present at the scene.

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

3.2.1.11 If there are non-English-speaking people or people with mobility impairments or hearing impairments.

3.2.2 If the caller is the victim, the dispatcher should attempt to keep the caller on the telephone as long as possible, tell the caller that help is on the way, and tell the caller when they can expect the peace officers to arrive.

3.2.3 If the caller is a witness to an incident in progress, the dispatcher should attempt to keep the caller on the phone and should relay ongoing information provided by the caller to the responding peace officers.

3.2.4 If the responding peace officers are some distance away and the dispatcher cannot remain on the telephone with the caller/victim, the dispatcher should attempt to call back periodically to check on the progress of events and call again when the officers arrive at the scene. If the dispatcher finds that a victim/caller who was recently available suddenly cannot be reached by phone or there is a persistent busy signal, the dispatcher should relay that information to the responding officers.

4.0 RESPONDING TO THE CALLS:

4.1 Driving to the Scene:

The peace officers should respond directly and without unreasonable delay to the scene of a domestic call.

4.2 Initial Contact with Occupants:

Upon arriving at the scene of a domestic call, and being met, the responding officers should identify themselves as peace officers, explain their presence, and request entry into the home. The officers should ask to see the person who is the subject of the call. If the person who called the law enforcement agency is someone other than the subject of the call, the officer should not reveal the caller's name. The officers should ensure all of the occupants are safe.

4.3 Entry:

4.3.1 Refused: If refused entry, the officers should be persistent about seeing and speaking alone with the subject of the call. If access to the

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

subject is refused, the officers should request the dispatcher to contact the caller or witness if the information for the contact is available.

4.3.2 Forced Entry: If access is still refused and the officers have reason to believe that someone inside is in imminent danger, officers may force entry.

4.3.3 Search Warrant Entry: If the officers are refused entry and have no legal recourse to force entry, and they have reasonable grounds to believe a crime has been committed, they should contact their supervisor and request permission to obtain a search warrant.

4.4 First Aid:

After securing the scene, the responding peace officers shall provide the necessary first aid.

5.0 ARREST DECISIONS:

5.1 Making Arrests:

After securing the scene and providing any first aid, the peace officers will begin a criminal investigation to determine if there is evidence and probable cause to believe that a crime has been committed, based upon the evidence and not upon the victim's apparent wishes regarding arrest. The officers should collect relevant physical evidence, including weapons which may have been used; take photographs of the scene and of any injuries; and take statements from the involved parties and witnesses. Some of the evidence and statements may include:

5.1.1 Visible injuries.

5.1.2 Condition of clothing.

5.1.3 Property damage.

5.1.4 Excited utterances of the victim and the suspect.

5.1.5 Demeanor of the victim and the suspect.

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

5.1.6 Medical records, including the victim's statements to paramedics, nurses and doctors.

5.1.7 Interviews of witnesses, including the children who may have been present.

5.1.8 Evidence of any prior domestic abuse-related convictions, including dates, and any existing order for protection or no-contact orders. The jurisdiction of convictions and OFP should also be noted.

5.2 Consideration Factors in Making the Arrest:

Arrests should be made without consideration of:

5.2.1 Marital status, sexual orientation, race, or cultural, economic, social, political or professional position.

5.2.2 Ownership, tenancy rights of either party, or the fact that the incident occurred in a private place.

5.2.3 Belief that the victim will not cooperate with criminal prosecution or that the arrest may not lead to a conviction.

5.2.4 Verbal assurances that the abuse will stop.

5.2.5 Disposition of previous police calls involving the same victim or suspect.

5.2.6 Denial by either party that the abuse occurred when there is evidence of domestic abuse.

5.2.7 Lack of a court order restraining or restricting the suspect.

5.2.8 Concern about reprisals against the victim.

5.2.9 Adverse financial consequences that might result from the arrest.

5.2.10 Chemical dependency or intoxication of the parties.

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

5.3 Primary Aggressor and Dual Arrests:

The agency shall discourage dual arrest. Where there are allegations that each party assaulted the other, the peace officer shall determine whether there is sufficient evidence to conclude that one of the parties is the primary aggressor based on the following criteria and the officer's judgment:

5.3.1 Comparative extent of any injuries inflicted.

5.3.2 Fear of physical injury because of past or present threats.

5.3.3 Actions taken in self-defense or to protect oneself.

5.3.4 The history of domestic abuse perpetrated by one party against the other.

5.3.5 Existence or previous existence of Orders for Protection.

5.4 Release of Arrested Person:

The release of any person arrested for violation of the above-mentioned statutes shall be at the discretion of the on-duty Shift Supervisor and in accordance with State law.

6.0 AUTHORITY AND TYPES OF ARREST:

6.1 Warrantless Probable Cause Arrest for Fifth Degree Assault:

Notwithstanding Minnesota Statute 629.34 or any other statute or rule, a peace officer may arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that the person within the preceding twenty-four (24) hours has assaulted, threatened with a dangerous weapon, or placed in fear of immediate bodily harm the person's spouse, former spouse, or other person with whom the person resides or has formerly resided or other person with whom the person has a child or an unborn child in common, regardless of whether they have been married or lived together at any time, even though the assault did not take place in the presence of the peace officer (M.S. 629.341). A peace officer acting in good faith and exercising due care in making an arrest pursuant to Minnesota Statute 629.341, subd. 1, is immune from civil liability that might result from the officer's action.

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

6.2 Level of Arrest for Assault 5: Misdemeanor, Gross Misdemeanor and Felony

6.2.1 Assault in the Fifth Degree is typically a misdemeanor.

6.2.2 Gross Misdemeanor

6.2.2.1 Minnesota Statute 609.224 subd. 2(a), assault in the fifth degree, provides for an enhancement to a gross misdemeanor violation when the offense is against the same victim within five years of discharge from sentence for a previous conviction for assault, criminal sexual conduct in the first through fourth degree or terroristic threats in Minnesota or any similar law of another state.

6.2.2.2 If the current victim is a family or household member and the crime occurs within five years of discharge from sentence for conviction of any of the above offenses against any family or household member, the same gross misdemeanor enhancement applies.

6.2.2.3 If there is a prior conviction for assault or terroristic threats against any person within two years, a gross misdemeanor may also be charged.

6.2.3 Felony Enhancement

6.2.3.1 If a person commits assault in the fifth degree within five years of discharge from sentence for the first of two or more convictions of assault, criminal sexual conduct in the first through fourth degree or terroristic threats against the same victim, assault 5 becomes a felony.

6.2.3.2 The same enhancement applies to assault 5 against any victim occurring within two years of the first of two or more of these convictions.

6.3 Harassment/Stalking (M.S. 609.749)

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

6.3.1 Gross misdemeanors include the following types of harassment when done in a manner that would cause a reasonable person under the circumstances to feel oppressed, persecuted or intimidated and which does cause that reaction in the victim (M.S. 609.749, subd 2).

6.3.1.1 Directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;

6.3.1.2 Stalks, follows or pursues another;

6.3.1.3 Returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

6.3.1.4 Repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

6.3.1.5 Makes or causes the telephone of another repeatedly or continuously to ring;

6.3.1.6 Repeatedly uses the mail or delivers or causes the delivery of letters, telegrams, packages, or other objects;

6.3.2 Felony

6.3.2.1 If a defendant stalks, follows or pursues the victim while possessing a dangerous weapon, even if the victim did not see the weapon, the offense becomes a felony.

6.3.2.2 Any of the above gross misdemeanors is enhanceable to a felony if committed within ten years of discharge from sentence for a prior conviction for harassment, assault (any degree), violation of an OFP or harassment order or terroristic threats.

6.3.2.3 Felony harassment prohibits engaging "in a pattern of harassing conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause a reasonable person under the

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

circumstances to feel terrorized or to fear bodily harm and that does cause this reaction” in the victim.

A “pattern of harassing conduct” means two or more acts (convictions are not necessary) within a five-year period that constitute any of the following offenses: harassment, terroristic threats, assault, violation of an order for protection or harassment order, trespass, harassing phone calls or mail, or criminal defamation.

NOTE: Notwithstanding any other law or rule, an arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with assaulting and/or harassment/stalking the individual’s spouse or other individual with whom the charged person resides (Minnesota Statute 629.72). An officer may make a warrantless probable cause arrest for assault, harassment, or stalking, even if the offense did not occur in the officer’s presence. Minnesota Statute 609.224 subd 2(a), assault in the fifth degree, provides for an enhanced gross misdemeanor violation when the offense is against the same victim within five (5) years of a previous conviction of assault in Minnesota or any similar law of another state, when the misdemeanor assault is committed against a household or family member within five years of a previous conviction for misdemeanor assault or a previous conviction for felony assault against a household or family member. Minnesota Statute 609.224 subd 2(b), assault in the fifth degree, provides for an enhanced gross misdemeanor if there is a conviction for fifth degree assault against anyone within the two years previous.

6.4 Other Crimes:

6.4.1 At a domestic call, peace officers shall consider whether there is probable cause to believe a felony may have been committed, including but not limited to: assault in the first, second or third degree, and the crime of terroristic threats.

6.4.2 Other Misdemeanors: At a domestic call, the peace officer shall consider whether other crimes have been committed, including but not limited to: trespassing, criminal damage to property, disorderly conduct, witness tampering, assault, interference with a 911 call.

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

6.4.3 An assault 5 may be chargeable as burglary in the first degree even if the home is also the offender's, if the entry is made without consent of the victim and in violation of an OFP barring the offender from the premises.

6.5 Violation of Court Orders:

The peace officers shall verify whether any of the following orders exist prior to or during an arrest. This verification shall be made by the Shift Supervisor. Methods of verification may include personally seeing a copy of the order or reviewing an agency's file which indicates the existence of such an order. In a police report, the officer shall document actions taken to identify and verify the specific court order (e.g. Order for Protection), indicate the exact provision(s) an alleged violation is based upon, and specify the file number of the order.

NOTE: Ex Parte Temporary Orders for Protection are valid for a fixed period of time, not to exceed 14 days from issuance unless extended by the court. Orders for Protection (non-temporary) are valid for a fixed period of time, not to exceed one year except when the court determines a longer fixed period is appropriate.

6.5.1 Order for Protection:

A peace officer shall arrest and take into custody without a warrant a person whom the peace officer has probable cause to believe has violated the restraint or exclusion section of an Order for Protection granted pursuant to Minnesota Statute 518B.01 subds. 6, 7 or 9. Such an arrest shall be made even if the violation did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer.

NOTE: There are three key points related to the Order for Protection: 1) The law requires an arrest regardless of whether or not the excluded party was invited back to the residence. 2) There is no hour limitation for a warrantless arrest for a violation of an Order for Protection. 3) If there is evidence that an individual has violated another provision of an Order for Protection, other than the restraint or exclusion clauses, a police report should be submitted to the prosecutor indicating that the order was violated. A violation of an Order for Protection is a misdemeanor but is enhanceable to a gross misdemeanor if the offense occurs within five years of discharge from sentence for conviction of violation of an OFP or (effective for crimes occurring on and after 8/1/94) for any conviction of

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

assault, terroristic threats, violation of a harassment order or harassment/stalking.

6.5.2 Harassment Restraining Order:

A peace officer shall arrest and take into custody a person whom the peace officer has probable cause to believe has violated a harassment restraining order pursuant to Minnesota Statute 609.748, subds. 4 or 5, if the existence of the order can be verified by the officer.

NOTE: A person who violates a harassment restraining order is guilty of a misdemeanor. This offense is enhanceable to a gross misdemeanor if it occurs within five years of discharge from sentence for a previous conviction for violation of either a harassment order or an OFP or any assault, harassment/stalking or terroristic threats conviction. This offense is enhanceable to a felony if it occurs within five years of discharge of the first of two or more such convictions.

6.5.3 No Contact Order:

A peace officer may arrest without a warrant any person who he/she has probable cause to believe has violated the provisions of a no contact restraining order issued by a court. M.S. 629.34, subd. 1(6). In a misdemeanor case, a citation shall be issued in lieu of arrest or continued detention unless it reasonably appears that the arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct, or there is a substantial likelihood that the defendant will fail to respond to the citation.

7.0 ASSISTANCE, STAYING AT THE SCENE, CRIME VICTIM RIGHTS AND SERVICES:

7.1 Staying at the scene:

If an arrest does not occur, the peace officers should remain at the scene of the disturbance until they believe that the likelihood of further imminent abuse has been eliminated.

NOTE: Minnesota Statute 629.342 provides that when a peace officer does not make an arrest, the peace officer must provide immediate assistance to the victim,

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

including obtaining necessary medical treatment and providing the victim with the notice of rights pursuant to Minnesota Statute 629.341, subd. 3.

7.2 Assistance to Non-English-Speaking Victims or Victims with Communications Disabilities:

The peace officer shall use the resource list established by the law enforcement agency to contact a person to assist in those cases where the participants in the domestic call, including witnesses, are non-English-speaking, are hearing-impaired, or have other communication disabilities. The officer should avoid the use of friends, family or neighbors to serve as the primary interpreter for the investigation.

7.3 Notice of Domestic Abuse Victim Rights:

7.3.1 Tell the victim whether a shelter or other services are available in the community per M.S. 629.341, subd. 3.

7.3.2 Immediately give the victim a notice of legal rights and remedies, per M.S. 629.341, subd. 3.

7.3.2.1 The notice must include furnishing the victim a copy of the following statement: "VICTIMS 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 from domestic abuse. The order could include the following:

7.3.2.1.1 An order restraining the abuser from acts of abuse;

7.3.2.1.2 An order directing the abuser to leave your household;

7.3.2.1.3 An order preventing the abuser from entering your residence, school, business, or place of employment;

7.3.2.1.4 An order awarding you or the other parent custody of or visitation with your minor children; or

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

7.3.2.1.5 An order directing the abuser to pay support to you and the minor children if the abuser has a court order to do so.”

7.3.2.2 The notice must also include the telephone number for the area battered women’s shelter as designated by the Department of Corrections.

7.3.2.3 The notice must also include available local community resources, which may include victim advocacy services, court services (i.e. prosecutor’s office, where to apply for an Order for Protection), medical services, important police numbers, etc.

7.3.3 If a formal statement is taken by a peace officer, the victim should be provided the notice of basic crime victim rights. This notice is developed by the Department of Public Safety in consultation with the Crime Victim and Witness Advisory Council according to Minnesota Statute 611A.02 subd. 2. In the event that the responding peace officer determines that criminal charges will be pursued and that no further investigation will result, the peace officer should at that time provide these rights to the victim.

7.4 Services:

The peace officer should contact the Women’s Resource Center (Domestic Abuse Project) by phone as soon as possible on arrest situations or where domestic violence has been alleged and provide the name and address of the victims and a brief factual reconstruction of events associated with the action. This section shall not apply if prohibited by the Minnesota Government Data Practices Act, Minnesota Statute 13.82, subd. 10.

8.0 CHILDREN:

8.1 Child Victims:

If a child is present at the scene of a domestic call or is the victim of domestic abuse, the peace officer should determine whether the child has been subjected to physical abuse, sexual abuse, or neglect, and comply with the requirements of Minnesota Statute 626.556, Reporting of Maltreatment of Minors. The officer shall also attempt to verify whether there has been an Order for Protection issued,

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

Minnesota Statute 260C.201. If the child has been physically injured, the officer should escort the child to the nearest hospital for treatment.

8.2 Child Present and Care:

8.2.1 If the legal parent or guardian of a child can no longer provide care (for example, when the parent is hospitalized), the officer should consult with the legal guardian to determine the disposition of the child and should make a good faith attempt to follow the request of the legal guardian or parent.

8.2.2 If the peace officer reasonably believes that the child's immediate surroundings or conditions endanger the child's health and welfare, the officer may take the child into immediate custody pursuant to Minnesota Statute 260.165, subd. 1(c) (2).

9.0 REPORTS AND FORMS:

9.1 Written Report:

Whether there is an arrest or not, peace officers shall make a report after responding to a domestic call. If the officer did not arrest or seek an arrest warrant even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest must be documented. The report should include the following: detailed statements from the victim, suspect and witnesses; description of injuries; information about past allegations of abuse; description of the scene; if and how a determination of primary aggressor was made; existence of language barriers; presence of elderly victims, children, or those with disabilities; and documentation of evidence.

9.2 Supervisors Review:

Shift Supervisors shall review reports submitted by the investigating officer to ensure that responsibilities of the investigating officer have been completed.

10.0 FURTHER INVESTIGATION:

10.1 If appropriate, the report shall be turned over to the designated investigator for further follow-up. If there is an arrest, the investigator shall determine the defendant's criminal record; and if there is proof of a previous conviction, the

WINONA POLICE DEPARTMENT

NUMBER: 103-13 PAGES: 16

EFFECTIVE DATE: November 15, 2012

SUBJECT: DOMESTIC ABUSE ARREST

peace officer should advise the prosecutors of any enhanced criminal sanctions which may be available.

10.2 Notwithstanding the fact that the officer has decided not to arrest one of the participants in the domestic call, the peace officer shall thoroughly document all relevant information in the report and shall refer the report to the appropriate prosecutor for review and consideration of criminal charges.