

219. DOMESTIC VIOLENCE/ASSAULT



RICHFIELD POLICE DEPARTMENT POLICY

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Authority: Chief Jay Henthorne

NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

I. PURPOSE

The purpose of this Policy is to help reduce the incidents of repeated domestic assault. Statistics indicate that the most effective way to reduce recidivism is by the arrest of the assailant. This Policy outlines procedures to be followed when officers encounter domestic violence or are called to domestic assaults.

II. POLICY

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

The Richfield Police Department complies with Minnesota Statutes which relate to the probable cause arrest of suspects in domestic assault incidents.

III. DEFINITIONS

Domestic Abuse: Has the meaning given it in Minn. Stat. 518B.01, subd. 2(a), which states: "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

- 1) Physical harm, bodily injury, or assault;
- 2) The infliction of fear of imminent physical harm, bodily injury, or assault; or
- 3) Terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

Family or Household Member: Has the meaning given it in Minn. Stat. 518B.01, subd. 2(b)(1)-(7): spouses, former spouses, parents and children, persons related by blood, and 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 a 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.

Domestic Situation: A domestic disturbance where no physical assault or threat of physical assault occurred.

IV. PROCEDURE

In determining the appropriate course of action in domestic assault cases, the primary concern of the officer is the protection of individuals involved from further acts of violence. Officers must also be concerned for the immediate care of the assault victim. When the scene is secured, officers should make sure that the victim receives any necessary first aid.

PROBABLE CAUSE ARRESTS

An officer should arrest and take into custody a person whom the officer has probable cause to believe assaulted a spouse, former spouse, other person with whom the victim is residing or has formerly

resided, or other person with whom the victim has a child or an unborn child in common, regardless of whether they have been married or have lived together at any time, if any of the following circumstances exist:

- 1) There are visible signs of injury or physical impairment;
- 2) There was a threat with a dangerous weapon;
- 3) The victim alleges to be in fear of immediate bodily harm.

Probable cause exists if, based on the officers' observations and statements made by the parties involved and witness (if any), the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault. The arrest can be made even though the assault did not take place in the presence of the officer.

Officers **shall** make probable cause arrests for domestic assault only within 72 hours of the alleged assault and when the officer believes that the injuries were the result of an assault by the alleged assailant.

If officers determine that probable cause exists that an assault occurred, an arrest is the expected course of action. In cases that include visible signs of injury or assault with a dangerous weapon, an arrest must be made unless there are extraordinary circumstances. If extraordinary circumstances exist, they must be thoroughly documented in the report. Generally, the duty supervisor should be involved in the decision in cases with unusual circumstances.

Officers are discouraged from making dual arrests. When there are allegations that each party assaulted the other, officers should determine if there is sufficient evidence to conclude that one of the parties was the primary aggressor. The following criteria should be used to determine if there was a primary aggressor:

- 1) Severity and type of injuries inflicted;
- 2) Fear of physical injury because of past or present threats;
- 3) Evidence action was taken in self-defense or protection;
- 4) History of assault by one person against the other;
- 5) Existence of order for protection (O.F.P.) or restraining order.

A police officer acting in good faith and exercising due care in making such an arrest is immune from civil liability that might result from the officer's actions. If the assailant is a juvenile, alternatives to arrest may be utilized.

If an arrest is not made when probable cause and other arrest criteria exist, the officer **shall** explain why an arrest was not made in the narrative of the incident report.

The victims' statements or requests that they do not want the suspect arrested, absent any other significant circumstances, is not an acceptable explanation for failing to make an arrest.

When an arrest does not occur, officers should remain at the scene until it is believed the likelihood of imminent abuse has been eliminated. If the perpetrator flees before officers arrive, the area should be checked to locate the suspect. If it is believed the suspect has gone to another address in Richfield, officers should check that address and attempt to locate the suspect. When a suspect has left and is believed to be going to another jurisdiction, the agency in that jurisdiction should be requested to attempt to locate the suspect.

An officer **shall** fill out and give the victim of a domestic assault a Crime Victim's Notification Sheet which contains domestic abuse information in accordance with Minnesota Statue 629.341, Subd.3.

An officer **shall** complete the *Domestic Violence Lethality* form with the victim prior to leaving the scene.

Officers should contact the local domestic abuse program by phone as soon as possible on all arrest situations. In most cases, this should be done from the scene of the assault. Officers should provide the name, address and telephone number of the victim and a brief reconstruction of the incident.

Because of the nature of domestic assault, it is important that as much information as possible is obtained from the victim at the time of the original incident. It is common for victims to later become uncooperative or request charges be dropped because the suspect has apologized or the couple is back together.

Officers shall make every attempt to obtain statements from the victim and witnesses at the time the initial report is taken. In addition to documenting the elements of the crime in a report, officers should include information about any children involved in the relationship.

ASSISTANCE TO VICTIMS

NOTE: Minnesota Statute 629.342 provides that when a police officer does not make an arrest, the police officer must provide immediate assistance to the victim including obtaining necessary medical treatment and providing the victim with the notice of rights pursuant to Minnesota Statute 629.341, subd. 3.

Non-English Speaking Victims or Victims with Communication Disabilities

The police 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 the witnesses, are non-English speaking, are hearing-impaired, or have other communication disabilities. The officer should avoid the use of friends, family or neighbors serving as the primary interpreter for the investigation.

Child Victims

If a child is present at the scene of a domestic call or is the victim of domestic abuse, the police 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 a Minor. The officers shall also attempt to verify whether there has been an Order for Protection (Minnesota Statute 260.133). If the child **has been injured**, the officer should escort the child to the nearest hospital for treatment.

REPORTS

Officers **shall** complete reports for all domestic situations even if no physical assault or threat of physical assault occurred.

When reporting domestic calls that do not involve physical assault or threat of physical assault, the offense should be listed as "Domestic." If the incident involves assault or threat of physical assault, the appropriate assault offense should be listed.

Whenever an officer is assigned a call as a domestic it is expected that a report will be written. A report is expected even in cases that are strictly verbal arguments. Reports in these cases will become important if in the future the arguments become physical assaults. The reports on the previous arguments, in which the police were called, will show an ongoing pattern that has escalated to an assault.

All reports resulting from domestic situations, domestic assaults, or O.F.P. violations will be reviewed by a designated person. Reports will be reviewed for referral to Bloomington Public Health or a domestic abuse program.


FURTHER INVESTIGATION

A domestic report shall be assigned to the appropriate investigator for further follow-up if appropriate. If there is an arrest, the investigator shall determine the defendant's criminal record, and if there is evidence of a previous conviction, the police officer should advise the prosecutors of any enhanced criminal sanctions which may be available.

Notwithstanding the fact that the officer has decided not to arrest one of the participants in the domestic call, the police 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.

Officers should be familiar with the ever-changing statutes relating to domestic situations involving misdemeanor, gross misdemeanor or felony assaults. Along with Harassment/Stalking Violations, Harassment Restraining Orders, Violations of Court Orders and Orders for Protection. Refer to the Department's Standard Operating Procedures and criminal statutes for appropriate charges.

By Order Of:



Chief of Police



**APPENDIX 11
DOMESTIC ABUSE ENHANCEMENTS FOR REPEAT CONVICTIONS**

New Offense	Statute	Victim of this Crime	Time Limit	Prior Conviction	New Offense Level
Assault 5	609.224, Subd 2a	same victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	609.224, Subd 2b	any victim	w/in 3 years of conv/adj	QDVRO (1)	GM
	609.224, Subd 4a	same victim	w/in 10 years of 1 st of 2 or more conv/adj	QDVRO (2)	F
	609.224, Subd 4b	any victim	w/in 3 years of 1 st of 2 or more conv/adj	QDVRO (2)	F
Domestic Assault	609.2242, Subd 2	family/HH member	w/in 10 years of conv/adj	QDVRO (1)	GM
	609.2242, Subd 4	family/HH member	w/in 10 years of 1 st of 2 or more conv/adj	QDVRO (2)	F
*Violation of DANCO	629.75, Subd 2(c)	any victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	629.75, Subd 2(d)(1)	any victim	w/in 10 years of 1 st of 2 or more conv/adj	QDVRO (2)	F
*Violation of OFP	518B.01, Subd 14(c)	any victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	518B.01, Subd 14(d)(1)	any victim	w/in 10 years of 1 st of 2 or more conv/adj	QDVRO (2)	F
*Violation of HRO	609.748, Subd 6(c)	any victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	609.748, Subd 6(d)(1)	any victim	w/in 10 years of 1 st of 2 or more conv/adj	QDVRO (2)	F
*Stalking	609.749, Subd 2, 4(a)	any victim	w/in 10 years of conv/adj	QDVRO (1)	F (5 year felony)
	609.749, Subd 2, 4(b)	any victim	w/in 10 years of 1 st of 2 or more	QDVRO (2)	F (10 year felony)
Malicious Punishment	609.377	any child (by caretaker)	w/in 5 years of discharge	Ass. 1-5; Domestic Assault; Mal. Punishment; Terroristic Threats; CSC 1-4	F
Interference w/ Privacy	609.746	any victim	None	Interference w/ Privacy or Harassment/Stalking	F

*NOTE: These offenses have other provisions that are felonies without prior conviction enhancement due to facts such as dangerous weapons, age differentials, pattern of stalking. See next page for other types of domestics for these crimes that are felonies due to additional offense elements.

ENHANCEMENT REACHBACK

Conviction = plea of guilty or verdict of guilty accepted by court (Minn. Stat. §609.02, Subd. 5); alternative: juvenile adjudication.

Sample Enhancement:

Arrest for assault 5	1/1/07
Plea (accepted) **to assault 5	6/1/07
Sentence	8/1/07

** Some judges may not formally accept the plea until sentencing.

Calculating the enhancement reachback can always be done from the sentencing date as the conviction is final. If a plea has been accepted and the offender commits a new crime prior to sentencing, then the accepted plea date is used to calculate the enhancement reachback for charging the new offense.

http://www.mncourts.gov/mncourtsgov/media/second_district/documents/Criminal_Court/Guidelines_DA_Related_Cases_Crim.pdf