



Policy 309: Domestic Abuse Arrests

Note: This policy is mandated by the Minnesota POST Board

POLICY

Our policy is to share in a common response for domestic violence intervention.

It is the policy of the Lakeville Police Department to recognize domestic abuse as a serious problem in today's society. This agency's policy is to protect victims of domestic abuse by ensuring its peace officers understand the laws governing this area.

Peace officers will utilize this policy in response to calls when 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 the laws without bias and prejudice based on race, marital status, sexual orientation, economic status, age, disability, gender, religion, creed, or national origin.

Order 309:

The Lakeville Police Department participates in the Community Intervention Project coordinated by the B. Robert Lewis House. The program is designed to intervene and eliminate domestic violence between partners by providing community consequences for the violent partner. Our department is committed to serving this community need through prompt intervention and arrest when necessary. We will follow up by providing constructive options, support, and referrals to victims.

Order 309.1: 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.

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:

- Physical harm, bodily injury, or assault.
- The infliction of fear of imminent physical harm, bodily injury, or assault; or
- 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.

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

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Child: Means a person under the age of 18.

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 Call: Means a request for assistance to a law enforcement agency regarding domestic abuse or any other crime against a family or household member.

Qualified domestic violence-related offense (QDVRO): Has the meaning given it in Minn. Stat. 609.02, subd. 16 and includes:

- A violation of or an attempt to violate a domestic abuse order for protection;
- First or second degree murder;
- First through fifth degree assault;
- Domestic assault;
- Female genital mutilation;
- Domestic assault by strangulation;
- First through fourth degree criminal sexual conduct;
- Malicious punishment of a child;
- Terroristic threats;
- Violation of harassment restraining order;
- Stalking;
- Interference with an emergency call;
- Nonconsensual dissemination of private sexual images; and
- Violation of domestic abuse no contact order; and
- Similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.
- If a person arrested for a domestic crime has a prior QDVRO, the new offense may be chargeable as a higher-level crime. (See Enhancement Table appended hereto.)

Order for Protection (OFP): Is an order issued under Minn. Stat. 518B.01 by a judge in civil court upon the request of the petitioner. Any family or household member of the abuser (called a respondent) may ask the court for an OFP. The relief granted to the petitioner may include an order for the respondent to stop domestic abuse, no direct or indirect contact with petitioner, temporary custody of minor children, temporary financial support, and/or counseling for the respondent. Other forms or relief are also available. Violating an OFP is a crime.

Domestic Abuse No Contact Order (DANCO): Is an order issued under Minn. Stat. 629.75 by a judge in criminal court limiting contact between a defendant and a victim of domestic abuse. DANCOs may be issued as pretrial condition of release and/or as a probationary condition of sentence.

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Harassment Restraining Order (HRO): Is an order issued under Minn. Stat. 609.748 by a judge in civil court when a petitioner requests a court order preventing another person from having contact with him/her. These orders generally prohibit all contact of any kind (including, but not limited to, phone calls, letters, e-mail, social media and contact through a third party) and may limit the respondent's ability to come within a certain distance of the petitioner's home, work or school. This type of order can be issued no matter what the relationship between the individuals involved. Violating an HRO is a crime.

Harassment: Has the meaning given to it in Minn. Stat. 609.748, subd. 1(a): a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target.

Stalking: Has the meaning given to it in Minn. Stat. 609.749, subd. 1: engaging in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim.

Order 309.2: Responding to The Calls

Driving to the Scene:

- The peace officers should respond directly and without unreasonable delay to the scene.

Initial Contact with Occupants:

- Upon arriving at the scene of a domestic call, 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 alleged victim.
- The officers should separate parties prior to taking statements.
- 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 officer should ensure all the occupants are safe.

Entry:

- Refused Entry – If refused entry, the officers should be persistent about seeing and speaking alone with the subject of the call.
- If access to the subject is refused the officers should request the dispatcher to contact the caller.
- Forced Entry – If access is still refused and the officers have reason to believe that someone is in imminent danger the officers are permitted to force entry.
- Search Warrant Entry – If the officers are refused entry and have no legal grounds for forced entry and have reasonable grounds to believe a crime has been committed, the officers should contact the appropriate authority to obtain a search warrant.

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First Aid:

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

Order 309.3: Arrest Decisions

Making Arrests:

- After securing the scene and providing any first aid, the peace officers will conduct an assessment of the lethality of the situation based on the totality of the circumstances and begin a criminal investigation to determine if there is probable cause to believe a crime has been committed based on the evidence and not solely upon the victim's desire to make an arrest.
- The officers should collect relevant physical evidence including weapons which may have been used, take photographs of the scene or any injuries and take statements from the involved parties and witnesses.

Some of the evidence and statements include:

- photos of the scene,
- condition of clothing,
- property damage,
- evidence of physical injury including strangulation,
- excited utterances of the victim and the suspect,
- demeanor of the victim and the suspect,
- medical records including the victim's statements to paramedics, nurses and doctors,
- recorded interviews of witnesses including children who may have been present,
- evidence of any prior domestic abuse – related convictions including dates, and
- any existing OFPs, HROs or DANCOs.

NOTE: When determining probable cause, the peace officers should consider their observations and any statements made by the parties involved and any witnesses. Prior convictions may provide the basis for enhancement to a gross misdemeanor or felony charges (see D below).

Factors Not to be Considered in Making the Arrest:

- ownership, tenancy rights of either party, or the fact the incident occurred in a private place,
- belief that the victim will not cooperate with criminal prosecution or that the arrest may not lead to a conviction,
- verbal assurances that the abuse will stop,
- disposition of previous police calls involving the same victim or suspect,
- denial by either party that the abuse occurred when there is evidence of domestic abuse,
- lack of a court order restraining or restricting the suspect,
- concern about reprisals against the victim,
- adverse financial consequences that might result from the arrest, or
- chemical dependency or intoxication of the parties.

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Predominant Aggressor and Dual Arrests:

The agency shall discourage dual arrest¹. 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 predominant aggressor based on the following criteria and the officer's judgment:

- Comparative extent of any injuries inflicted,
- Fear of physical injury because of past or present threats,
- Actions taken in self-defense or to protect oneself,
- The history of domestic abuse perpetrated by one party against the other, or
- The existence or previous existence of an order for protection.

Victim Request Not to Prosecute:

- If the officer finds probable cause to believe a domestic abuse offense has been committed and intends to arrest but the victim requests no arrest or prosecution, the officer should inform the victim that the decision to arrest is the officer's and the decision to prosecute lies with the prosecutor.

Order 309.4: Authority and Types of Arrest

Warrantless Probable Cause Arrest for Fifth Degree Assault or Domestic Assault:

- Although the general rule is that officers may not make probable cause arrests for misdemeanors unless the offense occurs in their presence (or a citizen who saw the crime requests an arrest) domestic assault is an exception.
- 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 has, within the preceding 72 hours, assaulted, threatened with a dangerous weapon, or placed in fear of immediate bodily harm any person covered by the "family or household member" definition, even if the assault did not take place in the presence of the peace officer (Minn. Stat. 629.341).
- A peace officer acting in good faith and exercising due care in making an arrest pursuant to this statute is immune from civil liability that might result from the officer's action.

NOTE: An arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with assaulting the individual's spouse or other individual with whom the charged person resides (Minn. Stat. 629.72).

¹ MN STAT 629.342 which mandates the development of a written domestic abuse arrest policy for every law enforcement agency in the state specifies that the policy "shall discourage dual arrests, include consideration of whether one of the parties acted in self defense, and provide guidance to officers concerning instances in which officers should remain at the scene of a domestic abuse incident until the likelihood of further imminent violence has been eliminated."

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Level of Arrest for Fifth Degree Assault and Domestic Assault:

- Misdemeanor, Gross Misdemeanor and Felony

Assault in the Fifth Degree and Domestic Assault are deemed misdemeanor offenses. However, changes in the statutes have greatly increased the potential for arrests for these crimes at the gross misdemeanor and felony level.

Gross Misdemeanors:

- Minn. Stat. 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 ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency in Minnesota, or any similar law of another state.
- If the charge is Domestic Assault (Minn. Stat. 609.2242) and the current victim is a family or household member and the crime occurs within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency of any of the above offenses against any family or household member, the same gross misdemeanor enhancement applies. The prior conviction need not be against a member of the same family or household.
- If there is a prior conviction for assault or terroristic threats against any person within two years, a gross misdemeanor may also be charged.

Felonies:

- If a person commits Assault in the Fifth Degree against the same victim within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency, Assault in the Fifth Degree becomes a felony.
- The same enhancement applies to Assault in the Fifth Degree against any victim occurring within three years of the first of two or more of these convictions.
- Domestic assault against a family or household member is also enhanceable under the same circumstances except that the prior convictions may be against any family or household member. According to Minn. Stat. 609.2247, subd. 2., whoever assaults a family or household member by strangulation is guilty of a felony.

Order 309.5: Stalking

The acts which constitute stalking according to Minn. Stat. 609.749 include several which are frequently applicable to domestic abuse situations even when no actual assault occurred.

Gross Misdemeanors:

A person who stalks another by committing any of the following acts is guilty of a gross misdemeanor:

- directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act.
- follows, monitors, or pursues another, whether in person or through any available technological or other means.

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- 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.
- repeatedly makes telephone calls or induces a victim to make telephone calls to the actor, whether or not conversation ensues.
- makes or causes the telephone of another to repeatedly or continuously ring.
- repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistance devices for the visually or hearing impaired, or any communication made through any available technologies or other objects; or
- knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

Also, according to Minn. Stat. 609.749., subd.1a., the State does not have to prove the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted or intimidated. The intent of the defendant is immaterial. Obtaining a complete domestic abuse history is usually the key to making the determination that the current act, under the circumstances, constitutes the crime of stalking.

Felony/Felony Enhancements:

- A person who commits any offense described in (see above) against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony.
- Any of the above gross misdemeanors is enhanceable to a felony if committed within ten years of a previous QDRVO conviction or adjudication of delinquency OR if committed against a juvenile OR if committed while possessing a dangerous weapon.
- In addition, it is a felony to engage in a pattern of stalking 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 circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim.
- According to Minn. Stat. 609.749, subd. 5, a "pattern of stalking conduct" means two or more acts (convictions are not necessary) within a five-year period that constitute any of the following offenses: murder, manslaughter, terroristic threats, fifth-degree assault, domestic assault, violation of domestic abuse orders for protection, violation of harassment restraining orders, certain trespass offenses, interference with an emergency call, obscene or harassing telephone calls, letter, telegram, or package opening or harassment, burglary, damage to property, criminal defamation, first- to fifth-degree criminal sexual conduct, and violations of domestic abuse no contact orders.

The stalking statute makes it more important than ever to document not just the facts of the current police call but also the history of abuse or stalking. *Venue* (Minn. Stat. 609.749, subp. 1b.):

- If a suspect commits acts of stalking in different counties, the acts may be consolidated and prosecuted in any county in which one of the acts was committed.
- If the conduct that constitutes stalking is done through use of a wireless or electronic communication device, the conduct can be prosecuted in the county where either the suspect or victim resides.

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Order 309.6: Probable Cause Warrantless Arrest

The domestic abuse arrest statute (Minn. Stat. 629.72) provides an officer may not issue a citation in lieu of arrest in harassment/stalking, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order cases.

According to Minn. Stat. 629.34, subd.1(c)(5) an officer may also make a warrantless probable cause arrest even if the offense did not occur in the officer's presence if the officer has reasonable cause to believe the offense was a gross misdemeanor or felony (no 72 hour restriction).

Order 309.7: Probable Cause Felony Arrests for Other Crimes

At a domestic call peace officers shall consider whether other felonies have been committed including but not limited to, burglary, felony assault, terroristic threats, kidnapping, false imprisonment, and witness tampering.

NOTE: 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.

Order 309.8: Violation of Court Orders

- The peace officer shall verify whether any of the following orders exist before or during an arrest.
- The peace officer or someone acting at the officer's direction may make this verification.
- Methods of verification include personally seeing a copy of the order or obtaining verification from the court or law enforcement agency that has the actual order.
- The police report shall include identifying information of the specific court order violated, including county of origin, the file number, and the provision allegedly violated.

Order for Protection (OFP):

A peace officer shall arrest and take into custody without a warrant a person who the peace officer has probable cause to believe has violated any condition of an OFP granted pursuant to Minn. Stat. 518B.01, subds. 6, 7, and 9. Such an arrest shall be made even if the violation of the order did not take place in the presence of the peace officer, if the officer can verify the existence of the order.

NOTE: Minn.Stat. 518B.01, subd. 18(a)(2), states that an OFP is not voided even if the respondent was invited back to the residence by the petitioner, and there is no hour limitation for a warrantless arrest for a violation of an OFP.

A violation of an OFP is a misdemeanor but is enhanceable to a gross misdemeanor if the offense occurs within ten years of discharge from sentence for conviction of violation of an OFP or for any conviction of assault, terroristic threats, violation of a harassment order or harassment/stalking. It is enhanceable as a felony if it occurs within ten years of discharge of the first of two or more such convictions.

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OFFPs and DANCOs can be verified on the State MNJIS system, also known as the Hot Files. HROs are not in the Hot Files system currently but are still enforceable.

Harassment Restraining Order (HRO):

A peace officer shall arrest and take into custody a person who the peace officer has probable cause to believe has violated a harassment restraining order pursuant to Minn. Stat. 609.748, subds. 4 and 5, if the officer can verify the existence of the order.

NOTE: A person who violates an HRO is guilty of a misdemeanor if the violator knows of the order. This offense is enhanceable to a gross misdemeanor if it occurs within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Per Minn. Stat. 609.748, subd. 6, (d), it is enhanceable to a felony if the person knowingly violates the order:

- within 10 years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency.
- because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability (as defined in section 363A.03), age, or national origin.
- by falsely impersonating another.
- while possessing a dangerous weapon.
- with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.414, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or
- against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

Domestic Abuse No Contact Order (DANCO) (Minn. Stat. 629.75):

A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a DANCO, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer.

The pretrial DANCO is sometimes continued at the time of sentencing with a new, probationary DANCO issued as a condition of probation. This DANCO may be valid for the full probationary period indicated in the order.

The court may rescind a DANCO at any time. However, a victim's production of a copy of an apparently valid court order, absent contrary evidence, provides prima facie basis for arrest whenever there is probable cause to believe a violation of the order has occurred.

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, or assault.

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Order 309.9: Assistance, Staying at the Scene, Crime Victim Rights, and Services

Staying at the Scene:

- If no arrest is made peace officers should remain at the scene of the disturbance until they believe that the likelihood of further imminent abuse has been eliminated.
- If a domestic abuse intervention program is available, the peace officer should make contact for immediate intervention.

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

Assistance to Non-English-Speaking Victims or Victims with Communication 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 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.

Notice of Crime Victims' Rights:

- The peace officer shall give the victim of a domestic call a copy of the agency's crime victim notification form.

NOTE: It is important to routinely review these forms to ensure that they are current, in compliance with the law, and contain the name of the local domestic abuse program. The Department of Public Safety, Office of Justice Programs, produces the crime victim's rights notice and serves as the contact for the victim's rights information.

Services:

- The peace officer should contact the local domestic abuse program by phone as soon as possible on all arrest situations and provide the name and address of the victim and a brief factual account of events associated with the action.
- This section shall not apply if prohibited by the Minnesota Government Data Practices Act (Minn. Stat. 13.82, subd. 10.).

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Order 309.10: Children

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 Minn. Stat. 626.556, Reporting of Maltreatment of a Minor.
- The officers shall also attempt to verify whether there has been an Order for Protection (Minn. Stat. 260C.201).
- If the child has been injured, the officer should escort the child to the nearest hospital for treatment.

Order 309.11: Reports and Forms

Written Report:

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 abuse.
- description of the scene.
- predominant aggressor.
- existence of language barriers.
- presence of elderly victims or those with disabilities; and
- documentation of evidence.

Order 309.12: Further Investigation

A domestic call shall be turned over 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 peace 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 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.