



DIRECTIVES

Oak Creek Police Department

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Title:

DOMESTIC ABUSE POLICY

Directive Number:

9-300

Critical Policy

Yes No

Open Record

Yes No

Total Pages:

9

Applicability:

Sworn Officers

*State Statute §968.075(3) – Domestic abuse incidents; arrest and prosecution

I. PURPOSE AND OBJECTIVES

The official response of the Oak Creek Police Department is to recognize that domestic abuse involves serious criminal offenses. The intent of this policy is two-fold—to maximize protection for the victims of domestic abuse, and to hold the predominant aggressor accountable for his/her abusive behavior. It is our policy to comply with all mandates in Wisc. State Statutes §968.075 and judicial orders relative to domestic situations. An officer is immune from civil/criminal liability arising out of a decision by the officer to arrest or not to arrest an alleged offender, if the decision is made in a good faith effort to comply with Wisc. Statutes §939.621 and §968.075.

II. DEFINITIONS

- A. *Domestic abuse* – means any of the following engaged in by an **adult** person (17 or older) against his or her spouse, former spouse, or adult relative, or against an **adult** with whom the person resides or formerly resided with. Included are acts of abuse by an **adult** person against an **adult** with whom the person has created a child. . If the victim (non-offender) in any of the above instances, has not reached the age of 18 (17 or younger), the incident would not be considered domestic violence related. A 17 year old is considered a child and would only be considered an “adult” if the 17 year old is alleged to have violated a state or federal law [948.01(1) and 938.02(1)].
1. Intentional infliction of **physical pain**, physical injury or illness; intentional impairment of physical condition; a violation of sexual assault section 940.225(1), (2), or (3); a physical act or a threat in conjunction with a physical act which may cause the other person to **reasonably** fear imminent engagement in the conduct described above .
 2. Domestic abuse can also be categorized as the pattern of coercive behavior characterized by the domination and control over an intimate partner, through physical, psychological, emotional, verbal, sexual, and/or economic abuse. Note that some of these circumstances may fall under the definition of domestic abuse but may not constitute a crime.
- B. *Relative* – means a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, child, stepchild, father-in-law, mother-in-law, daughter-in-law or son-in-law.
- C. *Predominant aggressor* – means the most significant, but not necessarily the first, aggressor in a domestic abuse situation.

II. DEFINITIONS -- *Continued*

- D. *Lethality Assessment Program (LAP)* - The LAP is used during domestic violence incidences to help identify victims of domestic violence in potentially lethal situations, and follow the established criteria to place those victims in immediate and direct contact with a domestic violence service program hotline (Sojourner Truth).
- E. *Intimate relationship* - An “intimate relationship” is one in which heterosexual or homosexual partners have, or have had, a sexual or emotionally-intimate relationship.
- F. *Intimate Partners* – Intimate partners are person who are, or have been involved in, an intimate relationship who:
1. Are married, separated, or divorced;
 2. Live or have lived together;
 3. Have children in common; or
 4. Date, or have dated, but do not live, or never have lived together.
 5. Juvenile victims, although they may not meet the definition under domestic violence laws, will receive services regarding the LAP with parental permission.
- G. *Lethality Screen* - The evidence-based field instrument used by trained practitioners to assess a person who is a victim of intimate partner violence for her/his risk of being killed by an intimate partner.
- H. *High Danger* - A term used for a victim who has been assessed, through use of the LAP and the Lethality Screen, as being at the greatest risk of being killed. The victim is said to be at “High Danger”.

III. PROCEDURES

A. **Probable cause for arrest**

1. An officer shall attempt to determine if **probable cause** exists that a crime is being or has been committed. **Probable cause** refers to that quantum of evidence which would lead a police officer to have reasonable grounds to believe that the defendant is committing or has committed domestic abuses and/or that the person’s actions constitute the commission of a crime.
2. Factors to be used in determining whether probable cause exists include, but are not limited to, the following:
 - a. Bodily harm or pain to the victim. **A decision not to arrest may not be based solely upon the absence of visible indications of injury or impairment. An arrest can be made if the predominant aggressor has caused pain to the victim without leaving any marks.**
 - b. Statements of the victim, including non-consent to the offense. This interview is to be conducted outside the presence of the suspect. Written statements are to be obtained whenever possible.

III. PROCEDURES – *Continued*

- c. Statements of family members, friends, neighbors or other witnesses. These interviews are to be conducted outside the presence of the suspect. Written statements are to be obtained whenever possible.
- d. Statements of the suspect. Written statements are to be obtained whenever possible.
- e. Observations of the scene and the victim are to be recorded.
- f. Previous complaints at the same location or involving the same parties.
- g. Previous threats/offenses against the victim by the suspect. Officers should check for the existence of a restraining order/injunction initiated by the victim. (**An arrest for violation of a restraining order/injunction may be in addition to the arrest made for the domestic abuse.**)
- h. Marriage is not a bar to prosecution for a sexual assault.

IV. CIRCUMSTANCES REQUIRING ARREST

- A. The following questions should be affirmatively answered to provide enough information for a “Mandatory Arrest” situation.
 1. Does the officer have reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person’s actions constitute the commission of a crime?
 2. Is the relationship domestic?
 - a. spouse;
 - b. former spouse;
 - c. adults residing together;
 - d. adults who formerly resided together;
 - e. adults with children in common.
 3. Did the suspect’s acts:
 - a. intentionally inflict **physical pain**, injury or illness?
 - b. intentionally impair the victim’s physical condition?
 - c. constitute 1st, 2nd or 3rd degree sexual assault?
 - d. cause the victim to fear they are about to be physically harmed or assaulted?
 4. Is there evidence of physical injury to the victim?
 5. Does the officer reasonably believe that there is a likelihood of continued abuse (bodily harm, sexual assault, impairment or threat of harm or assault) against the victim?

IV. CIRCUMSTANCES REQUIRING ARREST – *Continued*

- B. If the officer is acting on the basis of a complaint of a domestic abuse incident that is received more than 28 days after the alleged abuse has occurred, the officer is **not** required to follow guidelines of "Circumstances Requiring Arrest".
- C. Discretionary Arrest – Arrests will be discretionary when:
1. The officer has probable cause to believe the suspect committed a crime; **and**
 2. The relationship is not a “domestic” relationship; **and/or**
 3. You do NOT have an injury or believe that future violence is likely; **and/or**
 4. The crime was reported more than 28 days after the occurrence.
- D. All arrests stemming from a domestic abuse incident will be processed through the **Milwaukee County District Attorney's Office** with both the victim and the violator ordered in for the earliest date possible.
1. During weekdays, victims of domestic violence-related offenses will be ordered in to the Milwaukee County District Attorney's DV Unit, Room 303 of the Safety Building. During weekends, victims will be ordered in to Room 110 at the CJF.
 2. During weekdays, offenders that are able to post bail will be ordered in to Room 405 of the Safety Building. During the weekend, offenders that are able to post bail will be ordered in to Room 110 at the CJF, or the charging conference may be changed to the next available liaison day.
 3. If the District Attorney does not charge, the court officer should issue the appropriate municipal citation(s) (i.e., DC, battery, criminal damage, etc.).
- E. This policy applies to law enforcement officers as well as civilians.
1. Investigation of these cases shall be conducted by a supervisor of higher rank.
- F. An officer who has reasonable grounds to believe that both parties committed domestic abuse against each other should arrest the person whom the officer believes to be the predominant **aggressor**. In **determining who the predominant aggressor is**, an officer should consider the intent of this policy to protect the victims of domestic abuse, as well as:
1. The relative degree of injury or fear inflicted on the persons involved;
 2. The history of domestic abuse between these persons, provided it can be reasonably determined by the officer;
 3. If any party is threatening or has threatened future harm against another party or another family or household member;
 4. Whether any party acted in self-defense or in defense of any other person under circumstances described in Wisc. Statutes §939.48.
- G. An officer's decision as to whether or not to arrest may not be based on consent of the victim to any subsequent prosecution or on the relationship of the person involved in the incident.

IV. CIRCUMSTANCES REQUIRING ARREST – *Continued*

H. **The victim is not required to sign a complaint or request the case proceed toward prosecution.**

I. Initiating a Lethality Assessment

1. While investigating a domestic violence complaint involving “intimate partners”, the officer in charge of investigating the incident shall complete the Lethality Screen with the victim if one or more of the following conditions exist:
 - a. There is reason to believe an assault or an act that constitutes domestic violence has occurred, whether or not there is an arrest.
 - b. There is a belief or sense on the part of the responding officer that, once the victim is no longer in the care or presence of the responding officer, the potential for assault or danger is high.
 - c. Repeated calls for domestic violence complaints at the same location or involving the same parties.
 - d. The responding officer believes one should be administered based on his/her experience, training and instinct.
2. To initiate the Lethality Screen and corresponding LAP response protocol, the incident command officer should:
 - a. Advise the victim in a positive, supportive tone that she/he will be asked a series of questions to help the officer determine the immediate potential for danger to the victim.
 - b. Administer the Lethality Screen outside the presence, hearing and awareness of the abusive partner.
 - c. Ask the questions in the order they are listed on the form and in the manner they are written.
 - d. Ask all the questions in assessing the victim. The more questions the victim responds to positively, the clearer and more immediate the potential for danger is to the victim.
 - e. The Lethality Screen will reflect a High-Danger situation if one of the following is observed:
 - 1) A single “yes” response by the victim to questions #1, #2, or #3.
 - 2) No responses to questions #1-#3, but “yes” to any four questions #4 thru #11.
 - 3) The investigating officer has reason to believe the situation should be categorized as High-Danger. This may be based on the victim’s answer to question #12, the victim refuses to answer questions, and/or the officer’s training and experience.
3. While in the presence of the victim, the investigating officer will call the Sojourner Truth House 24-hour domestic violence hotline at (414) 933-2722. The officer will document the time of call and name of the advocate and provide the advocate with all requested information. This includes information pertaining to the victim, offender, incident, and lethality screening responses.

IV. CIRCUMSTANCES REQUIRING ARREST – *Continued*I. Initiating a Lethality Assessment - *Continued*

The investigating officer should advise the victim that he/she is in a situation of increased level of danger, and that people in the victim's situation have been killed or seriously injured. NOTE: It is important that the investigating officer "ASK", not request that the victim speak with the advocate. The officer should advise the victim that the advocate is there to help and provide the officer with guidance. If the victim refuses to speak with the advocate, the officer should ask the victim to reconsider while the officer provides the advocate with the necessary information. Once the victim has had some time to reconsider, the officer should "Ask One More Time" if the victim would be willing to simply speak with the advocate. If the victim still refuses, attempt to obtain a safe phone number for the advocate to attempt to follow up with the victim. If the victim agrees to speak with the advocate, remain on scene and speak with the advocate once the victim has concluded their conversation.

4. If the victim is "not" assessed as High-Danger, the investigating officer should advise the victim that domestic violence is dangerous and sometimes fatal. The officer should advise the victim of the signs which would indicate high danger as listed on the Lethality Screening. The officer shall offer to call the hotline for the victim. The officer will record the time and advocate name, and provide the advocate with the necessary information, but the officer will not need to remain on scene while the victim speaks with the advocate.
5. A copy of all completed Lethality Screens (Milwaukee County DV Supplementary Incident Report) shall be turned over to the LAP representative. The LAP representative will maintain data and will submit a bi-annual report (January 15 and July 15) to the LAP team Coordinator. This report will include the number of:
 - a. Lethality screens attempted, including the number of refusals.
 - b. High-Danger and non High-Danger assessments.
 - c. High-Danger victims that spoke with an advocate.

Per Wisconsin Act 323, the victim must be provided with the Oak Creek Police Department *Domestic Violence Referral Notice* pamphlet, which provides information on their legal rights, referral numbers for domestic violence support groups and information on other related services.

- J. If the suspect is not on the scene, the officer shall make a "**good faith attempt**" to locate him/her. If the defendant cannot be located, the investigating officer shall apply for a state warrant through the **Milwaukee County District Attorney's Office** at the earliest date possible.
- K. If an arrest is demanded by one or both of the parties and there is not sufficient probable cause for such an arrest, and the demand is not retracted, an officer shall order in all of the parties to the District Attorney at the next available order-in date. The demand(s) for an arrest must be noted in the report and the reason(s) for not making an arrest must be noted in the report.
- L. If a law enforcement officer does not make an arrest when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that the person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the District Attorney's office immediately after the investigation has been completed. The District Attorney shall review the report to determine whether the person involved should be charged with the commission of a crime. Reference §968.075 (4).

V. REPORT WRITING

- A. All domestic abuse reports should include the following:
 - 1. a complete statement from the victim;
 - 2. a medical release form signed by the victim; this request will be done by the Milwaukee Co. DA's Office upon the results from the charging conference.
 - 3. photographs of the victim's injuries;
 - 4. statements from witnesses other than the victim such as neighbors, children, or other citizen witnesses who can provide evidence at the trial of the case;
 - 5. excited utterances, admissions against interest and other informal statements of the defendant as well as formal statements;
 - 6. history of abuse that is reasonably accessible;
 - 7. where the victim may be reached during the 72 hours immediately following the arrest.
- B. A State case file is to be completed; note the relationship between the victim and defendant on the DA complaint worksheet.
- C. The officer in charge of the DV investigation will complete the information as described on the Milwaukee County Domestic Violence Supplementary Incident Report for all domestic abuse related arrests. This report includes the Lethality Screen questionnaire. Investigating officers will include the original with their report, include copies in the prosecutorial case file, and provide a copy to the OCPD LAP representative.

VI. CONDITIONAL RELEASE AND NO-CONTACT ORDER

- A. Rights of Victims
 - 1. An officer shall inform the alleged victim that, during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence or any other premises temporarily occupied by the alleged victim and avoid contacting or causing any person, other than an attorney for the arrested person or alleged victim, to contact the alleged victim.
 - 2. An officer shall inform the alleged victim that, at any time during the 72-hour period immediately following an arrest for a domestic abuse incident, he/she may sign a written waiver, thus negating the 72-hour no-contact prohibition. Notification of the waiver should be done outside the presence of the arrested person. Waiver forms will be made available at the police department.
 - 3. An officer shall inform the alleged victim of the likelihood and probable time of the arrested person's release if the release is made during the 72-hour period immediately following an arrest for domestic abuse.

VI. CONDITIONAL RELEASE AND NO-CONTACT ORDER - *Continued*

B. Rights/Restriction of Violators

1. The arrested person is not eligible for release on his/her personal recognizance. Immediate release is prohibited until the violator posts bail under §969.07 or appears before a judge under §970.01 (1).
 - a. If the charge is a felony, the arrested person will be held until charging.
 - b. Bail is mandatory for misdemeanors:
 - 1) \$500 cash for battery;
 - 2) \$250 cash for criminal damage;
 - 3) \$150 cash for disorderly conduct.
 - c. If bail cannot be arranged, the arrested person is to be taken to the **Milwaukee County District Attorney's Office** at the earliest date possible.
2. If the arrested person does arrange bail, he/she is to be informed orally and in writing that during the 72 hours immediately following an arrest for a domestic abuse incident the arrested person shall avoid the residence or any premises temporarily occupied by the alleged victim and avoid contacting or causing any person, other than an attorney for the arrested person or alleged victim, to contact the alleged victim. (This does not apply to a police officer notifying the alleged victim that the arrested person is going to be released.)
 - a. If the arrested person intentionally violates these requirements and provisions, he/she is again subject to arrest and a fine of up to \$1,000.
 - b. If the arrested person commits another act of domestic abuse against the alleged victim or another person during this 72-hour period and the act constitutes a crime, he/she is again subject to arrest and the penalty increases from a misdemeanor to a felony and the maximum term of imprisonment for that crime may be increased by not more than 2 years.
 - c. If the arrested person refuses to sign the Conditional Release and No-Contact Prohibition Order, he/she **will not be released from custody** until 72 hours after the arrest.

VII. OFFICER IMMUNITY

A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not arrest an alleged offender if the decision is made in a **good faith** effort to comply with this section.

VIII. DISCLAIMER

The Domestic Abuse Policy developed by the Oak Creek Police Department is for internal use only, and does not enlarge an officer'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 the Domestic Abuse Policy can only be the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

REFERENCE:

- No Contact Order and Waivers
- Conditional Release
- Officer Immunity



David R. Stecker
Chief of Police

DRS/tlp

(Attachment)

- “*Domestic Violence Referral Notice*” pamphlet
- “*You Are Not Alone*” (EnglishSpanish version) Milw. Commission on Domestic Violence & Sexual Assault resource brochure

<https://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Brochures/YANA2010english.pdf>

<https://city.milwaukee.gov/ImageLibrary/Groups/healthAuthors/MCDVSA/YANABrochure-Spanish.pdf>

LEGAL NOTICE TO DOMESTIC VIOLENCE VICTIMS

Domestic violence offenses (like other criminal acts) are not private family matters, but are crimes against the State of Wisconsin. Under Wisconsin law, officers are required to make immediate arrests for specified domestic violence offenses, even if the victim does not wish an arrest. After an arrest has been made, only the District Attorney can decide whether to issue formal charges in court; that decision does not belong to a victim.

If an arrest has been made for a domestic violence offense, you have the following protection under Wisc. Stat. 968.075(5):

1) Arrested suspects are confined in the Milwaukee County Jail, 949 North 9th Street, but may be released on bail or upon the order of the Intake Court Commissioner. If no charges are issued by the District Attorney, the District Attorney may also authorize the release of a suspect from the County Jail. Thus, it is not possible to accurately predict when a suspect may be released—sometime between several hours and three days after the arrest. To find out if a suspect is still in jail, you may call the Milwaukee County Jail at 226-7070.

2) For the 72 hours immediately following the arrest, the arrestee must stay away from your home and any other place you temporarily occupy.

3) For the 72 hours immediately following an arrest, the arrestee is forbidden to contact you by any means, including phone calls, texts, letters, friends, etc. Contact may only be made between attorneys for both parties.

4) An arrestee who violates any part of the 72-hour No-Contact Order is subject to an immediate, mandatory arrest and a fine up to \$1,000.

5) IF THE ARRESTEE VIOLATES ANY PART OF THE 72-HOUR NO-CONTACT ORDER, CALL THE POLICE IMMEDIATELY!

6) If you do NOT wish the protection of the 72-hour No-Contact Order, you may cancel it at your own risk by appearing IN PERSON (with identification) at the Oak Creek Police Department, located at 301 W. Ryan Road, and sign a waiver form.

Forms/domestic violence referral notice.pub

Oak Creek Police Department
301 W. Ryan Road
Oak Creek, WI 53154
(414) 762-8200
(414) 766-6699 (fax)

Oak Creek Police Department DOMESTIC VIOLENCE REFERRAL NOTICE

There are many agencies and organizations that can assist you with domestic violence problems. The following is a list of numbers that may be valuable to you:

Information On Your Case

District Attorney's Office
Domestic Violence Unit
821 W. State Street
Safety Building, Rm. #303
Mon—Fri • 8:30 am—5:00 pm
278-4792

Generally, the District Attorney's Office will review the police reports written about this incident on the next day. Only the Assistant District Attorney can decide whether to "press charges". Your feelings and input are important; however, the final decision does not belong to you. Your presence is encouraged but not required.

The District Attorney's Office reviews police reports during the hours listed above. If you cannot attend in person, you are urged to call the number during those hours.

You will also be notified of the charging decision by phone or mail. If the case is charged, you will be contacted regarding the way the case will proceed and whether you will be called to testify in a court hearing.

Domestic Violence Advocates

Sojourner Family Peace Center
414-276-1911

Confidential domestic violence advocates can support you and give you referrals to other resources. Call them with questions. It is also important to inform this office if you move or change phone numbers.

Victim Support / Shelters

24-Hour Hotlines / Shelters

Sojourner Truth House

Domestic Violence Hotline & Shelter933-2722

Milwaukee Women's Hotline & Shelter671-6140

24-Hour DV Helpline (Hmong).....877-740-4292

24-Hour DV Helpline (Spanish).....389-6510

Counseling Services

Attending a support group or receiving counseling may help you deal with the impact of abuse. For referrals to support groups or counseling, call:

Asha Family Services.....875-1511

Hmong American Women's Assn.342-0858

Milwaukee Women's Center.....272-6199

Sojourner Family Peace Center933-2722

UMOS/Latina Resource Center389-6510

Advocacy and Support

To find out about other legal options for victims of family violence or to get help with safety planning or other community resources, call:

Family Advocacy and Support Services

135 W. Wells Street, 4th Floor

Mon-Fri

9:00 am-5:00 pm

276-1911

Restraining Orders

A restraining order is a legal order that can tell your abuser to have no contact or limited contact with you/ your child(ren). To find out about restraining order options, contact:

Sojourner Family Peace Center Restraining Order Clinic

Milwaukee County Courthouse
901 N. 9th Street, Rm. #711
278-5079

Clinic Times:

8:30 am-10:30 am & 1:00-2:00 pm
(or call for other times)

The Sojourner Family Peace Center "Restraining Order Clinic" can help you understand the kinds of restraining orders available and what the court looks for to grant a restraining order. Contact them Monday through Friday between 8:30 am—4:30 pm.

To file a restraining order, bring the information on the location of the person you want to file the order against. There may be court fees associated with the order. The entire process could take 1-3 hours.

Related Services

If you've been sexually assaulted, you can get support 24 hours by calling:

**The Sexual Assault Treatment Center
219-5555**

To report child abuse, call your local police department and contact:

**The Milwaukee Bureau of Child Welfare
220-7233**

To report elder abuse, call your local police department and contact:

**Department on Aging
289-6874**

Abuser Programs

Batterers can attend treatment programs to help them stop their abusive behavior, but their attendance does not guarantee your safety. Talk with an advocate about safety planning, even if your partner is in one of these programs. Available programs for the abuser include:

Alma Center 265-0100

Beyond Abuse..... 276-1911

Nevermore 828-5190

Ujima..... 875-1511

Probation / Parole

If the abuser is under supervision, the agent can help you. To learn if the abuser is under supervision, call (414) 220-5260 (intake reception line) or (414) 229-0600 (regional office line) between the hours of 8:00 am and 4:30 pm, Monday through Friday.

Wis. Crime Victim Compensation Program

Contact this agency to learn if you are eligible for reimbursement for medical bills and lost wages:

P.O. Box 7951
Madison, WI 53707-7951
Toll Free: **1-800-446-6564**

Wisconsin VINE

(Victim Information & Notification Everyday)

Crime victims and the public can access information about offenders who are in the custody of the County Sheriff and also receive automated notification if the status of the offender changes. Victims and other citizens can register for VINE by calling the toll-free number or visiting the website. You will be able to register to receive automated telephone notification and/or e-mail notification when there is a change in the offender's custody status. The Wisconsin VINE service is anonymous and confidential.

1-888-944-8463
TTY: **1-866-847-1298**
www.vinelink.com