

	KENOSHA POLICE DEPARTMENT		
	POLICY AND PROCEDURE		
	42.8 Domestic Violence/Abuse/Restraining Orders/Injunctions		
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I. PURPOSE

The purpose of this policy is to establish guidelines for responding to domestic abuse with a particular focus on violent criminal conduct, deterring the defendant from committing continuing acts of violence, helping adult victims and children and reducing potential injuries to the involved parties and to assigned officers. Our goal is to maximize protection for victims of domestic abuse and hold abusers accountable for their criminal behavior.

II. POLICY

It is the policy of the Kenosha Police Department to thoroughly investigate all domestic abuse incidents and arrest the **predominate physical aggressor** when an act of domestic abuse has occurred. Through early and certain conflict resolution, it is intended that the inherent danger for all involved parties can be lessened and the frequent escalation of domestic abuse can be greatly reduced. Arrest and subsequent prosecution of domestic abuse shall not depend upon the willingness of a victim to press charges.

III. APPLICATION

This directive shall apply to all sworn personnel. Strict adherence to this directive shall be required. Violations of this policy may result in a disciplinary action, civil liability and/or criminal charges.

IV. 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 State Statute: 968.075.

V. DEFINITIONS

- A. Adult** – means a person who is 18 years of age or older except that for the purposes of investigating or prosecuting a person who is alleged to have violated any State or Federal criminal law, or any civil law or municipal ordinance, adult means a person who has attained 17 years of age.
- B. Child** – means a person who is less than 18 years of age except that for the purposes of investigating or prosecuting a person who is alleged to have violated a State of Federal criminal law or any civil law or municipal ordinance, “child” does not include a person who has attained 17 years of age.

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- C. *Domestic Abuse*** -- means any of the following engaged in by an adult person against his or her spouse, former spouse, an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common, (includes cohabitants, ex-cohabitants, homosexual partners, adult children and adult parents, adult siblings, etc.):
1. Intentional infliction of physical pain, physical injury or illness.
 2. Intentional impairment of physical condition.
 3. A violation of § 940.225(1), (2) or (3). [Sexual Assault – excluding 4th Degree]. Note: Marriage is not a bar to prosecution for Sexual Assault.
 4. A physical act which may cause the other person, reasonably to fear imminent engagement in the conduct described under 1, 2 and 3 above.
- D. *Party*** – Means a person involved in a domestic abuse incident.
- E. *Predominate Aggressor*** – means the most significant, but not necessarily the first, aggressor in a domestic abuse incident. **See 968.075 (2)(ar)**

Factors to Consider in Identifying the Predominate Aggressor

In order to protect victims from continuing domestic abuse, a law enforcement officer shall consider all of the following in identifying the predominate aggressor:

1. Information from the 911 call.
 2. Statements made by witnesses.
 3. The **history of domestic abuse** between the parties [and in prior relationships of the parties], if the officer can reasonably ascertain it and any information provided by witnesses regarding that history.
 4. Criminal history of involved parties.
 5. Past or present restraining orders.
 6. The relative degree of injury inflicted on the parties.
 7. The severity of harm/violence in this incident.
 8. .
 9. The extent to which each person present appears to fear any party.
 10. The difference in power maintained by the parties during the incident.
 11. Use of power and control tactics to intimidate or threaten victims.
 12. Whether any party is threatening or has threatened future harm against another party or another family or household member.
 13. Whether either party acted in self-defense or in defense of any other person under the circumstances described in 939.48.
- F. *Circumstances Requiring Mandatory/Warrantless Arrest, 968.075*** -- If probable cause exists to believe that a domestic abuse crime is being committed or has been committed, the suspect *shall* be arrested and taken into custody, even if the victim declines to prosecute. 968.075(2) requires that a law enforcement officer shall arrest and take a person into custody if:
- a. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constituted the commission of a crime; **and**

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b. **Any** of the following apply [need at least **one** of these, **not** all]:

1. The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
2. There is evidence of physical injury to the alleged victim.
3. The person is the predominate aggressor.

Note: If a law enforcement officer identifies the predominate aggressor, it is generally not appropriate for a law enforcement officer to arrest anyone under 968.075 (2)(a) other than the predominate aggressor. [Unless the non-predominate aggressor's arrest is required under s. 813.12 (7), 813.122 (10), 813.125 (6) or 813.128 (1)(b) or sub. (5)(e)].

An officer's decision as to whether or not to arrest may not be based on the consent of the victim to any subsequent prosecution. The victim is not required to sign a complaint or request that a case proceed toward prosecution. It is not necessary to ask a victim if they consent to referral and prosecution of the defendant or if they will "sign" a complaint. A victim signature is not required for prosecution; however, officers will continue to ask the victim to sign the complaint.

An officer's decision not to arrest *may not* be based solely upon the absence of visible indications of injury or impairment.

VI. PROCEDURE

Whenever an officer responds to a domestic disturbance call at any location involving adults who reside together or have previously resided together, spouse or former spouse, an adult with whom the person has a child in common, cohabitants, ex-cohabitants, homosexual partners, adult children and adult parents, adult siblings, etc., the following procedure shall be followed:

- A. Upon arrival, officers should check for any injuries and provide necessary first aid when required. Officers shall attempt to determine if probable cause exists that a crime is being, or has been committed. An officer, in reaching a probable cause determination, should consider the following:
 1. Bodily harm/injury or pain to the victim [note the victim's demeanor].
 2. Statements of victim, including non-consent to the offense (non-consent form). Every effort should be made to incorporate the victim's statement of non-consent into their written statement. This interview should be conducted outside the presence of the suspect, in a separate room where possible.
 3. Statements of family members -- **including children** [note their demeanor], friends, neighbors, or other witnesses. These interviews should be conducted outside the presence of the suspect.
 4. Statements of the suspect [note the suspect's demeanor].
 5. Officers' observations of the scene.
 6. Previous calls to same location with the same parties.
 7. Previous threats/offenses against the victim by the suspect.
 8. Officers should check for the existence of a restraining order.
 9. Any other reliable hearsay information.

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- B. If probable cause exists to believe that a domestic abuse crime has been committed, the suspect shall be arrested and taken into custody, even if the victim declines to prosecute.
- C. Dual arrests (mutual combatants) should be *limited* to those incidents when an officer determines that both parties were mutual combatants, equally involved in the commission of a crime against another person and neither person was acting in self-defense or in defense of another person.
- D. If the suspect is not at the scene, the investigating officers shall make an attempt to locate the suspect. All efforts to locate the suspect shall be documented in the incident/offense report. If the suspect cannot be located, a warrant shall be applied for from the District Attorney's Office if required under the "mandatory arrest provision of 968.075.

Note: When investigating a domestic abuse incident, officers are required to make a "mandatory" arrest under 968.075 **within 28 days** after the day the domestic abuse incident is alleged to have occurred (absent of any other supporting information). However, if a victim reports an act of domestic abuse, supported by probable cause 29 days or later after the incident, mandatory arrest does not apply.

- E. Officers should be alert to any evidence of child abuse and should obtain the full names and birthdates of all children. Should it be necessary to place children in protective custody, the report should note the agency and caseworker involved.
- F. When investigating domestic abuse involving *victims* who are 17 years of age or younger, officers should treat these types of cases as *child abuse*. The investigating officer should involve the appropriate Department of Human Services.
- G. All efforts should be made to photograph and document any and all injuries suffered by the victim, including their demeanor. Photographs of the scene should be taken. Officers do not need a victim's consent for taking photographs. In some cases, it may be advisable to have the victim report to the station 24 hours after the incident for photographs, as visible injuries will be most obvious at this time.
- H. Wherever a victim seeks or advises they will seek medical treatment, officers shall seek to obtain a medical records release and subsequently forward all medical records to the District Attorney's Office.
- I. The officer must obtain a telephone number where the victim can be reached so they can be informed when the suspect is released on bail.
- J. The telephone number for Women and Children's Horizons, Inc. will be provided to the victim(s) in all domestic violence cases. Officers are encouraged to utilize business cards provided to the Department by Women and Children's Horizons, Inc.
- K. If the arrested subject is not combative, they should be transported to the station to be interviewed. Prior to any custodial investigation, the subject is to be advised of his/her Miranda Rights. Upon securing a waiver, questioning may proceed. It is advisable to obtain a written statement when serious injury or other circumstances warrant.
- L. The immediate release of a domestic abuse suspect following arrest is prohibited under s. 968.075 (2m). The suspect is to be taken to the Kenosha County Jail where they will be booked in and held. The suspect is to be held for charging by the District Attorney's office, unless released on cash bail. Release on personal recognizance is prohibited, unless personally authorized by a Circuit Judge.

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- M. The investigating officer must notify the victim that during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person is to avoid the residence or any premises occupied by the victim, and avoid contacting or causing any person, other than an attorney for the arrested person, to contact the victim. The victim is to be advised to report any violation of the above immediately to the Police Department.
- N. At any time during the 72-hour period, the victim may sign a written waiver, thus negating the 72 Hour No Contact provision. Officers may provide the waiver form to the victim at the scene or the victim can obtain the form at the police department front counter (with proper identification) prior to the expiration of the 72-hour time period. Notification of this procedure should be made outside the presence of the arrested person.
- O. Should a waiver be filed, the arrested person is to be informed orally, and in writing, that a waiver of the 72 Hour No Contact provision has been issued.

In the event a waiver is not filed, the arrested person must be informed orally and in writing of the 72 Hour No Contact prohibition. The arrested person must give a signed acknowledgment of the No Contact prohibition, stating that he/she understands the requirements, the consequences of violating the requirements, and that an enhanced penalty exists for a second domestic abuse offense committed during the 72 Hour No Contact period. If the arrested person refuses to sign the Conditional Release and Contact Prohibition Notice, he/she may not be released from custody. The notification and release is the responsibility of jail personnel.

- P. A member of the Kenosha Police Department will notify the victim when the suspect is released from jail. The operations supervisor generally performs or directs this notification.
- Q. In the event of a violation of the 72-Hour No Contact Prohibition, the investigating officer shall arrest and take a suspect into custody for bail jumping, if the officer has reasonable grounds to believe that a person has violated the above prohibition.
- R. Officer's Decision Not To Arrest: If a law enforcement officer does not make an arrest under this section when the law enforcement officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and the person's acts constitute the commission of a crime, the officer shall prepare a detailed written report stating why the person was not arrested.

In all instances of Domestic Abuse where the investigating officer makes a decision not to arrest, based on a lack of probable cause, a detailed written Incident/Offense Report shall be completed. The report **shall** be sent to the District Attorney's Office immediately after investigation of the incident has been completed. The District Attorney will then review the report to determine whether the person involved in the incident should be charged with a crime.

VII. RESTRAINING ORDERS AND INJUNCTIONS

This section provides guidance to officers for required departmental responsibilities in enforcement of valid Domestic Abuse Restraining Orders under 813.12(3), Domestic Abuse Restraining Orders under 813.12, and Harassment Restraining Order/Injunctions under 813.125.

If a law enforcement officer determines that a domestic abuse temporary restraining order, a domestic abuse restraining order/injunction or a harassment restraining order/injunction is in

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effect and there is probable cause to believe that the suspect had violated any part of the court order, the law enforcement officer **shall** arrest the suspect and take him or her into custody.

VIII. PROCEDURE & ARREST

1. Before making an arrest for a temporary restraining order, a domestic abuse restraining order/injunction or a harassment restraining order, the officer shall check with Joint Services to verify:
 - a) That the temporary restraining order or permanent injunction has not expired.
 - b) The temporary restraining order has been served on the defendant.
2. If the temporary restraining order has not been served on the suspect, the officer shall advise the suspect of its existence and notify the Sheriff's Department for possible service.
3. The officer has probable cause to believe that the person has violated the court order issued under 813.12(3) [Temporary Restraining Order] or 813.12(4) [Injunction].
4. An arrest must be made even if the petitioner initiated the contact with the respondent and permitted the respondent to return contrary to the court order. The victim cannot determine if/when or where the restraining order applies.
5. See 813.12(7) "Arrest" – An officer **shall** arrest and take a person into custody if all of the following occur: (a) a petitioner presents the officer with a copy of a temporary restraining order or an injunction, or the officer determines that such an order exists through communication with appropriate authorities, (b) the officer has probable cause to believe the person has violated a temporary restraining order or injunction, (c) a respondent who has been served with a copy of the petition and notice for the date and time of the hearing under 813.12(3) has constructive notice of the existence of the injunction and **shall** be arrested for violation of the injunction **regardless** of whether he or she has been served with a copy of the injunction.

IX. FOREIGN PROTECTION ORDERS

- A. Officers shall enforce foreign protection orders. Wisconsin Statute 806.247(1) provides for full faith and credit to foreign protection orders. Failure to make a mandatory arrest may result in disciplinary action, civil liability, and/or criminal charges.
- B. Foreign orders are defined as orders from other states or Tribal Indian court orders. The phrase is to include any injunction or other court order which is issued to "prevent abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to a person."
- C. 813.128(1)(a): Arrest: An officer **shall** arrest and take the subject of a foreign protection order into custody if all the following occur:
 1. The officer sees a hard copy of the order.
 2. The officer learns of the order because the order was entered into the TIME system.
 3. The officer is informed – of the existence of an order through communication with other authorities. The officer must establish communication with the appropriate authorities to confirm the existence of the order.
 4. The officer has probable cause to believe that the person has violated the terms of the foreign protection order or modification of the order.
- D. The court order does not have to be filed in a Wisconsin court to be recognized by Law Enforcement officers.

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- E. Foreign Protection orders do not apply to child support and custody orders.
- F. The suspect is to be transported to the Kenosha County Jail to be booked and held. The suspect is to be held for charging by the District Attorney's office, unless released on cash bail. The suspect will be charged with a violation of 813.128 (2), Foreign Protection Order. Release on personal recognizance is prohibited, unless personally authorized by a Circuit Judge.
- G. The arresting officer shall file an Incident/Offense Report, headed under the proper offense category. It should contain a complete statement from the complainant, victim, witnesses and suspect, and also a copy of the court order.
- H. If the suspect violated any other criminal laws in addition to the court order, he/she shall also be charged with those additional offenses.
- I. Officers should document their confirmation of the validity of the court order in the Incident/Offense Report.
- J. The suspect is to be advised of the Domestic Violence/Abuse provisions in addition to the no-harassment of witnesses' provisions of the state statutes: 940.42, 940.43, 940.44, 940.45, 940.47, 940.48 and 940.49. Jail personnel make this notification.
- K. **Immunity:** A law enforcement officer, law enforcement agency, prosecuting attorney or clerk of circuit court is immune from civil and criminal liability for his or her acts or omissions arising out of a decision related to the filing of a foreign protection order or modification or to the detention or arrest of an alleged violator of a foreign protection order or modification if the act or omission is done in a good faith effort to comply with 813.128 and 806.247.