

GENERAL ORDER IV

SUBJECT: DOMESTIC VIOLENCE

EFFECTIVE DATE: 03-04-92 REVIEW DATE: 03-01-2015

NOTE: This rule or regulation 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 of care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a nonjudicial administrative setting.

I. Policy

The policy of The West Plains Police Department is to view domestic violence as a serious crime. Therefore, this department will take a proactive response to safeguard victim's rights, provide victim assistance, and utilize arrest as a deterrent to future violence.

The goals of this policy are:

- A. Reduce the number of domestic violence incidents and victim injuries;
- B. Reduce the number of repeat calls for domestic incidents;
- C. Obtain more prosecutions in domestic violence cases;
- D. Provide increased sensitivity, assistance, and protection to the victims of domestic violence and their children;
- E. Increase cooperative efforts with the courts, prosecutors, and victim service agencies in achieving a reduction in domestic violence.
- F. Reduce civil liability.

II. Purpose The purpose of this general order is to establish guidelines, responsibilities, and procedures for domestic violence intervention.

III. Procedures

A. Definitions

1. "Abuse", includes but is not limited to the occurrence of any of the following acts, attempts, or threats against a person who may be protected under sections 455.010 to 455.085:
 - a. "Assault", purposely or knowingly placing or attempting to place another in fear of physical harm;
 - b. "Battery", purposely or knowingly causing physical harm to another with or without a deadly weapon;
 - c. "Coercion", compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;

d. "Harassment", engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or person to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include but is not limited to:

(1) Following another about in a public place or places:

(2) Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;

e. "Sexual assault", causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress;

f. "Unlawful imprisonment", holding, confining, detaining, or abducting another person against that person's will;

2. "Adult". Any person seventeen years of age or older or otherwise emancipated:

3. "Child", a person under seventeen years of age unless otherwise emancipated;

4. "Court", the circuit or associate circuit court or family court of the state of Missouri;

5. "Domestic Violence", abuse or stalking, as both terms are defined in this section;

6. "Ex Parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;

7. "Family or household member", spouses, former spouses, any

persons related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;

8. "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

9. "Order of protection", either an ex parte order of protection or a full order of protection;

10. "Pending", exists or for which a hearing date has been set;

11. "Petitioner", a family or household member who has been a victim of domestic violence, or any person who has been the victim of stalking or a person filing on behalf of a child pursuant to section 455.503 who has filed a verified petition pursuant to the provisions of section 455.020 or section 455.505;

12. "Respondent", the family or household member against who a verified petition has been filed;

13. "Stalking", is when any person purposely and repeatedly engages in unwanted course of conduct that causes alarm to another person when it is reasonable in that person's situation to have been alarmed by the conduct. As used in this subdivision:

a. "Alarm" means to cause fear of damage or physical harm;

b. "Course of conduct" means a pattern of conduct composed

repeated acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact; and

c. "Repeated" means two or more incidents evidencing a continuity of purpose.

B. Responsibilities

1. Dispatcher (communication center) responsibilities

a. Because the dispatcher is likely to be the first person to receive the call, he or she is a key person in determining the type of response,

b. The dispatcher shall assign the call to a responding unit.

Whenever possible, a second unit should be assigned. To assist the responding officers, the dispatcher shall determine as much information as possible and provide that information to the officer so that the officer can safely and adequately respond to the call.

(1) Who is complaining?

(2) Is the crime (incident) in progress?

(3) Is a weapon involved?

(4) Has the caller or anyone else at the address been injured? Is an ambulance needed?

(5) Name and location? At this point, if there is evidence of injury or weapon, or major threat of violence, dispatch a police unit immediately (and ambulance, if needed). Keep the complainant on phone if possible and obtain additional information.

(6) Assailant's where about? If not known, obtain direction of travel and elapsed time.

(7) Was alcohol or drugs involved?

(8) Have there been any previous history or reports of domestic abuse?

c. Listen for background noises that assist in evaluating the threat level (screams, shouts, breaking glass and furniture). These sounds will raise the potential danger level and can help provide the probable cause required.

d. Maintain telephone contact until the officers arrive in order to monitor the incident and provide support to the victim. Advise the victim of the intended department response.

e. The dispatcher shall provide the responding officer with as much information as possible to identify victim at the scene.

f. Check the cross-reference file of incidents by name and address to determine previously reported incidents involving the same parties, address and probable danger involved.

(1) All domestic violence calls should be assigned a priority no lower than the same standard for response to an alleged incident of abuse, or any offense involving strangers.

(2) IMMEDIATE RESPONSE priority MUST be assigned if any of the following facts are present:

(a) The caller indicates that violence is imminent; or

(b) A protection of order is in effect; or

(c) The caller indicates that incidents of domestic violence have occurred previously between the parties.

2. Patrol Responsibilities

a. Response to call: Priority of response to domestic violence calls will be no less than if the call involved strangers. Immediate response will be assigned the call when the caller indicates that violence is imminent, or a protection order is in effect, or the caller indicates that incidents of domestic violence have occurred between the parties in the past. Obtain all available information from the dispatcher before arriving at the scene.

(1) Approaching the scene

(a) Do not park the police unit directly in front of the residence.

(b) Persons encountered while approaching the domestic dispute scene should be briefly questioned about the incident and parties involved. Remain alert for an assailant leaving the scene.

(c) Observe the location of the dispute before contacting the complainant.

(d) Consider the surroundings before knocking on door; listen and look in any nearby window to obtain additional information about the situation (layout of house, number of people involved, weapons).

(e) Officers must be concerned for their own safety as well as the disputants. To minimize the possibility of injury, stand to the side of the door when knocking. The unexpected may occur when the door opens.

(2) Initial contact with occupant(s)

(a) Identification: Identify selves as police officers by name, give an explanation of police presence, and request entry into the home (when conditions permit). If the complainant is home, ask to see him or her.

(b) Consent search: Officer may enter and conduct search of the premises if consent has been given to do so. Although a consent search eliminates the need for a warrant and for probable cause, such consent must be freely and voluntarily given. If two people have joint ownership of a place or thing, either one may give a valid consent. A spouse can consent to the search of premises used jointly by both the husband and wife. This is also true if they are cohabitants; however, if one of them exercises control over the premises and objects to the search, a warrant must be obtained.

(c) Refused entry: When refused entry to a residence, be persistent, explaining that a complaint was received and must be verified. If entry is still refused, request that the dispatcher call the complainant to

re-contact the victim. If still refused entry, contact your supervisor, if available, and explain the situation. The supervisor or senior police officer on the scene will decide whether to remain or leave.

(d) Forced entry: There may be times when enough cause exists to indicate that a felony is occurring, has just occurred, or that a life is in danger. In these cases, if entry is refused, or there is no reply from the premises, forced entry may be necessary to protect a life or make an arrest. Among the circumstances that can provide probable cause to force an entry include cries for help, weapons displayed, obvious signs that a struggle occurred, and/or an eyewitness account that a felony occurred and the victim is still on the premises. Officers shall evaluate the following elements when considering a forced, warrantless entry:

- (1) The degree of urgency involved and the time required to get a warrant;
- (2) The possibility of damage to others, including police officers left to guard the site;
- (3) Whether the suspected offense involved violence;
- (4) Whether officers reasonably believe that persons may be armed.

(c) Once inside, establish control by

- (1) Inquiring about nature of dispute.
- (2) Identifying disputants.
- (3) Being aware of potential weapons in surroundings.
- (4) Determining if person(s) are in other rooms (children and other adults) and the extent of their injuries, if any. These persons should be separated from the parties involved and kept out of hearing range (to avoid compromising their witness status).
- (5) Listening for res gestate (second hand statements considered trustworthy for the purpose of admission as evidence) statements/information.

(f) Protecting the victim

- (1) Officers must protect the victim from further abuse.

Separate from assailant, administer first aid, and arrange for medical attention if victim is hurt.

(2) Victim can sustain internal injuries to the stomach, breast area, portions of the head covered by the hair, and the back. Pregnant women are often hit or kicked in the stomach. The absence of external injury does not mean the victim has not been assaulted.

(3) If victim appears injured and yet refuses medical assistance, carefully document any observed injuries, as well as the refusal of medical attention.

(g) Interview the disputants

- (1) Ensure safety and privacy by interviewing victim in a separate area away from the assailant, witnesses, and bystanders.

(2) Critical to the success of the interview is the police officer's manner. Officers must show interest through effective listening and remain aware of non-verbal communication signals.

(3) Officers shall attempt a low key approach in domestic violence cases, projecting the role of mediator/helper rather than that of authoritarian. Maintain good eye contact through natural, spontaneous glances. (Fixed gazes or staring increases the fear and hostility). A relaxed stance, along with appropriate facial and head movements, demonstrates interest and encourages the victim to continue speaking.

(4) Allow the parties to describe the incident individually without interruption at the beginning of the interview. Expect the parties to ventilate their emotions to relieve tension.

(5) After the parties ventilate their emotions, and while still separated, the officer(s) should ask about the details of points for clarification and summarize the stated accounts, allowing the parties to point out anything that may be misrepresented.

(h) Interview witnesses

(1) Witnesses to the incident - children, other family members, and neighbors - should be interviewed as soon as possible.

(2) These witnesses also may be in significant emotional crisis.

(3) As communications between domestic violence shelter staff and victims are privileged and confidential; the officer must receive a written waiver from the victim to speak with shelter staff (455.220 RSMo.).

(4) Children of disputants should be interviewed with care and kindness and as a last resort. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma and apparent healing of abuse wounds should be noted.

(l) Officers shall provide information and assistance to abused parties as required by Section 6. VICTIM ASSISTANCE SERVICES, of this order.

(j) Arrest decisions; Officers will effect an arrest, based on probable cause and supported by the statements of the victim, witness(s), and evidence of abuse in domestic situations in the following circumstances:

(1) Where a crime has been committed.

(2) Where the officer is aware of a past history of assaults committed by the abuser and there is probable cause to believe another assault has occurred.

(3) Where a physical assault has occurred and there is evidence of either alcohol or drug abuse.

(4) Where any weapon was used to inflict the injury, or was used to intimidate or threaten the victim.

(5) Where an assault has occurred and, if the officer takes no action, there is strong likelihood that further violence or injury might result.

(6) When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to abuse or assault, as defined in section 455.010, against a family or household member, the officer shall arrest the offending party. When the officer declines to make arrest the officer shall make a written report of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made and other pertinent information. Any law enforcement officer subsequently called to the same address within a twelve-hour period, who shall find probable cause to believe the same offender has again

committed a violation as stated in this subsection against the same or any other family or household member shall arrest the offending party for this subsequent offense.

(7) When a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order entered, the officer shall arrest the offending party respondent.

(8) Upon investigation of domestic violence situation, the officer shall evaluate the circumstances surrounding the incident and determine if probable cause exists to initiate an arrest. Arrest is the preferred response, although not the only alternative, to family violence because arrest offers the greatest potential for ending the violence.

(9) Refusal of a victim to sign an official complaint against the offender(s) shall not prevent, nor shall it be consideration, in a law enforcement officer's decision to arrest.

(10) When an officer makes an arrest he is not required to arrest all parties involved in an incident when all parties claim to be victims. The arresting officer shall attempt to identify and arrest the party(s) he believes to be the primary physical aggressor(s). The term, "Primary Physical Aggressor" is defined as the most significant, rather than the first, aggressor(s). If the primary physical aggressor is absent upon officers arrival, the crime will be investigated and application for warrant made.

(11) Under no circumstances shall a law enforcement officer(s)

of this agency use the threat of arrest to all parties involved for the purpose of discouraging requests for law enforcement intervention.

(k) Gathering evidence

(1) Physical evidence takes three forms in domestic violence cases; the injuries of the victim, evidentiary articles that substantiate the attack, and the crime scene itself.

(2) Victim's account of injuries sustained can be corroborated by medical examination.

(3) The investigating officer will see that photographs are taken of visible injuries on the victim and make those photographs available for prosecution.

(4) Photographing the crime scene to show that a struggle occurred is preferred; if not possible, make a written description of it.

(5) All articles of evidence should be collected as in other investigations.

(l) Documenting the incident

(a) A report will be written in all domestic disturbance cases.

All calls dispatched as "domestic abuse" remain call typed as such unless the change is approved by a supervisor and documented within the report...

(b) Include, as a minimum, the following information:

(1) Facts and circumstances of the incident including any complaint or signs of injury;

(2) Victim/Witness statement of previous incidents and/or prior request for police assistance.

(3) Victim's statement as to the frequency and severity of prior incidents of abuse by the same abuser;

(4) Assistance provided to the victim/dependents.

(5) Victim's intention to prosecute and disposition of the investigation.

(c) Upon investigation of a domestic violence situation, the officer shall evaluate the circumstances surrounding the incident and determine if probable cause exists to initiate an arrest. Arrest is the preferred response, although not the only alternative to family violence, because arrest offers the greatest potential for ending the violence.

(d) Officers shall make a physical, custodial arrest if any of the following circumstances exist:

Evidence of:

(1) Assault

(2) Abuse of child

(3) Harassment/Threats

(4) Sexual Abuse/Assault

(5) Unlawful Imprisonment

(6) Violation of orders of protection, any other court order or child custody order.

(e) Refusal of a victim to sign an official complaint against the offender(s) shall not prevent, nor shall it be a consideration, in a law enforcement officer's decision to arrest.

(f) Identifying the offender(s)

(1) When an officer makes an arrest he is not required to arrest all parties involved in an incident when all parties claim to be victims. The arresting officer shall attempt to identify and arrest the party(s) he believes to be the physical primary aggressor(s). The term "Physical Primary Aggressor" is defined as the most significant, rather than the first aggressor(s). If the primary physical aggressor is absent upon officer's arrival, the crime will be investigated and application for warrant made.

(2) Under no circumstances shall a law enforcement officer(s) of this agency use the threat to arrest all parties involved for the purpose of discouraging requests for law enforcement intervention.

(g) In accordance with 455.543, homicide and suicide situations must be specifically reviewed to determine whether the incident was related to domestic violence as defined by 455.200 RSMo. This

determination must then be written into the case records by the investigator (455.540 RSMo.), documented on the required form, and submitted to the Missouri State Highway Patrol "without delay". (43.500 RSMo.)

IV. Orders of Protection

A. When a person advises an officer that an order of protection pertaining to the suspect has been issued; the officer shall attempt to ascertain if such an order is on file with the department (see Appendix).

B. Certified copies of the orders of protection sent to the department by the court will be filed so that they are accessible on a 24 hour basis to all field and patrol officers. Orders of protection are filed with the Howell County Sheriff's Department. The officer shall check with the department to verify:

(A) That a certified copy of the order is on file;

(B) That the order has not expired;

(C) What the exact terms of the order are for a particular individual at a particular location.

C. Officers shall arrest when there is probable cause to believe that the subject of the order of protection has violated the order.

D. Violators shall be arrested for a violation of the terms of the order which may include criminal trespass in the first degree or any other violations charged.

E. If the violator is not present when the officer arrives, the officer shall investigate the incident and, if probable cause exists, the officer and/or the department will apply for an arrest warrant.

F. If an order for protection has not yet been served or cannot be verified to have been served;

1. Report completed and forwarded to Prosecutor's Office with a Probable Cause Statement.

2. The officer will make the order known to the suspect and if necessary detain suspect for service of the order by a deputy.

G. Equal enforcement of Orders of Protection from foreign jurisdictions shall be provided.

V. Reporting Requirement

A. When an officer responds to a call of domestic violence a report is required. The report will include:

1. Facts and circumstances of the incident including any complaint or signs of injury.

2. Victim/Witness statements of previous incidents and/or prior request for police assistance.

3. Assistance provided to the victim/dependents.

4. Victim's intention to prosecute and disposition of the investigation.

VI. Victim Assistance/Services

An officer shall make reasonable effort to inform victims of services for their protection and welfare by:

- A. Securing medical treatment for the victim.
- B. Insuring safety of children.
- C. Giving the victim an information sheet explaining legal rights, court options and how to obtain a protective order (see Appendix).
- D. Give the victim an information sheet with the phone numbers of shelters, advocacy groups, batterers' groups.
- E. Offering to arrange transportation in cases where a victim chooses to seek shelter.

APPENDIX

Under Chapter 455 RSMo, the courts will be issuing two kinds of orders that pertain to family violence incidents;

1. Ex parte order of protection. Any adult family member or household member who has been subjected to abuse may apply for such an order.
2. Full order of protection.

A copy of an order of protection shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. The clerk shall also issue a copy of an order of protection to the local law enforcement agency responsible for maintaining M.U.L.E.S. or any other comparable law enforcement system, the same day the order is granted. The law enforcement agency responsible for maintaining M.U.L.E.S. shall enter information contained in the order for purposes of verification within 24 hours from the time the order is granted.

WEST PLAINS POLICE DEPARTMENT

DOMESTIC VIOLENCE INFORMATION

Your Rights:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE", you have the right to file a criminal complaint through the Police Department. You also have the right to file a petition in the Associate Circuit Court requesting an order of protection from domestic abuse. This order is simply called an ORDER OF PROTECTION. The order may include any of the following: (A) Restraining your abuser from further acts of abuse; (B) An order directing your abuser to leave your household; (C) An order preventing your abuser from entering your residence; (D) An order awarding you custody of your minor child or children. To obtain more information about such an order contact the Associate Court Clerk's Office at Howell County Courthouse at 417-256-4050.

DOMESTIC VIOLENCE IS DEFINED AS:

Physical harm, bodily injury, assault, or the indication of fear of imminent physical harm, bodily injury or assault, harassment, sexual abuse or unlawful imprisonment between

"Family or Household members".

HOUSEHOLD MEMBERS DEFINED

FOR PURPOSES OF ORDER OF PROTECTION:

Spouses, former spouses, persons related by blood or marriage, and other persons of any sex jointly residing in the same dwelling unit (or have resided together in the past) and persons who have a child in common regardless if they have been married or have resided together at any time.

WEST PLAINS

POLICE DEPARTMENT

You are notified that the law now grants to abused parties certain judicial remedies for relief of adult abuse and certain shelters for victims of domestic violence.

Law enforcement officials at the scene are required to provide or arrange transportation for an abused party to a medical facility for treatment of injuries or to a place of shelter or safety. In West Plains, medical treatment is available at Ozarks Medical Center and the following shelters or sources of help available are: Adult Abuse Hotline, 1-800-392-0210; Child Abuse Hotline, 1-800-392-3738 Family Services, 256-7121; OMC Stress Unit, 257-6750; Ozark Area Care and Counseling, 256-3185; Christos House, 1-800-611-5853; MOCARS, 1-800-356-5395; Agape House, 1-800-667-1811; Samaritan Outreach, 257-7792. Persons alleging abuse may seek help through private attorneys; Ex Parte Orders from the Circuit Clerk of Howell County, 256-3741; or any law enforcement agency. There are numerous responsibilities of the investigating officer which may include the making of arrests, the investigation for filing criminal charges at a later date, or the requirement to arrest if called to the same address within a 12 hour period and probable cause is found. The refusal of the apparent victim to sign complaints or take criminal prosecution shall not prevent an arrest. This notice is not intended to offer legal advice by an attorney, but is a brief extract of information of the rights and remedies available.

AUTHORITY

A. This policy is issued by the authority of the Chief of Police. Any policy additions, deviations or revisions shall be made only at the direction of the Chief of Police.

By Authority of:

Jeffrey S. Head, Chief of Police