Domestic Abuse

310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent, and reduce domestic abuse through vigorous enforcement and to address domestic abuse as a serious crime against society. The policy specifically addresses the commitment of this department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic abuse.

310.1.1 DEFINITIONS

Definitions related to this policy include:

Qualified domestic violence-related offense (QDVRO) - has the meaning given it in Minn. Statute 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; NonCensenual 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.

Court order - All forms of orders related to domestic abuse, that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

Domestic abuse - Commission of any of the following if committed against a family or household member by another family or household member (Minn. Stat. § 518B.01, Subd. 2):

(a) Actual or fear of imminent physical harm, bodily injury, or assault

(b) Threats of violence with intent to terrorize as specified by Minn. Stat. § 609.713, Subd.1.

(c) Criminal sexual conduct (Minn. Stat. § 609.342 to Minn. Stat. § 609.3451)

(d) Interference with an emergency call as specified by Minn. Stat. § 609.78, Subd.2

310.2 POLICY

The Braham Police Department's response to incidents of domestic abuse and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic abuse is criminal behavior. It is also the policy of this department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

310.3 OFFICER SAFETY

The investigation of domestic abuse cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede

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the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

310.4 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic abuse cases:

(a) Calls of reported, threatened, imminent, or ongoing domestic abuse and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.

(b) When practicable, officers should obtain and document statements from the victim, the suspect, and any witnesses, including children, in or around the household or location of occurrence.

(c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.

(d) When practicable and legally permitted, video or audio record all significant statements and observations.

(e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Detective in the event that the injuries later become visible.

(f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.

(g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement and make an arrest or seek an arrest warrant if appropriate.

(h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence.

(i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.

(j) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:

1. Whether the suspect lives on the premises with the victim.
2. Claims by the suspect that the victim provoked or perpetuated the violence.
3. The potential financial or child custody consequences of arrest.

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4. The physical or emotional state of either party.
5. Use of drugs or alcohol by either party.
6. Denial that the abuse occurred where evidence indicates otherwise.
7. A request by the victim not to arrest the suspect.
8. Location of the incident (public/private).
9. Speculation that the complainant may not follow through with the prosecution.
10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or marital status of the victim or suspect.
11. The social status, community status, or professional position of the victim or suspect.

310.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, officers should:

(a) Advise the victim that there is no guarantee the suspect will remain in custody.

(b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail (Minn. Stat. § 629.72 Subd. 6).

(c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

310.4.2 IF NO ARREST IS MADE

If no arrest is made, the officer should:

(a) Advise the parties of any options, including but not limited to:

1. Voluntary separation of the parties.
2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).

(b) Document the resolution in a report.

310.5 VICTIM ASSISTANCE

Because victims may be traumatized or confused, officers should be aware that a victim's behavior and actions may be affected.

(a) Victims should be provided with the department's domestic abuse information handout, even if the incident may not rise to the level of a crime.

(b) Victims should be alerted to any available victim advocates, shelters, and community resources.

(c) When an involved person requests law enforcement assistance while removing essential items of personal property, officers should stand by for a reasonable amount of time.

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(d) If the victim has sustained injury or complains of pain, officers should seek medical assistance as soon as practicable.

(e) Officers should ask the victim whether he/she has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists.

(f) Officers should make reasonable efforts to ensure that any children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.

(g) If appropriate, officers should seek or assist the victim in obtaining an emergency order.

310.6 DISPATCH ASSISTANCE

All calls of domestic abuse, including incomplete 9-1-1 calls, should be dispatched as soon as practicable.

Dispatchers are not required to verify the validity of a court order before responding to a request for assistance. Officers should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

310.7 FOREIGN COURT ORDERS

Various types of orders may be issued in domestic abuse cases. Any foreign court order properly issued by a court of another state, Indian tribe or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state.

310.7.1 CANADIAN ORDERS FOR PROTECTION

An order for protection issued by Canada or a Canadian province shall be enforced as if it were the order of a court in this state and afforded the same consideration as foreign court orders with respect to proper issuance and registration (Minn. Stat. § 518F.03).

310.8 VERIFICATION OF COURT ORDERS

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and, where appropriate and practicable:

(a) Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.

(b) Check available records or databases that may show the status or conditions of the order.

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(c) Contact the issuing court to verify the validity of the order.

(d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

310.9 LEGAL MANDATES AND RELEVANT LAWS

Minnesota law provides for the following:

310.9.1 STANDARDS FOR ARRESTS

Officers investigating a domestic abuse report should consider the following:

(a) An officer has the authority to arrest a person 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, exclusive of the day probable cause was established, 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 rise to the level of a felony or did not take place in the presence of the peace officer (Minn. Stat. § 629.34; Minn. Stat. § 629.341).

(b) Officers should generally not make dual arrests but may make an arrest of a primary aggressor. Where there are allegations that each party assaulted the other, the officer shall determine whether there is sufficient evidence to conclude that one of the parties was the primary aggressor based on the following criteria and the officer's judgment (Minn. Stat. § 629.342, Subd. 2):

1. Comparative extent of any injuries inflicted
2. Fear of physical injury because of past or present threats
3. Actions taken in self-defense or to protect oneself
4. History of domestic abuse perpetrated by one party against the other
5. Existence or previous existence of an order for protection

(c) An officer shall not issue a citation in lieu of arrest and detention to an individual charged with any of the following offenses (Minn. Stat. § 629.72):

1. Stalking
2. Domestic abuse
3. Violation of an order for protection
4. Violation of a domestic abuse no contact order

(d) The Adminstration will determine whether a person arrested on a charge of stalking any person, domestic abuse, violation of an order for protection, violation of a domestic abuse no contact order, or violation of a court-ordered transfer of firearms will be held in custody or be issued a citation in lieu of continued detention and released after

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booking. The person shall be held in custody whenever the Adminstration determines that it reasonably appears the release of the person (Minn. Stat. § 629.72):

1. Poses a threat to the alleged victim or another family or household member.
2. Poses a threat to public safety.
3. Involves a substantial likelihood that the arrested person will fail to appear at subsequent proceedings.

(e) Officers shall arrest and take into custody, without a warrant, a person whom the peace officer has probable cause to believe has violated a court order issued pursuant to Minn. Stat. § 518B.01 or Minn. Stat. § 629.75. 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. If the person is not released on citation in lieu of continuing detention, the person shall be held in custody for these violations for at least 36 hours unless released by a court (Minn. Stat. § 518B.01; Minn. Stat. § 629.75).

(f) An arrest for a violation of an order of protection may be made regardless of whether the excluded party was invited back to the residence (Minn. Stat. § 518B.01, Subd. 18).

(g) Following an arrest, an officer should contact the local domestic abuse program by phone as soon as possible and provide the name and address of the victim and a brief factual account of events associated with the action.

(h) An officer shall arrest and take into custody a person whom the officer has probable cause to believe has violated a harassment restraining order, pursuant to Minn. Stat. § 609.748, if the officer can verify the existence of the order.

(i) Officers are authorized to make an arrest without a warrant when there is probable cause to believe the person has violated the provisions of any other no contact or restraining order issued by a court, even if the offense did not rise to the level of a felony (Minn. Stat. § 629.34). While conducting a domestic abuse investigation officers shall attempt to verify whether there has been a court order issued.

(j) Officers should consider whether other offenses have been committed that may not qualify as a domestic abuse including, but not limited to, burglary, felony assault, other threats of violence, kidnapping, false imprisonment, witness tampering, trespassing, criminal damage to property, disorderly conduct, or assault.

310.9.2 REPORTS AND RECORDS

(a) Officers should include information related to the following in a report, as applicable (Minn. Stat. § 629.341):

1. Names, addresses, and telephone numbers of all involved persons
2. Condition of clothing
3. Description of the scene, including any property damage
4. Evidence of physical injury, including strangulation
5. Presence of elderly victims or persons with disabilities

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6. Facts related to any person who may have been a primary aggressor
7. Excited utterances of the victim and the suspect
8. Demeanor of the victim and the suspect
9. Medical records, including the victim's statements to paramedics, nurses, and doctors
10. Detailed statements of interviews of witnesses, including children, who may have been present, noting any language barriers
11. A detailed explanation of the reasons for the officer's decision not to arrest or seek an arrest warrant
12. Evidence of any prior domestic abuse or related convictions, including dates
13. Any existing orders for protection, harassment restraining order, or no contact orders
14. Identifying information of a specific court order violated, including county of origin, the file number, and the provision allegedly violated

(b) Domestic abuse reports should be forwarded to the appropriate prosecutor for review and consideration of criminal charges, even when no arrest is made or warrant requested.

(c) If a child was present at the scene of a domestic abuse incident or was the victim of domestic abuse, the officer should determine whether the child has been subjected to physical abuse, sexual abuse, or neglect, and comply with the mandatory reporting requirements of Minn. Stat. § 260E.06 et seq.

1. The officer shall also attempt to verify whether there has been an order for protection issued under Minn. Stat. § 260C.201 and take appropriate action.

(d) Fees will not be charged for the release of reports related to domestic abuse, as directed in Minn. Stat. § 13.82.

310.9.3 SERVICE OF COURT ORDERS

Officers, when reasonably safe and in a position to do so, shall serve copies or short forms of court orders as directed in Minn. Stat. § 518B.01 and Minn. Stat. § 609.748.

310.9.4 COURT-ORDERED FIREARM SURRENDERS

Although not required, this department generally will accept firearms surrendered by a court order from an abusing party or defendant. A decision to refuse a surrendered firearm should be approved by a supervisor.

Firearms will normally be surrendered at the Braham Police Department; however, when encountering someone in the field who wishes to surrender a firearm, officers should make reasonable efforts to accommodate the request.

Surrendered firearms should be collected and submitted to the Evidence Room in accordance with the Evidence Room Policy.

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