

## Domestic Abuse

### 321.1 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 deputies in the investigation of domestic abuse.

#### 321.1.1 DEFINITIONS

Definitions related to this policy include:

**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.

### 321.2 POLICY

The Becker County Sheriff's Office'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.

### 321.3 OFFICER SAFETY

The investigation of domestic abuse cases often places deputies in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all deputies to exercise due caution and reasonable care in providing for the safety of any deputies and parties involved.

#### 321.3.1 ARRESTS

An arrest for domestic abuse should be made anywhere without a warrant, including at the person's residence, if the deputy has probable cause to believe that within the preceding 24 hours the person has committed domestic abuse. The arrest may be made even though the assault did not take place in the presence of a deputy (Minn. Stat. § 629.341 Subd. 1).

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### 321.3.2 PRIVATE PERSON'S ARREST

Deputies will advise the victim of his/her right to make a private person's arrest when a crime has been committed outside the deputy's presence that does not meet the requirements for a deputy-initiated arrest because it is not a felony or a qualifying misdemeanor. Advisements regarding private person's arrests should be held out of the presence of the suspect.

### 321.3.3 TENANCY ISSUES

Deputies may request a person who is not in lawful possession of the premises to leave when:

- (a) The complainant is in lawful possession of the premise as exhibited by rent receipts, lease, deed and/or verification by the apartment manager.
- (b) The complainant has requested that the person leave the premises.

The deputy will stand by until the person not in lawful possession removes essential belongings.

If the person not in lawful possession does not leave upon request, an arrest should be made under applicable law, which may include an arrest for trespass as well as other offenses.

If the complainant requesting removal cannot show proof of lawful possession, the deputy should refer the complainant for a court order or other appropriate civil remedy.

If appropriate, a domestic abuse situation involving a tenancy issue may be resolved through the proper application for an emergency or temporary court order.

### 321.3.4 UNUSUAL STATUS CIRCUMSTANCES

Any domestic abuse incident that involves an employee from any law enforcement agency will require supervisory oversight and review after briefing from investigating deputies while still at the scene. Actions to consider by the supervisor include:

- (a) Responding to the scene if indicated.
- (b) If employed by this department, immediately placing the involved BCSO employee on administrative leave pending further review.
- (c) Notification of another agency's ranking on-duty officer of an arrest of another agency's employee or that the employee is sought in relation to a crime.

Domestic abuse incidents involving a person whose status warrants special consideration should be immediately brought to a supervisor's attention for appropriate review and oversight.

All information will be documented in appropriate reports and reviewed by the involved supervisor.

### 321.3.5 MALTREATMENT OF AFFECTED MINORS

If children are present in a domestic abuse incident, deputies shall take prompt appropriate enforcement action, report and document any maltreatment, endangerment, abuse, sexual abuse, medical neglect, abandonment or neglect.

Employees shall also promptly notify the appropriate county or state child protection agencies, either directly or by forwarding a copy of the report, to provide the opportunity for assistance,

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placement or follow-up, to reduce the potential for future abuse or neglect (Minn. Stat. § 626.556 Subd. 1).

### **321.4 INVESTIGATIONS**

The following guidelines should be followed by deputies 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, deputies 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) Deputies 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 Investigation Section in the event that the injuries later become visible.
- (f) Deputies 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, deputies 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, deputies 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 deputy should attach a copy of the order to the incident or arrest report.
- (j) Deputies 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.

### 321.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, deputies 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.

### 321.4.2 IF NO ARREST IS MADE

If no arrest is made, the deputy 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.

### 321.4.3 VERIFICATION OF COURT ORDERS

Whenever a complainant advises of the existence of a court order, the deputy shall immediately attempt to determine the following:

- (a) Whether a court order is on file with the Department or whether the complainant has a valid copy of the court order in his/her possession.
- (b) Whether there is a current court order on file with any state law enforcement agency or state database.
- (c) Whether there is a current court order on file with any accessible national database.
- (d) The terms of the court order.

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- (e) The termination or expiration date of the court order, or whether the order has been vacated by the court.

Deputies must carefully read a court order prior to taking enforcement action and should contact the issuing agency to verify the details of the prohibited conduct prior to making any arrest.

The fact that an order has not been registered or included in the state database or in any national crime information database is not grounds for a deputy to refuse to enforce the terms of the order unless it is apparent to the deputy that the order is not authentic on its face, invalid or expired.

### 321.4.4 PROOF OF SERVICE

Proof of service may be established by any one of the following:

- (a) The existence of the order and proof of service to the suspect has been verified by the deputy.
- (b) The complainant produces a valid copy of the order bearing a file stamp of a court and proof of service.
- (c) The deputy has verified the existence of the order and the order reflects that the suspect was personally present in court when the order was made, which removes the proof of service requirements.
- (d) The existence of the order has been verified and there is proof that a deputy has previously informed the suspect of its terms.
- (e) The respondent admits to having been served the order.

### 321.4.5 PROOF OF SERVICE NOT VERIFIED

When the deputy verifies that a court order exists but cannot verify proof of service or prior knowledge of the order by the suspect, the deputy shall perform the following (Minn. Stat. § 518B.01 Subd. 8a):

- (a) At the request of the complainant and upon presentation of an endorsed copy of the restraining order and a proof of service form, serve a copy of the order on the respondent. Submit the completed proof of service form to the Records Center and ultimately the court, regardless of whether the respondent is taken into custody.
- (b) Immediately inform the respondent of the terms of the order and place the respondent on notice that violation of the order will result in arrest.
- (c) Obtain the respondent's address, place of employment and telephone numbers.
- (d) Enforce the order but do not make an arrest for any violation of the order occurring prior to verified proof of service or before a deputy's admonition of the terms of the order. If the respondent continues to violate the order after being advised of the terms, an arrest shall be made.

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If the respondent complies with the order the deputy shall complete a report detailing the specific terms of the order and advisement, the name of the advising deputy and the date and time of the advisement. The Department copy of the court order, if on file, shall be updated to reflect the information listed above.

### **321.4.6 WHEN ORDERS ARE NOT VERIFIABLE**

If the victim is not in possession of the court order and/or for any reason the deputy cannot verify the validity of the order, the following action shall be taken:

- (a) Write a report outlining the incident and give the report number to the victim.
- (b) Inform the victim of how to contact the appropriate investigating deputy for further action.
- (c) Inform the victim of how to contact the court to obtain a valid copy of the order.

Additionally, the deputy should inform the victim of the right and the process to make a private person's arrest for a violation of the order that takes place in the victim's presence.

### **321.4.7 SUBSEQUENT ORDERS AND EXTENSIONS**

Deputies should advise the victim of domestic abuse incidents that the court may extend the relief granted in an existing order for protection or, if the victim's order for protection is no longer in effect when the application is made, grant a new order (Minn. Stat. § 518B.01 Subd. 6a).

Whenever a deputy files for a court order on a victim's behalf, he/she will document the action in an offense report and explain the reasons for taking the action.

## **321.5 VICTIM ASSISTANCE**

Because victims may be traumatized or confused, deputies 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, deputies should stand by for a reasonable amount of time.
- (d) If the victim has sustained injury or complains of pain, deputies should seek medical assistance as soon as practicable.
- (e) Deputies 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 deputy determines that a need exists.
- (f) Deputies 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.

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

#### **321.5.1 RECORDING INJURIES AND STATEMENTS**

All visible injuries should be photographed regardless of severity and all victims shall receive proper medical care prior to being photographed, if needed or desired. If feasible deputies may video record injuries and victim statements. Deputies should request that the victim complete and sign an authorization for release of medical records.

Victims whose injuries are not visible at the time of the incident should be advised to contact the Investigating deputy, in the event the injuries later become visible. An investigator may be assigned to ensure that the injuries are photographed during the course of preparing the case for court.

#### **321.5.2 RECORDING OF STATEMENT**

Whenever practicable, the responding deputy shall promptly and while still at the scene take a recorded statement from the victim setting out the facts that constitute the violation of the order and/or criminal act. The recording shall be processed and treated as evidence consistent with the Use of Audio Recorders and Computers and Digital Evidence Policies as applicable to the device and media.

#### **321.6 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. Deputies should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

#### **321.6.1 VICTIM NOTIFICATION**

When investigating an act of domestic abuse, deputies shall tell the victim whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. Additionally, victims should be advised of all reasonable means to prevent further abuse (Minn. Stat. § 629.341 Subd. 3).

When appropriate, deputies should advise the victim of the availability of the Victim Information and Notification Everyday (VINE) Program. VINE is a free, computer-based telephone service that allows victims to check on an offender's custody status and register to receive automatic notification when an inmate is released from jail. The contact telephone number for VINE is (877) 664-8463 and is printed on the Becker County Sheriff's Office Victim's Information Card.

Additionally, the reporting employee shall advise the victim of the state's Address Confidentiality Program, "Safe at Home," and that applications can be obtained from and filed with the Secretary of State (Minn. Stat. § 5B.03).

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### 321.6.2 WRITTEN NOTICE TO VICTIMS

Victims of domestic abuse shall be furnished with a written notice explaining their rights as required by statute (Minn. Stat. § 629.341 Subd. 3).

### 321.6.3 DOMESTIC ABUSE SUPPORT

Victims of domestic abuse should be allowed to have a domestic abuse counselor and a support person of the victim's choosing present at any interview by law enforcement authorities. The investigating deputy should advise the victim of the option to have an advocate and support person present at any subsequent interview, including additional interviews by the reporting deputy and/or investigators handling the case.

- (a) For the purposes of this section, an initial investigation by law enforcement to determine whether a crime has been committed and to determine the identity of the suspect shall not constitute a law enforcement interview.
- (b) The support person may be excluded from an interview if the law enforcement authority determines the presence of that person would be detrimental to the purpose of the interview.

### **321.7 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 deputies 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.

#### 321.7.1 RECORD-KEEPING RESPONSIBILITIES

State statute requires that all law enforcement agencies maintain records on the number of domestic abuse-related calls reported to their agency and to include whether weapons were used in the incident. This information is to be reported to the state. It shall be the responsibility of the Records Manager to maintain and report this information (Minn. Stat. § 611A.36 Subd. 2).

This department shall maintain and make available to all law enforcement officers verification as to the existence of any court order and the information contained within them (Minn. Stat. § 518B.01 Subd. 13).

### **321.8 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, deputies 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.

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

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

### **321.9 LEGAL MANDATES AND RELEVANT LAWS**

Minnesota law provides for the following:

#### **321.9.1 STANDARDS FOR ARRESTS**

Deputies investigating a domestic abuse report should consider the following:

- (a) A deputy 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) Deputies 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 deputy 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 deputy'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) A deputy 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 Supervisor 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

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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 booking. The person shall be held in custody whenever the Supervisor 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) Deputies 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 deputy 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, a deputy 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) A deputy shall arrest and take into custody a person whom the deputy has probable cause to believe has violated a harassment restraining order, pursuant to Minn. Stat. § 609.748, if the deputy can verify the existence of the order.
- (i) Deputies 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 deputies shall attempt to verify whether there has been a court order issued.
- (j) Deputies 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.

### 321.9.2 REPORTS AND RECORDS

- (a) Deputies 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

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5. Presence of elderly victims or persons with disabilities
  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 deputy'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 deputy 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 deputy 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.

### 321.9.3 SERVICE OF COURT ORDERS

Deputies, 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.

### 321.9.4 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 Becker County Sheriff's Office; however, when encountering someone in the field who wishes to surrender a firearm, deputies should make reasonable efforts to accommodate the request.

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