



City of Racine Police Department
Policy and Procedure

Number: 1932

Subject: Mandatory and Proarrest Guidelines for Domestic Abuse		
Date Issued: 6-21-85	Effective Date: 10-15-10	Revision Number: 5

PURPOSE:

This Department recognizes that domestic abuse is a serious criminal offense. The intent of this policy is twofold: to maximize protection for victims of domestic abuse; and to hold the predominant aggressor accountable for his/her abusive behavior. This policy recognizes that violent behavior will neither be excused nor tolerated regardless of the relationship of the persons involved. Domestic abuse is not a private matter but a crime against the State of Wisconsin and prosecution does not depend upon the willingness of a victim to prosecute. Therefore, an officer shall seek to make an arrest supported by probable cause and take a person into custody according to this policy.

DEFINITIONS:

Domestic abuse - means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

- Intentional infliction of physical pain, physical injury or illness.
- Intentional impairment of physical condition.
- A violation of first, second or third degree sexual assault.
- A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described above.

A juvenile can be engaged in domestic abuse if he/she is a spouse or former spouse of an adult, or if they have a child in common. If a juvenile is arrested for domestic abuse, the District Attorney's Office should be notified.

Predominant Aggressor is defined as the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

Shall Arrest – the appropriate domestic abuse conditions are met (as in #1 below), the officer “must” arrest the offender or offenders.

Should Arrest – the conditions do not require immediate arrest but it is strongly recommended.

MEMBER:

The following guidelines must be adhered to when dealing with issues of domestic abuse.

1. The officer **SHALL ARREST** the alleged offender, if possible, when the officer has reasonable grounds to believe that the suspect is committing or has committed domestic abuse and the suspects actions constitute the commission of a crime; AND the officer reasonably believes continued domestic abuse against the alleged victim is likely AND/OR there is evidence of physical injury to the victim.
2. The officer **SHOULD ARREST** the alleged offender, if possible, when the officer has reasonable grounds to believe the suspect is committing or has committed domestic abuse and the suspects actions constitute the commission of a crime. If such arrest is not made, then see “7” below for the required report.
3. If the probable cause is based on a report of an alleged domestic abuse, the officer **SHALL** make an arrest only if the report is received within 28 days after the alleged incident is to have occurred.

4. Probable cause can be based on reliable hearsay information. The officer need not witness the domestic abuse.
5. Probable cause and the decision to arrest or not arrest may not be based:
 - a. On the consent or willingness of the victim to prosecute.
 - b. On the current relationship of the victim to the offender.
 - c. Solely on the absence of visible injury or impairment to the victim.
6. If probable cause exists that domestic abuse has been committed by more than one person, to each other, the officer **SHALL ARREST** the predominant aggressor. In deciding which of the parties is the predominant aggressor, the officer should consider:
 - a. History of domestic abuse between the parties, if it can be reasonably ascertained by the officer and any information provided by witnesses regarding that history.
 - b. Statements made by witnesses.
 - c. The relative degree of injury inflicted on the parties.
 - d. The extent to which each person present appears to fear any party.
 - e. Whether any party is threatening or has threatened future harm against another party or another family or household member.
 - f. Whether either party acted in self-defense or in defense of any other person.
7. If the officer does not arrest the suspect under either the non-mandatory **SHOULD ARREST** or mandatory **SHALL ARREST** situation and there is probable cause to arrest the suspect, the officer **MUST** prepare an Incident Report and Warrant Recommendation, ensuring that both documents detail the reason why the offender or predominant aggressor was not arrested. These reports must be forwarded to the District Attorney's office for review (after in-house review by supervisor).
8. After the offender is taken into custody, the officer shall notify the victim that:
 - a. Unless a waiver is in place signed by the victim, during the 72 hours immediately following the arrest, the arrested person shall avoid the residences of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.
 - b. If the victim desires to sign such a waiver, he/she must appear at the Racine County Sheriffs Department to complete the appropriate form.
Note: This waiver only releases the arrested person from the \$1000 penalty. The arrested person is still subject to the Bail Jumping penalties for violating the conditions set forth in Paragraph 2 of the Notice of Conditional Release and Contact Prohibition (RCSD/DA 89-1) prior to their first court appearance.
- c. Typically, members of the Department will not function as a "go-between" for the arrested person and the victim (see 8.a. above). However, based on extraordinary or unusual circumstances, a supervisor may authorize an officer to serve as a go-between.
9. An offender arrested for a domestic abuse incident shall be photographed and fingerprinted regardless of the nature of the underlying criminal offense.
10. Immediate release of the predominant aggressor is not permitted until the person posts bail or appears before a judge or commissioner for an initial appearance.
11. Should a person arrested for these offenses be released within 72 hours of the arrest, a law enforcement officer must notify the suspect orally and in writing, of the requirements and the conditions of release. The RCSD Jail Staff completes this notification; however the arresting officer shall prepare applicable portions of form RCSD/DA 89-1 during the booking process. If the suspect refuses to sign the acknowledgement of the conditions of release, the suspect may not be released.
12. If an officer arrests a person for Domestic Abuse who was arrested for Domestic Abuse within the previous 72 hours, this second offense is considered a felony. This is regardless of whether a 72 hour no contact waiver has been signed by the victim or if it is a different victim.

13. If an officer has probable cause to believe that a released offender has violated any provisions of the 72-hour “no contact” provision, the officer **SHALL ARREST** the offender for Bail Jumping.
14. Officer/Civilian Employee-involved Domestic Violence. When an Officer responds to a report of alleged Domestic Violence involving one of our officers/civilian employee, the responding officer shall:
 - a. Secure the scene and separate the parties if they are both present.
 - b. Request that a Supervisor responded to the scene.

SUPERVISOR:

Upon being notified of an Officer/Civilian Employee involved Domestic Violence the Supervisor shall:

1. Respond to the scene.
2. Notify the on duty Shift Commander by phone of the incident.

SHIFT COMMANDER:

Determine if the on scene Supervisor should handle the investigation or if an outside Agency should investigate the incident.

**RELATED
STATUTES:**

Wisconsin §813.12 – Domestic Abuse Restraining Orders and Injunctions
Wisconsin §813.125 – Harassment Restraining Orders and Injunctions
Wisconsin §939.621 – Increased Penalty for Certain Domestic Abuse Offenses
Wisconsin §946.49 – Bail Jumping
Wisconsin §968.075 – Domestic Abuse Incidents; Arrest and Prosecution

**RELATED
PROCEDURE:**

[402 – Member’s Responsibility at Incidents Involving Off-Duty Sworn Personnel or Civilian Employee](#)
[1931– Mandatory Arrest for Violations of Domestic Abuse, Child Abuse or Harassment Orders](#)
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NOTE:

The issuance of a citation for a misdemeanor domestic abuse crime meeting the requirements of mandatory arrest is prohibited.