



**Division of State Patrol  
Policy and Procedure**

Number  
**14-5**

Subject <b>DOMESTIC AND CHILD ABUSE</b>	
Author/Originator Bureau of Field Operations	Approved by <i>Stephen Fitzgerald</i> <b>Superintendent</b>
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**I. POLICY**

It is the policy of the Division of State Patrol (DSP) to enforce domestic and child abuse laws and take measures to protect victims.

**II. BACKGROUND**

Section 968.075(3) requires every law enforcement agency to develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents.

Sworn personnel who have reason to suspect that neglect or abuse of a child is occurring, whether or not associated with a domestic abuse incident as defined by this policy shall follow the reporting requirements of Section V.B. of this policy.

**III. OBJECTIVES**

The intent of this policy is to maximize protection for victims of domestic abuse and to hold physical aggressors accountable for their abusive behavior. Sworn personnel shall make arrests for crimes supported by probable cause and take a person into custody according to the procedures of this policy.

**IV. DEFINITIONS**

For the purpose of this directive, the following definitions apply:

- A. **Domestic Abuse** – any of the following engaged in by an adult person against his or her spouse, former spouse or adult relative or against an adult with whom the person

resides or formerly resided or against an adult with whom the person has a child in common.

1. Intentional infliction of physical pain, physical injury, or illness.
  2. Intentional impairment of physical condition.
  3. A violation of s. 940.225 (1), (2) or (3) Sexual Assault.
  4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1, 2, or 3.
- B. **Relative** – a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, child, stepchild, father-in-law, mother-in-law, daughter-in-law, or son-in-law.
- C. **Officer** – any sworn member of the Division of State Patrol.
- D. Abused or Neglected Children
1. Abuse means any of the following:
    - a. Physical injury inflicted on a child by other than accidental means.
    - b. Sexual intercourse or sexual contact under ss. 940.225, 948.02, or 948.025.
    - c. Sexual exploitation of children under s. 948.05.
    - d. Permitting, allowing or encouraging a child to violate s. 944.30, prohibiting prostitution.
    - e. Emotional damage for which the child's parent, guardian, or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the treatment necessary or to take steps to ameliorate the symptoms.
    - f. Causing a child to view or listen to sexual activity under s. 948.055.
    - g. Exposing genitals in a public area under s. 948.10.
    - h. When used in referring to an unborn child, serious physical harm inflicted on the unborn child and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to severe degree.

2. **Child** – any person less than 18 years of age. For the purposes of investigating or prosecuting a person suspected of violating a state or federal criminal law, a child is a person less than 17 years of age.
3. **Emotional damage** – any harm to a child’s psychological or intellectual functioning. Emotional damage shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety, depression, withdrawal, outward aggressive behavior, or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.
4. **Neglect** – the failure, refusal, or inability on the part of a parent, guardian, legal custodian, or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.
5. **Physical injury** – includes, but is not limited to, physical pain, bruising, lacerations, fractured bones, burns, internal injuries or great bodily harm as defined in s. 939.22(14).
- E. **Predominant Aggressor** – the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

## V. PROCEDURE

### A. DOMESTIC ABUSE – Sworn Personnel

1. In most circumstances a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that this abuse constitutes the commission of a crime.
  - a. Factors in determining whether probable cause exists that a crime has been committed include, but are not limited to the following:
    - 1) Bodily harm or pain to the victim.
    - 2) Statement of victim including non-consent to the offense. This interview is to be conducted outside the presence of the suspect. Written statements are to be obtained whenever possible.
    - 3) Statements of family members, friends, neighbors, or other witnesses. These interviews are to be conducted outside the presence of the suspect. Written statements are to be obtained whenever possible.

- 4) Statement of the suspect. Written statements are to be obtained whenever possible.
  - 5) Observations of the scene and the victim.
  - 6) Previous calls at same location or with same parties.
  - 7) Previous threats/offenses against the victim by the suspect.
- b. An officer's decision not to arrest may not be based:
- 1) Upon the consent of the victim to subsequent prosecution of the aggressor.
  - 2) Solely upon the absence of visible indications of injury or impairment.
  - 3) On the relationship of the persons involved.
- c. When an officer has reasonable grounds to believe that two or more of the parties have committed domestic abuse against each other, the officer need not arrest each person but should arrest the person that the officer believes to be the predominant aggressor.
- d. In determining who is the predominant aggressor, the officer should consider the intent of this policy and state law to protect victims, including protecting victims from arrest. An officer shall consider all of the following in identifying the predominant aggressor:
- 1) 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.
  - 2) Statements made by witnesses.
  - 3) The relative degree of injury inflicted on the parties.
  - 4) The extent to which each person present appears to fear any party.
  - 5) Whether any party is threatening or has threatened future harm against another party or another family or household member.
  - 6) Whether either party acted in self-defense or in defense of any other person under the circumstances described in s. 939.48.
- e. There is no requirement that an officer witness the crime; probable cause can be established by reliable hearsay information.

2. Mandatory Arrest
  - a. Except as provided for in paragraph 2.a.3) below, a sworn officer shall arrest and take the person into custody if:
    - 1) The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; **and**
    - 2) The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely and/or there is evidence of physical injury to the alleged victim.
    - 3) The officer has probable cause that a person has violated one of the following:
      - A domestic abuse restraining order or injunction
      - A child abuse restraining order or injunction
      - A harassment restraining order or injunction
      - A foreign protection order
    - 4) If the officer's reasonable grounds for belief are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest only if the report is received by the DSP within 28 days of the alleged incident.
    - 5) Violation of the 72-hour contact prohibition (See sect. V.3.).
  - b. Violation of Temporary Restraining Orders:
    - 1) Officers should check for the existence of a temporary restraining order against the subject. If a valid restraining order exists and there is probable cause to believe that the person has violated the restraining order, the officer shall make an arrest.
    - 2) The victim may produce a copy of the restraining order or the officer may check via radio whether a restraining order exists; the officer should, if possible, confirm the validity of any such order via the Post Communications Center.
    - 3) The facts and circumstances leading to arrest for violation of a temporary restraining order shall be documented on an electronic Offense/Incident Report (eSP4500).
  - c. If the person subject to arrest is not at the scene, the officer shall make a good faith attempt to locate him/her. If the person cannot be located,

the officer shall notify the law enforcement agency of primary jurisdiction and immediately send the district attorney a copy of the officer's Offense/Incident Report and any additional statements or supporting documentation.

- d. If one or both parties demand an arrest and there is no probable cause for such an arrest, the demand(s) for arrest shall be noted in the officer's Offense/Incident Report and a copy immediately submitted to the police agency of primary jurisdiction.

3. Immediate Release Prohibited

Immediate released of the arrested person under mandatory arrest is not permitted until the person posts bail or appears before a judge or commissioner for an initial appearance.

4. 72-Hour Contact Prohibition [s. 968.075 (5)]

- a. Rights and requirements: Unless a valid waiver has been executed during the 72 hours immediately following an arrest in a domestic abuse incident, the arrested person must avoid the residence 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. Notification of and/or Waiver of Rights [s. 968.075(5)(d)]
  - 1) An officer who arrests a person for a domestic abuse incident shall notify the alleged victim of the requirements of the 72-hour contact prohibition as specified in "a" above; **and**
  - 2) Shall notify the alleged victim that at any time during the 72-hour period the alleged victim may voluntarily waive the contact prohibition; **and**
  - 3) Shall provide the alleged victim a copy of the waiver form; **and**
  - 4) Shall provide an explanation of the procedure for releasing the arrested person and the likelihood and probable time of the arrested person's release.
  - 5) If an officer releases from custody a person arrested for domestic abuse less than 72 hours after the arrest and there is no waiver, the officer shall inform the person orally and in writing of the 72-hour contact prohibition and the provisions of s. 939.621. The arrested person shall sign a notice that he/she

understands these requirements. If the person refuses to sign, he/she may not be released from custody.

- 6) If an officer releases from custody a person arrested for domestic abuse less than 72 hours after the arrest and there is a waiver of the 72-hour contact prohibition, the officer shall inform the person orally and in writing of the waiver and the provisions of s. 939.621.
- 7) Attachment 1 and/or Attachment 2 to this policy may be used for this purpose. Other agency forms which comply with the above requirements may also be used.

c. Violation of 72-Hour Contact Prohibition

- 1) When an officer has probable cause to believe:
  - a) That a person has been arrested for a domestic abuse crime, **and**
  - b) The person has been released on bail, **and**
  - c) The person has subsequently violated the 72-hour “no contact” provision of s. 968.075(5), the officer shall arrest the person for the crime of “bail jumping,” s. 946.49(1).
- 2) Although s. 968.075(5) provides a forfeiture penalty for a “no contact” violation, it is the opinion of the Wisconsin Attorney General that “bail jumping” is the appropriate offense with which to charge a person in violation of this subsection [78 Atty. Gen. 177].

5. Notice to Crime Victims [s. 950.08(2g)]

- a. Within 24 hours of the initial contact with the victim of a crime, an officer will supply the victim with crime victim rights and other required information listed in s. 950.08(2g). Every region shall make information packets, which comply with s. 950.08(2g) available to uniformed officers.
- b. Referral: Whether or not a crime has been committed, the officer may wish to advise persons involved in a domestic abuse incident of the availability of shelters or other services in the community.

6. Report Writing

- a. A domestic abuse report should include the following:

- 1) Statements obtained from the victim or other witnesses.
  - 2) Photographs of visible injuries.
  - 3) Excited utterances, admissions against interest, and other informal statements of the defendant.
  - 4) Formal statements obtained from the defendant after the defendant has been informed of and waived his/her Miranda rights.
  - 5) Names and ages of children, whether they were present when the incident occurred and the time of contact. In addition, note whether the children were placed in protective custody and to whom any referrals were made. In domestic abuse incidents, officers should be alert to any indications of child abuse or neglect (See Section V.B. "Reporting Abused or Neglected Children.").
- b. "No Arrest" Report
- 1) If an officer does not make an arrest when she/he has probable cause to believe that the person is committing or has committed domestic abuse and that the person's act constitute the commission of a crime, the officer shall prepare an Offense/Incident Report stating why the person was not arrested, and immediately send a copy (via fax if possible) of the report to the district attorney of the county in which the acts took place. Permissible reasons for failure to make such an arrest are:
    - a) The suspect cannot be found (See section V.A.2.c.).
    - b) The primary physical aggressor is arrested.
    - c) The suspect has been committed to a hospital, mental health or detoxification center.
    - d) The crime was committed more than 28 days previously and no warrant for the person's arrest has been issued.
  - 2) When the suspect is arrested by another police agency, the officer shall complete an Offense/Incident Report and deliver a copy of the report and any evidence the officer may have collected to the arresting agency. A copy of the report need not be sent to the district attorney.



7. Post Communications Center
  - a. Determine the existence of any temporary restraining orders with the county sheriff's office or other appropriate authority when requested. Obtain teletype confirmation of the following:
    - 1) The restraining order was issued pursuant to Chapter 813 (for example, s. 813.12, 813.122, or 813.125).
    - 2) The dates or term of the restraining order is current.
    - 3) The restraining order was signed by a judge or court commissioner and a copy given to the person subject to the prohibitions of the restraining order.
    - 4) The specific prohibitions of the restraining order.
  - b. Inform the officer of the statute section, term, and prohibitions of the restraining order.
  - c. Retain a hard copy of the restraining order verification.

**B. REPORTING ABUSED OR NEGLECTED CHILDREN [s. 48.981] Sworn Personnel**

1. Any sworn officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected, or having reason to believe that a child has been treated with abuse or neglect and that abuse or neglect of the child will occur, shall immediately inform the county department of social services, licensed child welfare agency, sheriff or local police department and the local district attorney's office of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur.
2. An officer reporting suspected child abuse may request an immediate investigation by the sheriff or police department if the officer has reason to suspect that the health of a child or unborn child is in immediate danger.
3. An officer shall take a child into custody (not an arrest) when she/he believes, on reasonable grounds, either of the following circumstances exists:
  - a. The child is suffering from illness or injury or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.
  - b. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be

seriously affected or endangered due to the child expectant mother's lack of self-control in the use of alcoholic beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

4. If a child must be taken into custody and the child's parent(s) or guardian(s) are unwilling or unable to provide adequate supervision and care for the child, the child should be delivered to a juvenile intake worker.
5. If a child must be taken into custody and the officer believes that the child is suffering from a serious physical condition which needs prompt diagnosis or prompt treatment, the child should be delivered to a hospital.
6. The officer shall complete an Offense/Incident Report describing the grounds to suspect child abuse or neglect or the belief that child abuse will occur; and, if the child is taken into custody, the facts and circumstances necessitating the immediate removal of the child from his or her surroundings.

**V. REFERENCES**

2005 Act 104.  
Wisconsin Statutes, ss. 48.19, 48.20 48.981, 813.12, 939.621, 949.04, 950.04, 950.08 and 968.075.  
eSP4500

**VI. ATTACHMENTS**

Notice to Persons Arrested for Domestic Abuse Incidents  
Notice to Victims of Domestic Abuse

**NOTICE TO PERSONS ARRESTED FOR DOMESTIC ABUSE INCIDENTS**

1. You have been arrested for a domestic abuse incident.
2. Unless the victim signs a written waiver, during the 72 hours immediately following your arrest you are required by law to avoid the alleged victim's residence and/or residence temporarily occupied by the victim and to avoid contacting or causing any person other than law enforcement officers or attorneys for each party to contact the alleged victim. [s. 968.075(5)]
3. Any person who violated this prohibition may be fined up to \$1,000 and be arrested for bail jumping, s. 946.49(1). [78 Atty. Gen. 177]
4. If you commit an act of domestic abuse during this 72-hour period, and the act constitutes the commission of a crime, then the penalty increases a misdemeanor to a felony and the term of imprisonment may be increased by up to 2 years. [s. 939.621]
  - a. This applies even if the alleged victim signed a waiver, and
  - b. The subsequent domestic abuse crime need not be against the same alleged victim for the penalty enhancement provisions to apply.
5. If the alleged victim has not signed a written waiver, your release is conditioned upon your signed acknowledgement that you have received written and oral notice of these requirements, understand them and understand the penalties for violating them.
6. If you refuse to acknowledge (by signing) this notice and the alleged victim has not signed a written waiver, then you will not be released from custody until after 72 hours after your arrest.
7. The alleged victim HAS HAS NOT (circle one) presented a signed waiver to this agency prior to the time of release.

**ACKNOWLEDGEMENT**

*I acknowledge that I have been given oral and written notice of the provisions enumerated above. I understand these provisions and agree to abide by them.*

Signature of Arrested Person \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_

Written Name of Arrested Person \_\_\_\_\_ Time \_\_\_\_\_ AM PM

Officer Name: \_\_\_\_\_ Badge No. \_\_\_\_\_ Region \_\_\_\_\_ Post \_\_\_\_\_

Date Arrested \_\_\_\_\_, 20 \_\_ Time Arrested \_\_\_\_\_ AM PM

Offense/Incident No \_\_\_\_\_

**NOTICE TO VICTIMS OF DOMESTIC ABUSE**

1. You have been identified as an alleged victim of domestic abuse.
2. Unless you sign a written waiver, during the 72 hours immediately following their arrest, the person arrested in this incident is required by law to avoid your residence and/or any residence temporarily occupied by you and to avoid contacting or causing any person other than a law enforcement officer or an attorney representing you or the arrested person to contact you. [s. 968.075(5)]
3. Any person who violated this prohibition may be fined up to \$1,000 and/or be arrested for bail jumping, s. 946.49(1). [78 Atty. Gen. 177]
4. If the arrested person commits an act of domestic abuse during this 72-hour period, and the act constitutes the commission of a crime, then the penalty increases a misdemeanor to a felony and the term of imprisonment may be increased by up to 2 years. [s. 939.621]
  - a. This applies even if you signed a waiver, and
  - b. The subsequent domestic abuse crime need not be against you for the penalty enhancement provisions to apply.
5. The arrested person may be conditionally released prior to 72 hours after his/her arrest. However, their release is conditioned upon a signed acknowledgement that they have received written and oral notice of the 72-hour contact prohibition and the penalty enhancements under item (4), understand them and are aware of the penalties for violating any of these provisions.
6. If there is no signed written waiver and the arrested person refuses to acknowledge by signing a written notice described in (5), they may not be released from custody until after 72 hours after their arrest.
7. You may voluntarily waive your right to the 72-hour contact prohibition by signing the statement below. You may also waive this right at any time during the 72-hour period by delivering this signed statement to the agency having custody of the person arrested.

**VOLUNTARY WAIVER**

***I have read the information contained above and hereby DO DO NOT (circle one) voluntarily waive my right to the 72-hour domestic abuse contact prohibition.***

Signature of Alleged Victim \_\_\_\_\_ Date Signed \_\_\_\_\_, 20 \_\_

Time Signed \_\_\_\_\_ AM PM

Written Name of Arrested Person \_\_\_\_\_

Name of officer/official providing notice to the Victim: \_\_\_\_\_

Agency: \_\_\_\_\_ Offense/Incident No. \_\_\_\_\_