



<b>APD Policy Chapter 26 Domestic Violence Investigations</b>	<b>ABERDEEN POLICE DEPARTMENT  POLICY AND PROCEDURE MANUAL</b>
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only for the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable South Dakota Statutes: <b>CHAPTER 25-10 PROTECTION FROM DOMESTIC ABUSE § 25-10-13, chapter 22-19A, 22-1-2(9) § 25-10-12-1</b>	
Applicable Federal Laws: <b>U.S. Code (U.S.C.) title 18 section 2265, 18 U.S.C. 2266</b>	
<b>RELATED POLICES: Domestic Misconduct</b>	
<b>Date Implemented: June 15, 2020</b>	
<b>Special Instructions</b>	<b>Number of pages: 11</b>

I. **Policy:** It is the policy of this agency to reduce incidences and severity of *domestic abuse* whenever reasonably possibly. To attempt to identify victims of domestic abuse, protect them, and provide support through a combination of direct law enforcement intervention and referrals to community services. At the same time, training and supervision enhance officer safety when responding to *domestic abuse* calls for service.

II. **DEFINITIONS:**

**Under South Dakota Law Terms used in this Policy mean:**

A. "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § 25-10-3.1. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship;

**B.** Persons entitled to apply for protection order as defined in § 25-10-3.1. Any person who is involved in one of the following relationships with another party:

- (1) Spouse or former spouse;
- (2) Is in a significant romantic relationship;
- (3) Has a child or is expecting a child with the abusing party;
- (4) Parent and child, including a relationship by adoption, guardianship, or marriage; or
- (5) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage; is entitled to apply for a protection order or a temporary protection order pursuant to the provisions of this chapter 25-10-3.1.

**C. "Protection order,"** "Protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A protection order has a duration of five years or less.

**D. "Temporary protection order** Temporary protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A temporary protection order has a duration of thirty days except as provided in § 25-10-7.1

**E. Full faith and credit:** The requirement by the U.S. Code (U.S.C.) title 18 section 2265 that jurisdictions honor the terms and conditions of a protection order issued by another jurisdiction.

**F. Protection order** *(as defined by 18 U.S.C. 2266):* Any injunction or other court order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. This includes any temporary or final order issued by a civil or criminal court (other than a support or

child custody order issued pursuant to state divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other federal law) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as a civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

**G. Respondent:** The person alleged in a petition for order of protection to have abused another.

**H. Petitioner:** The person alleging abuse in a petition for an order of protection.

**I. Primary aggressor:** When an officer has probable cause to believe that family or household members have assaulted each other; the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor, the person who poses the most serious ongoing threat.

**J. Pro-Arrest response:** The expectation that the officer shall arrest a person for committing domestic abuse unless there is a clear and compelling reason not to arrest (such as a self-defense determination or lack of probable cause).

**K. Self-defense:** Certain legal circumstances under which persons may use a reasonable amount of force to protect themselves or another based on their actual belief that they are, or another is, in imminent danger coupled with reasonable grounds.

**L. Victim:** A family or household member who is the subject of domestic violence/abuse and who a law enforcement officer has determined is not a primary aggressor.

**M. Community stakeholders:** Entities in the community that are responsible for joining together to foster effective intervention in and prevention of domestic violence. Community stakeholder include, but are not limited to, law enforcement agencies, prosecutors, parole and probation officers, advocacy organizations, social service agencies, adult and child protective services, clergy, educators, government agencies, animal welfare organizations, businesses and employers.

### III. PROCEDURES:

Prevention through Collaboration :

The department shall establish and maintain ongoing partnerships with local community stakeholders in general as well as victim advocacy organization in particular to develop domestic violence curricula and train officer and call takers to enhance abilities. The department shall provide local community stakeholders and victim advocacy organizations with copies of all domestic violence curricula, protocols, and policies for review and feedback.

#### **Dispatch Procedures:**

Dispatchers receiving *domestic abuse* calls can provide the responding officers with vital information that could save the victim's and the officer's life. The dispatcher shall give domestic abuse calls the same priority as any other potentially life-threatening call and when reasonably available, will dispatch two officers to reported location.

**Dispatchers must not cancel law enforcement response to a domestic abuse complaint based solely on a follow-up call from the original complainant.**

The dispatcher will pass all critical information to responding officer(s) before arriving at the scene including:

1. Dispatch a minimum of two officers to a domestic violence call whenever possible.
2. Assign a priority response to all domestic violence calls, whether or not the assailant is known to be on the premises, including those calls that involve or appear to involve a police officer of any department.
3. Immediately notify and dispatch a supervisor to a domestic violence call for service that involves or appears to involve a police officer, regardless of the involved officer's jurisdiction.
4. Preserve documentation of the facts and circumstances of each call, including 911 tapes, for use in potential administrative and criminal investigations, as requested by the investigating officers or supervisors.
5. Maintain current contact information of local domestic violence advocacy organizations for responding officers to provide to victims.
6. Attempt to elicit any and all information from the caller that may help the responding and investigating officers assess the situation including the following:
7. Immediate safety of the caller and others at the scene
8. Nature of the incident (verbal or physical) nature of injuries, and whether violence is ongoing.
9. Weapons that are involved, or present
10. Hazards to responders, including animals present
11. Whether the suspect is under the influence of alcohol or drugs
12. Suspect's description and presence or absence, and, if absent, direction and mode of travel

13. Other people involved or witnesses at the scene, including children
14. Existence of protections orders
15. Outstanding warrants
16. Inform the caller of an approximate time of the officer's arrival
17. Not cancel the original call for service even if a subsequent request to cancel the original call is received. Advise the responding officer of the second call and instruct them to continue to respond, investigate, and assess the situation to ensure that all parties are safe.
18. Keep the caller on the telephone if the caller is a victim or witness to a domestic violence incident in progress in order to relay ongoing information provided by the caller to the responding officers and remain aware of victim's safety.
19. Have ready access to the department records that indicate whether the parties involved in the incident have been involved previously in domestic violence incidents, whether previous incidents involved a weapon, and whether there is in effect a protection order involving the parties, and relay any relevant information to the responding officers.
20. Make the safety of the domestic violence victim a primary concern. Address threats of violence, whether immediate or remote, by working with the victim to focus on ways to enhance safety, such as waiting for the officers at another location or leaving the location if the suspect returns.

#### **IV. Responding Officer Procedures:**

##### **A. Initial Law Enforcement Officer Response**

- a. When dispatched to a domestic violence call, responding officers should do the following:
  1. Approach the scene of a domestic dispute with a high degree of caution
  2. Obtain all available information from the dispatcher and notify the dispatcher on arrival
  3. Avoid the use of emergency lights and sirens when it is not necessary so as not to alert the perpetrator to the officers' approach
  4. Be alert for persons leaving the scene and for the deployment of weapons from doors, windows and vehicles
  5. Use recording devices to capture statements made by victims, suspects and witnesses.
  
- b. Upon arrival at the scene, responding officers should do the following:
  1. Avoid parking the police vehicle in front of the residence or other site of the disturbance when possible

2. Identify themselves as law enforcement officers, explain their presence, and request entry in the event the incident is at a private residence, as necessary, and when exigent circumstances do not exist.
3. Make contact with all residents of the house, all potential witnesses, victims, and suspects. When making a warrantless arrest a law enforcement officer may enter the residence of the person to be arrested in order to make the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member. In making this decision, officers may take into account everything they personally observe, all physical evidence, and all things learned from witnesses or other persons supplying information. In evaluating the information, officers should take into account the credibility of the persons supplying the information and whether there is a reasonable basis for believing the information.
4. Upon gaining entry, responding officers should do the following:
  - a. Identify and secure potential weapons in the area
  - b. Separate the parties
  - c. Restrain or remove the suspect, if necessary
  - d. Assess for injuries, administer first aid, and request medical services as necessary
  - e. Identify all people and witnesses on the premises
  - f. Separate occupants and witnesses from the victim and the accused keeping them out of sight and hearing range of one another.
  - g. Obtain a comprehensive account of events from all parties.
5. During the on-scene investigation, using a coordinated approach, responding officers should do the following:
  - a. Ask the parties about injuries including those that may be concealed by clothing or otherwise not readily apparent or visible including strangulation. In cases of strangulation officers are required to seek medical assistance for the victim whether the injuries are visible or not. An officer of the same sex as the victim may be needed as further visual investigation continues and photographs are taken to document the injury.
  - b. Photographs are essential. They bring the trauma of the incident into the courtroom. Take photographs of everything: the crime scene, blood, injuries of suspect and victim, and anything else that shows the scope of the incident.
  - c. After speaking with the victim and making proactive assessment of the victim's physical condition, determine whether emergency medical services (EMS) should be summoned to the scene. Officers should always summon (EMS) if the victim requests medical attention. A medical examination may provide important corroborative evidence. In cases of reported strangulation officers are required to summon medical attention.

- d. Inform the victim in advance of actions to be taken and obtain written consent to search the scene. If both parties are on scene and both have standing over the residence and one party is objecting to the search, absent exigent circumstance, a warrant should be obtained.
  - e. If the suspect has been arrested prior to the interview, give *Miranda* warnings before questioning. If the suspect has fled the area gather information to his possible whereabouts.
  - f. Address the victim's safety and privacy by interviewing the victim in the area apart from the suspect and witnesses. Obtain information about previous incidents, including frequency and severity.
  - g. Ask the victim about the existence of protection orders.
  - h. Collect, preserve, and document all physical evidence to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, phone cords...) and evidence recording the crime scene. Ensure that color photographs are taken of visible injuries on the victim as well as the visible injuries on the suspect. Make arrangements to take follow-up photographs of the victim's injuries. In many cases bruising and swelling are not visible to the officer immediately following an assault. Securing of this photographic evidence can be done after 24, 48, or 72 hours in the event the injuries and bruising become more visible and pronounced.
  - i. Interview all witnesses fully and as soon as possible. If witnesses provide information about incidents, document the information to establish a pattern.
  - j. Interview children at the scene in a manner appropriate to their age. Document any signs of trauma and apparent wounds or healing of wounds on the children and take appropriate action. Elicit information and document all actual and suspected incidents of abuse including physical and sexual abuse, elder or child abuse, and animal cruelty.
  - k. Offer to contact a local advocate to provide support to the victim as available and provide current contact information for local domestic violence victim advocacy organizations.
  - l. Remain at the scene as long as there is danger to the safety of the person or until the person is able to leave the dwelling. The officer shall transport the person if no reasonable transportation is available.
6. The Responding or investigating officer **shall not** do the following:
- a. Make any statement that would discourage a victim from reporting an act of domestic violence
  - b. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel

**7. Supervisor involvement**

- a. Field supervisors shall be responsible for monitoring any domestic violence calls dispatched to the officers under their direct supervision or within their area of responsibility.
- b. Whenever possible, the supervisor should respond to the scene for the purpose of providing additional safety, monitoring the situation and being available to offer advice to the victim.
- c. In situations where the supervisors are unable to respond he or she should perform follow-up to ensure departmental policy has been followed.

**8. Incidents involving a police officer as the suspect**

- a. Upon arrival on the scene of a domestic violence call or an incident involving a law officer, the primary patrol unit shall immediately notify dispatch and request a supervisor of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.
- b. Responding officers shall be aware of the heightened risk that a suspect who is a police officer will likely possess firearms, other weapons, physical combat training, or all three.

**B. Arrest of criminal suspect when responding to domestic abuse call.**

- a. If any law enforcement officer who is responding to a domestic abuse call has probable cause to believe that a crime has been committed, the law enforcement officer shall arrest the person who is suspected of committing the crime and make a complete report of any action taken. The officer shall indicate on the arrest report and the fingerprint document if the arrest is for a crime against a family or household member as defined in § 25-10-3.1.
- b. Arrest of person for abuse--Considerations. If the officer has probable cause to believe that persons in a relationship as defined in § 25-10-3.1 have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the predominant physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:
  - 1. The intent to protect victims of domestic abuse under this chapter;
  - 2. The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
  - 3. the history of domestic abuse between the persons involved.
- c. 25-10-36.1. Arrest of domestic abuse victim for outstanding warrant. No law enforcement officer, called to the scene of a domestic abuse complaint, is required to arrest any victim of domestic abuse for an outstanding warrant if:
  - 1. The victim is not otherwise liable to arrest for any action arising out of the present incidence of domestic abuse;
  - 2. The outstanding warrant is for a nonviolent misdemeanor offense; and



3. The victim is the custodial parent or immediate caregiver of a minor child.
4. However, the victim is subject to arrest on any outstanding warrant after seventy-two hours have passed since the incidence of the domestic abuse call.
5. The decision of an officer to arrest or not to arrest a victim on an outstanding warrant does not constitute a cause of action against the officer, the law enforcement agency, the employing entity, or any of the employing entity's employees.

**C. If the alleged offender has left the scene and in the judgment of the officer(s) a crime has been committed, the responding officer(s) will:**

1. Conduct a search of the immediate area;
2. Obtain information from victim(s) and witnesses as to where the alleged offender might be;
3. Assess the need for medical attention and call for assistance, as indicated;
4. Interview witnesses, children separately and alone;
5. Determine if arrest(s) should be made, or other actions taken;
6. Collect and record evidence and when appropriate, take color photographs of injuries and property damage; tape recording of the initial phone call;
7. Complete offense or incident reports to document the response;
8. Tell victim(s) about how to obtain a copy of the incident report;
9. Advise victim(s) on seeking protection orders;
10. Advise those present about the serious and criminal nature of domestic abuse, its potential for escalation, and help that is available;
11. Provide victim(s) with referral information for legal or social assistance and support; &
12. If evidence warrants and supports a criminal charge, refer the matter to the prosecuting attorney.
13. Remain on scene with the victim until the situation is rendered safe.
14. If necessary, transport the victim to a safe location, after advising communications and notifying the shift supervisor.

**D. Law enforcement to initiate mental illness hold in domestic abuse situations:**

1. Notwithstanding (25-10-40,Restrictions on release of person charged with domestic abuse) if the police officer believes that the domestic abuse perpetrator has a severe mental illness that makes the person an imminent danger to self or others, the officer may initiate a mental illness hold under 5 27A-10-3 and transport the person to an appropriate regional facility as described in that section and in accordance with the provisions set forth in title 27A. This section is not a substitution for an arrest under the provisions of chapter 25-10, and the person shall be released only to the custody of law enforcement or a law enforcement agency if the mental illness hold is released.

**E. Enforce All Active South Dakota Protection Orders and Foreign Protection Orders:**

Enforcement of foreign protection orders--Requirements. Any domestic violence protection order, or any stalking or physical violence protection order, issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United States is enforceable as if the order was issued by a court in this state if all of the following requirements are satisfied:

1. The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
2. The order is in effect in the issuing jurisdiction;
3. The issuing court had jurisdiction over the parties and the subject matter;
4. The respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction; and, in any event, within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights;
5. If the order also provides protection for the respondent, a petition, application, or other written pleading was filed with the issuing court seeking such an order and the issuing court made specific findings that the respondent was entitled to the order; and

6. The prohibited conduct violative of the foreign protection order could be prohibited by a protection order if issued in this state.
  
7. Any protection order meeting the requirements of this section is a foreign domestic violence protection order. § 25-10-12-1
  - a. Remain on the scene until satisfied that the threat has ended;
  - b. Provide victim(s) with referral information for legal or social assistance and support;
  - c. Turn in photographs and any evidence including tape recording of the initial phone call to the evidence officer or agency.