

CRYSTAL POLICE DEPARTMENT



TITLE: DOMESTIC ASSAULT

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INTRODUCTION

The City of Crystal and the Crystal Police Department recognize domestic assaults and abuse as a serious problem. It is this department's policy to protect the victims of domestic assault and abuse by making an arrest whenever it is authorized and by ensuring that its peace officers have a complete understanding of the law governing this area.

This agency will aggressively enforce these laws without bias and prejudice based on race, age, gender, marital status, sexual orientation, social class, religion, creed or national origin.

PURPOSE

The purpose of this policy is to establish guidelines and procedures for this department's peace officers in response to domestic assault or abuse. Additionally, the intent of this policy is:

- a) To afford maximum protection and support to victims of domestic assault or abuse through a coordinated program of law enforcement and victim assistance;
- b) To ensure that the same law enforcement services are available in domestic assault and abuse that are available in other criminal cases;
- c) To reaffirm peace officers' authority and responsibility to make arrest decisions in accordance with established probable cause standards;
- d) To complement and coordinate efforts with the development of domestic abuse prosecution plans so that law enforcement, prosecution and advocacy will be more efficient and successful; and
- e) To document allegations of domestic abuse so there can be meaningful prosecution and delivery of victim services.

SCOPE

All licensed police officers.

DEFINITIONS

Domestic Assault/Abuse_- a request for assistance to this agency in general regard to:

- 1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between family or household members; or
- 2) Criminal sexual conduct within the meaning of Minn. Stat. Sec. 609.342, 609.343, 609.344, or 609.345, committed against a family or household member by family member or household member; or
- 3) Terroristic threats within the meaning of Minn. Stat. Sec. 609.713, subd. 1.

Domestic Abuse Program_- a public or private intervention project or advocacy program contracted by the City of Crystal to provide support and assistance to the victims of domestic abuse.

Child or Minor_- a person under the age of 18.

Family or Household Members_- has the meaning given it in MN Statute 518B.01 sub 2(b)(1-7) spouses, former spouses, parents and children, persons related by blood, persons who are presently residing together or whom have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. It also includes a man and woman if the woman is pregnant and the man alleged to be the father, regardless of whether they have been married or have lived together at any time and persons involved in a significant romantic or sexual relationship.

PROCEDURES

Responding to the Calls

- 1) Officers should respond directly and without unreasonable delay to reported incidents of domestic abuse.
- 2) Upon arrival, officers should secure the scene, shall provide any necessary first aid and ensure all of the individuals involved and/or occupants of the dwelling are safe.
- 3) Officers should request entry into the dwelling and ask to see the person who is the subject of the domestic abuse.

Entry Refused

- 1) If refused entry, the officers should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused, the officers should request the dispatcher to contact the caller or witness if the information for the contact is available.

Forced Entry

- 1) If access is still refused and the officers have reason to believe that someone inside is in imminent danger, officers may force entry.

Search Warrant Entry

- 1) If the officers are refused entry and have no legal recourse to force entry and they have reasonable grounds to believe a crime has been committed, they should contact their supervisor and request permission to obtain a search warrant.

POLICY

Officers shall conduct a thorough criminal investigation to determine if there is probable cause to believe that a crime has been committed, including the observation of injuries or property damage.

Relevant evidence, and statements made by the participants and any witnesses, shall be collected by the responding officers. Evidence will include, but is not limited to:

- a) Weapon or instrument used in the assault.
- b) 911 taped utterances.
- c) Photographs of injuries, evidence, or damage to property.
- d) Taped victim and witness statements.

By the officer's appearance and initial actions, the officer should project the image of a well-trained professional. Officers should clearly show by word and action their concern and willingness to assist participants within the scope and authority of the police department. Officers should avoid creating an impression of disinterest, cynicism or belittlement of the incident.

ARRESTS

Domestic Assault/Abuse

- a) Notwithstanding Minn. Stat. Sec. 629.341, or any other statute or rule, a peace officer shall arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that the person, within the preceding 72 hours, has assaulted,

threatened with a dangerous weapon, or placed in fear of immediate bodily harm the person's spouse, former spouse, or other person with whom the person resides or has formerly resided, though the assault did not take place in the presence of the peace officer (Minn. Stat. Sec. 629.341). A peace officer acting in good faith and exercising due care in making an arrest pursuant to Minn. Stat. Sec. 629.341, subd. 1, is immune from civil liability that might result from the officer's action.

- b) Note: Notwithstanding any other law or rule, an arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with assaulting the individual's spouse or other individual with whom the charged person resides. (Minn. Stat. Sec. 629.72). Minn. Stat. Sec. 609.224, subd. 2(a), assault in the fifth degree, provides for an enhanced gross misdemeanor violation when the offense is against the same victim within ten years of a previous conviction of assault in Minnesota or any similar law of another state, when the misdemeanor assault is committed against a household or family member within ten years of a previous conviction for misdemeanor assault, or a previous conviction for felony assault against a household or family member.

Violations of Court Orders

- a) Peace officers shall verify whether any of the following orders exist prior to or during an arrest. This verification may be made by the peace officer or someone acting at the officer's direction. Methods of verification may include personally seeing a copy of the order or reviewing an agency's file which indicates the existence of such an order. If the verification is made at the direction of the peace officer, the peace officer shall document the name of the person verifying the time of order. In a police report, the officer shall document actions taken to identify and verify the specific court order (e.g., Order For Protection), indicate the exact provision(s) an alleged violation is based upon, and specify the file number of the order.
- b) Note: Ex Parte Temporary Orders For Protection are valid for a fixed period of time, not to exceed 14 days from issuance unless extended by the court. Orders For Protection (non-temporary) are valid for a fixed period of time, not to exceed one year except when the court determines a longer fixed period is appropriate.

Order For Protection

- a) A peace officer shall arrest and take into custody without a warrant a person whom the peace officer has probable cause to believe has violated the restraining or exclusion section of an Order For Protection granted pursuant to Minn. Stat. Sec. 518B.01, subds. 6, 7, or 9. 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 existence of the Order can be verified by the officer.

- b) Note: There are three key points related to the Order For Protection: (i) The law requires an arrest regardless of whether or not the excluded party was invited back to the residence. (ii) There is no hour limitation for a warrantless arrest for a violation of an Order For Protection. (iii) If there is evidence that an individual has violated another provision of an Order For Protection, other than the restraint or exclusion clauses, a police report should be submitted to the prosecutor indicating that the Order was violated. Violations of Orders For Protection are misdemeanors unless the person violates Minn. Stat. Sec. 518B.01, subd. 14 within two years after a previous conviction under this law or a similar law of another state, in which case the offense is a gross misdemeanor.

Harassment Restraining Order

- a) A peace officer shall arrest and take into custody a person whom the peace officer has probable cause to believe has violated a Harassment Restraining Order pursuant to Minn. Stat. Sec. 55609.748, subds. 4 or 5, if the existence of the Order can be verified by the officer.
- b) Note: A person who violates a Harassment Restraining Order is guilty of a misdemeanor if the violator knows of the Order.

No Contact Order

- a) A peace officer, having probable cause to believe that a released defendant has violated the conditions of release, may, if it is impracticable to secure a warrant or summons as provided in Minnesota Rules of Criminal Procedure 6.03, arrest the defendant and take the defendant forthwith before the court.

Primary Aggressor and Dual Arrests

- a) The agency shall discourage dual arrests. Where there are allegations that each party assaulted the other, the peace officer shall determine whether there is sufficient evidence to conclude that one of the parties is the primary aggressor based on the following criteria and the officer's judgment:
 - (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) The history of domestic abuse perpetrated by one party against the other.
- (5) Existence or previous existence of Orders For Protection.

Factors Not to be Considered in Making Arrests

- a) ownership, tenancy rights of either party, or the fact the incident occurred in a private place
- b) belief that the victim will not cooperate with criminal prosecution or that the arrest may not lead to a conviction,
- c) verbal assurances that the abuse will stop,
- d) disposition of previous police calls involving the same victim or suspect,
- e) denial by either party that the abuse occurred when there is evidence of domestic abuse,
- f) lack of a court order restraining or restricting the suspect,
- g) concern about reprisals against the victim,
- h) adverse financial consequences that might result from the arrest, or
- i) chemical dependency or intoxication of the parties.

Domestic Abuse Program Notification

- a) The arresting officer shall contact the local domestic abuse program, if available, by phone as soon as possible on all arrests and non-arrest assaults and Order For Protection violation situations and provide the name and address of the victims and a brief factual reconstruction of events associated with the action. This section shall not apply if prohibited by the Minnesota Government Data Practices Act, Minn. Stat. Sec. 13.82, subd. 10.

ASSISTANCE, STAYING AT THE SCENE, CRIME VICTIM RIGHTS AND SERVICES

Staying at the Scene

- a) If an arrest does not occur, the peace officers should remain at the scene of the disturbance until they believe that the likelihood of further imminent abuse has been eliminated. If a domestic abuse intervention program is available, the peace officer should make contact for immediate intervention.
- b) Note: Minn. Stat. Sec. 629.342 provides that when a peace officer does not make an arrest, the peace officer must provide immediate assistance to the victim, including obtaining necessary medical treatment and providing the victim with the notice of rights pursuant to Minn. Stat. Sec. 629.341, subd. 3.

Assistance to Non-English Speaking Victims or Victims with Communication Disabilities

The peace officer shall use the resource list established by the law enforcement agency to contact a person to assist in those cases where the participants in the domestic call, including witnesses, are non-English speaking, are hearing impaired, or have other communication disabilities. The officer should avoid the use of friends, family or neighbors to serve as the primary interpreter for the investigation.

Notice of Domestic Abuse Victim Rights

- a) Upon the report of domestic abuse, police officers must:
 - (1) Tell the victim whether a shelter or other services are available in the community per Minn. Stat. Sec. 629.341, subd. 3.
 - (2) Immediately give the victim a Notice of Legal Rights and Remedies per Minn. Stat. Sec. 629.341, subd. 3. This information is included on the "Crime Victim Notification" form.
 - (3) If a formal statement is taken by a peace officer, the victim should be provided the Notice of Basic Crime Victim Rights. This notice is developed by the Department of Public Safety in consultation with the Crime Victim and Witness Advisory Council according to Minn. Stat. Sec. 611A.02, subd. 2. In the event the responding peace officer determines that criminal charges will be pursued and that no further investigation will result, the peace officer should at that time provide these rights to the victim.
 - (4) Give each person who may be eligible to file a claim for financial compensation the Reparations Form provided by the Department of Public Safety Crime Victims Reparations Board, Minn. Stat. Sec. 611A.66.

REPORTS AND FORMS

Written Report

- a) Whether there is an arrest or not, peace officers shall make a report after responding to a domestic abuse call. If the officer did not arrest or seek an arrest warrant, even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest must be documented. The report should include the following: detailed statements from the victim, suspect, and witnesses; description of injuries; information about past allegations of abuse; description of the scene; if and how a determination of primary aggressor was made; existence of language barriers; presence of elderly victims, children, or those with disabilities; and documentation of evidence.

- b) Notwithstanding the fact that the officer has decided not to arrest one of the participants in the domestic abuse call, the peace officer shall thoroughly document all relevant information in the report and shall refer the report to the appropriate prosecutor for review and consideration of criminal charges.
- c) If appropriate, the report shall be turned over to the designated investigator for further follow-up. If there is an arrest, the investigator shall determine the defendant's criminal record and, if there is proof of a previous conviction, the peace officer should advise the prosecutors of any enhanced criminal sanctions which may be available.

CHILDREN

Child Victims

- a) If a child is present at the scene of a domestic call or is the victim of domestic abuse, the peace officer should determine whether the child has been subjected to physical abuse, sexual abuse, or neglect, and comply with the requirements of MSS 626.566, Reporting of Maltreatment to Minors. The officer shall also attempt to verify whether there has been an *Order for Protection* issued – MSS 260C.201. If the child has been physically injured, the officer should insure the child is transported to the nearest hospital for treatment.

Child Presence and Care

- a) If the legal parent or guardian of a child can no longer provide care (i.e., when the parent is hospitalized), the officer should consult with the legal guardian or parent to determine the disposition of the child, and should make a good faith attempt to follow the request of the legal guardian or parent.
- b) If the peace officer reasonably believes that the child's immediate surroundings or conditions endanger the child's health and welfare, the officer may take the child into immediate custody pursuant to MSS 260.165, subd. I (c)(2).

Enhancements Table

Conviction means a plea of guilty or verdict of guilty accepted by the court (Minn. Stat. § 609.02, subd. 5).

Discharge from Offense means the time between conviction and the end of 5 years following discharge from sentence for that offense.

QDVRO means a “Qualified Domestic Violence Related Offense” which 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; and violation of domestic abuse no contact order (DANCO); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories. (Minn. Stat. 609.02, subd. 16)

Offense	Victim of Offense	Time Limit	Prior Conviction	Offense Level
Assault 5	Same Victim	w/in 10 years of conviction	QDVRO	Gross Misdemeanor
		w/in 10 years of discharge of 1 st of 2 or more convictions	QDVRO	Felony
	Any Victim	w/in 3 years of conviction	QDVRO	Gross Misdemeanor
		w/in 3 years of 1 st of 2 or more convictions	QDVRO	Felony
Domestic Assault	Family/Household Member (as defined in Minn. Stat. 518B.01, subd. 2.)	w/in 10 years of conviction	QDVRO	Gross Misdemeanor
		w/in 10 years of 1 st of 2 or more convictions for Domestic Assault or Assault 5	QDVRO	Felony
Malicious Punishment	Any Victim	w/in 5 years of discharge	Assault 1-5, Domestic Assault, Malicious Punishment, Criminal Sexual Conduct 1-4, or Terroristic Threats	Felony
Violation of Order for Protection or Harassment Restraining Order	Any Victim	w/in 10 years of conviction	QDVRO	Gross Misdemeanor
		w/in 10 years of discharge of 1 st of 2 or more convictions	QDVRO	Felony
Stalking	Any Victim	w/in 10 years of conviction	QDVRO	Felony
Interference w/ Privacy	Any Victim	None	Interference w/ Privacy or Stalking	Gross Misdemeanor

Example of Enhancement Reachback:	
Arrest for Assault 5 & Malicious Punishment	1/1/2013
Plea (Accepted) to Assault 5 & Malicious Punishment (Conviction)	6/1/2013
Sentence of 2 years of probation	8/1/2013
Expiration of reachback for any victim for Assault 5	6/1/2016
Discharge from sentence	8/1/2015
Expiration of reachback for any victim for Malicious Punishment	8/1/2020
Expiration of reachback for same victim for Assault 5	6/1/2023