

Policy  
**303**

**Burnsville Police Department  
Policy Manual**



**303.4 – Domestic Disturbance**

EFFECTIVE 07-20-2010  
UPDATED 01-31-2014

**POLICY:** Domestic abuse is criminal conduct. It is the policy of the Burnsville Police Department to stress enforcement of criminal laws related to domestic abuse, the protection of the victim and the availability of civil remedies and community resources. This includes the arrest of domestic abuse offenders when there is probable cause to believe an offense has occurred, as defined the Domestic Abuse Act, [Minn. Stat. §518B.01](#).

**PURPOSE:** In responding to domestic incidents, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic abuse from continuing abuse; the threats creating fear of physical injury; the history of domestic abuse between the persons involved; whether either person acted in self-defense; the relative severity of the injuries inflicted upon the persons involved; the potential for future injury; and any other factor that may help the officer decide which person was the primary physical aggressor, defined in [Minn. Stat. §629.342](#).

**SCOPE:** This directive applies to all sworn members of the department.

**303.4 DOMESTIC DISTURBANCE**

A domestic disturbance is a situation whereby members of a household have reached an impasse and there is a potential for violence. The primary focus of officers will be on victim safety. In the event that violence takes place, or is threatened, appropriate measure will be taken to protect the citizens of the community and to conduct a proper investigation to prosecute a criminal case where appropriate. The department acknowledges that it is impossible to provide its officers with appropriate responses to every conceivable problem that may be encountered, but intends, through these procedures, to provide direction for responding to domestic situations.

- A. **Initial Response:** 911 hang-up calls should be handled as a domestic disturbance until it is determined otherwise. Domestic disturbance complaints are regarded as some of the most hazardous calls for law enforcement officers. Therefore, the department expects that officer use extreme caution prior to entering a domestic disturbance scene without an assisting partner.
- B. **Entering a Private Premises:** When officers need to enter a private residence in response to a domestic call, the following guidelines should be used:
  - 1. If invited into the home by a legal occupant, officers may enter unless another physically present person objects. Officers should confirm that the inviting and objecting person is authorized to make such an invitation or objection.
  - 2. Where officers enter a dwelling on consent and subsequently a person who is present and is authorized to object requests that the officers leave, the officers must leave unless they have reasonable grounds to believe that their continued presence is necessary to prevent bodily injury, if reasonable suspicion exists to investigate a crime or if there is probable cause to make an arrest.

3. Where a party refuses to admit officers into the dwelling, the officers shall respect his or her wishes unless there are reasonable grounds to believe that immediate entry is necessary to prevent bodily injury or to render emergency first aid.

**C. On-Scene Investigation:**

1. Officers should ensure the safety of all people involved and call for medical assistance if necessary.
2. Officers should speak with all parties involved to determine if a crime has been committed. In cases where no crime has been committed, officers should assist in restoring the peace. In cases where it is determined that a crime has been committed, officers should prepare a case for charging and make an arrest for the offense whenever possible.
3. Participants or witnesses in the domestic call who have limited English proficiency, are hearing impaired, or have other communication disabilities, are eligible to receive interpretation assistance free of charge. Officers should avoid the use of friends, family or neighbors serving as the primary interpreter for the investigation. An interpreter may be reached through one of the department's official services such as Language Line. *[Updated 01-31-2014]*
4. If a child is present at the scene of a domestic call or is the victim of domestic abuse, the officer should determine whether the child has been subjected to physical abuse, sexual abuse or neglect, and comply with the requirements of [Minn. Stat. §626.556](#), Reporting of Maltreatment of a Minor. The officers should also attempt to verify whether there has been an Order For Protection on behalf of the child. If the child has been injured, the officer should arrange for treatment of the child's injuries.

**D. Domestic Assault Charges/Arrest:**

1. [Minn. Stat. §629.341](#) states that officers may arrest a person anywhere without a warrant when the officer has probable cause to believe the person, *within the last 12 hours*, has committed domestic abuse as defined in [Minn. Stat. §518B.01](#).
2. In cases where two or more people make claims against each other, officers should attempt to determine the predominant aggressor and arrest that person. Part of this determination should include finding out if one person acted in self defense. Self defense is a person's justifiable use of physical force upon another person when the person believes such force is necessary to defend him/herself or a third party from what he/she believes is the use of, or imminent use of, unlawful physical force by such other person. Use of self defense is not a crime. Dual arrests or charging in domestic abuse situations is discouraged unless extenuating circumstances exist. These would be cases where there is no predominant aggressor and self defense is not a valid claim for either person involved. In these cases, if both parties are requesting to file a complaint against the other and the officer believes that both parties should be charged with a crime, the matter should be referred to the city/county attorney for charging and no citation should be issued. Jail for probable cause assault or other arrangements should still be considered to protect the parties from further harm.
3. After an arrest has been made, officers should advise the victim that the assailant will normally be held for court but that in the event of the assailant's release, reasonable efforts to contact the victim will be made. The Victim Notification of Release of Defendant form should be prepared, obtaining all victim information to assist in contacting the victim at a later date. This form should be forwarded to Jail staff where the suspect is taken.
4. If an arrest does not occur, officers should remain at the scene until such time as the likelihood of imminent violence has been eliminated. [Minn. Stat. §629.342](#) provides in part that, "if the law enforcement officer does not make an arrest when the officer has probable cause to believe that a person is committing or has committed domestic abuse or violated an Order For Protection, the officer shall provide immediate assistance to the victim. Assistance includes: (1) Assisting the victim

in obtaining necessary medical treatment; and (2) Providing the victim with the notice of rights under [§629.341, Subd. 3.](#)”

5. [Minn. Stat. §629.2242](#) allows for enhancement of domestic abuse-related crimes if the suspect has prior qualified domestic violence-related convictions (as defined in [Minn. Stat. §609.02](#)). Officers should attempt to determine if the suspect has prior convictions, which may be used pursuant to this statute to enhance a charge. To assist in making determinations about enhancements, the department’s Domestic Abuse Response Team will make a regularly updated guide available to officers. In cases where it appears that a charge may be enhanced, the suspect should be held on Probable Cause Gross Misdemeanor Domestic Assault with no citation issued until the status of the prior arrest or charge may be confirmed.

E. **Investigation/Reporting of Domestic Assault Arrest:** The primary investigating officer should coordinate the gathering of all information to assist in the successful prosecution of criminal charges brought in response to a domestic assault or violation of an Order For Protection. The information gathered should be included in officers’ reports. Relevant information may include, but is not limited to:

1. The name, phone number and address of the reporting party and witnesses who are familiar with the incident.
2. A written or taped statement from the victim of the offense. This statement should be taken as soon as possible after the commission of the offense and be summarized in the officers’ reports.
3. Information obtained from witnesses or reporting parties.
4. Subject to Miranda requirements, a statement of the suspect should be obtained. The officer should complete a summary report on verbal statements. If the suspect cannot be located within the 12-hour time limit for arrest and is later located, the investigating officer should make every attempt to get a statement from the suspect before issuing a tab charge.
5. The officer’s report should include a complete description of the physical and emotional condition of the victim when he/she is first contacted and at the time that any statement is taken.
6. All physical evidence of a struggle or an argument should be noted in a report and photographed as evidence.
7. If a victim has visible injuries and no photographs are taken of the injuries, the officer should indicate the reasons for this in the report.

F. **Reports:** [Minn. Stat. §629.341, Subd. 4](#), requires that a written report be made whenever a peace officer investigates an allegation of domestic abuse as defined in [Minn. Stat. §518B.01](#). Officers should fill out appropriate paperwork dictated by the situation. In cases where an arrest is made, this shall include a Victim Notification form, Arrest Report, B. Robert Lewis Shelter form, and any other necessary paperwork. In cases where no arrest is made, reports may include an Incident Report, B. Robert Lewis House form, and any other necessary paperwork. All reports concerning domestic abuse arrests should be given top priority for processing.

G. **Victim Notification and Referrals:** [Minn. Stat. §629.341, Subd. 3](#), requires peace officers to inform domestic violence victims of their rights to file complaints and obtain an Order For Protection. Information about the B. Robert Lewis House should also be furnished to the victim. The Domestic Abuse Packet, available to officers, contains all the information for the victim that is required by statute. Officers should explain the information provided and see that the victim understands his/her rights.

H. **Confiscation of Weapons:** When a weapon is present at the scene of a domestic dispute, and officers perceive or are informed by one of the disputants that the weapon may become involved in the dispute, officers may request that the weapon be placed in their custody; seize the weapon if it is in plain view and alternative remedies have not been effective in alleviating the threat of serious violence it poses; or search for

and remove a weapon if one of the parties requests that they do so. When a weapon is seized in this manner, the officer shall prepare a Property Inventory form itemizing all weapons seized and, if possible, present a copy of the form to the owner as a receipt.

- I. **Orders For Protection or Harassment Restraining Orders:** Orders For Protection or Harassment Restraining Orders are issued in conjunction with an action before the District Court. Specific violations of the provisions of these orders are routinely enforceable by officers under [Minn. Stat. §518B.01](#). Copies of these court documents are accessible to officers or will be in the possession of one or both of the parties. Officers must confirm the existence, current validity, or provisions of these orders prior to enforcement action. An officer should exercise his/her best judgment in developing probable cause, based on provable facts in support of an arrest for a violation allegedly committed not in the officer's presence. The statute reads that a peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section restraining the person or excluding the person from the residence, or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existing order can be verified by the officer.
- J. **Civil Issues:** When either participant in a domestic dispute is removing or attempting to remove alleged joint property from the dwelling, the officer shall not arrest nor physically restrain the party to prevent the removal unless there is a written Court Order stating that such an act is a criminal violation. If joint property has been removed or damaged by one of the parties against the wishes of another party and there is no Court Order preventing that, officers should advise the complainant that this is a civil issue and they should consult legal counsel. When one party is locked out of the home by another party, officers normally should not assist the evicted party in forcing entry.
- K. **Divorce/Child Custody:** Officers generally should not remove a child from custody of one guardian to give to another. Where one party to a domestic dispute alleges that an estranged spouse or significant other is violating a Court Order fixing custody of the children, the officers should determine if a Court Order exists.
  - 1. If there is a valid order, officers should respond as stated in the order. If there is no order, officers should inform the party that they should contact legal counsel.
  - 2. If the party has a concern about the child's welfare, officers should check to make sure that the children are safe. If there are no safety concerns, officers should advise the reporting party to contact legal counsel.
  - 3. If there is apparent danger to the health or safety of the children, officers should attempt to obtain the parents' consent to the temporary, voluntary removal of the children or to allow a relative to care for the children temporarily. If this is unsuccessful, the children may be taken into custody. [Minn. Stat. §626.566, Subd. 3](#), provides in part that a law enforcement officer, "who has knowledge or reasonable cause to believe a child is being neglected or physically or sexually abused shall immediately report the information to the local welfare agency," (i.e., Child Protection Program of the Dakota County Human Services Department). [Minn. Stat. §206.165, Subd. 1](#), states that in extreme cases a police officer may take a child into custody, "when a child is found in surroundings or conditions which endanger the child's health or welfare, or which such peace officer reasonably believes will endanger such child's health or welfare."
  - 4. A Restraining Order may be issued in a divorce proceeding or in another civil proceeding. This order is generally not enforceable by law enforcement agencies unless specific language is placed in the order by the court making it enforceable. Language similar to that placed in the Order For Protection would have to be included. An officer should assume that a Restraining Order is not enforceable by the police department unless the appropriate language is pointed out by the victim or found by the police officer if he/she actually reviews the document. A Restraining Order is generally enforceable only through a motion for contempt brought before the judge that issued the Restraining Order.

Enforcement of a Restraining Order may be made by the civil court through the imposition of civil fines or jail time.

- L. **Resources:** In many cases it may be appropriate to refer one or both parties involved for additional support or assistance. There are a number of social referral agencies available in Dakota County and officers should familiarize themselves with some of the resources available. This policy has been reviewed and approved by the B. Robert Lewis Shelter.
- M. **Domestic Abuse Response Team:** The department has a group of officers who have advanced training in handling domestic abuse situations. These officers may be resources for other officers when handling domestic disturbances.