

POLICY AND PROCEDURES MANUAL

Fergus Falls Police Department

Policy Title	Domestic Abuse Arrest Model Policy (Minnesota Statutes, Section 629.342)
Policy Number	505 (Formerly 63.01)
References	Federal: USC Title 18, Section 921, 922 Code of Federal Regulations Title 27, 178.11, 178.32 State: MN Statutes 144.355, 518B.01, 609.02, 609.21, 609.2242, 609.255, 609.267, 609.2671, 609.2672, 609.342-345, 609.3451, 609.377, 609.713, 609.72, 609.748-9, 609.78, 611A-02, 624.713, 629.34-2, 629.355, and 629.72
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PURPOSE

The purpose of this policy is to formalize the response by the Fergus Falls Police Department to domestic violence. Domestic violence continues to be a problem in society which must be confronted in an aggressive manner to safeguard victims and attempt to get help for the offender so that future acts of violence are thwarted.

POLICY

It is the policy of the Fergus Falls Police Department to recognize domestic abuse as a serious problem in today's society. This agency's policy is to protect victims of domestic abuse by making an arrest whenever it is authorized and by ensuring its peace officers understand the laws governing this area.

DEFINITIONS

For the purposes of this policy, the words and phrases in this section have the meanings given to them, unless another intention clearly appears.

Domestic Abuse means: 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) terroristic threats (MN Statutes, Section 609.713, Subd. 1) or criminal sexual conduct in the first through fourth degree, committed against a family or household member by a family or household members. (MN Statutes, Section 518B.01, Subd. 2(a).)

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Domestic Abuse Program means a public or private intervention project or advocacy program, which provides support and assistance to the victims of domestic abuse.

Child means a person under the age of eighteen (18).

Family or Household Member means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time, and persons involved in a significant romantic or sexual relationship. It also includes a man and a woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

Domestic Call means a request for assistance to a law enforcement agency regarding domestic abuse or any other crime against a family or household member.

Qualified Domestic Violence-Related Offense (QDVRO) refers to prior convictions for violation of an Order for Protection (OFP) or Harassment Restraining Order (HRO), assault in the first through fifth degree, domestic assault, criminal sexual conduct in the first through fourth degree, malicious punishment, terroristic threats, or harassment/stalking. If a person arrested for a domestic crime has a prior QDVRO, the new offense may be chargeable as a higher-level crime. The QDVRO includes violations of similar laws in other states or under federal or tribal law.

PROCEDURES

I. Responding to the Calls

A. Driving to the Scene

The peace officers should respond directly and without unreasonable delay to the scene.

B. Initial Contact with Occupants

Upon arriving at the scene of a domestic call, the responding officers should identify themselves as peace officers, explain their presence, and request entry into the home. The officers should ask to see the person who is the alleged victim of the call. If the person who called the law enforcement agency is someone other than the subject of the call, the officer should not reveal the caller's name. The officer should ensure all of the occupants are safe.

C. Entry

- 1. Refused** 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.
- 2. Forced Entry** If access is still refused and the officers have reason to believe that someone is in imminent danger, the officers are permitted to force entry.
- 3. Search Warrant Entry** If the officers are refused entry and have no legal grounds for forced entry and they have reasonable grounds to believe a crime has been committed, they should contact the appropriate authority to obtain a search warrant.

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4. **First Aid** After securing the scene, the responding peace officers shall provide the necessary first aid.

II. Arrest Decisions

A. Making Arrests

After securing the scene and providing any first aid, the peace officers will begin a criminal investigation to determine if there is probable cause to believe that a crime has been committed based on the evidence and not solely upon the victim's desire to make an arrest. The officers should collect relevant physical evidence, including weapons which may have been used, take photographs of the scene or any injuries and statements from the involved parties and witnesses. Some of the evidence and statements include:

1. Condition of clothing;
2. Property damage;
3. Excited utterances of the victim and the suspect;
4. Demeanor of the victim and the suspect;
5. Medical records including the victim's statements to paramedics, nurses, and doctors;
6. Interviews of witnesses, including the children who may have been present;
7. Evidence of any prior domestic abuse – related convictions including dates; and
8. Any existing Orders for Protection, Harassment Restraining Orders, or No Contact Orders.

Note: When determining probable cause, peace officers should consider their observations, along with any statements by parties or witnesses involved. Prior convictions may provide the basis for enhancement to a gross misdemeanor or even felony charges

B. Factors *Not* to be Considered in Making the Arrest

1. Ownership, tenancy rights of either party, or the fact the incident occurred in a private place;
2. Belief that the victim will not cooperate with criminal prosecution, or that the arrest may not lead to a conviction;
3. Verbal assurances that the abuse will stop;
4. Disposition of previous police calls involving the same victim or suspect;
5. Denial by either party that the abuse occurred, when there is evidence of domestic abuse;
6. Lack of a court order restraining or restricting the suspect;
7. Concern about reprisals against the victim;
8. Adverse financial consequences that might result from the arrest; or
9. Chemical dependency or intoxication of the parties.

C. Primary Aggressor and Dual Arrests

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; or

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5. Existence or previous existence of order for protection.

D. Victim Request Not to Prosecute

If the officer finds probable cause to believe a domestic abuse offense has been committed and intends to arrest but the victim requests no arrest or prosecution, the officer should inform the victim that the decision to arrest is the officer's and the decision to prosecute lies with the prosecutor.

III. Authority and Types of Arrest

A. Warrantless Probable Cause Arrest for Fifth Degree Assault or Domestic Assault

Although the general rule is that officers may not make probable cause arrests for misdemeanors unless the offense occurs in their presence (or a citizen who saw the crime requests an arrest), domestic assault is an exception. A peace officer may 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 any person covered by the "family or household member" definition even if the assault did not take place in the presence of the peace officer (MN Statutes, Section 629.341). A peace officer acting in good faith and exercising due care in making an arrest pursuant to this statute is immune from civil liability that might result from the officer's action.

Note: 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 (MN Statutes, Section 629.72).

B. Level of Arrest for Assault 5 and Domestic Assault: Misdemeanor, Gross Misdemeanor, and Felony

Assault in the fifth degree and domestic assault are deemed misdemeanor offenses. However, recent changes in the statutes have greatly increased the potential for arrests for these crimes at the gross misdemeanor and even felony level.

1. Gross Misdemeanors

MN Statutes, Section 609.224, Subd. 2(a), Assault in the Fifth Degree, provides for an *enhancement to a gross misdemeanor* violation when the offense is against the *same victim* within ten (10) years, or *any* within five years, of discharge from sentence for a previous conviction of assault, criminal sexual conduct in the first through fourth degree, or terroristic threats in Minnesota or any similar law of another state.

If the charge is domestic assault (MN Statute, Section 609.224, Subd. 2), and the current victim is a family or household member and the crime occurs within ten (10) years of discharge from sentence for conviction of any of the above offenses against *any family or household member*, the same gross misdemeanor enhancement applies. The prior conviction need not be against a member of the *same* family or household.

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If there is a prior conviction for assault or terroristic threats against *any person* within two (2) years, a gross misdemeanor may also be charged.

2. Felonies

As of August 1, 1993, if a person commits Assault in the Fifth Degree within five (5) years of discharge from sentence for the *first of two or more convictions* of assault, criminal sexual conduct in the first through fourth degree, or terroristic threats against the *same victim*, Assault 5 becomes a felony. The same enhancement applies to Assault 5 against *any* victim occurring within (2) years of the first of two or more of these convictions.

Domestic Assault (against a family or household member) is also enhanceable under the same circumstances except that the prior convictions may be against *any* family or household member.

The new language “within five years of *discharge from sentence*”, in effect extends the reachback for previous convictions to seven and one half years (7 ½).

Example: Defendant arrested for Assault 5 on 01/01/1998, sentenced on 06/01/1998, and placed on two (2) years probation. This offense remains good for enhancement purposes until 06/01/2005.

C. Harassment/Stalking

(Minnesota Statutes, Section 609.749). Effective July 1, 1993, Minnesota enacted a stalking statute which created new crimes at both the felony and gross misdemeanor levels. The statute also supersedes and repeals certain previously misdemeanor offenses. The acts covered by Minnesota Statutes, Section 609.749, include several which are frequently applicable to domestic abuse situations even when no actual assault occurred.

The 1997 Legislature amended the stalking statute to clarify language the Minnesota Supreme Court found ambiguous in the 1993 law while still maintaining the basic structure of the 1993 law.

1. Gross Misdemeanors

Current law (effective 05/07/1997) makes it a gross misdemeanor to harass another person by committing any of the following acts. A person who:

- a. Directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
- b. Stalks, follows, or pursues another;
- c. Returns to the property of another if the actor is without claim of right to the property, or consent of one with authority to consent;
- d. Repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
- e. Makes or causes the telephone of another repeatedly or continuously to ring;
- f. Repeatedly mails, delivers, or causes the delivery of letters, telegrams, messages, packages, or other objects; or

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- g. Engages in any other harassing conduct that interferes with another person or intrudes on the person's privacy or liberty.

Minnesota Statutes, Section 609.749, Subd. 1, (as amended by the 1997 Legislature) defines "harass" as meaning "to engage in intentional conduct which (1) the actor *knows or has reason to know* would cause the victim *under the circumstances* to feel frightened, threatened, oppressed, persecuted, or intimidated; and (2) causes this reaction on the part of the victim.

The 1997 Legislature also specifically declared that in stalking/harassment prosecutions, the State does *not* have to prove the actor *intended* to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated (Minnesota Statutes, Section 609.749, Subd. 1(a).)

The defendants claimed intent is therefore immaterial as long as *objectively* he *should have known* (i.e. a reasonable person would know) his/her acts would harass the victim and, in fact, the victim did feel the harassed. Obtaining a complete domestic abuse history is usually the key to making the determination that the current act, *under the circumstances*, constitutes the crime of harassment.

2. Felony Enhancement

Any of the above gross misdemeanors is enhanceable to a felony if committed within ten (10) years of discharge from sentence for a prior conviction for harassment, assault (any degree), violation of an OFP or harassment order or terroristic threats, *or* if committed against a juvenile, *or* if committed while possessing a dangerous weapon.

3. Pattern of Harassing Conduct

In addition, it is a felony to engage "in a pattern of harassing conduct with respect to a single victim or one or more members of a single household which the actor *knows or has reason to know* would cause a reasonable person under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction" in a victim. Minnesota Statutes, Section 609.749, Subd. 5, (as amended by the 1997 Legislature). A "pattern of harassing conduct" means two (2) or more acts (convictions are not necessary) within a five (5) year period that constitute any of the following offenses: Harassment, terroristic threats, assault, violation of an Order for Protection or Harassment Order, trespass, harassing phone calls or mail or criminal defamation.

Note: The harassment statute makes it more important than ever to document not just the facts of the current police call but also the history of abuse or harassment.

D. Probable Cause Warrantless Arrest

The domestic abuse arrest statute (Minnesota Statutes, Section 629.72) has been amended to provide that the officer may *not* issue a citation in lieu of arrest in harassment/stalking cases. An officer may also make a warrantless probable cause arrest for harassment even if the offense did not occur in the officer's presence. Minnesota Statutes, Section 629.34, Subd. 1(c)(5).

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E. Probable Cause Felony Arrests for Other Crimes

At a domestic call, peace officers shall consider whether other felonies have been committed; including but not limited to burglary, felony assault, terroristic threats, kidnapping, false imprisonment, and witness tampering.

Note: An Assault 5 may be chargeable as burglary in the first degree even if the home is also the offender's, if the entry is made without consent of the victim and in violation of an Order for Protection (OFP) barring the offender from the premises.

F. Violation of Court Orders

The peace officer shall verify whether any of the following orders exist before or during an arrest. The peace officer or someone acting at the officer's direction may make this verification. Methods of verification include personally seeing a copy of the order or obtaining verification from the court or law enforcement agency that has the actual order. The police report shall include identifying information of the specific court order violated, including county of origin, the file number, and the provision allegedly violated.

1. Order for Protection

A peace officer shall arrest and take into custody without a warrant a person who the peace officer has probable cause to believe has violated the restraint or exclusion section of an order for protection granted pursuant to Minnesota Statutes, Section 518B.01, Subd. 6, 7, and 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 officer can verify the existence of the order.

Note: There are three key points related to the Order for Protection: (1) The law requires an arrest regardless of whether or not the excluded party was invited back to the residence. (2) There is no hour limitation for a warrantless arrest for a violation of an Order for Protection. (3) 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 specifically how the order was violated.

A violation of an Order for Protection is a misdemeanor but is enhanceable to a gross misdemeanor if the offense occurs within five (5) years of discharge from sentence for conviction of violation of an Order for Protection (OFP) (effective for crimes occurring on and after 08/01/1994) or for any conviction of assault, terroristic threats, violation of a harassment order or harassment/stalking. As of 08/01/1997, it is enhanceable as a felony if it occurs within ten (10) years of discharge of the first of two or more such convictions.

As of January 5, 1998, a statewide law enforcement computer verification system for domestic abuse orders for protection will be on-line, including the phone number of the controlling agency (the law enforcement agency with a copy of the actual Order for Protection). The system will also make it possible to identify respondents against whom an OFP has been issued but not served.

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2. Harassment Restraining Order

A peace officer shall arrest and take into custody a person who the peace officer has probable cause to believe has violated a harassment restraining order pursuant to Minnesota Statutes, Section 609.748, Subd. 4 and 5, if the officer can verify the existence of the order.

Note: A person who violates a harassment restraining order is guilty of a misdemeanor if the violator knows of the order. This offense is enhanceable of a **gross misdemeanor** if it occurs within ten (10) years of discharge from sentence for a previous conviction for violation of a harassment order or an OFP or for any assault, harassment/stalking or terroristic threats conviction. As of 08/01/1997, it is enhanceable to a **felony** if it occurs within ten (10) years of discharge of the first of two (2) or more such convictions.

3. No Contact Order

As of August, 1, 1993, an officer may arrest without a warrant any person who he has probable cause to believe has violated the provisions of a no contact or restraining order issued by a court. Minnesota Statutes, Section 629.34, Subd. 1(6).

In many jurisdictions, pretrial no contact orders are routinely issued in crimes against person cases, including domestics, and are valid until final disposition of the case (sentencing or dismissal.) The pretrial order is frequently replaced at the time of sentencing with a new no contact order issued as a condition of probation. This no contact order may be valid for the full probationary period indicated in the order.

The court may rescind a no contact order at any time. However, the production of the victim of a copy of an apparently valid court order, absent contrary evidence, provides prima facie basis for arrest whenever there is probable cause to believe a violation of the order has occurred.

G. Other Misdemeanors

At a domestic all, the peace officer shall consider whether other crimes have been committed including but not limited to trespassing, criminal damage to property, disorderly conduct, witness tampering, or assault.

IV. Assistance, Staying at the Scene, Crime Victim Rights, and Services

A. Staying at the Scene

If an arrest does not occur, 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.

Note: Minnesota Statutes, Section 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 Minnesota Statutes, Section 629.341, Subd. 3.

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B. 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 the witnesses, are non-English speaking, are hearing-impaired, or have other communication disabilities. The officer should avoid the use of friends, family or neighbors serving as the primary interpreter for the investigation.

C. Notice of Crime Victims Rights

The peace officer shall give the victim of a domestic call a copy of the agency's *Crime Victim Notification* form.

Note: It is important to routinely review these forms to ensure that they are current, in compliance with the law, and contain the name of the local domestic abuse program. The Department of Public Safety, Crime Victim and Advisory Council, produces the Crime Victim's Rights Notice, and serves as the contact for the Victim's Rights information.

D. Services

The peace officer should contact the local domestic abuse program by phone as soon as possible on all arrest situations, and provide the name and address of the victim and a brief factual account of events associated with the action. This section shall not apply if prohibited by the Minnesota Government Data Practices Act (Minnesota Statutes, Section 13.82, Subd. 10).

V. Children

A. Child Victims

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 Minnesota Statutes, Section 626.556, Reporting of Maltreatment of a Minor. The officers shall also attempt to verify whether there has been an Order for Protection (Minnesota Statutes, Section 260C.201). If the child *has been injured*, the officer should escort the child to the nearest hospital for treatment.

VI. Reports and Forms

A. Written Report

Peace officers shall make a report after responding to a domestic 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:

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1. Detailed statements from the victim, suspect and witnesses;
2. Description of injuries;
3. Information about past abuse;
4. Description of the scene;
5. Primary aggressor;
6. Existence of language barriers;
7. Presence of elderly victims or those with disabilities; and
8. Documentation of evidence

VII. Further Investigation

- A.** A domestic call shall be turned over to the appropriate investigator for further follow-up if appropriate. If there is an arrest, the investigator shall determine the defendant's criminal record, and if there is evidence of a previous conviction, the peace officer should advise the prosecutors of any enhanced criminal sanctions which may be available.
- B.** Notwithstanding the fact that the officer has decided not to arrest one of the participants in the domestic 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.

VIII. Firearms Prohibitions

Persons convicted of domestic assault, Order for Protection, Harassment, or Stalking violations after August 1, 1996, are prohibited from possessing a handgun unless three (3) years have passed from the date of conviction. Firearms seized by the Fergus Falls Police Department shall be held until court disposition allows for their release or forfeiture, or in lieu of such an order, may be disposed of in accordance of law.