

Domestic Violence

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Policy Statement

It is the policy of the Whatcom County Sheriff's Office to stress enforcement of criminal laws related to domestic violence, protection of the victim, and education of victims about other resources. This includes the arrest of domestic violence offenders when there is probable cause to believe an offense has occurred. ([RCW 10.99.030\(5\)](#)).

Persons Affected

- All commissioned personnel
- Records Manager

Definitions

Bodily Injury – [RCW 9A.04.110](#)

Dating Relationship – [RCW 10.99.020](#)

Domestic Violence – [RCW 10.99.020](#) (crimes included)

Family or Household Members – [RCW 10.99.020](#)

Harassment – [RCW 9A.46.020](#)

Liability and Accountability

No deputy may be held criminally or civilly liable for making a domestic violence arrest if the deputy acts in good faith and without malice (RCW [10.31.100\(12\)](#), and [10.99.070](#)).

Deputies who willfully fail to enforce the law are not immune from liability, the above statutes notwithstanding. Victims of domestic violence must receive equal protection under the law, and it is the policy of the Whatcom County Sheriff's Office that all deputies will be held accountable for any willful failure to enforce domestic violence laws.

Investigation

Domestic Violence Determination

When investigating any crime or responding to calls for assistance, deputies should determine relationships between any of the parties that would qualify them as [family or household members](#). Crimes, when committed by one family or household member against another, including but not limited to those listed in [RCW 10.99.020](#) are considered [domestic violence](#).

Corpus Delicti

As in other criminal investigations, deputies must seek to establish the facts of a case by identifying, collecting and documenting evidence.

Excited Utterances and 911 Calls

Deputies must consider the information provided by callers to the dispatch center (e.g. in Computer Aided Dispatching (CAD) entries) when investigating all crimes. This is particularly important in domestic violence investigations, as victims may provide information or make statements to dispatchers that they are later unwilling or unable to repeat to deputies. Such excited utterances are often admissible in court and are of particular value when a subject does not testify.

Prosecutor's Office Victim/Witness Unit personnel normally request recordings from What-Comm of 911 calls made in domestic violence cases that get forwarded to the Prosecutor's Office (e.g. when arrests are made). Deputies may forward requests for such recordings per normal procedure if they feel the recordings will be of value in other cases.

Interviews

Deputies should ask the parties about any history of domestic violence, including previous assaults or threats, or manipulative behavior. Deputies should also establish whether the victim has been intimidated about cooperating with law enforcement personnel or the courts by asking if the suspect has ever threatened the victim about seeking help from law enforcement or the courts. Deputies should document this information in related reports, particularly if not included in a written statement by the victim.

Deputies should be attentive to reports of behaviors that, when considered together, may constitute stalking ([RCW 9A.46.110](#)).

Deputies should inquire about the presence of children during domestic violence incidents and include identifying information and relevant details about their presence and welfare in related reports.

Statements

Deputies should attempt to obtain complete written statements from involved parties and witnesses. Statements from third parties who call 911 are often of particular importance. In more serious cases and when practicable, deputies should record statements by victims on video with their permission.

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Note: The [Domestic Violence Victim's Statement form](#) is only appropriate for use in cases of *assault or threats of assault*. If other crimes are involved or if the severity of the crime is unknown, the full Voluntary Statement form should be used.

Medical Releases

Deputies should ask all parties with injuries for which they receive treatment at the scene, who are transported to a hospital, or who state they plan to seek treatment, to sign a medical records release.

Photographs

All visible injuries should be photographed regardless of severity. The need to photograph injuries of victims shall not delay or interfere with any medical care a victim may require. Deputies should arrange to return to photograph a victim's injuries that are not visible at the time of the incident or may become more visible in the future.

Other photographs that may be of evidentiary value include damaged property, evidence of alcohol or drug abuse, and locations where key parts of the incident occurred.

Physical Evidence

Deputies should impound physical evidence that substantiates the victim's injuries and/or the crimes charged (e.g., weapons, torn clothing).

Primary Aggressor

Deputies shall make reasonable efforts to identify the primary aggressor in any domestic violence incident. The primary aggressor is the person determined to be the most significant rather than the first aggressor. In identifying the primary aggressor, a deputy shall consider factors listed in [RCW 10.31.100\(2\)\(c\)](#), which include the history of domestic violence of each person involved and whether the conduct was part of an ongoing pattern of abuse.

Deputies should generally be reluctant to arrest both parties in domestic violence incidents and should consult with a supervisor before doing so, if practicable.

Arrests

If deputies find that probable cause exists to believe one or more domestic violence crimes have occurred, they should then determine if arresting the primary aggressor is [mandatory](#).

If arrest is not mandatory but probable cause exists to make an arrest, deputies should determine if a physical arrest is appropriate based on the totality of the circumstances and considering the mandate of this policy to protect victims. If deputies believe a physical arrest is not appropriate, they should consult with a supervisor prior to citing and releasing a suspect.

Deputies who are unable to locate suspects whom they are required or intend to arrest should post a probable cause statement in accordance with agency procedures as soon as practicable.

Role of the Victim

Deputies should make reasonable efforts to explain to victims who are reluctant to actively participate in holding suspects accountable (e.g. victims who indicate they do not want suspects arrested) of the important role that enforcement of domestic violence laws plays in protecting them from further abuse. However, deputies must balance their encouragement with the possibility that victims may have been experiencing a loss of control over their own lives and should thus be mindful of applying undue pressure.

It is also important to note that arrests are justified when probable cause exists to believe a crime occurred regardless of the victim's desires, whether or not the arrest is mandatory under [RCW 10.31.100\(2\)](#). Deputies must consider the totality of the circumstances, including the Sheriff's Office's commitment to enforcing domestic violence laws and protecting victims, when deciding whether or not to make discretionary arrests.

Consistent Enforcement

In their response to domestic violence, all Sheriff's Office employees should consistently stress the enforcement of laws intended to protect victims and communicate the attitude that violent behavior is criminal behavior and will not be tolerated. Factors like the following should not be used to avoid making an arrest:

- Marital status of suspect and victim.
- Whether or not the suspect lives on the premises with the victim.
- Claims by the suspect that the victim provoked or perpetuated the violence.
- Potential financial consequences of arrest.
- The physical or mental health of either party.
- Use of drugs or alcohol by either party.
- Denial that the abuse occurred where evidence indicates otherwise.

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- A request by the victim not to arrest the suspect.
- Location of the incident (public/private).
- Speculation that complainant may not follow through with the prosecution.
- The racial, cultural or sexual orientation, or social or professional position, of the victim or suspect.

Mandatory Arrests

Deputies who respond to an incident of domestic violence shall arrest and take into custody persons under circumstances described in [RCW 10.31.100\(2\)](#).

Booking Requirement

Once a suspect has been arrested under the provisions of this section, the suspect shall be taken to jail. Neither law enforcement deputies nor corrections deputies have the authority to subsequently release the arrested person. Any post-booking release decisions are the responsibility of the Prosecutor's Office and/or the courts and must be received in writing before a domestic violence offender is released.

Warrantless Arrest Restriction – Certain Order Violations

[RCW 10.31.100\(2\)](#) does not authorize the warrantless arrest of respondents who violate protection orders by contacting petitioners by telephone, mail or other means that do not involve in-person contact or violate proximity provisions, except in the cases of:

- A foreign protection order that specifically makes such conduct a crime.
- A violation of any condition of an order issued under RCW 26.44.063 (sexual or physical abuse of children).

Deputies shall fully investigate such alleged violations. If the results of the investigation indicate there is probable cause to believe the suspect committed a misdemeanor by violating the terms of an order but a warrantless arrest of the suspect is not permitted, deputies will normally forward the case report to the Prosecutor's Office requesting that the suspect be issued a summons to appear in court.

Deputies should also be alert for when repeated order violations of this type could constitute stalking.

Risk Assessment Protocol

If deputies arrest a suspect for a domestic violence crime or establish probable cause to make an arrest but are unable to arrest the suspect at the scene (e.g. suspect has fled), deputies shall, unless precluded by emergency or other reasonable circumstance, initiate the [Domestic Violence Risk Assessment Protocol](#) by asking the victim a series of research-based questions and assisting the victim with obtaining additional services if indicated.

Victim Assistance

Deputies must consider the greater context in which a particular incident is being reported and provide assistance to victims beyond the arrest of offenders when appropriate. Deputies should encourage complainants to take action to prevent further escalation of crisis situations and offer to assist in ways that may include the following:

- Assist in obtaining appropriate medical attention if a person claims injury, whether visible or not.
- Assist in arranging to transport the complainant to alternate shelter if the complainant expresses concern for his or her safety, or the deputy determines a need exists.
- Stand by for a reasonable amount of time while a party removes essential items of personal property from the residence before voluntarily departing.
- Provide transportation to a party who wishes to leave the residence.

Victim Resources

“Law enforcement, as part of a coordinated community response, should provide referral information and/or direct assistance to victims, witnesses, and other requesting parties to facilitate the delivery of advocacy and other appropriate services.”¹

Written Notice to Victims (“Victim’s Rights”)

The Domestic Violence Victim’s Rights form fulfills victim notification requirements listed in [RCW 10.99.030\(6\)\(a\)](#) and (7). This form shall be completed and provided to all victims of domestic violence crimes, and may be provided to a party who appears to be the victim of [ongoing manipulative behavior](#).

Domestic Violence and Sexual Assault Services (DVSAS)

Deputies should encourage victims to contact DVSAS at any time and, when appropriate or required by this policy, assist victims with doing so.

Victim Contact Information

If a victim chooses to move to another location following an incident and requests that the new address be kept confidential, deputies should avoid referencing the new address in the case report and note the victim’s new address on a [Confidential Contact form](#). This form should not be attached to the case report but routed to the Detective Sergeant, who will ensure it is provided to the Prosecutor’s Office as needed.

¹ Dunford-Jackson, B. & Jordan, S. (2006, Winter). Context is everything: Domestic violence in the real world. *Synergy*, 10(1). p. 11. Retrieved from <http://www.co.whatcom.wa.us/superior/pdf/cpsdvappend.pdf> (Whatcom County Coordinated Response Protocol)

Real and Personal Property Issues

The legal right to the use and enjoyment of real property is often dependent upon a variety of factors that have evolved over time and that are not readily verifiable by deputies. Unless it is clearly evident to a deputy that a person on a premise is not entitled to possession or a valid court order establishes that such a right does not exist, persons asserting conflicting claims of entitlement should be advised to consult an attorney regarding legal avenues for removing unwanted persons.

In the cases where it is clearly evident that a person is not entitled to possession of the premise, the deputy should stand by for a short time (normally limited to 20 minutes) until the person who is departing removes essential belongings, the ownership of which are not in dispute. Deputies will not assist with or participate in the division of property.

Reports

“A peace officer responding to a [domestic violence](#) call shall take a complete offense report including the officer's disposition of the case” ([RCW 10.99.030\(6\)\(b\)](#)).

Behavior that does not appear to violate criminal law at the time deputies are called to investigate a domestic disturbance may be part of a “course of conduct by one partner intended to assert and maintain control and power over another.”² Deputies must be mindful of this fact and should document such behavior in a report. Examples could include situations in which a deputy believes a crime may have occurred but are unable to develop probable cause, or when no crime is alleged but one party appears to be fearful of the other.

Probable Cause Statement

Risk Assessment Questions

Deputies shall include the questions contained in the lethality assessment (see [appendix](#)) and the victim's answers to these questions (1) on or with any [Probable Cause Statement](#) that is to be forwarded to the Prosecutor's Office (e.g. when the suspect is booked into jail) and (2) with the related case report. A check list containing the lethality assessment questions is printed on the back of the Victim's Rights form.

Victim Contact Information

Law enforcement deputies should include the victim's phone number on probable cause statements to assist corrections deputies with notifying victims prior to releasing the suspect from custody. However, if the victim's phone number should not be made available to the suspect, deputies should not include it on the probable cause statement but provide it directly to the booking corrections deputy. See Section 0.

Forms

For access to forms commonly used in domestic violence investigations, see the online [forms index](#).

² Dunford-Jackson, B. & Jordan, S. (2006, Winter). Context is everything: Domestic violence in the real world. *Synergy*, 10(1). 6-9. Retrieved from <http://www.co.whatcom.wa.us/superior/pdf/cpsdvappend.pdf> (Whatcom County Coordinated Response Protocol)

In-Custody Issues

Offender Post-Custody Statements

Corrections deputies should be alert for unsolicited statements made by domestic violence offenders, particularly during the booking process. Expressions of the intent to harm victims and witnesses or other retaliatory plans, as well as admissions of guilt, should be noted and promptly forwarded to the appropriate law enforcement deputy.

Victim Notification

As part of the inmate release process, corrections deputies shall attempt to notify persons listed as victims in domestic violence cases that a suspect in the case is being released. [Victim contact information](#) is normally available on pre-booking reports and/or probable cause statements.

Corrections deputies should make at least one attempt to contact a victim by telephone and should leave a voice message if there is no answer.

If no telephone number for a victim is available, corrections deputies will ask via the chain of command that a patrol deputy attempt contact with the victim in person. Patrol deputies assigned to advise a victim in person should normally leave a business card with the appropriate information printed on the back at the victim's address.

Protective Order Violations

For guidance on enforcing court orders intended to protect victims of domestic violence, see [BLEIS Operations Manual](#) Policy P-013-R1 (Domestic Violence Response), Sections J-P.

Record-Keeping

All law enforcement agencies are required to maintain records on the number of domestic violence-related calls reported to their agency. The Records Manager is responsible for ensuring this information is reported to the Washington Association of Sheriffs and Police Chiefs ([RCW 10.99.030\(12\)](#)).