


<b>New Berlin Police Department Directives Manual</b>		<b>Directive Title: Domestic Abuse</b>			
<b>Issue Date:</b> 02/06/15	<b>Published Date:</b> 01/08/21	<b>Next Review Date:</b> 01/01/24	<b>Total Pages:</b> Page 1 of 6	<b>Directive Number:</b> 6307	<b>WILEAG Standards:</b> 6.3.9

### Purpose

This directive establishes the policy of the New Berlin Police Department concerning the issue of domestic violence and abuse and guidelines for the handling of investigations relating to domestic violence in accordance with §968.075(3).

### Policy

It is the policy of the department that officers shall make an arrest in all domestic abuse incidents where a predominant aggressor has been identified. While the department understands that officers may sometimes have difficulty determining who the predominant aggressor is, the department discourages officers from arresting both people involved in a domestic abuse incident. Justice is better served if officers work diligently to determine who the predominant aggressor is.


A police officer shall, if probable cause exists, make an arrest and take a person into custody according to the guidelines of this directive. The intent of this directive is to maximize the protection of victims of domestic violence and to hold the predominant aggressor accountable.

### Education and Training

Any education and training by the law enforcement agency relating to the handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents shall cooperate in all aspects of the training.

### Definitions

1. **Domestic Abuse** means any of the following engaged in by an adult person against his or her spouse, or former spouse, against any adult with whom the person resides or formerly resided, or against an adult with whom the person has created a child:
  - a. Intentional infliction of physical pain, physical injury or illness.
  - b. Intentional impairment of physical condition.
  - c. A violation of §940.225(1), (2), or (3) (first, second or third degree sexual assault).
  - d. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under a., b. or c.
2. **Predominant Aggressor** means the most significant, but not necessarily the first, aggressor in a domestic abuse incident. Officers shall consider all of the following in determining who is the predominant aggressor:
  - a. The history of domestic abuse between the people, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history.
  - b. Statements made by witnesses.
  - c. The relative degree of injury inflicted on the people.
  - d. The extent to which each person present appears to fear any other person.

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- e. Whether any person is threatening or has threatened future harm against another person or another family or household member.
- f. Whether either person acted in self-defense or in the defense of another person.
- g.
- 3. **Lethality Assessment Program (LAP)** The LAP is a two-pronged intervention process that features a research-based lethality screening tool and an accompanying protocol referral that provides direction for law enforcement and others to initiate appropriate action based on the results of the screening process.
- 4. **Intimate Partner** is a person with whom one has a close personal relationship that can be characterized by the following:
  - a. Non-familial relationships as defined by domestic violence statute (spouses, child in common, etc.).
  - b. Ongoing physical contact and/or sexual behavior.
  - c. Identity as a couple.
  - d. This definition is not statutory. If there is any doubt as to the status, an officer should error on the side of caution and treat it as an intimate partner relationship.
- 5. **Waukesha County Law Enforcement Agency Lethality Assessment Program Supplement** is a template report form to be completed in investigations involving domestic abuse and/or incidents of abuse involving intimate partners.
  - a. **Section I** This section of the supplement shall be completed in all incidents of domestic abuse and incidents of abuse involving intimate partners in which an offender has been arrested or probable cause exists to arrest an offender.
  - b. **Section II** The lethality assessment shall be completed in domestic abuse incidents **only involving intimate partners** in which probable cause exists to arrest an offender or an arrest has been made. This includes incidents of abuse between intimate partners in which the victim/offender relationship doesn't meet the statutory definition of "domestic abuse" as prescribed in WI ss. 968.075 (1)(a).
  - c. The supplement report will be filed with the incident report. With the consent of the victim(s), the content of the supplement form will be shared with the Waukesha County Women's Center in accordance with training.

## Guidelines

**Probable Cause to Arrest:** An officer shall attempt to determine if probable cause exists that a crime is being or has been committed.

Factors to be used in determining if probable cause that a domestic abuse has occurred include, but are not limited to the following:

1. Bodily harm or pain to the victim. A decision not to arrest may not be based solely on the absence of visible indications or injury or impairment.
2. Statements of victim, including non-consent to the offense. This interview is to be conducted outside the presence of the suspect. Written statements are to be obtained whenever possible.

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3. Statements of family members, friends, neighbors or other witnesses. These interviews are to be conducted outside the presence of the suspect. Written statements are to be obtained whenever possible.
4. Statements of the suspect. Written statements are to be obtained whenever possible.
5. Observations of the scene and the victim.
6. Previous calls at the same location or with same parties.
7. Previous threats/offenses against the victim by the suspect. Officers should check for the existence of a restraining order/injunction against the suspect. Officers shall arrest for violations of temporary restraining orders or injunctions when such an order exists and there is probable cause to believe that it was violated.
8. Marriage is not a bar to prosecution for sexual assault.

**Mandatory Arrest:** An officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and the person's actions constitute the commission of a crime, and any of the following circumstances are present:


1. The officer has reasonable grounds to believe that continued domestic abuse against the alleged victim is likely. If the officer's reasonable grounds for belief are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest only if the report is received by the officer or department within twenty-eight (28) days after the day the incident is alleged to have occurred.
2. There is evidence of physical injury to the victim.
3. The person is the predominant aggressor.
4. Notwithstanding the requirements of 968.07(1), if an officer identifies the predominant aggressor, it is generally not appropriate for the officer to arrest anyone other than the predominant aggressor.
5. In determining whether to arrest a person, officers should consider whether that person acted in self-defense or defense of another person.

An officer who has reasonable grounds to believe that both parties committed domestic violence against each other shall arrest the person whom the officer believes to be the predominant aggressor. A decision not to arrest may not be based solely upon the absence of visible indications of injury or impairment.

An officer, who has reasonable grounds to believe that a person is committing or has committed domestic violence, will provide the victim with a Domestic Abuse/Sexual Assault Victim Resource Information sheet. The officer will describe services that are available to the victim ensuring that the victim is aware of his/her rights as a victim under WI §950. The officer will also ensure that the victim understands as a victim of domestic abuse, he/she may contact a domestic violence victim service provider to plan for his/her safety and take steps to protect him/herself, including filing a petition under §813.12 of the Wisconsin Statutes for a domestic abuse injunction or under §813.125 of the Wisconsin Statutes for a harassment injunction.

An officer's decision as to whether or not to arrest may not be based on the consent of the victim to subsequent prosecution or on the relationship of the persons involved.

All arrests in domestic abuse incidents are to be referred to the District Attorney's Office. Officers shall check prior criminal DV convictions for repeat offenders. According to Wisconsin State Statute 939.621 (1) (b), two prior criminal convictions during the ten year period prior to the new arrest changes the status of a misdemeanor to a felony

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Anytime an officer incarcerates a person in the Waukesha County Jail on a domestic violence-related charge, the officer must request the jail to notify the department of the offender's release.

If the suspect is not at the scene at the time of the officer's arrival, reasonable efforts will be made to locate the suspect.

If the suspect still cannot be located, the investigating officer will complete an arrest report and request that a warrant be issued for the suspect.

An officer shall arrest and take a person into custody if he/she has probable cause to believe that the suspect violated the 72-hour no contact prohibition. The suspect **will** be held for bail under these circumstances.

**Lethality Assessment Program (LAP):** Officers will utilize the LAP Protocol as adopted by the Waukesha County District Attorney's Office in the investigation of Domestic Abuse incidents only involving intimate partners in which probable causes exists to arrest an offender or an arrest has been made. This includes incidents of abuse between intimate partners in which the victim/offender relationship doesn't meet the statutory definition of "domestic abuse" as prescribed in WI ss. 968.075 (1) (a).


1. LAP shall be performed as trained, utilizing section II of the form titled "Waukesha County Law Enforcement Agency Lethality Assessment Program Supplement".
2. Officers will note whether the victim consented to sharing his/her information on the Lethality Assessment Program Supplement form.
3. Notifications to the Women's Center per the outcome of the lethality assessment tool shall be made appropriately prior to leaving the scene or as soon as practicable after leaving the scene of investigation, with notification being documented in the officer's report.

### **Domestic Violence Investigations and Report Writing**

Officers must understand that a thorough investigation and report is crucial in cases of domestic violence. Officers shall make every effort to preserve all relevant evidence and to conduct a thorough on-scene and follow-up investigation of domestic violence incidents.

An Incident Report will be prepared and titled "Domestic Dispute" and should include the following:

1. Verbal and written statements from the victim. While interviewing the victim, officers shall explain the procedures under which the suspect can/will be released. This interview should not be conducted in the presence of the suspect.
2. Information concerning the release of the offender. If the offender posts the necessary bail and is released, officers will contact the victim to notify him/her of the offender's release. If officers transport the offender to the Waukesha County Jail to be held on domestic abuse related charges, the officers will request that the jail notify the department when the offender is released. Once the department receives notification of an offender's release, the department will, in turn, notify the victim that the offender has been released.
3. Photographs of the victim's injuries, at the time of the initial investigation as well as 24-48 hours after the assault.

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4. A signed medical records release from the victim if injured.
5. Interviews of other witnesses, i.e., neighbors, children, or other citizen-witnesses who can provide evidence and information. If child interviews are necessary, it is best done away from the victim and suspect, if possible, and by an officer sensitive to children, police social worker, or other social worker.
6. Excited utterances, admissions against interest and other informal statements of the defendant as well as formal statements, written and verbal.
7. The Waukesha County Law Enforcement Agency Lethality Assessment Program Supplement form. (Section I of the supplement form shall be completed in Domestic Violence incidents in which probable causes exists to arrest an offender or an arrest has been made. Additionally, section II shall be completed only in incidents involving Intimate Partners.
8. Evidence of child abuse. Officers should be aware of the high correlation between domestic violence and child abuse and be alert to it. If child abuse is an issue, a separate child abuse investigation should ensue.
9. A history of abuse as described by the victim or other witnesses, as well as past police records
10. The necessary/required forms, to include:
  - a. Domestic Abuse Contact Prohibition.
  - b. Domestic Abuse Victim Notification Waiver.
  - c. Domestic Abuse Notice of Waiver.

A subsequent arrest made for domestic abuse will require an Arrest Report also be prepared. If officers arrest a suspect involved in a domestic abuse incident, that suspect **will not** be released until he/she has posted the required bond for the crime charged, or the suspect appears before a judge.


If an officer does not make an arrest when he/she has probable cause to believe that a person is committing or has committed a crime, ***it is mandatory that the officer prepare a written report stating the reason the suspect was not arrested, and forward the report to the District Attorney as soon as possible.***

The decision not to arrest will be reviewed by the appropriate Shift Supervisor before the report is forwarded to the District Attorney.

### **Notice of Rights**

**Contact Prohibition:** An officer shall notify the alleged victim that during the 72 hours immediately following the arrest for a domestic abuse incident, the arrested person shall avoid the residence or any premises temporarily occupied by the alleged victim and avoid contacting or causing any person, other than officers and attorneys for the arrested person or alleged victim, to contact the alleged victim. The officer shall also notify the alleged victim of the procedure for releasing the arrested person and probable time of the arrested person's release. Any time the department receives notification from the Waukesha County Jail that a domestic abuse suspect is about to be, or has been, released, an officer will notify the victim of the suspect's release.

At any time during the 72-hour period, the alleged victim may sign a written waiver, thus negating the 72-hour no contact prohibition. Notification of the waiver should be done outside of the presence of the arrested person. Waiver forms will be made available upon request at the Police Department.

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An arrested person shall be informed orally and in writing of a waiver of the 72-hour no contact prohibition and provision of §939.621.

An arrested person shall be informed orally and in writing of the 72-hour no contact prohibition. The arrested party must give a signed acknowledgment of the no contact prohibition, stating that he/she understands the requirements, the consequences of violating the requirements and that an enhanced penalty exists for a second domestic abuse offense committed during the 72 hours immediately following the arrest for the first domestic abuse incident.

If the arrested person refuses to sign the notice, he/she may not be released from custody and shall be conveyed to the County Jail.

**Required Reporting of Lethality Assessment Program (LAP) DATA:**

The Chief's designee shall collect and submit data pertaining to the department's utilization of LAP on a quarterly basis (Jan, April, July and October) to [www.wilap.org](http://www.wilap.org). This will occur by the 10<sup>th</sup> of each quarter. Data permissible for submission shall include:

1. Quantity of high-danger screens.
2. Quantity of non-high danger screens.
3. Quantity of screens where the victim declined to answer ALL of the lethality screening questions.
4. Quantity of high-danger assessments where the victim spoke to the hotline worker from the scene.

**Submitted data shall not include personal identifying information of involved parties.**

By Order of:  
Jeffrey Hingiss



Chief of Police