

St. Louis County Sheriff's Office

Domestic Violence Handbook and Training Guide

for Patrol Deputies



*A product of the St. Louis County Sheriff's Office's
Safety & Accountability Audit,
funded by the Violence Against Women Office,
Office of Justice Programs, U.S. Department of Justice.*

Domestic Violence Handbook and Training Guide

A reference handbook for deputies that outlines the St. Louis County Sheriff's Office patrol (SLCSO) policies for responding to domestic abuse related calls.

Sheriff Rick Wahlberg

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FOREWORD

This handbook was written for deputies in the St. Louis County Sheriff's Office as a guide to the implementation of new domestic violence policies. The new policies were the result of a Domestic Violence Safety and Accountability Audit conducted in 1998 by a team of criminal justice practitioners, staff from all levels of the Sheriff's Office, and several domestic violence experts from local advocacy programs. The audit team conducted a comprehensive process of inquiry to examine how the domestic violence case management practices in St. Louis County, Minnesota, furthered two important goals: keeping the victim safe, and establishing state control over the offender to deter further violence. The Safety and Accountability Audit was funded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice. To receive a copy of the manual, contact Praxis International, 202 E. Superior St., Duluth, MN 55802, (218) 722-4820.

Domestic Violence Handbook and Training Guide

INTRODUCTION

Today, progressive law enforcement agencies are guided by a series of policies and protocols that define operating procedures and policing objectives in almost all areas of their work. Some of these guiding policies are worked out in small management meetings between agency staff, some are painstakingly crafted with court personnel whose work is affected by local law enforcement practices, and some policy development requires an even larger community of expertise, as in the area of domestic violence crimes. The St. Louis County Sheriff's Office (SLCSO) knew that to successfully address this area of criminal activity, we needed help from well-established advocacy groups and criminal justice practitioners who already help us respond to the complex needs of battering victims. The following agencies were asked to help us write the new policy, train officers/deputies, and monitor the impact of these policies on public safety: the St. Louis County Probation Department; the County Attorney's Office; the Women's Coalition; Range Women's Advocates; Dabinoo'Igan Shelter¹ for Native American women; the Domestic Abuse Intervention Project; and Praxis International, an organization that specializes in safety on responses to domestic violence.

In order to craft a new domestic violence policy, our office formed an audit committee made up of management, patrol officers, jail staff and staff from the agencies mentioned above to examine every aspect of intervention in domestic violence cases. Over a one-year period, we interviewed staff in all our departments and in other agencies that work with us on domestic violence cases. We asked audit members to observe staff in action – through ride-alongs, observations of jail intakes, etc. – to fully understand the context and conditions in which the work takes place. Finally, we reviewed literally hundreds of documents, forms, and procedures that our agency produces or uses when processing domestic assault cases. This process, similar to a financial audit, helped us to rethink many current practices, and to

¹The Dabinoo'Igan shelter was just opening and hiring its staff when we started our audit. They were not able to participate in the audit but they have been involved in our follow-up efforts for this handbook.

look at every step to see that the best processes and procedures were in place to protect victims from future assaults. In the spring of 2001, Sheriff Wahlberg issued a new set of domestic abuse related policies based on the work of this multi-agency audit committee.

Developing a policy, however, does not serve as a daily road map or ensure community collaboration unless the policy is known, understood, and used by all members of the Office. To help this information become second nature to those in the forefront of law enforcement, the policy committee sought to provide a user-friendly manual that would include information, background, interpretation, and training on this far-reaching, new domestic violence policy. That is the intent and genesis of this handbook.

A final note: in most communities, we know that two groups of people are most vulnerable to serious assault and/or murder: domestic abuse victims, and people associated with drug dealing or severe alcohol/drug abuse. The criminal justice system is a reactive institution. It does not create the social conditions that make this form of violence so prevalent in our society. However, a well organized, swift, and offender-directed response to these cases can prevent most domestic homicides. Our agency operates in a community that is internationally renowned and recognized for its pioneering efforts to permanently alter how policing and court intervention is organized to reduce domestic violence. Our agency has a prominent role in ensuring that our reputation truly reflects a coordinated community effort to protect all victims of domestic violence.

Please keep the following in mind when referring to this handbook:

- All material enclosed in a box is taken directly from a state or federal statute.
- All material *shaded and in italics* is taken directly from Office policy.
- All other material is narrative added to further explain the policy or show examples.
- SLCSO, our office, our agency all refer to St. Louis County Sheriff's Office.

PURPOSE OF THE POLICIES

The purposes of the St. Louis County Sheriff's Office domestic violence policies are to:

- Provide guidance to deputies who must make decisions regarding arrests in domestic violence related crimes by clarifying when deputies can use discretion in their arrest authority, and when arrests are required, either by state law or office directive.*
- Provide deputies with a framework for writing domestic violence related reports that will assist follow-up agencies to better carry out their intervention responsibilities (e.g., probation, prosecution, child protection services, advocacy programs).*
- Provide guidance to deputies who must take formal statements, interview children, locate suspects who have left the scene, and enforce inter-jurisdictional protection orders.*
- Set priorities and requirements for the service of domestic violence related warrants and protection orders.*
- Detail the Office's expectations regarding an employee's use of domestic violence, and its role in selecting and disciplining employees who commit acts of domestic violence.*
- Outline specialized jail procedures for handling domestic violence related cases, such as booking, release, and programming.*

DEFINITIONS

During the course of our audit committee meetings we frequently used terms such as domestic abuse, probable cause, or predominant aggressor. We found that each of us had a slightly different notion of what those terms meant. So we included in the policy a definition section. Deputies need to be familiar with the Office's interpretation of terms as they are used in this policy. Because domestic violence legislation is a relatively new area of law, the state legislature is frequently altering previously passed provisions. Every year for the past decade there have been alterations to either the domestic abuse act or legislation that governs law enforcement response to domestic

cases. This trend will likely continue for another decade. In some areas we thought it was important for deputies to read directly from the language of state or federal laws. Some of that language is included in the body of this handbook and some of it can be found as an appendix. We will distribute updates as legislative changes occur.

Domestic Abuse:

Minn. Stat. § 518B.01 subd. 2(a) defines domestic abuse as follows:

- Physical harm, bodily injury or assault
- the infliction of fear of imminent physical harm, bodily injury or assault
- terroristic threats, within the meaning of Minn. Stat. § 609.713 subd. 1
- criminal sexual conduct within the meaning of Minn. Stats. § 609.342, 609.343, 609.344, or 609.345 committed against a family or household member by a family or household member.

Domestic abuse includes inflicting actual bodily harm and inflicting fear of imminent bodily harm. When investigating domestic assault cases, deputies frequently arrive before someone actually gets hit. One party is afraid of the other because of something the other has said or done that leads them to believe s/he will use violence. A deputy might mistakenly think, “I can’t do anything until he actually assaults her.” If the deputy thinks a suspect has knowingly and intentionally put a domestic partner in fear of immediate bodily harm, then an assault has occurred and the specific statutory legal condition to permit a warrantless arrest has been met.

In 1993, the state legislature added terroristic threats to the definition of domestic abuse because it is not uncommon for perpetrators to threaten acts of violence with the purpose of terrorizing a family or household member. Threats to kill, causing fear and terror, are not unusual and should be taken seriously. Making terroristic threats, pursuant to Minn. Stat. § 609.713, is a felony.

Domestic abuse also includes sexual violence. It is particularly difficult to gather information about sexual abuse. However, deputies should be sensitive to recognizing domestic assaults that are also sexual assaults. Forced or coerced sexual contact or penetration

including forced or coerced contact with breasts, inner thighs, or the clothing covering intimate parts, if committed with aggressive or sexual intent, may constitute criminal sexual conduct.

Petitioner:

The person alleging abuse in a petition for an Order for Protection.

Probable Cause:

A belief, based on a deputy's reasonable consideration of the totality of circumstances, that a crime occurred and the subject to be arrested committed the crime.

Totality of circumstances refers to all information and evidence available to the deputies including, but not limited to: information from 911 dispatchers; statements from all parties; observations made by deputies; and physical evidence that corroborates, or conflicts with a party's account of events; the demeanor and emotional state of parties; a deputy's prudent and cautious judgement of the credibility of statements; and reliable information about past incidents involving a suspect.

Domestic Status:

Provisions of Minn. Stat. § 629.341 apply to acts of domestic abuse as defined in Minn. Stat. § 518B.01 subd.2. These provisions apply in situations involving family or household members, as defined in Minn. Stat. § 518B.01 subd.2. This includes:

- spouses and former spouses
- parents and children
- persons related by blood
- 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 ever lived together or been married
- persons with a pregnancy in common
- persons involved in a significant romantic or sexual relationship

The above definition encompasses married and unmarried relationships. The definition of a family or household member is broad and is not dependent on sexual orientation. Gay, lesbian, and heterosexual relationships may be included in the category of family or household member. A deputy must determine that a couple meets the above definition to make a warrantless arrest.

Self-defense:

Reasonable force may be used to resist, or aid another to resist, an offensive action. A person may use all force and means that s/he reasonably believes to be necessary to prevent bodily injury that appears imminent. The use of force must be reasonable, given the strength differential and the nature of the threat; i.e., deadly force is justified when it is necessary to prevent death or great and imminent bodily harm.

(See page 15 for further explanation.)

Predominant Aggressor:

The person who is the most dangerous aggressor, taking into account the totality of circumstances in this incident as well as determining the person who poses the greatest threat or likelihood of future harm. The predominant aggressor is the person determined to be the most significant, rather than the first, aggressor.

(See pages 13-15 for further explanation.)

Respondent:

The person whom the petitioner alleges, in a Protection Order, committed acts of domestic violence.

Victim:

A family or household member who is the subject of domestic abuse and who a law enforcement deputy has determined is not a predominant aggressor under the factors set out in the policy.

Section One - PATROL RESPONSE

I. USE OF ARREST IN DOMESTIC VIOLENCE RELATED CASES

It is the policy of the Sheriff's Office to exercise its authority to arrest perpetrators of domestic violence. This does not mean that deputies will arrest in every incident where violence has occurred, but through sound investigations will determine when a case meets both the statutory and Office requirements to make an arrest.

Since the development of “pro-arrest” domestic violence policies, there has been pressure on deputies to make an arrest at every domestic violence call. The Office wants to aggressively pursue a policy of arresting suspects who abuse their partners, but not at the expense of due process and sound investigation. This policy tries to clarify when an arrest should occur by providing deputies with the foundations of clear Office expectations and necessary information about legal requirements. This policy also seeks to reduce arrests, even when there is probable cause, in two types of cases: (1) where minimal force was used and there is no indication that the victim fears the offender; and (2) where victims of ongoing abuse use force toward their abusers but do not pose a significant threat of danger to them. Both types are explained in further detail in this manual.

A. Violation of Protection Orders

State law and Office policy require that a deputy arrest a suspect who the deputy has probable cause to believe has violated an order for protection. The arrest may be made without a warrant. In cases where the offender has left the premise, deputies will make reasonable attempts to immediately locate the suspect. As according to state law, there is no time limit within which this warrantless probable cause arrest must be made.

A female victim of domestic abuse will often obtain a protection order only after a specific incident convinces her that she must separate from the respondent. Anyone who has filled out paperwork and gone through the process to obtain a protection order knows it is not done lightly. However, deputies are often called to homes where the respondent, usually male, has been living with the petitioner for an extended period of time with an order that prohibits him from being at or near her residence. State law and Office policy require that the respondent in these situations be arrested and prohibit the state from charging the petitioner with an offense.

Many deputies feel it is unfair to arrest a man who was asked by the petitioner to return home. While the Sheriff's Office agrees with the state's legislative initiative to provide immediate non-hostile legal recourse for victims of domestic abuse – such as the order for protection – we also recognize the ambivalence of victims to severing ties with the person who is simultaneously her partner and her abuser. Deputies cannot know all of the circumstances under which a person returns to a household. When faced with the difficult decision to arrest in these cases, deputies should keep in mind that this and other law enforcement agencies worked closely with the judiciary and advocacy programs to create a process whereby respondents can easily request a case review should both parties want to live together again. This process does require that the respondent ask for a hearing – typically heard within two weeks of the request – to bring the case back before the issuing judge who can rescind the entire order or the exclusion order. This process is explained to every respondent at the initial hearing and again in writing. While this does not eliminate the occasionally difficult obligation to arrest, it does provide every respondent with an alternate route for legally living on the premises.

During our audit, we reviewed deputy reports from 1998 and 1999 in which there was an allegation of a protection order violation. We found no instance in which a deputy failed to enforce restraining or exclusion orders or failed to arrest suspects who violated these forms of court relief and were still present when deputies arrived. We did find, however, that deputies rarely (in less than 15% of cases reviewed) documented attempts to locate a suspect in gone on arrival (GOA) protection order violations. Under the new policy, deputies are

required to make an attempt to locate suspects who are GOA but who have reportedly violated a restraining or exclusion order. The deputy must attempt to locate when, based on an interview with the reporting party (petitioner), it appears that there is probable cause to arrest the suspect for the offense.

Deputies were called to a number of cases where the respondent was in violation of relief other than the exclusion or restraining part of the order. For example, in one case, the court order stated that the respondent had an unsupervised visitation every other weekend but was ordered to return the child to the petitioner by 6:00 P M on Sunday evenings. At 11:00 P M, deputies were called when the respondent refused to return a child to the petitioner's home. In this case, deputies located the child and returned him to his mother but the case posed two questions. First, did deputies have authority to arrest the father for violation of a protection order, and second, should the deputies have arrested him?

A peace officer may arrest without a warrant and take respondent into custody when the deputy has probable cause to believe that there has been a violation of an order other than an order restraining or excluding the respondent from a petitioner's residence or place of employment (if these exist, exclusion or violation, deputy must arrest). When making an arrest for a violation of protection order, a deputy may break open an outer or inner door or window of a dwelling or house if, after notice of office and purpose, the deputy is refused admittance. Minn Stat. § 629.34 subd.1(d). Unlike a misdemeanor arrest for domestic abuse, there is no time limit by which the deputy must make a warrantless arrest for violation of an order for protection.²

Minn. Stat. § 609.26 makes it a felony to fail to return a minor child in violation of a court order where there is an intent to substantially deprive the parent of their right to custody or visitation. In this case there didn't seem to be such an intent. But even if the deprivation of custody is not a substantial deprivation justifying a felony charge, it can, at the deputies' discretion, be charged as a misdemeanor violation of an order for protection.

²Excerpted from *Enforcing Orders for Protection: An Instructor's Manual* by MN Center for Crime Victim Services and MN County Attorneys Association, February 1999.

B. Assault with Probable Cause

A deputy who has probable cause to believe a domestic assault took place will arrest the suspect. In cases where there is probable cause to determine that both parties committed an offense the deputy should arrest the predominant and most dangerous aggressor and use discretion as to whether the second offender should be arrested as defined below. Under state law, a deputy has authority to arrest a suspect of domestic abuse without a warrant, if probable cause has been established and the arrest is made within twelve hours of the alleged assault. A deputy who has probable cause to make an arrest should do so regardless of the victim's stated desire not to arrest. In some instances, a deputy may determine that no public safety interest is served by an arrest, and that common sense dictates no arrest. Such an instance would typically involve no injuries, and no fear on the part of the victim. (In relationships, minor contact can occur where there are no injuries, neither party is in fear and there is not a pattern of abuse, but usually in these instances a deputy would not be involved). If deputies do not arrest when there is probable cause to do so, the reason for not arresting should be clearly articulated in their report.

This part of the policy clearly states that deputies are expected to make an arrest when there is probable cause to do so. There are two situations where an arrest is not mandated with probable cause: (1) when both parties assault each other but there is a predominant aggressor (only one arrest should be made); and (2) when the assault is extremely minor, resulting in no injury, and the victim shows no fear of the suspect.

This piece of policy is also the heart of the deputy's role in a community-wide strategy to reduce domestic homicides and serious assaults. Its purpose is to place state controls on people who engage in a pattern of intimidation, coercion, and violence toward a partner. A deputy, by virtue of his/her authority and opportunity to investigate, arrest, and document the case, plays two crucial roles in this effort.

First, the deputy's report drives almost every subsequent action on this case, influencing the setting of bail, what charges to pursue, what sentence to recommend, what rehabilitation services to provide, as well as what advocacy services and what interventions for children

are needed. The deputy's investigation and arrest report is the single most important document in determining how protective our legal system will be for victims and how aggressively it will intervene with offenders.

Second, our agency acts as the first screening level for cases. Our interpretation of what we see, hear, and sense on a call initiates a powerful course of state action. This policy's intent is to do the screening with prudence, caution, and regard for the dynamics of each situation, bringing the most significant aggressor into the court system, and avoiding double arrests, thereby eliminating the abuser's ability to use us against their victims. Therefore, deputies need to make three equally important determinations on every case:

- Do I have probable cause to arrest?
- Did either party act in self-defense?
- If both parties committed an offense, who is the predominant aggressor?

1) Establishing Probable Cause: Over the past decade, there has been increasing pressure on law enforcement to arrest in domestic assault cases. The number of deaths and serious injuries that preceded this period (when no arrests were made) brought a shift in thinking on a national level. However, the need to intervene still requires deputies to document a belief, based on the totality of circumstances, that the person being arrested did commit a crime. A deputy cannot conduct an investigation where there are two opposing stories and simply throw up his hands in frustration saying, "That's it. I'm taking you both in and the courts can figure it out."

It is common in domestics for both parties to claim to be the victim. The deputy must consider the totality of circumstances when making a probable cause determination. In domestic violence cases, the totality of circumstances includes: (a) information received from 911, (b) all witness accounts, (c) deputy observations which corroborate or negate accounts, (d) physical evidence, (e) either party's history, and (f) the deputy's training and education that informs his/her interpretation of the information. Considering only some of the available information before concluding that probable cause exists can lead to arresting an inappropriate party and making prosecution of the case unlikely. In *Illinois vs. Gates*, 1983, the United States Supreme Court ruled that a deputy must consider the totality of circumstances when making a probable cause arrest.

In general, our audit showed high compliance with the existing arrest policy. Deputies rarely left the scene of a domestic where there was injury or evidence to arrest without making an arrest. There were, however, two major misconceptions about the application of the probable cause standard in domestic violence cases that are worth reviewing here.

- In a significant number of reports reviewed, deputies failed to interview witnesses. In a small but disturbing number of reports, the deputy did not indicate that s/he interviewed the suspect prior to making the arrest. Gathering as much information as possible at the scene is critical to determining probable cause and successfully prosecuting the case. Best practices in evaluating the totality of the circumstances include, where possible, non-custodial interviewing of the suspect before arrest. Deputies cannot short-circuit the process of establishing probable cause by claiming “enough to go on” unless they have prudently and cautiously considered all of the circumstances readily available to them.
- Misinterpretation of arrest policy: In several reports, deputies made comments that indicated a misinterpretation of the arrest policy and the application of probable cause to domestic violence cases. For example, in one case, where there were a significant number of past calls to the house, the woman stated at the incident, “He held me in the hallway for over an hour screaming at me and threatening me.” The deputy asked the suspect to leave the house and said, “Neither party had injuries so no arrest was made.” While it is true that the previous policy did not require an arrest unless there was injury, Minnesota law has never held that a suspect must injure the victim before a law enforcement deputy can make a warrantless misdemeanor arrest for assault in domestic cases.

Because probable cause is based on an individual deputy’s belief, it is possible that two deputies, considering the same set of circumstances, would make different probable cause determinations. Often, deputies do not want to arrest unless they have enough evidence to convict. This desire for strong evidence is good, but not required to meet the probable cause standard. On the other hand, many arrests result in no conviction or greatly reduced charges because deputies stop collecting evidence at the point of establishing probable cause. The threshold of probable cause is much lower than the conviction

standard of beyond a reasonable doubt. Deputies need to know when the probable cause level is reached – the basis for mandatory arrest – but they must still pursue the investigation with an eye toward collecting enough evidence to prosecute the case with a higher level of proof.

2) Determining the Predominant Aggressor: The concept of a primary aggressor was introduced into domestic violence policing in the early 1980s to differentiate between one who batters his/her partner and one who reacts to being battered; violence used to batter and violence used in reaction to being battered pose significantly different public safety risks. But the word “primary” proved to be confusing. By directing deputies to arrest the primary aggressor, many deputies arrested the person first to throw a punch rather than the most dangerous person. By 1995, law enforcement agencies were switching to the new term of “predominant aggressor.” Because this term grew out of policy development rather than case law, there was no standard definition or set of guidelines for agencies to adopt. After reviewing the language in several state laws and over a dozen law enforcement policies, the following definition and six considerations became the standard for making probable cause determinations.

Predominant Aggressor

The Sheriff and State law (Minn. Stat. § 629.342 subd. 2) discourages dual arrests in domestic violence cases. When both parties have used force, the deputy should first determine if either party was acting in self-defense. If the deputy determines that neither party was acting in self defense and does have probable cause to arrest both parties, then the deputy should take the predominant or most dangerous aggressor into custody and document the probable cause determination on the secondary offender in the report. For this provision, a predominant aggressor is defined as the party to the incident who, by their actions in this incident and through known history and actions, has caused the most fear and intimidation against the other. The deputy should determine who, if left unrestrained, would likely cause the greater degree of fear and harm to the other.

After considering all of the following factors and making comparisons to each, deputies should use their best judgment in determining the predominant aggressor:

- *the severity of injuries and fear inflicted in this incident by each party*
- *the use of force and intimidation used in this incident by each party*
- *the actions of each party relative to the Office's DV policy and mission to protect victims of ongoing abuse and create a general deterrence to battering*
- *prior domestic abuse committed by each party*
- *the likelihood of each suspect to cause future injury*
- *each person's fear of being injured by the other*

Deputies will take the predominant aggressor into custody. The arrest report should be sent to the prosecuting attorney for a determination on whether to charge the second party.

The deputy must make a common-sense decision about how to prioritize the above six factors given the specifics of a case. In some cases, the history of abuse will be a more significant factor for consideration than who used the most force in the incident. For example, suppose a deputy is investigating a call where a woman kicks her husband in an argument after he calls her a name. The husband then slaps her and she kicks him again, he calls her another name, and she kicks him again. Clearly, she has used more force in this incident. If, after asking the risk questions and checking the record, the deputy finds that the husband has threatened her on many occasions, has a history of abusing her, appears to be angry but is not afraid of her, then the history of abuse might supercede the force used in this incident. The deputy should arrest the person who he or she believes poses the most significant ongoing threat to the other.

A common mistake that law enforcement officers make in determining a predominant aggressor is to make a decision on a single factor – who hit first, or who did the most damage. The following factors do not, in and of themselves, determine who is the predominant aggressor:

- Who threw the first blow?
- Who started the argument which preceded the violence?
- Who is being more obnoxious?

- Who said or did the most hurtful thing to the other (who caused the argument)?
- Who is the most drunk?

A predominant aggressor arrest does not necessarily mean that the secondary aggressor will not be charged with a criminal violation. The policy requires reports to be forwarded to the County Attorney's office for review to determine if criminal charges are warranted.

The Sheriff's decision to limit double arrests on domestics was recommended by the inter-agency audit committee who thoroughly studied domestic violence cases, spent considerable time discussing the issue, and then asked, "How can we build guidelines into the policy that will help deputies make consistent determinations?" During the first year of policy implementation, the committee will meet quarterly to review all cases, especially predominant aggressor and double arrest reports, to determine if guidelines and instructions in this handbook are adequate for assisting deputies to make this determination.

3) Self-defense Determination: Deputies are reminded of the four important points of self-defense:

1. *The person using force had a reasonable belief that s/he was at risk of bodily harm.* This means the deputy needs to ask questions such as: "What did you think was going to happen?" "What were you thinking when you picked up the knife?" or "What made you think that?" If the person responds, "I wasn't going to let him come near me," ask, "Why? What did you think would happen if he came near you?" (Force cannot be used to prevent emotional abuse.)
2. *The risk of harm is actual or imminent.* The risk cannot be for some undetermined time in the future, as in, "Someday I'm going to whip your _____."
3. *The use of force was reasonably necessary to prevent the infliction of bodily harm.* In other words, Arnold Schwarzenegger cannot use the same force that Goldie Hawn can. The standard here is about the level of force not its effectiveness. In three reports we read, deputies indicated that the use of force was not reasonable because it was ineffective. Most violence by victims of battering is ineffective, but that does not mean it's not a form of self-defense.

4. *Lastly, the use of force is based on the beliefs the person has about the above issues at the time of the incident, not on the intent of the person making the threat.*

Research shows that more than 50% of victims of domestic violence use violence against their abusers at least once. Most victims use force more than once. This does not mean that the two parties are engaging in “mutual combat.” In almost all cases of domestic abuse, one party is using violence as a pattern of coercion and intimidation, and the other is reacting to that violence. In almost all cases one person is far less able to stop the violence against her/him. In almost all cases one person is suffering greater injuries, greater levels of fear, and greater degrees of psychological stress. While some situations may involve a double assault, rarely does the violence result in mutual damage. Arresting both parties and treating them as if they were doing the same thing has shown to be an ineffective and sometimes dangerous intervention. Therefore, this policy attempts to correct that situation by asking the deputy to determine which offender is the most dangerous or dominant in their use of force and to make a custodial arrest of that person. If one party was acting in self-defense, then the deputy will arrest the other party. The county attorney’s office will then decide if the second party should be charged with an assault or deferred into a program to find alternative methods of responding to abuse.

On rare occasions, when a deputy believes that there is a compelling public safety issue which requires the arrest of both parties and that both parties pose a significant threat of danger to each other, then the deputy should arrest both parties.

At times, a deputy may believe that both parties could seriously injure the other and that both parties need to be arrested for the purpose of placing some kind of state control on them. This does not merely mean, however, that the deputy thinks both might hit again. For example, in the following scenario the deputy may suspect that the woman will hit her abuser again, but would not make a double arrest here.

Sara Jenkins and Jeffrey Howe have lived together for six years. Both are serious alcohol abusers. Deputies have responded to their residence many times in the past. Sara was seriously injured in the past but has refused to testify against Jeffrey and he has not been convicted despite two previous arrests. Sara

admits that she hit him with the metal rod of a vacuum cleaner and kicked him in the groin. Jeffrey has a slight swelling on his arm where he was hit. She states that she has hit him in the past because it's the only thing he understands. Jeffrey slapped Sara twice leaving a reddened area on her face.

Neither party was acting in self-defense in this incident. Both parties are likely to use violence again, but there is still clearly a predominant aggressor here: Sara is in far greater danger of being seriously injured. If we were to slightly alter the above facts we would have cause for a double arrest:

Sara hit him with the metal rod and caused Jeffrey to fall backwards over a stool. She then continued to bash him with the metal rod seven or eight times, yelling that she will kill him if he ever touches her again.

Sara is still the same victim of domestic abuse, but her violence is escalating to the point where she may seriously injure or kill Jeffrey. Even though Jeffrey can protect himself by not abusing Sara again, there is arguably a compelling public safety issue here and a deputy could decide to arrest both parties. Deputies will rarely see cases where both parties have equal abilities or tendencies to inflict serious harm, but occasionally a deputy might find a case where a victim of ongoing abuse has reached a volatile point in which s/he could take extreme measures.

Deputies are called upon to make a reasonable professional judgement. In making this decision, ask yourself, "If I walk away and do nothing, who do I think is mostly likely to seriously harm the other?" That person is most likely your predominant aggressor; common sense should prevail.

4) Charging Sexual Abuse: More than 50% of male batterers sexually abuse their partners. No research has been conducted on the use of sexual coercion or force by women who assault their partners. In our review of deputy reports we found no cases in which a male alleged his partner sexually assaulted him or sexually attacked him in any way. In many domestic assault cases there are indicators of sexual abuse but law enforcement officers are hesitant to document them. Most battered women are also more reluctant to pursue prosecution on the charge of sexual abuse. However, even if a deputy thinks it is unlikely a case will be pursued as criminal sexual conduct, s/he should document all domestic abuse related offenses at the scene.

The following is an excerpt from a deputy's report that exemplifies the way sexual abuse is frequently sidelined in the investigation.

Upon my arrival, the victim stated that she and the suspect got into an argument. She stated they started arguing over him leaving and he struck her in the mouth. The suspect had cuts on his hand and stated that the victim bit him. There was blood on the victim's mouth. Both were taken into custody and arrested under Domestic violence Law. I called for an E.M.S. unit to look at the bite wounds on the suspect as well as the victim's cut on the mouth. After treatment both were taken to the county jail.

Male Statement: There was a discussion about breaking up. I told Tina this is the last time I will be seeing her, the relationship is over, and not to call for any reason. Tina started to get agitated. Earlier, Tina let me hold some money for safe keeping because someone kept breaking into her apartment. I told her I will get the money and bring it back and I will not see her no more. I was picking up my school bag and cellular phone along with the charger that came with the phone. She confronted me at the front door and there was more discussion about the relationship. I turned and hit the door a couple times out of frustration about her communicating threats. She, in turn, started hitting me with her fist as well as starting to claw at me. I dropped my belongings to try and stop her from hitting or scratching me. This is when she bit my hand on several locations. One of the locations she did not want to let go (it was in her mouth with her teeth on it). I pushed her back so she let go of my hand. The situation had calmed down a little, my fingers were bleeding and she had some blood on her lip. I was picking up my belongings so I could leave and she threw something and hit me in my back. As I looked for my car keys, Tina kept throwing items she picked up around the house and finally grabbed my cellular phone charger and would not let go. We both wrestled with the cord but when I saw she broke it I let go and started looking for my keys again. She knocked on the wall and told the next-door neighbor to call the police. When I found the keys, I started to go outside when she starting throwing things again. I picked up my cell phone and went outside. I tried to get away from my car because I did not want her breaking my windows or damaging anything else. When she went inside the house to get some more items I jumped in my

car and left the scene but I left my cell phone in the yard so I moved the car out of her way and went to pick up my cell phone. I was walking back to the car when I saw police cars coming.

Female Statement: James and I were discussing sex. I told him I did not want to have sex. So he said he was going somewhere else to have sex. I said fine. Then he started raising his voice at me and hitting his fist in my front door. I asked him to leave; he came back two times before this last time I asked him to leave. He pushed me on the floor. I got up and he threw me on the bed and put his hand over my mouth and nose so I could not breathe. His weight stopped me from moving my arms so I bit his hand and then he punched me in my mouth. I was struggling on the bed and screaming. I got up and told him to leave again and he said he wasn't leaving. He pulled me outside and tried to box me. I had my robe on trying to get back in the house. I finally broke loose, went inside, came back outside and he called the police.

It is unclear if this case is a sexual abuse case. Deputy documentation is crucial for several levels of intervention, including: conditions of release, plea negotiations, sentencing, rehabilitation services and advocacy services. In this case, deputies should have asked questions to draw out the details of the events that took place on the bed, and to flesh out discrepancies in the accounts.

5) Minor Incidents:

The policy does recognize that there will be rare instances where the deputy may determine that arrest serves no public safety interest.

This clause is included to avoid arrests in those rare occasions that an assault occurred but the victim is neither injured nor afraid of the suspect. Below is the summary of a case where a deputy did not arrest with probable cause.

Ms. Jackson does admit to pushing Mr. Jackson out the door and throwing his keys out the window. Jackson, however, was not injured nor did he report being afraid of Ms. Jackson. He admits he did agree not to return to the residence until he completed alcohol treatment. Mr. Jackson was not drinking tonight.

When responding to a domestic assault, a deputy should avoid arresting the assault victim on an outstanding misdemeanor warrant. Deputies can arrange a court date with the victim and advise the warrant office accordingly as soon as possible.

If a person is afraid to call for help in an emergency because of parking tickets or minor violations, then people – usually poor people – become more vulnerable to domestic violence. Therefore, deputies are cautioned against enforcing warrants for minor and nonviolent offenses when responding to an abuse call. If the victim has a warrant out for an assault the deputy should consider making the arrest.

In general, this new policy requires deputies to take two important steps when both parties have used violence: first, thoroughly question each party to determine if either was acting in self-defense, and secondly, determine who is the predominant aggressor and arrest him or her. Other points to always keep in mind are:

Victim's input: The decision to make an arrest rests with the deputy and not on what the victim wants or desires. Because of this, the deputy should not even ask the victim if s/he wants the suspect arrested.

Twelve-hour rule: Deputies should note that the law now allows a warrantless arrest up to twelve hours after the assault, rather than the old four-hour limit.

Use of citations: State law prohibits deputies from issuing a citation in lieu of a custodial arrest in domestic abuse cases.

II. REPORTS AND INVESTIGATIONS

The police report is undoubtedly the most important document in a domestic violence case. A number of people rely on it to make decisions regarding the case: the judge, the detective, the prosecutor, the probation officer, child protection and other family advocates, as well as counseling programs who work with the offenders. Deputies typically do not write reports with all these uses in mind. One might think that in order for the report to function adequately in all the roles it plays, it would need to be a general thesis rather than a thorough, but relatively short, two-page report.

Deputies must see themselves not only as a part of the coordinated community response to domestic violence, but as frontline witnesses to events that inform all other practitioners that will act on this case. Deputies are the eyes and ears of the entire legal system. They observe what no one else can. No one else sees the context in which the violence occurs. No one else senses the fear that was present the night of the assault. No one else talks to the victim in the immediate aftermath of an incident when she may be most willing to talk about what really happened. No one else sees the children at the scene, their relationship to the violence, and the danger they are in. No one else encounters the offender before he or she is prepped for a court hearing.

It is important for deputies to recognize the cumulative effect of their reports as well. Most domestic violence cases will not be resolved by processing a single incident. But as the community begins to coordinate its response, it makes available to the intervention system – the judges, the advocates, and prosecuting attorneys – a collection of reports related to a single offender. The first or second well-written report may not tip the scales, but often the third or fourth one will.

This section of the manual offers a guide for writing detailed, concise reports so that an entire system set up to reduce domestic violence in our community can make informed and fair decisions about each case.

Deputies responding to domestic assault related calls will conduct a thorough initial investigation. In accordance with state law and Office policy, deputies will complete a report whenever they respond to any domestic assault call, regardless of whether they identified probable cause.

A. Documentation and Evidence Collection: (Deputies should refer to the beige laminated card, shown later in this manual, for guidance on a model domestic assault investigation and report).

In our review of cases, we found that almost all deputies followed the state law on writing domestic violence reports. Most deputies wrote narratives that clearly showed the basis of their probable cause arrest and fulfilled the requirements of our former policy. However, due to specialized intervention needed in these cases, the audit did lead the Sheriff to conclude that the SLCSO needs to elevate its standards for domestic violence related reports, particularly in the following areas:

- More detail in the account of events, exploration of self-defense and probable cause.
- More physical evidence, such as pictures. In the reports reviewed, where physical evidence was even mentioned, two out of three of those cases did not actually collect, or photograph that evidence (with the exception of photographing victim injuries).
- Consistent use of witness interviews and documentation of those interviews. There was no documentation of interviews with witnesses other than the victim in over a third of the cases with witnesses present.
- Investigations tended to focus on two offenses only: assault, and violation of protection orders. (See Appendix 1 for a list of common crimes associated with domestic violence cases.)
- Two common crimes associated with domestic violence are assault by strangulation, and stalking. SLCSO deputies have not received training on the special methods to investigate these cases. See Appendices 2 and 3 for information on investigation of these crimes.
- Incidents in which the woman was intoxicated frequently resulted in a less thorough report than cases with sober victims.

B. Completing and filing reports:

Domestic assault-related reports shall be filed during the same shift in which the deputy responded to the call.

With this new policy, deputies are expected to follow **three basic steps:**

- 1) If the deputy has probable cause to determine that a crime was committed based on available information, then s/he will file a report that follows the outline on the beige laminated card (see page 24). Once deputies have used the format a few times, they should be able to dictate reports in 8 to 12 minutes. Deputies should not limit their domestic abuse related investigations to assault or violation of protection order cases but write a report using this format on all domestic abuse related offenses.
- 2) If a deputy responds to a domestic violence call and finds no basis for a probable cause determination that a crime occurred the deputy will file a report with a brief narrative that describes the situation (see Short Report on page 35).
- 3) In all calls to disturbances among domestic partners, the deputy will ask and document responses to the three risk questions on the back of the laminated card.

Following is an example of the beige laminated card. The left column shows the front side of the card and the right column shows the back. All deputies should carry this card as a reference until the outline is committed to memory. Following the card, each section is reviewed briefly.

**ST. LOUIS COUNTY
SHERIFF'S OFFICE**

**Domestic Abuse
Arrest/Incident**

Report Writing Checklist

Document the following:

1. Time of arrival and incident
2. Relevant 911 information
3. Immediate statements of either party
4. For each party interviewed, document:
 - (a) relationship of parties involved/witnesses
 - (b) name, DOB, address, phone - work/home
 - (c) his/her account of events
 - (d) responses to deputies' follow-up questions
 - (e) past history with same/other victims
 - (f) deputy observation related to account of events
 - (g) injuries, including those not visible (e.g., sexual assault, strangulation)
 - (h) emotional state/demeanor
 - (i) alcohol or drug impairment
5. Names and phone numbers of two people who can always reach victim (#s not to be included in report)
6. Where suspect has lived during past seven years
7. Children present, involvement in incident, general welfare. Children living at residence, not present
8. Evidence collected (e.g., pictures, statements, weapons, other)
9. Medical help offered or used, facility, medical release obtained
10. Rationale for self-defense or predominant aggressor (see reverse)
11. Summarize actions (e.g., arrest, non-arrest, attempts to locate, transport, referrals, victim notification, seizing firearms)
12. Existence of OFP, probation, warrants, & prior convictions
13. Responses to risk questions (see reverse)

Code this call a DOMESTIC

RISK QUESTIONS:

1. Do you think he or she will seriously injure or kill you or your children? What makes you think so? What makes you think not?
2. How frequently and seriously does he or she intimidate, threaten, or assault you?
3. Describe most frightening event/worst incidence of violence involving him/her.

SELF-DEFENSE DEFINITION:

Reasonable force may be used to resist, or aid another to resist, an offensive action. A person may use all force and means that she or he reasonably believes necessary to prevent bodily injury that appears imminent. The use of force must be reasonable given the strength differential and the nature of the threat, i.e., deadly force is justified when it is necessary to prevent death or great and imminent bodily harm.

**PREDOMINANT AGGRESSOR
CONSIDERATIONS:**

Intent of policy - to protect victims from ongoing abuse

Compare the following:

- severity of their injuries and their fear (incident)
- use of force and intimidation (incident)
- prior domestic abuse by each party
- likelihood of each suspect to cause future injury
- fear of each person of being injured by the other

**DETERMINING THE VALIDITY
OF ORDERS FOR PROTECTION:**

Any protection order should be presumed valid (even an out-of-state order) if all of the following are identified:

- names of the parties
- the date the order was issued, that date being prior to the date of enforcement
- the expiration date of the order
- specified terms and conditions against the abuser
- the name of the issuing court
- the signature of a judicial deputy or of someone on behalf of a judicial deputy

1) Report-writing Checklist (Side one of Laminated card)

1. **TIMES OF ARRIVAL AND INCIDENT:** The narrative with the supplemental section of report should inform the prosecutor when the assault occurred and when deputies arrived at the scene, in order to determine if statements are fresh enough to be admitted (as excited utterances or as present-sense impressions).

Statements or utterances made immediately after an assault often allow a deputy to testify to what the victim said. (See Appendix 4 for an explanation of hearsay exceptions in deputy testimony.)

2. **RELEVANT 911 INFORMATION:** Information provided to a deputy by a 911 dispatcher should be included when considering the totality of circumstances in determining probable cause. If the caller says he heard a woman scream for help and the male suspect claims nothing happened, the 911 information alerts the deputy to inconsistencies in the evidence. The narrative should begin with any information the deputy considered in his/her investigation of the case, as shown in the excerpts below.

- ...responded to a domestic disturbance call at 10:17 hrs. in which neighbor heard a woman screaming for help and a male voice yelling at her.
- ...responded to an upset caller who said ex-husband left message threatening to kill her.

3. **IMMEDIATE STATEMENTS OF EITHER PARTY:** Prosecutors need to know any spontaneous information blurted out upon a deputy's first contact with suspects or witnesses. It is considered by law and by many jurors as far more credible and truthful information than the more measured responses associated with an interview.

4. **DOCUMENTATION NEEDED FOR EACH PARTY INTERVIEWED:**

A) **RELATIONSHIP OF PARTIES/WITNESSES INVOLVED:** In order for a case to be prosecuted as a domestic, the deputy must document that the relationship falls into one of the following categories:

- spouses and former spouses
- parents and children
- persons related by blood

- persons who presently reside together or who have resided together in the past
- persons who have a child in common, regardless of whether they have ever lived together or been married
- persons with a pregnancy in common
- persons involved in a significant or romantic relationship

If the relationship of the parties falls into one of these categories, then a deputy has warrantless arrest authority and the victim can apply for a civil protection order. For other witnesses at the scene, the prosecutor wants to know how people are related to each other—for example, relatives or friends—to be alert for why one or more parties might alter the truth. Child protection wants to know the relationship between children and the parties involved in the incident.

B) NAME, DOB, ADDRESS, WORK AND HOME PHONE NUMBERS: Proper identification is necessary for doing background checks, notifying involved persons of hearings that may occur far into the future, and proving that the person charged is the person involved in the incident. Many of the cases reviewed in the audit identified only the victim and the suspect, making it impossible for the prosecutor to use witnesses in the case.

C) EACH PARTY'S ACCOUNT OF EVENTS: Deputies should never let a taped statement stand in for a report on their interview with a suspect or witness; nothing takes the place of a good interview. Interview the suspect and victim separately. Minimize the suspect's interference with the victim's interview. Avoid making accusatory statements, acknowledge frustrations and anger, allow suspects to tell their story before confronting them with conflicting evidence, and focus on what happened, not on why.

D) RESPONSES TO DEPUTY'S FOLLOW-UP QUESTIONS: Document the parties' accounts of events and their answers to follow-up questions. This is the part of the report that others draw on to guide their interventions in these cases. Even if it appears there will be no prosecution in a case, because domestic abuse is a patterned crime, it is important to

accumulate information on each incident.

E) PAST HISTORY WITH THE SAME OR DIFFERENT PARTIES: The Minnesota state legislature has made it easier for prosecutors to get history into evidence in domestic violence cases in order to establish the intent of suspect. As stated earlier, most victims seek to protect their abusers within a short time after a domestic assault, so obtaining as much information as possible immediately after the assault is critical.

F) DEPUTY OBSERVATIONS RELATED TO ACCOUNT OF EVENTS: Deputies should document any observations that corroborate or call into question a party's account of events. If he says "she ripped the phone out of the wall," document if the phone cord appears to have been ripped out of the wall. If she says, he "tore the place apart," document what the place looks like.

G) INJURIES, INCLUDING THOSE NOT VISIBLE (E.G., SEXUAL ASSAULT, STRANGULATION): Our audit found that deputies were quite specific in describing injuries, however, in a number of reports, deputies did not note signs of physical impairment or pain which later surfaced at a hearing. Deputies should ask victims to describe any pain and document relevant information. (Appendix 2 contains information on the danger, and the importance of documenting a suspected choking incident.)

H) EMOTIONAL STATE/DEMEANOR: In a DWI report, deputies are accustomed to describing an image of the person charged. They routinely document speech pattern, existing signs of alcohol use, slurred speech, watery eyes, odor of alcohol, and impaired motion. Deputies must do the same when responding to a domestic violence call. When members of our audit team interviewed deputies about cases in which they believed the suspect was battering the victim, every deputy could articulate behaviors that made him/her believe abuse was going on. "He wouldn't let her out of his sight when we were there," "He was telling her what to say when he was yelling his remarks to me," "She was obviously terrified of him, she kept glancing over to see if he could hear her." These are observations that prosecutors and others need in order to get a picture of what the deputy sensed at the scene. The law enforcement deputy is the only person in the system to actually see and hear

firsthand what really happened; what lawyers and judges see in court are scripted versions of the deputy's real experience.

D) ALCOHOL OR DRUG IMPAIRMENT: Deputies almost always document the presence of alcohol or apparent drug use. But there are no guidelines on how to document this information. In reports reviewed by auditors where alcohol use was documented, the information was rarely useful because it was not specific enough. For example, "both parties were drinking." is in itself not a helpful statement. It does not tell the prosecutor if either party had impaired ability to give a coherent statement, if there was any behavior that indicated drinking, or how much either party might have consumed. If the deputy thinks statements are unreliable because of drinking, s/he should indicate why. Below are useful ways to document alcohol or drug use.

- Johnson said he had about three beers. He had a strong odor of alcohol on him and his speech was slurred. I had to keep repeating myself for him to follow my questions. He was unable to walk without steadying himself with the wall or furniture.
- Both parties said they had been drinking. I observed no indicators of alcohol consumption or impairment. Both parties were able to speak coherently.

5. NAMES AND PHONE NUMBERS OF TWO PEOPLE WHO CAN ALWAYS REACH THE VICTIM: Jail records show that, in over half of the cases, we have not been able to locate the victim to inform her/him of the suspect's release from jail. The county prosecutor's office is also frequently unable to contact the victim as the case enters a pre-trial or omnibus stage. Probation officers conducting PSIs, advocates providing follow-up services, and rehabilitation providers conducting victim safety checks are all hampered in their efforts to find the victim. Therefore we now require arresting deputies to obtain the victim's phone number as usual and, in addition, to ask the victim for names and numbers of two people who can always reach her/him. These numbers should not be put on the arrest or incident report because the suspect has access to those. Instead, put them on the *Request for Commitment* jail form.

6. WHERE SUSPECT HAS LIVED DURING PAST SEVEN YEARS: This is needed to conduct a criminal history check; repeat offenses are enhanceable and alter sentencing recommendations.

7. CHILDREN, BOTH PRESENT AND ABSENT, THEIR INVOLVEMENT IN INCIDENT, THEIR GENERAL WELFARE: Children are affected by conflict in their lives whether that be verbal fighting, domestic abuse, depression, or living with a parent obsessed with drinking, gambling, or overwork. Those who follow a deputy's initial investigation need to know specifically how children are, or are not, involved. Did a child witness this incident? Were they physically involved? A deputy should note if s/he has concerns about the general welfare of a child. When asking the victim risk questions, include children in your conversation.

Having noted these concerns, it is absolutely crucial not to threaten either party with the loss of their children. This does not protect the children and frequently has just the opposite effect. Domestic abuse is an ongoing crime; it has a pattern, and it rarely ends abruptly because of one intervention. It ends because of pressure on the abuser to stop or be punished and the ability of the victim to break the many psychological, economic, and cultural holds/controls the abuser has established over time. Most abusers threaten victims with the loss of children: "I'll take the kids and you'll never see them again," "No judge will ever give you custody of those kids!" or "Welfare will take those kids off you in a second." One deputy working on the audit put it well:

When I conduct my investigation, I need to remember what this crime is all about. Most batterers have got her scared to death that she is going to lose her kids, be put in a psych ward, lose her house, or whatever. Somehow she is going to lose big time if she reaches out for help. I need to know how these threats cast a shadow on my interview. I also need to recognize that a lot of these women are afraid of me because I represent the evil state which has been held up to her as the thing that is going to harm her. We are going to see her as a lying Delilah, doing bad things to her man, and a bad mother. If I reinforce that message I won't get half the information that I need from her and he'll probably walk.

After much debate and careful consideration, the audit team recommends that deputies at the scene decide when to interview a child as part of their crime scene investigation. The committee did recommend and the sheriff agreed, that in all cases the deputy will check on and document the general welfare of the children. The deputy is required to contact social services if a child is in immediate danger. In cases where deputies do not report immediate danger but children are present, the report will be forwarded to the Initial Intervention Unit for them to make a determination if intervention on behalf of the child is warranted. This determination will rely heavily on a deputies' documentation by Risk questions.

8. EVIDENCE COLLECTED (E.G., PICTURES, STATEMENTS, WEAPONS): Deputies should concisely (one sentence is often sufficient) list the evidence gathered at the scene.

9. MEDICAL HELP OFFERED OR USED, WHAT FACILITY WAS USED, MEDICAL RELEASE OBTAINED: This should be noted in the report, even when medical assistance is limited, in order to alert subsequent investigators of evidence. Victims are more likely to sign a medical release right after an assault than at any other time so deputies should see it as their responsibility, rather than someone else's later on, to obtain the release.

10. RATIONALE FOR SELF-DEFENSE OR PREDOMINANT AGGRESSOR: A deputy makes three primary determinations on a domestic abuse related call: was there probable cause; did any party act in self-defense, and; if there is probable cause to arrest both parties, who is the predominant aggressor? The report should make it clear why the deputy made the determination s/he did and summarize those conclusions.

11. SUMMARIZE ACTIONS: Including; arrest, non-arrest, attempts to locate, transport, referrals, victim notification, seizing firearms, 911 tape of OFP requested.

12. EXISTENCE OF PROBATION, WARRANTS, PRIOR CONVICTIONS.

13. RESPONSES TO RISK QUESTIONS (SEE REVERSE OF CARD). See next page.

2) Risk Questions/Assessing Danger (Side two of Laminated card)

- 1) DO YOU THINK S/HE WILL SERIOUSLY INJURE OR KILL YOU OR YOUR CHILDREN? WHAT MAKES YOU THINK SO? WHAT MAKES YOU THINK NOT?
- 2) HOW FREQUENTLY AND SERIOUSLY DOES S/HE INTIMIDATE, THREATEN, OR ASSAULT YOU?
- 3) DESCRIBE MOST FRIGHTENING EVENT, OR THE WORST INCIDENCE OF VIOLENCE INVOLVING HIM/HER.

These open-ended questions are meant to replace the previous risk questions. Has he ever threatened to kill you? Has he ever choked you? and Has he ever used a weapon? While affirmative answers to those questions indicated an elevated level of risk, they left the reader guessing as to what particular action might make us think he will or will not seriously injure her. No short list of behaviors could help us conclude that there was minimal or no danger. Now we are asking the victim for his/her opinion about the level of fear, level of risk, and pattern of abuse. We have settled on three questions to ask in the emotional moments following a specific incident that might help shed light on a whole history of violence. While a deputy cannot conduct an interview long enough to fully understand a pattern of abuse, s/he is in the best position to get an overview of violence at a time when the victim is most likely to tell someone.

Deputies should keep in mind that some victims may clearly answer the three risk questions, while others may have to be asked in different ways. Some will give partial answers requiring the deputy to probe for significant details. For example, she might say she thinks he could seriously injure her because, “he just started drinking after three years of being sober and he’s all stressed about his job.” If the deputy asks about the job, the victim might offer, “It looks like he’ll be laid off next month.” Deputies should probe until they understand the basis for the persons’ fear or lack of fear. In this example, the deputy could ask, “What about his drinking or being under stress makes you afraid?”

Domestic violence victims will often provide information if the deputy knows how to ask in a way that does not raise victim’s defenses or cause them to fear retaliation from the abuser or from the legal system itself.

A number of abuse victims will hint at trouble but be vague. In these cases, the deputy must draw the victims out with additional questions. Other victims will claim there is no problem and state they have no fear of the suspect even though a deputy's observations, instincts, and common sense point toward a volatile, perhaps dangerous, situation. When deputies cannot elicit information from victims, they should document their own observations. Below are two sample summaries of information on victim risk.

- Ms. Harris states that she does think Kiefer could seriously harm her because he has threatened on many occasions to kill her and make it look like an accident. He has been abusive for most of the nine years of their marriage but the violence has been getting worse since she told him two months ago she wanted a divorce. He assaulted her four or five times in the past six months. In April, he tried to throw her out of a moving vehicle, the most serious incident to date.
- Jacobson did not think her husband posed a significant threat because he has been saying these things for years and this is the first time he has ever even indicated that he would hit her. He has never hit her in the past, nor has he tried to coerce her into doing or saying things she didn't want to do or say.

3) Example of Deputy Report Narrative - Long Form

A final note for the laminated card: it is meant to be a tool to assist deputies in investigation, dictation and report writing. Below is an example of a report written using the format it describes.

At 16:30 hrs, 911 operators dispatched Squad 612 to 987 Blue Street in response to a complaint by a child that his father was hitting his mother with a cord. We arrived at 16:37. Sandra Delaney (DOB 5-2-56) answered the door and said, "If you don't get him out of here, something bad is going to happen."

I asked what the problem was and she gave the following account. She came home from work at approx. 5:30. Her husband Jack Delaney was upset that she was late. He began yelling and swearing and accusing her of having an affair. She said she left the living room, went to her bedroom, and Mr. Delaney followed her and again began yelling. She stated that he began pulling clothes out of the closet and telling her to move if she was so unhappy with her family. She tried to leave but he grabbed her. She tried to get out of the room, but Delaney continued to hold her and began

hitting her with the extension cord he was holding. She said she yelled at her daughter (seven yrs.) to go get her brother from the garage. Her son Bryan (16 yrs.) came into the house and started yelling at Delaney to let go of his mother. Delaney let go and said, "Your mother's a tramp, you go ahead and defend her." The daughter called 911. When I asked Mrs. Delaney about the scratch marks on Jack Delaney, she said she thinks she scratched him when he was holding her in the bedroom. She said this all occurred about fifteen minutes ago. I asked her if she had hit or in any way struck Mr. Delaney. She said she got one arm loose and swung at him, and thinks she may have hit him two or three times.

Injuries: She had four red lines slightly swelling on the back of her right leg where she says Delaney hit her with the cord. She also had red marks on her right arm and shoulder.

Emotional state/demeanor/sobriety: Mrs. Delaney was very upset. She appeared to have been crying.

Evidence: There were a number of shirts and jackets still on their hangers lying on the bedroom floor. Mrs. Delaney said she was also hit on her back but did not want to show me her back. I asked her where the electric cord was and she said he threw it at her in the bedroom. I found a six-foot brown electric cord on the floor near the foot of the bed and placed it into evidence.

Next, I interviewed the suspect, Jack Delaney, who provided the following account. He said Mrs. Delaney came home over an hour late from work and refused to talk to him when he asked her where she had been. He asked her several times to talk to him but she refused. He stated that he followed her into the bedroom and when he raised his voice, she slapped him. He said he then restrained her. I asked him if he hit or struck Mrs. Delaney with his hand or anything else and he said no. He also showed me a scratch mark on his left hand where he said she "clawed me for no reason at all." Mr. Delaney refused to answer any follow-up questions.

Injuries: I observed a scratch on the back of Mr. Delaney's hand with a small amount of blood.

Emotional state/demeanor/sobriety: Mr. Delaney appeared agitated. He stated that he had consumed two beers that evening and he had a slight odor of alcohol about him. He was coherent and able to understand and respond appropriately to questions.

Then I interviewed the witnesses, Jessica and Bryan (ages 7 and 16), who provided the following account of events. Jessica, the 7-year-old, said she heard her mother yelling at her father to let go of her and ran out to get her brother. Bryan did not want to talk to me, but did say that he came into the house to keep things from getting out of control. He would not be specific about what that meant.

Phone and Address: Same as victim/suspect. See face sheet.

Deputy observations related to witness account of events: Jessica appeared afraid and shaken-up.

Presence, involvement, and well-being of children: It appears that neither of the minors were physically involved in the altercation, but could be interviewed at a later date for more details.

Suspect's criminal/protection order history: Mrs. Delaney said that she got a protection order against Mr. Delaney after he broke her collarbone three years ago, but that it has since expired.

Risk Questions: I asked Mrs. Delaney about past abuse and she said her husband has been violent in the past. Three years ago, he broke her collarbone by hitting her with a broom. That was the worst incident of violence, but she said things have been getting worse lately and that Delaney had been drinking heavily since his mother died in the spring. She did think he could "accidentally go too far" because of the drinking.

Actions: Based on the information available to me, and after consideration of the circumstances described in this report, the following actions were taken: I arrested Mr. Delaney for 5th degree assault. I mirandized him, handcuffed him, and placed him in the squad car. I determined Mrs. Delaney's actions to be in self-defense. Victim Help Card given to Mrs. Delaney. I also explained to her how to apply for an order for protection, but she stated that she did not want to separate from her husband. Two emergency contacts for the victim were obtained.

Additional Notes: On the way to the jail, Delaney made several veiled threats toward Mrs. Delaney, stating, "Someday I'll give that bitch something to call the cops about."

Evidence Collected/follow-up Information: The following photos and/or physical evidence were collected: I took photographs of the clothes on the bedroom floor and Mrs. Delaney's leg and arm injuries. I also placed the electric cord into evidence.

No weapons involved in incident. Hunting weapons locked up in a back closet.

Written statements taken from Mrs. Delaney, Mr. Delaney refused.

Medical attention: Refused by both parties.

4) Example of Deputy Report - Short Form

If the deputy did not establish probable cause that abuse occurred but an abuse complaint was made, then the deputy will add a short narrative to the report (instead of using the outline on the laminated card), explaining their investigation of the claim.

The report need not be long, but should include the basics of the investigation and an explanation as to why probable cause was not determined. Below is a sample short narrative.

Dispatched to a domestic at 123 Main Street on 05/05/00 at 22:40 hrs. A caller said she heard screaming and shouting from the apartment below. Upon arrival, deputies heard yelling coming from the rear of the house but heard no indications of a physical altercation. On entry we separated the parties. Sandra Epton (DOB 4-15-48) said that she and her husband had been arguing over him being fired at work for excessive absences. Sandra said neither party had threatened or assaulted the other. She was agitated but did not appear to be injured or afraid of Kurt Epton (DOB 5-18-50). Kurt's statement to deputy Perro was consistent. Both parties were asked the three risk questions and both claimed there had been no previous acts of violence or domestic abuse. Both parties were warned to keep the noise level down and encouraged to call the police if either party needed assistance. There were no other persons present at the residence. I checked with 911 who said the caller was asked and did not see or hear an actual assault. Through the investigation, we determined that the call was not a domestic abuse situation.

In the above example, the deputy included enough information in his report to indicate to his supervisor that the decision to change this to a disturbance and write a short report was based on a reasonable

investigation. The deputy also asked the risk questions even though the parties said there was no abuse. The report suggests that if there were no other calls (OFP's) then no follow-up appears to be warranted.

During booking, the deputy shall record the victim's contact information on the Request for Commitment Form. That information shall include the victim's phone number as well as the names and phone numbers of at least two people who can always reach the victim.

As stated earlier, in domestic violence cases, victims are often difficult to reach after an assault. They may be in hiding, staying with friends and relatives, have no phone, or avoiding contact attempts made by staff in the criminal justice system. It is important that information reach a victim of domestic violence, such as the progress made in a case, and any notifications of the defendant's release from jail. Getting third-party contact information helps guarantee that a victim will know when someone in the criminal justice system has information s/he might need.

A deputy should pursue a more comprehensive record check on all domestic abuse related cases, and document any additional history or predominant aggressor evidence gained there, to determine if the offense is enhanceable.

Notify Supervisor: A patrol supervisor will be notified of a domestic violence related incident as soon as practical.

III. MANDATED VICTIM ASSISTANCE

It is the policy of the Sheriff's Office to provide and promote effective responses to victims of domestic violence. Since a timely response to a victim's situation is critical, especially in a rural area, the responding deputy will make referrals to, and have contact with, the local battered women's program.

Deputies will advise victims of the availability of services and refer them to the appropriate agency for information on obtaining a protection order. Victims will also be given the legal rights card prepared by the Minnesota Department of Public Safety.

Following a domestic related arrest, deputies will advise female victims that an advocate will be contacting them to explain their legal rights and options.

Arresting deputies will contact Range Women's Advocates (Northern St. Louis County) or the Women's Coalition (Southern St. Louis County) immediately following the booking procedure, to inform them of the arrest. When a male victim is in need of an emergency advocate, the deputy or jail correction's deputy can contact Range Women's Advocates (Northern) or the Women's Coalition (Southern). The Women's Coalition will contact an on-call advocate from DAIP for a male victim.

Prior to giving the victim the victim rights card, the deputy will write the ICR number on the space provided in addition to his or her name.

If the victim does not have available transportation and wishes to go to a shelter or other safe place, the responding deputy will offer to transport the victim if possible, or assist in making arrangements for transportation to a safe place.

IV. TAKING STATEMENTS

It is the policy of the Sheriff's Office to audio-record all relevant statements by all persons who are parties to, involved in, or witnesses to, a domestic assault related case whenever possible.

A. Audio-Recorded Statements The MN Supreme Court requires that a custodial interrogation must be recorded when questioning a suspect at a place of detention, and otherwise where feasible. See State v. Scales, 518 N.W. 2d 587,592 (Minn. 1994). Deputies should also make reasonable attempts to audio-record formal statements taken from victims, suspects, and/or witnesses, and, whenever possible, the person who made the 911 call using the guidelines outlined below. The recorded statement will not take the place of the deputy's investigative report. The investigative report will contain a summary of all interviews, including a description of each subject's emotional appearance/state.

B. Written Statements If it is impractical to record the statement, deputies may obtain a written statement. Deputies who cannot get statements from victims because they are unable, unwilling, or too intoxicated to give one, will, after the deputy's best efforts, attempt to do so the following day.

V. INTERVIEWING CHILD WITNESSES OF DOMESTIC VIOLENCE

Deputies will check on the welfare of all minors present at the scene. A deputy who is aware of danger to a child must report it to child protection services.

Children should be interviewed if they witnessed an assault or were present or nearby when one occurred, or if a deputy has reason to believe the child has information relating to the incident under investigation or previous incidents of assault or abuse. Deputies should not interview a child if he or she feels it is not safe for the child to be interviewed. If a child witness is not interviewed the deputy will document reasons in their report. Deputies should consider the following in determining whether to interview children:

- *The child’s physical, emotional, or psychological ability to give a statement;*
- *The child’s age and ability to understand questions and formulate responses;*
- *Valid reasons one or both parents may object to an interview.*

Children in homes where domestic violence is used may be at particular risk when they become witnesses. The perpetrator may use pressure to get the child to see that his/her actions were “caused” by the victim. S/he may also threaten harm to either the child or the adult victim if they do not support the perpetrator’s actions. If they maintain contact with each other, still live together, or if the court approves visitation in a separation, it is difficult or impossible for anyone to prevent this from happening. When considering the possibility of consequences to children, deputies should be reminded that batterers often use children to manipulate and control a partner.

The victim may be afraid for the child’s safety and try to see that the matter is dropped rather than risk having the child testify. She/he could also question the child about what they saw or what they said to the investigating deputy, impressing on the child that their statement will have an impact on what ultimately happens to the abusive parent. With these factors in mind, a deputy can make a more informed decision on whether or not to interview children.

To the extent possible, children should be interviewed immediately, and privately. Regardless of whether a child is interviewed, the deputy will document any spontaneous and relevant statements by a child witness, the presence of children at the location of the incident, the physical and emotional condition of children present, and the involvement, if any, of children in the incident.

Deputies who do not feel comfortable interviewing a child witness may request assistance from an investigator.

Appendix 5 contains a list of tips for interviewing children.

VI. PRESENCE OF FIREARMS

When a deputy is investigating domestic assault and/or violation of protection order calls and has probable cause to believe that a criminal offense involving abuse against a domestic partner (see definition) has occurred, the deputy shall seize all weapons alleged to have been used by the suspect, or threatened to be used by the suspect, in the commission of a crime.

When investigating any situation/crime and the deputy verifies that the suspect is subject to a protection order, the deputy will seize all firearms and ammunition in the possession of the suspect and will report the incident to the Federal Bureau of Alcohol, Tobacco and Firearms for prosecution.

If the deputy determines that the suspect possesses firearms, the deputy shall seize such firearms if, in the judgment of the deputy, such firearms present a credible threat to the safety of the intimate partner, child, or the public.

VII. LOCATING SUSPECTS

With Intent to Arrest: It is the policy of the Sheriff's Office to attempt to locate suspects in domestic violence related cases whenever reasonably possible. A deputy who has probable cause to make an arrest and is within the statutory time limit for doing so, will attempt to locate the suspect, as long as the deputy:

- has information or knowledge regarding possible locations of the suspect; and*
- believes the attempt to locate the suspect will not jeopardize victim safety.*

Searching the premises: A deputy who has established probable cause to arrest and is given reason to believe the suspect is still on the premises, should search the premises to effect the arrest. A deputy who has not established probable cause may only search the premises with the owner's permission.

Note that the policy now requires deputies to attempt to locate suspects where conditions for arrest appear to exist.

VII. INTER-JURISDICTIONAL ENFORCEMENT OF PROTECTION ORDERS

It is the policy of the Sheriff's Office to comply with Title IV of the Violent Crime Control and Law Enforcement Act (P.L. 103-322), Section 2265, and Statute 518B.01, subd. 14(a), and enforce protection orders from this and other jurisdictions including tribal courts.

Deputies shall enforce the provisions of valid protection orders issued in other jurisdictions and by tribal nations.

For further explanation on determining whether an order is valid and enforceable, deputies should refer to Appendix 7: Enforcement of Inter-jurisdictional Protection Orders.

VIII. WARRANT AND SERVICE OF CIVIL ORDERS FOR PROTECTION PROCESS

It is the policy of the Sheriff's Office to prioritize service of warrants involving perpetrators who pose heightened levels of danger to particular victims, such as domestic violence related warrants, and to take immediate action in situations posing a risk to the victim.

A. Warrant Process

1) Assignment of Priority: 1. ASSIGNMENT OF PRIORITY Warrants involving domestic violence and heightened levels of violence and/or danger, including misdemeanor warrants, shall receive high priority. The staff person assigned to processing warrants received from court shall decide which domestic violence related warrants to prioritize by taking the following information into consideration:

- the original offense, documented history of violence by the offender; and*
- information provided by other agencies, including advocacy programs.*

2) Service: A deputy who exercises an arrest on a domestic violence related warrant shall document any significant statements made by the arrestee including:

- *circumstances involving the original offense, including admissions;*
- *intended retaliation against the victim;*
- *domestic violence related history of the offender or victim; and*
- *direct, indirect or implied threats against the victim.*

If the arrestee makes voluntary statements, the deputy shall complete an incident report and forward the report to the originating law enforcement agency. If the arrestee makes a statement or threat, the deputy shall notify the local battered women's program and attempt to contact the victim by contacting the victim directly or by contacting the victim through an authorized third party. If unable to contact the victim by either of these means, the deputy should request that the local battered women's program continue to try to contact the victim.

B. Civil Orders for Protection Process

It is the policy of the Sheriff's Office to assign high priority to the service of civil Orders for Protection. Service will be attempted immediately, and deputies will take care to document and respond appropriately to indications of danger to the Petitioner.

- *Staff shall not indicate to the respondent the existence of an OFP prior to its service.*
- *Staff should run a warrant check on respondents prior to service.*
- *Staff should review the front side of the Law Enforcement Information Sheet (LEIS) with the petitioner or his/her representative when the petitioner is available and in the presence of the serving deputy whenever possible.*
- *Deputies should ensure that all service related provisions in the order are effectuated.*
- *If the respondent makes any threat (direct, indirect or implied) or statement of admission, deputies should complete the second side of the LEIS, and fax a copy of both sides to the issuing court and to local law*

enforcement. If the statement rises to the level of a crime, deputies shall consider arrest, make an ICR and a complete report, and forward this to the prosecutor.

- *If the respondent makes a statement or threat that indicates a risk to the petitioner during or after being served, the deputy shall notify the local battered women's program and shall attempt to communicate these statements to the petitioner directly or through designated third parties (phone numbers on 2nd sheet of LEIS form). If unable to contact the petitioner by calling these numbers, the deputy should request that the local battered women's program continue to try to contact the petitioner.*

Section Two - RESPONDING TO EMPLOYEE DOMESTIC VIOLENCE

It is the policy of the Sheriff's Office to promote a climate of zero tolerance toward domestic violence. The Sheriff's intent is to educate Office personnel about the dynamics of domestic violence and to take a preventative approach to domestic violence within the Office - an approach that decreases the possibility of victimization and increases the career stability of deputies and staff.

As an employer, the Sheriff's Office can be influential in discouraging future acts of domestic violence by its employees. The Sheriff's Office will investigate all reports of domestic violence received through both official and unofficial channels and take such actions necessary to hold offenders accountable and protect victims of battering.

The Sheriff's Office has included in its overall domestic violence policy a detailed section (not shown here) on responding to employees who have allegedly committed acts of domestic abuse. In order to ensure the proper implementation of that policy, all deputies shall:

1. Contact a supervisor if they have reason to believe a staff member of the Office has committed an act of domestic abuse.
2. As with any citizen, follow the policy on serving orders for protection & warrants, initial investigation and report writing, and removal of weapons, with two additions:
 - a. Contact a supervisor at the scene of the call.
 - b. Seize any county-owned weapon in the possession of a suspect or protection order respondent, even if a weapon was not involved in this incident or any past incidents.

Section Three - SUPERVISORY OVERSIGHT OF DOMESTIC VIOLENCE RELATED INCIDENTS

The Saint Louis County Sheriff's Office received a substantial grant from the Department of Justice to conduct an assessment of our operations and to write and implement state-of-the-art policies based on what we know about this crime, the dynamics between offenders and victims, and the inherent problems with prosecuting domestic abuse cases. The Justice department is interested in changing long-held practices in law enforcement related to this crime. Our department is privileged to be selected as one of a handful of rural agencies in the country to set the standards for our profession. It is both an honor and a huge responsibility. The ability of our Office to lead in this area comes not through the development of these policies but through the work of our deputies in carrying them out on a daily basis. We anticipate a six-month implementation period. The supervisors should work with their staff to ensure that, within that period, our reports reflect the full implementation of the provisions in the patrol policy. Each deputy is expected to read this handbook and be familiar with all of its provisions, and each deputy will receive training on the new policy. This chapter on oversight is meant to lay out the specific supervisory steps that will ensure full compliance and an ongoing maintenance of this critical policy. The Justice Department has awarded us a follow-up grant to study our reports and responses for a full year after its initial implementation to determine each team's level of compliance. The proper application of steps detailed in this section should ensure a high compliance rate.

It is the policy of the Sheriff's Office to provide meaningful supervisory oversight. Supervisors immediately responsible for oversight of patrol operations will closely monitor deputy's investigative reports, determine whether all necessary steps were taken in the investigation, direct necessary follow-up investigation, and ensure notifications are made. The supervisors will then document those actions taken by means of a worksheet for each domestic violence-related incident. This worksheet will be retained only by the Lieutenant in charge of Investigation and Patrol divisions.

- *It is the responsibility of the Lieutenant in charge of the Investigation and Patrol divisions to ensure that there is*

consistency in the quality of domestic violence-related investigations and report writing. This can be achieved by making certain every patrol deputy, patrol supervisor, and criminal investigator is thoroughly familiar with the Sheriff's policies and procedures regarding the response to domestic violence related cases.

- *When a deputy has completed the investigation of the incident, the patrol supervisor will use the Supervisory Oversight Worksheet (a copy of which is located in the handbook), to make sure proper steps have been followed. When individual reports are not satisfactory, the reports will be returned to the deputy with specific instructions on rewriting the report.*
- *As soon as is practical, the patrol supervisor will either deliver or fax the completed worksheet to the appropriate Lieutenant in charge of the Investigations and Patrol Division.*
- *The Lieutenant will review the Supervisory Oversight Worksheets to verify that all necessary investigative actions have been initiated and all necessary notifications made.*
- *The Lieutenant will also review all reports and statements for thoroughness and determine if additional investigation is needed. In the absence of the Lieutenant, an appropriate supervisor will review the worksheet.*
- *The Lieutenant should monitor deputy reports to determine if additional training is warranted in investigative proficiency (e.g., interviewing techniques particularly for determining predominant aggressor and investigating self defense claims, report writing, collecting evidence, following official policy) as well as in the specific issues arising in domestic violence related cases. Such deputies will then be directed to appropriate trainings. The Lieutenant will continue to monitor deputy's investigative skills to determine the efficacy of training and the necessity for taking other measures.*

CONCLUSION

The St. Louis County Sheriff's Office is committed to acting as a model rural law enforcement agency in this area of public safety. By doing so, we reduce our agency's-and our individual deputy's-liability. More importantly, we lay the foundational work for a coordinated response to domestic violence cases which can and will save lives. Each deputy furthers our goals by

- ✔ Understanding the laws and polices governing domestic abuse cases.
- ✔ Responding in a timely fashion.
- ✔ Investigating cases thoroughly.
- ✔ Completing thorough investigative reports.
- ✔ Understanding the power dynamics operating in the cases.
- ✔ Offering victims assistance and referrals.
- ✔ Charging appropriately and be aware of all the crimes associated with these cases.
- ✔ Confiscating prescribed weapons and collecting evidence.

Appendix 1:

Common Crimes Associated with Domestic Violence Cases

Sexual assault	Harassment or threats through the mail
Dangerous weapon offenses (such as reckless use or pointing a gun at someone)	Receiving profit from prostitution, "pimping"
Tampering with a witness	Kidnaping
Arson	False imprisonment
Burglary	Depriving another of custodial or parental rights, "child-napping"
Damage to property	Malicious punishment of a child
Maltreatment of animals	Child neglect or abuse
Trespassing	Criminal neglect or abuse of a vulnerable adult
Terroristic threats	Obstruction of justice
Stalking	Habitual offender
Obscene or harassing phone calls	Murder
Interruption of telephone service	

Appendix 2:

How to investigate Strangulation Cases

Strangulation and Choking (the terms are used interchangeably) is a common form of violence in domestic violence cases. Strangulation can immobilize and terrorize the victim; her life is literally in the perpetrator's hands. However, all too often, deputies do not detect signs of strangulation, fail to document when it has occurred, underestimate its seriousness, and do not call medical personnel, despite the victim's risk of death from the after-effects of strangulation.

Deputies sometimes minimize or dismiss threats because they hear them so often when they investigate domestic violence cases. They sometimes assume a threat was made in a "fit of anger," concluding that the suspect did not intend to actually follow through. This is a dangerous assumption. It is important that deputies document all threatening statements allegedly made by the suspect. Deputies can charge a suspect with attempted murder if a threat to kill was made during the strangulation.

The importance of calling for medical attention when a victim has been strangled cannot be overemphasized. The after-effects of choking can be fatal, even hours after the assault. Because of this, every choking victim should be checked by medical personnel. Some victims may immediately state that the abuser tried to choke them, others may not.

Some possible signs/symptoms of choking:

victim called 911 and said that suspect was threatening to kill her or trying to kill her

victim has:

raspy voice	sore throat
difficulty talking, breathing, or swallowing	bleeding from the mouth
impression marks	loss of bodily functions
rope or cord burns	fainting
swelling of the neck	bruising

Suggested Interviewing Techniques:

Make the victim feel comfortable

Adjust the pace of questioning to the respondent's needs

Maintain established contact with parties—

i.e., have the same deputy ask follow-up questions

Ask for permission before touching her neck

Remain calm, even if victim is not providing information

Questions to determine strangulation:

Did he use one or two hands?

Did he shake you while strangling you? If so, how much?

How much force did he use and how hard did he grab you?

Did he grab from the front or from the back?

How long did he strangle you?

Did he use his hands, his arm, or an object?

Was he wearing rings?

Did he say anything while he was strangling you?

Questions to Determine Internal Injuries:

- Did you have difficulty breathing? Describe
- Did you feel light-headed, faint, or close to losing consciousness?
- Did you experience any loss of bodily functions?
- Are you experiencing nausea or vomiting?
- Are you in pain or discomfort?
- Are you having trouble swallowing?
- Have there been past incidents of choking?

Physical Evidence on the Suspect that is Suggestive of Strangulation:

- scratches or cuts
- bite marks on the arms, hands, or chest
- finger impressions on hands or arms

– Excerpted from “Domestic Violence: the Law Enforcement Response,” produced by the Domestic Abuse Intervention Project and the Law Enforcement Response Center, 1998.

Appendix 3: How to Investigate Stalking Cases

Today, all 50 states have enacted some stalking-related statutes in their state codes. In 1993, Congress directed the U.S. Department of Justice’s National Institute of Justice (NIJ) to develop a model anti-stalking code to provide directions in formulating such laws. Stalking laws differ somewhat from state to state. In some states, the laws have been rarely used. Primarily, this stems from a lack of training in both law enforcement and prosecuting agencies. Stalking cases are unique and difficult to investigate and prosecute.

1. Stalking cases often appear insignificant to the patrol officer in the beginning. Unless the deputy questions the victim appropriately and thoroughly, a potential or present stalking case can be completely missed.
2. Stalkers may commit criminal acts in multiple jurisdictions. The victim may live in one city, work in another, attend school in a third location, etc. Subsequently, there will be different locations and sometimes different victim names on crime reports that all relate to acts committed by one stalker. If different agencies do not communicate in some fashion, the “big picture” of a stalking case gets lost and the victim is not helped.
3. Stalking cases can last for several years.

4. Arresting and prosecuting a stalker, or obtaining a protection order, do not guarantee that the stalker will cease and desist. In fact, these actions may aggravate the situation. This does not mean that these remedies should not be used, but that they should be used in conjunction with a commitment to continue to work with the victim. It is also critical that appropriate bail and penalties are used to deter the stalker.

Common Harassing behaviors are:

- vandalism
- annoying or threatening phone calls
- following or other violations of protection orders
- actual assaults
- sending unwanted letters or cards
- leaving gifts for the victim
- showing up at the victim's workplace, home, or school
- attempting to obtain information about the victim from others
- disabling the victim's car
- taking mail from the victim's mailbox
- entering the victim's home when the victim is not there (may not manifest as forced entry since many stalkers have copies of keys)
- taking photographs of the victim or friends of the victim (new intimate)
- spying on the victim
- reporting the victim to authorities for crimes that did not occur
- reporting the victim to child protection agencies
- tapping the victim's phone

5. There are 3 parts to any stalking investigation:

- a). Assessment – learning as much as possible about the stalker and his/her method of operation. The responding deputy should interview the victim about the suspect and document the following:
 1. any actual pursuit or following of victim
 2. any actual pursuit or following of victim
 3. any history of violence against the victim or others.
 4. any information regarding a tendency toward emotional outburst or rage
 5. prior mental illness history
 6. substance abuse problems
 7. possession or knowledge of or fascination with weapons
 8. any history of protection order violations
 9. any annoying phone calls

10. any unsolicited correspondence
11. threats of murder and/or murder/suicide
12. any acts of vandalism or arson
13. is the victim in fear?

b). Corroboration – gathering and establishing evidence that corroborates a stalking behavior. Every stalking investigation should include a thorough research of the suspect's prior criminal history and/or prior contacts with law enforcement. Deputies should consider using search warrants in stalking cases.

Items to be alert for when serving a warrant include:

1. photograph of the victim (comments written on it)
2. photographs, diagrams, or drawings of the victim's home or work place
3. diaries, writings kept by the suspect that describe stalking activities or fantasies about victim
4. personal items belonging to the victim
5. video or cassette tapes that might have information such as surveillance footage
6. books describing stalking techniques
7. any keys that fit the house or vehicle of the victim
8. any equipment that appears to have been used to stalk the victim, such as binoculars

Deputies should seize any tangible items and/or photographs of evidence from the victim, such as:

1. taped phone messages
2. letters written to the victim by the suspect
3. objects sent to victim
4. evidence of phone tapping

c). Advising the victim of measures they might take to increase their personal safety. Generalizing about what a stalking victim should do in any particular case can be dangerous. Not all stalkers are the same, but certain advice is generally safe to give to all stalking victims:

1. Stop all contact with the stalker now and for good.
2. Restrict third-party intervention to law enforcement staff
3. Obtain a restraining order with the help of an advocate
4. Change her phone number and get a new unlisted one, but keep the original number with a machine on it to tape messages from the stalker.

5. Alter her work hours if possible and routes to and from work
6. Advise her co-workers, friends, relatives of the situation
7. Keep a diary of any and all attempts to contact her including dates, etc.
8. Save all evidence
9. If necessary, arrange for a phone tap
10. Avoid places the stalker frequents
11. If children in common, arrange for third party exchange for visitation
12. If possible, move to new address with a roommate and have all the bills in the roommate's name
13. Refer to an advocate to work on safety planning

– Excerpted from “Domestic Violence: the Law Enforcement Response,” produced by the Domestic Abuse Intervention Project and the Law Enforcement Response Center, 1998.

Appendix 4: Hearsay Exceptions in Deputy Testimony

In seeking to have the jury hear what the victim initially said, the prosecutor can employ at least two rules of evidence. As most peace officers know, the hearsay rule prohibits some out-of-court statements from being introduced into evidence at trial. When a victim is unwilling to testify, his/her statements to police are usually considered hearsay. Two exceptions to that rule can help the prosecutor confront this problem.

Present Sense Impression: One exception is referred to as the Present Sense Impression exception. This rule allows a jury to hear statements made by a victim about an assault, if they are made during the assault or immediately thereafter. These statements can be repeated in court by almost anyone who heard them, including law enforcement officers and any other witnesses.

The question then arises as to exactly how soon after the assault must the statement be made for the prosecutor to use it at trial. Though interpretations differ, some courts have indicated that statements made within a few minutes of an incident are admissible, but statements made as long as an hour later cannot be heard by the jury. As a result, this rule is most useful in a case that occurs in an urban setting where law enforcement officers can arrive quickly to the scene.

Excited Utterance: What the victim originally said is the Excited Utterance exception to the hearsay rule. This rule allows a jury to hear the victim's statements about the assault if she is under "stress of excitement" caused by the assault. Although each situation is different, the courts consider relevant factors such as the length of time elapsed, the nature of the assault, the physical condition of the victim, and any possible motive to falsify the statement. Where information about the emotional state was included in the deputy's written observations, the deputy often was allowed to testify about what the victim initially said.

In the present sense impression rule, time is the critical element. With the excited utterance rule, there are many elements seen and heard by deputies at a domestic violence scene that can build a successful prosecution.

Appendix 5: Tips for Interviewing Children

- Interview the child away from both parents.
- Interview the child in a place comfortable for children.
- Get on the child's level by crouching or sitting. Establish rapport.
- Ask some simple questions first to make the child comfortable.
- Explain why you are there and the action you intend to take.
- Get child's version of events.
- Avoid indicating the response you are looking for, or the child may simply give it to you.
- Be aware of any indication that the child is afraid of one or both parents.
- Be aware of a child's inclination to feel responsible or guilty about what has happened. Reassure the child.
- Don't pry information from the child. Be aware that children who are also victims of abuse may have been warned not to talk to outsiders and to distrust all adults.
- Document any signs of distress or of injury to the child.
- Document "Excited Utterances." (See Appendix 4 for Excited Utterance description)

– Excerpted from "Domestic Violence: the Law Enforcement Response," produced by the Domestic Abuse Intervention Project and the Law Enforcement Response Center, 1998.

Appendix 6: Supervisory Oversight Worksheet

Supervisor _____ Case # _____

Deputy _____ Date ____/____/____

Check the following boxes if the report includes this information and circle items needing attention.

- | | |
|---|--|
| <input type="checkbox"/> times of arrival and incident | <input type="checkbox"/> where suspect has lived last 7 years |
| <input type="checkbox"/> relevant 911 information | <input type="checkbox"/> children present, their involvement, and general welfare |
| <input type="checkbox"/> immediate statements of either party for each party interviewed: | <input type="checkbox"/> evidence collected (pictures, statements, weapons) |
| <input type="checkbox"/> relationship of parties involved | <input type="checkbox"/> medical help offered, facility used, release obtained |
| <input type="checkbox"/> name, DOB, address, phone #'s | <input type="checkbox"/> clear rationale for self-defense or predominant aggressor |
| <input type="checkbox"/> account of events | <input type="checkbox"/> summary of actions (arrest, non-arrest, attempt to locate, transport, referrals, firearm seizure) |
| <input type="checkbox"/> responses to deputies follow-up questions | <input type="checkbox"/> existence of OFP, probation, warrants, & prior convictions |
| <input type="checkbox"/> past history with same/other victims | <input type="checkbox"/> appropriate enforcement of tribal or inter-jurisdictional protection order |
| <input type="checkbox"/> deputy observation related to account of events | |
| <input type="checkbox"/> injuries, including those not visible | |
| <input type="checkbox"/> emotional state/demeanor | |
| <input type="checkbox"/> alcohol or drug impairment | |
| <input type="checkbox"/> names and phone #'s of two people to reach victim | |

Risk Questions

- Do you think he/she will seriously injure or kill you or your children? What makes you think so? What makes you think not?
- How frequently and seriously does he/she intimidate, threaten, or assault you?
- Describe most frightening event/worst incident of violence involving him/her.

Self Defense

Reasonable force may be used to resist, or aid another to resist, an offensive action. A person may use all force and means that s/he reasonably believes necessary to prevent bodily injury that appears imminent. The use of force must be reasonable given the strength differential and the nature of the threat, IE deadly force is justified when it is necessary to prevent death or great and imminent bodily harm.

- Predominant Aggressor Considerations:** Intent of policy - to protect victims of on-going abuse.

Compare the following:

- severity of their injuries and their fear (incident)
- use of force and intimidation (incident)
- prior domestic abuse by each party
- likelihood of each suspect to cause further injury
- fear of each person of being injured by the other

- Appropriate application of arrest/self defense/ predominant aggressor policy**

Comment on all circled items _____

Appendix 7: Enforcement of Protection Orders

A. What is an Order of Protection?

Under the Federal Violence Against Women Act (VAWA), a protection order is defined as: any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person.

The Federal full faith and credit provision of VAWA applies to both criminal and civil orders of protection, both tribal and non-tribal jurisdictions. Orders may differ in form, content, length, layout and names (i.e., stay away, restraining, criminal, and emergency or temporary protection order).

In some jurisdictions, a certification form is affixed to the order of protection verifying that it is a valid order of the court. However, under Federal law, a certification form is not required for the order of protection to be enforced. Nor is there any requirement that the order or the signature of the issuing authority be original or that there be a raised seal or stamp of the court on the document. Additionally, there is no requirement in the Federal law that a victim must register the order of protection in the enforcing jurisdiction before that jurisdiction enforces the order.

B. Basic Elements of a Valid Order of Protection

Any order of protection should be presumed valid if all of the following are found:

- ✓ The order gives the names of the parties
- ✓ The order contains the date the order was issued, which is prior to the date when enforcement is sought
- ✓ If the order has an expiration date, the date of expiration has not occurred
- ✓ The order specifies terms and conditions against the abuse
- ✓ the order contains the name of the issuing court
- ✓ The order is signed by or on behalf of a judicial officer (including tribal court officer)

C. Determining the Terms and Conditions of an Order of Protection

After providing for victim and officer safety, it is essential that the officer read the order in its entirety. An order may state something in one paragraph and specify exceptions in another. For example, an order may state that the abuser is to have “no contact” with a victim in one paragraph, and then in another state that contact may occur to arrange for visitation with the children. In this case, if the abuser contacted the victim for any reason other than to arrange for visitation, the order was violated.

D. Mutual Orders for Protection

In some cases officers may find that mutual orders for protection have been issued against both parties. Mutual orders should only be issued if both parties have filed independent petitions with the court and the court has made independent findings on each petition that an order for protection is warranted. However, it is frequently the case that, in order to avoid a contested hearing, the court will ask the parties to agree to a mutual order. The battered woman, who is the initial petitioner and who may be unrepresented by counsel, is generally unaware that a mutual order is not in her best interest. A mutual order can and frequently is used by the batterer to continue controlling/abusive behavior toward the victim.

Officers should avoid making mutual arrests simply because there is a mutual order for protection. Officers should consider the following when called to a violation of a mutual order:

- Who was the initial 911 caller?
- What is the relationship history?
- Who was the initial petitioner to the mutual order?
- If there is a physical injury to either party, consider whether that injury was the result of defensive action by the other party;
- What residence did the 911 call come from?
- Are there children and who has custody of them now?
- Are there any independent witnesses to what happened, i.e., neighbors, strangers?

Mutual orders for protection are difficult to enforce. However, officers should take the time to make sure there is independent probable cause against each party before making mutual arrests.

E. Firearm Provisions

1. Federal Provisions

It is a federal felony for the respondent to possess a firearm or ammunition once a final order for protection has been entered or the respondent has been convicted of the misdemeanor offense of domestic violence. Possession may include actual possession, constructive possession or simply access to the firearm. The term “firearm” is defined to include:

- a. Any firearm muffler or silencer; or,
- b. Any destructive device.

A destructive device includes a bomb, explosive, incendiary, poison gas, grenade, rocket missile or mine. Title 18 U.S.C. 921 (a)(3).

2. State Provisions

The state provisions on firearms are much more limited than the federal provisions and concern situations where the respondent used the firearm during a violation of an OFP.

- a. When a respondent is convicted of a misdemeanor or gross misdemeanor violation of an order for protection and the court determines that the respondent used a firearm in any way during the commission of the violation, the court may order that the respondent is prohibited from possessing any type of firearm for any period longer than three years and the remainder of the respondent’s life. A person who violates this provision is guilty of a misdemeanor. Minn. Stat. § 518B.01, subd. 14(j).
- b. When a person is convicted of a misdemeanor or gross misdemeanor violation of an order for protection, s/he is prohibited from possessing a pistol for three years from the date of conviction. A violation of this provision is a gross misdemeanor. Minn. Stat. § 518B. 01, subd. 14(k).

– A, B, C above excerpted from “Protecting Victims of Domestic Violence:” A Law Enforcement Officer’s Guide to Enforcing Orders of Protection Nationwide,” produced by the International Association of the Chiefs of Police with support from the Violence Against Women Grants Office, U.S. Department of Justice.

– D and E above excerpted from “Enforcing Orders for Protection: an Instructor’s Manual,” produced by the Minnesota Center for Crime Victim Services and the Minnesota County Attorney’s Association.

