

DOMESTIC VIOLENCE

POLICY:

It is the policy of the Omaha Police Department (OPD) that when a criminal act of Domestic Violence has occurred or been threatened, the primary responsibility of the responding officer is to conduct a thorough and complete investigation of the crime irrespective of the victims'/witnesses' wishes. If probable cause exists, officers shall physically arrest the person responsible.

DEFINITIONS:

Applicant (Plaintiff): The person who sought the protection order or initiated the court case.

Dating Relationship: A relationship that involves frequent, intimate associations and is primarily characterized by the expectation of affection or sexual involvement ([NRS §28-323](#)). Dating relationships do NOT include casual relationships or ordinary associations between persons in a business or social context.

Domestic Violence (DV): Any act of violence (threat of or actual) including but not limited to: 1) bodily injury or threat of imminent bodily injury with or without a dangerous instrument, 2) sexual battery, 3) physical restraint, 4) property crime directed at the victim, 5) violation of a court order of protection, or similar injunction, and/or 6) death perpetrated by an individual upon his or her intimate partner.

Exclusionary Order: A restraining order or protection order that contains a provision excluding the respondent from the premises occupied by the applicant.

Ex-parte: A legal term meaning "on one side." Most court orders are issued only after hearing where both the plaintiff and the respondent have an opportunity to be heard, however, protection orders are often issued ex-parte.

Harassment: To knowingly and willfully engage in a course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose ([NRS §28-311.02](#)).

Intimate Partner: A spouse, former spouse, persons who have a child in common whether or not they have been married or lived together at any time, and persons who are or were involved in a dating relationship.

Protection Order: A court order issued to provide protection to a victim of domestic violence or a victim of stalking, pursuant to [NRS §42-924](#), et seq. Protection orders prohibit the respondent from imposing any restraint upon the applicant, and from threatening, assaulting, molesting, attacking, or disturbing the peace of the applicant. A protection order may also include a provision that excludes the respondent from the premises occupied by the applicant.

Respondent (Defendant): The adverse party against whom a protection or restraining order is issued.

Restraining Order: A term broadly applied to many kinds of court orders that forbid the respondent from doing some act. This term is most often used to refer to orders issued in divorce cases, pursuant to Nebraska Revised Statutes ([NRS §42-357](#)).

Stalking: Willfully harassing another person or family or household member with the intent to injure, terrify, threaten, or intimidate ([NRS §28-311.03](#)).

PROCEDURE:

I. Investigation of Domestic Violence (DV) Cases

- A. Officers will conduct a thorough investigation and submit reports for all actual or alleged incidents of violence and crimes related to Domestic Violence (DV). As a part of their investigation, officers will:
1. Determine the location and condition of victims and suspects.
 2. Obtain or offer medical treatment for any injured persons.
 3. Determine if any weapons are involved or in the home.
 4. Interview victims, suspects, and any witnesses to the incident. Interviews should be conducted separately.
 5. The following questions should be evaluated:
 - a. Is there a history of violence by one of the parties against the other?
 - b. Is there a history of violence by one of the parties against other people?
 - c. Was there an escalation of violence on one person's part?
EXAMPLE: Did one party react to being slapped by beating the other person?
 - d. Do any injuries appear to be defense wounds?
 - e. Is one party in actual fear of the other?
 6. Officers shall attempt to confirm the identity of any domestic violence suspect by:
 - a. Obtaining a photo of the suspect from the victim.
 - b. Showing the victim a mugshot of the suspect.
NOTE: If the victim is unable to produce a photo of the suspect, officers will use a domestic violence camera to document the suspect's identity.
 - c. Officers shall document all identity confirmation efforts in a Supplementary Report.
 7. The policy of the OPD and the Douglas County Attorney's Office is to pursue prosecution where probable cause exists, including cases where the cooperation of the victim is either unavailable or not forthcoming.
 - a. If victims indicate they do not wish to prosecute, they will be informed that the decision to prosecute is made by the Domestic Violence Prosecution Unit. The victim does not decide whether to "press charges" or "drop charges."
- B. Reporting Requirements.
1. Documentation of DV incidents will include all necessary Incident Reports and completion of the Domestic Violence Supplementary Report ([OPD Form 200E](#)).
 - a. Officers will complete and submit a Domestic Violence Supplementary Report for ALL DV incidents even when an arrest is not made.

NOTE: The Omaha/Douglas County Victim Assistance Division has access to reports they may need via the Case Management system and/or via the Douglas County Attorney's Office.

2. For charges to be pursued against a suspect in a DV case, documentation of the incident is of the utmost importance.
 - a. Officers will maintain objectivity in reporting and avoid any personal opinions regarding comments made by the victim or suspect.
3. Officers will make certain all elements of all crimes involved in a DV incident are documented in their written reports, including but not limited to the following:
 - a. Body Worn Camera (BWC) recording details.
 - (1) The BWC recording details shall be documented for reference in the written report(s), but officers shall NOT rely on BWC as the official record of the incident.
 - (2) Officers may refer to the BWC recording(s) for exact quotes.
 - b. All statements of victims, suspects, and all witnesses, including children present.
 - (1) Officers will record, exactly as stated (to the greatest extent possible), any comments made by victims, suspects, or witnesses.
 - c. Name, sex, and ages of all children present.
 - d. Victim and suspect condition and demeanor. This includes any evidence of torn clothing, smeared make-up, visible or alleged injury, etc.
 - (1) Photographs of all injuries or damage to property will be obtained by officers in accordance with the "Photographing Domestic Violence Incidents" section of this policy. Reports will specifically indicate if photographs were taken and the type of photograph taken.
 - e. Any disarray to the house or damage to furniture.
 - f. Whether alcohol or drugs were involved by alleged abusers.
 - g. Symptoms of use of alcohol or controlled substance(s) by suspects.
 - h. The probation/parole status of suspects.
 - i. The relationship between victims and suspects.
 - j. The size of victims and suspects.
 - k. Any past history of violence, as reported by the victim.
 - l. Any prior DV incidents at the address (available through 911 computer-aided dispatch).
 - m. Physical evidence that was obtained (i.e., photographs, weapons recovered and/or impounded, etc.).

4. All cases of DV require a Domestic Violence Supplementary Report ([OPD Form 200E](#)).

C. Photographing DV Incidents.

1. Officers will document and photograph any actual or alleged injuries the victim or suspect may have sustained regardless of whether injuries are visible to the officer or not.

NOTE: Visible injuries may not be immediately recognizable but appear after time, such as in strangulation cases.

- a. The first photo taken will be an overall shot to provide reference.

EXAMPLE: A full body shot, picture of the house, etc.

- b. The second photo will be a closer shot that still shows designation.

EXAMPLE: For a cut on the elbow, include the elbow and part of the arm in the photo.

- c. The third photo will be a close up of the injury or damage.

2. DV incident photos shall be sent to the Domestic Violence Squad by email:

- a. Officers will follow the instructions provided in the document "How to Download and E-Mail DV Photos to the DV Unit."

- b. This document is saved in the [PowerDMS "Help Resources" folder](#).

3. Body Worn Cameras (BWC) and Mobile Video Recorder (MVR) recordings are not appropriate for documenting photographic evidence of DV. In case of an emergency and as a last resort, officers may take DV photos with an unofficial digital camera or cell phone, a BWC or MVR (This is NOT desirable, but is preferable to losing all evidence.).

- a. If a non-DV camera is used, the officer will burn the photos to a disc.

- (1) Officers shall email copies of the digital photos to the DV Squad using the steps in this policy.

- (2) Officers shall book the disc into property per PPM.

- (3) Non-OPD memory chips cannot be guaranteed to be returned to the owner and should not be sent to the DV Squad.

- (4) Officers shall indicate the incident RB# in the BWC or MVR recording program.

4. Officers will adhere to the following guidelines when they use DV cameras:

- a. Do not take more photos than necessary.

- b. DO NOT use the DV cameras on other calls, such as burglaries, in lieu of calling the Forensic Investigations Unit. The Forensic Investigations Unit will still be called on ALL FELONIES including felony DV incidents.

- c. Officers MAY take gang or intelligence gathering photos with these cameras. If so, the OFFICER is responsible for getting the photo to the proper unit via email or on a disc. Officers will NOT turn in memory chips with photos from any incident other than a DV incident to the Domestic Violence Squad and expect them to be processed.
- d. In EXTREMELY important non-DV cases, DV cameras or personal cameras can be used to collect evidence that would otherwise be lost (i.e., homicide scene being covered with falling snow, injuries to a victim being rushed to surgery, etc.). In these cases, the memory cards should be hand-carried to the Forensic Investigations Unit by the officer who took the pictures.
- e. Only take pictures of one case (RB#) per memory chip.
- f. Officers shall NOT DELETE PICTURES.
 - (1) Each photo is numbered sequentially by the camera. Therefore, each RB# should have a complete series of pictures with no missing photos.
 - (2) A missing photo could create legal defense issues.
 - (3) Prosecutors will decide which pictures will be used.
 - (4) A bad photo explains itself.
- g. All pictures taken at a crime scene are property of the OPD regardless of the media used (department-owned cameras, cell phones, personal cameras, etc.). Therefore, all photos taken with these cameras are the property of the OPD and are not to be sent, kept, saved, or downloaded for personal purposes.

II. Determination of the Primary Aggressor

- A. If an officer receives complaints where there is an alleged mutual combat situation, the officer will evaluate each complaint separately to determine who the primary aggressor was. If the officer determines one person was the primary aggressor, the officer need not arrest the other person believed to have committed an offense. In determining whether a person is the primary aggressor, the officer will consider:
 - 1. Prior complaints.
 - 2. The relative severity of the injuries inflicted on each person.
 - 3. The likelihood of future injury to each person.
 - 4. Whether one of the persons acted with a justified use of force.

NOTE: The primary aggressor is not necessarily the party who started the conflict but can be the party whose aggression was unjustified.
- B. In addition to any other required reports, officers who arrest two or more persons with respect to such a complaint will submit a separate Domestic Violence Supplementary Report ([OPD Form 200E](#)) which includes a detailed narrative setting forth the grounds for arresting multiple parties.

III. Arrest

- A. When officers have established probable cause to believe a crime has been committed and that the suspect is responsible, the investigating officer will arrest the person responsible EVEN IF THE VICTIM DOES NOT WISH TO PURSUE THE MATTER.
1. Officers SHALL NOT issue criminal citations in Domestic Violence situations.
- B. If the suspect is not present at the scene, follow-up will be conducted to complete the arrest. This follow-up will consist of broadcasting a description of the suspect and of any known vehicles as well as physically checking possible locations where the offender might be located.
- C. Following the arrest of suspects, officers will:
1. Document any spontaneous statements.
 2. Prevent communications between suspects and victims or witnesses.
 3. Advise suspects of their Miranda rights.
 4. Obtain a formal statement from suspects if the Miranda warning has been waived.
 5. Inform victims of the disposition of suspects (i.e. physically booked).
 - a. Victims MUST be informed that suspects have a constitutional right to bond. If suspects are able to make bond, they will be released and may return.
 - b. Victims and any family members should prepare a safety and contingency plan for this possibility.
 6. Offer transportation or emergency housing to victims if needed.
 7. Officers may request an OPD Chaplain by calling the Front Desk, who will contact the Omaha Police Chaplain. When the Duty Chaplain calls, the Front Desk will give the Chaplain the following information:
 - a. Location of the call.
 - b. Type of call.
 - c. Name of the requesting officer.
 - d. The officer's car number.
 8. Officers will call the Women's Center for Advancement (WCA) 24-hour crisis line for law enforcement (See [Appendix A](#) for the phone number) and provide the following information:
 - a. Victim name.
 - b. Victim address.
 - c. Victim telephone number (if applicable).
 - d. Status of the suspect.

NOTE: Victim and officer safety are paramount, therefore, referral calls **shall** not be made in front of suspects.

- D. When there is not enough probable cause for an arrest, officers will:
1. Inform victims the evidence is not sufficient to make an arrest.
 2. Offer transportation or emergency housing to victims as described above.
 3. Use any other appropriate intervention strategy to calm or resolve conflicts/disputes such as mediation, referral, or persuading one party to leave the home temporarily.
 4. Provide victims with the telephone numbers for the following referral resources (See [Appendix A](#) for the telephone numbers):
 - a. The Omaha/Douglas County Victim/Witness Assistance Division.
 - b. The WCA Domestic Violence Advocate.
 - c. The OPD Domestic Violence Squad.
 5. Inform victims that reports will be forwarded to the Domestic Violence Squad for additional follow-up investigation and that an investigator, the Omaha/Douglas County Victim/Witness Squad, and the WCA's Advocate Program will contact them within the next 24 to 72 hours.
 6. Provide victims with information about obtaining a Protection Order.
 7. Make certain victims sign an OPD Domestic Violence Waiver Supplementary ([OPD Form 171](#)). Officers should also note victims' refusal to sign in the signature block if applicable.
 8. Officers will document the incident is DV related by selecting the appropriate check box in the "Incident Type" field.
 9. Officers will note the "Domestic Violence Squad" in the "CIB Unit Assigned" field of the Incident Report.

IV. Arrest without a Warrant in DV Cases

- A. An officer may arrest a person without a warrant if the officer has probable cause to believe that such person has committed one or more of the following acts to one or more household members, WHETHER OR NOT COMMITTED IN THE PRESENCE OF THE OFFICER:
1. Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument.
 2. Placing, by credible threat, another in fear of bodily injury.
 3. Engaging in sexual contact or sexual penetration without consent.

V. Carrying a Firearm or Destructive Device During the Commission of a Dangerous Misdemeanor

- A. Per NRS § [28-1205](#), a person who carries a firearm or destructive device during the commission of a dangerous misdemeanor, including misdemeanors of domestic violence, commits the

offense of “Carrying a Firearm or Destructive Device During the Commission of a Dangerous Misdemeanor.” This will be a separate and distinct charge from the underlying domestic violence crime committed.

1. A violation of this section is a Class I Misdemeanor for the first or second offense and a Class IV Felony for any third or subsequent offense.
2. A dangerous misdemeanor means a misdemeanor violation of any of the following offenses: stalking; knowing violation of a Harassment Protection Order, a Sexual Assault Protection Order, or a Domestic Abuse Protection Order; domestic assault; assault of an unborn child in the third degree; theft by shoplifting; unauthorized use of a propelled vehicle; criminal mischief if such violation arises from an incident involving the commission of a misdemeanor crime of domestic violence; impersonating a police officer; resisting arrest; operating a motor vehicle or vessel to avoid arrest; obstructing a peace officer; or any attempt to commit one of these offenses mentioned.

VI. Disposition of Arrested Person

- A. In all cases where a physical arrest has occurred, officers will make certain that, in misdemeanor offenses, copies of all reports are attached to arrest sheets (booking sheets).
- B. For felony offenses, the procedures for compiling a felony arrest packet will be followed.

VII. Seizure of Weapons

- A. Officers who make an arrest for Domestic Assault (NRS [§28-323](#)) shall seize all weapons that are alleged to have been involved or threatened to be used during the criminal act.
 1. Officers will also seize any firearms or ammunition in plain view or discovered during a legal search as necessary for the protection of the officer or any other person.
 - a. See OPD’s [“Firearms – Seizure, Storage, Release, and Disposal”](#) and [“Weapons Offenses – Booking and Charging”](#) policies for more procedures regarding encounters with those in possession of firearms and/or ammunition.
- B. If the offender used or threatened to use the weapon during the criminal act, the “Held As Evidence” box will be marked on the Property Report ([OPD Form 203](#))/SAFE System entry when booking the weapon into the Evidence and Property Unit.
- C. If a weapon is found in plain view or during a legal search but was not used or threatened during the criminal act, the “Held As DV Weapon, [§29-440](#)” box will be marked on the Property Report ([OPD Form 203](#))/SAFE System entry when booking the weapon into the Evidence and Property Unit.
- D. The disposition of the seized weapons will be determined by court order.

VIII. NRS Related to DV

- A. The following is a list of common criminal statutes applicable in DV cases. This list is not meant to be all-inclusive. Officers will be familiar with the below statutes and elements of each as they apply to DV.
- B. In incidents of DV, officers will specifically include the elements of the crime and the offense type in their reports.

28-201	Criminal Attempt
28-302	Homicide
28-308	Assault 1 st Degree
28-309	Assault 2 nd Degree
28-310	Assault 3 rd Degree
28-310.01	Offense of Strangulation or Suffocation
28-311.01	Terroristic Threats
28-311.02-.05	Stalking and Harassment
28-313	Kidnapping
28-314	False Imprisonment 1 st Degree
28-319	Sexual Assault 1 st Degree
28-320	Sexual Assault 2 nd and 3 rd Degree
28-323	Domestic Assault
28-507	Burglary
28-511	Theft
28-519	Criminal Mischief
28-520	Criminal Trespass 1 st Degree
28-707	Child Abuse
28-901	Obstructing Government Operations
28-904	Resisting Arrest
28-906	Obstructing a Peace Officer
28-907	False Reporting
28-919	Tampering with a Witness or Informant; Jury Tampering
28-929 (1 st), 28-930 (2 nd), and 28-931 (3 rd)	Assaulting an Officer, Emergency Responder, Certain Employees, or a Health Care Professional
28-1201 – 28-1202.04 , 69-2427 – 69-2449	Carrying a Concealed Weapon
28-1310	Intimidation by Phone Call or Electronic Communication
28-1322	Disturbing the Peace
28-1335	Discharging a Firearm
29-404.01-.03	Arrest Without a Warrant
29-439	Determining the Predominant Aggressor
29-440	Seizure of Weapons Incident to an Arrest in Domestic Assault Cases

IX. Address Confidentiality Program

- A. The State of Nebraska provides an Address Confidentiality Program for victims of DV, sexual assault, and stalking. The program provides a substitute mailing address to be used by participants when interacting with state and local agencies. Confidentiality is maintained because the public records contain only the substitute mailing address.
- B. Participants of the program are issued authorization cards by the state.
- C. OPD employees are required to accept and document the Address Confidentiality Program's substitute address as the actual residential, work, or school address of program participants, if requested.
 1. Officers will not enter the victim's address in reports but will instead enter, "See Supp" in the "Location Occurred" and/or narrative section of reports.
 2. The true location/address will be documented ONLY in the Supplementary Report(s).

X. Protection Orders

- A. Officers shall adhere to all procedures in the OPD "[Protection Orders and Harassment](#)" policy when enforcing a Domestic Abuse Protection Order.

REFERENCES:

I. Laws

- A. Nebraska Revised Statutes (NRS) §[42-357](#), [28-311.02](#), [42-924](#), [28-311.03](#), [1202.01](#), [28-1205](#), [69-2427](#) – [69-2449](#) are referenced in this policy.
- B. 18 US Code §925(a)(1) and 922(g) are relevant to this policy.

II. Previous OPD Orders

- A. Previous General Orders: #24-92, 18-96, 18-97, 18-97 Supplement #1, 7-99, 27-04, 19-07, 37-12, 43-14, 19-15, 91-16, 119-17, 13-22, and 64-23.

III. Other

- A. PPM Monthly Updates: #1-2017, 12-2017, 02-2018, 09-2019, and 09-2021.