



Policy Number: 309 – Domestic Violence
Effective Date: May 26, 2020
Revision Date: May 26, 2020
Approved By: Denis Otterness, Chief of Police

309.1 PURPOSE AND SCOPE

The purpose of this policy is to provide officers employed by the Montana State University Billings Police Department (Department) with guidelines necessary to deter, prevent, and reduce domestic violence through vigorous enforcement, addressing domestic violence as a serious crime against society. This policy specifically addresses the commitment of the Department to take enforcement action when appropriate, to provide assistance to victims, and to guide officers in the investigation of domestic violence.

309.1.1 DEFINITIONS

Definitions related to this policy include (§ 45-5-206, MCA):

Court Order - All forms of orders related to domestic violence, that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

Domestic Violence (or Partner or Family Member Assault) - Purposely or knowingly causes bodily injury to a partner or family member; negligently causes bodily injury to a partner or family member with a weapon; or purposely or knowingly causing reasonable apprehension of bodily injury in a partner or family member.

Family member - Mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

Partners - Spouses, former spouses, persons who have a child in common, and persons who have been, or are currently in, a dating or ongoing intimate relationship.

309.2 POLICY

This Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this Department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

309.3 OFFICER SAFETY

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officer(s) and other parties involved.

309.4 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic violence cases:

- a. Calls of reported, threatened, imminent or ongoing domestic violence, and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
- b. When practicable, officers should obtain and document statements from the victim, the suspect and any witnesses, including children, in or around the household or location of occurrence.
- c. Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.
- d. When practicable and legally permitted, officers should video or audio record all significant statements and observations.
- e. All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact this Department in the event the injuries become visible at a later time.
- f. If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement and make an arrest or seek an arrest warrant if appropriate.
- g. Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence.
 1. This is mandatory when a weapon was used or threatened to be used in the alleged assault (§ 46-6-603, MCA).
- h. When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- i. If it cannot be established that the offender was served, but there is sufficient evidence the offender had knowledge of the order and its content, facts establishing such knowledge should be included in the report (§ 45-5-626, MCA).

- j. Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:
1. Marital status of suspect and victim.
 2. Whether the suspect lives on the premises with the victim.
 3. Claims by the suspect that the victim provoked or perpetuated the violence.
 4. The potential financial or child custody consequences of arrest.
 5. The physical or emotional state of either party.
 6. Use of drugs or alcohol by either party.
 7. Denial that the violence occurred when evidence indicates otherwise.
 8. A request by the victim not to arrest the suspect.
 9. Location of the incident (public/private).
 10. Speculation that the complainant may not follow through with the prosecution.
 11. The racial, cultural or social identity, professional position, or sexual orientation of the victim or suspect.

309.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, officers should:

- a. Advise the victim that there is no guarantee the suspect will remain in custody.
- b. Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- c. Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

309.4.2 IF NO ARREST IS MADE

If no arrest is made, the officer should:

- a. Advise the parties of any options, including but not limited to:
 1. Voluntary separation of the parties.
 2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness assistance).
 3. Document the resolution in a report.

309.5 VICTIM ASSISTANCE

Because victims may be traumatized or confused, officers should be aware that a victim's behavior and actions may be affected.

Victims shall be provided with a Department domestic violence information handout, even if the incident may not rise to the level of a crime (§ 46-6-602, MCA).

Victims shall also be alerted to any available victim advocates, shelters, University resources, materials and community resources. The reporting officer should review the resources outside the presence of any suspect.

When an involved person requests law enforcement assistance while removing essential items of personal property, officers should stand by for a reasonable amount of time (§ 46-6-603, MCA).

If the victim has sustained injury or complains of pain, officers should seek medical assistance for the victim as soon as practicable.

Officers should ask the victim whether s/he has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for his/her safety, or if the officer determines that a need exists (§ 46-6-603, MCA).

Officers should make reasonable efforts to ensure that any children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.

If appropriate, officers should seek or assist the victim in obtaining an emergency court order.

309.6 FOREIGN COURT ORDERS

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265; § 40-15-301, MCA). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state.

309.7 VERIFICATION OF COURT ORDERS

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and, where appropriate and practicable:

- a. Ask the subject of the order about his/her notice or receipt of the order, knowledge of its terms and efforts to respond to the order.
- b. Check available records or databases that may show the status or conditions of the order.
- c. Contact the issuing court to verify the validity of the order.
- d. Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

309.8 STANDARDS FOR ARRESTS

Officers investigating a report of domestic violence should consider the following:

- a. Officers should arrest upon probable cause for domestic violence, any complaint involving injury to the victim, use or threatened use of a weapon, violation of a court

order, or other imminent danger to the victim. Any decision not to arrest under these circumstances requires supervisor approval (§ 46-6-311, MCA).

- b. When investigating a domestic violence complaint and if it appears that the parties were involved in mutual aggression, the investigating officer shall evaluate the situation to determine the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only that person. Factors to be considered in this determination include (§ 46-6-311, MCA):
 1. The prior history of violence between the partners or family members, if available.
 2. The relative severity of injuries received by each person.
 3. Whether an act of violence, or threat of violence, was taken in self-defense.
 4. The relative sizes and apparent strength of each person.
 5. The apparent fear or lack of fear between the partners or family members.
 6. Statements made by witnesses.
- c. Persons arrested for domestic violence or violations of protection orders must appear before a judge before release on bail (§ 46-9-302, MCA).

309.9 REPORTS AND RECORDS

Officers shall document their investigations of any reported incident of domestic violence and, when applicable, explain the reason for when an arrest is not made (§ 46-6-601, MCA).

309.10 SERVICE OF COURT ORDERS

Officers shall serve a standing no contact order on a person charged with or arrested for domestic violence as set forth in § 45-5-209, MCA and § 46-6-311, MCA.