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The Network.

***SOUTH DAKOTA
POCKET GUIDE
TO
DOMESTIC
VIOLENCE
INVESTIGATION
AND
LAWS OF ARREST
2016***

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Investigation & Evidence Collection

Collect evidence and prepare the case assuming the victim may be unwilling to testify or cooperate.

- Interview victim, suspect and witnesses, including children and neighbors
- Separate victim, suspect and witnesses. Conduct interviews separately, out of sight and sound from the others. Obtain written statements from all involved or who may have information.
- Note full name, address, home telephone number, place of work, work telephone number and place where a message can be left.
- Note suspect's full physical description, age, height, weight, hair and eye color and skin markings.
- Ask direct questions about injuries to the victim and suspect.
- Sign medical release.
- Secure 911 tapes.
- Take down names of ambulance staff.
- Run Triple I for domestic violence history, or call the sheriff's office in the jurisdiction issuing the protection order. State Radio, at 605-773-3536, may also verify protection orders that have been issued in South Dakota. NCIC National Protection Order registry can be contacted through your dispatcher via computer link.
- Use victim worksheet with body diagram to note where blows struck and where injuries are located.
- Make a note of demeanor, state of mind, excited utterances, evidence of substance

abuse.

- Ask witnesses about prior knowledge of domestic violence incidents between the suspect and victim.
- Collect physical evidence at crime scene.
 - Note physical evidence at scene: weapons, broken furniture or objects, torn clothing, blood stains, damage to phone.
 - Take physical evidence into custody and follow your department policy on handling evidence.
 - Take photographs of the crime scene, property damage and personal injuries.
 - Use an audio recorder to record statements as a supplement to the written report.

Mandatory Arrest & Probable Cause

23A-3-2.1. Circumstances permitting warrantless arrests. Unless the provisions of § 22-18-5 apply, a law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, any person, without a warrant, at any time that the opportunity presents itself, if the officer has probable cause to believe that:

- (1) An order has been issued under chapter 25-10 protecting the victim and the terms of the order prohibiting acts or threats of abuse or excluding the person from a residence have been violated; or
- (2) An order has been issued under chapter 22-19A protecting the victim and the terms of the order prohibiting acts of stalking or physical injury have been violated; or
- (3) The person is eighteen years or older and within the preceding forty-eight hours has assaulted a person in a relationship as defined in § 25-10-3.1; and the officer believes that an aggravated assault has occurred; an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or an attempt by physical menace has been made to put another in fear of imminent serious bodily harm.

There is no requirement that there be corroborating physical evidence or visible injury to establish probable cause. This means that the word of the victim alone, if believed, is sufficient grounds for establishing probable cause.

25-10-35. Arrest of person for abuse

Considerations. If the officer has probable cause to believe that persons in a relationship as defined in § 25-10-3.1 have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the predominant physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:

- (1) The intent to protect victims of domestic abuse under this chapter;
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (3) The history of domestic abuse between the persons involved.

25-10-1. Definitions. Terms used in this chapter mean:

(1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § 25-10-3.1. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship;

(2) "Protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared.

A protection order has a duration of five years or less; and

(3) "Temporary protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A temporary protection order has a duration of thirty days except as provided in § 25-10-7.1.

Determine Predominate Physical Aggressor

If the officer has probable cause to believe a crime was committed the officer shall arrest the person suspected of committing the crime. Use the following questions in determining the predominate physical aggressor:

1. Fear: Who talks and acts scared?
2. Body Language: Who has aggressive stance?
Size of parties?
3. History of Abuse: Paper trail? Medical records, 911 tapes, police reports, shelter stays, protection order
4. Neighbors & Witnesses: Prior and typical behavior
5. Excited Utterances: Adult and child statements blurted out at the scene while upset?
6. Injuries: Who has injuries? Are they self-defensive or inflicted? Are stories consistent

- with injuries?
7. Crime Scene: Smashed furniture? Empty liquor bottles?
 8. Type and Use of Weapons
 9. Who Objects to Separation of Parties?
 10. Children's Statements

In making this determination, the officer shall make every reasonable effort to consider the intent to protect victims of domestic violence under Chapter 25-10; the comparative extent of injury inflicted; serious threats creating fear of physical injury; and the history of domestic abuse between the persons involved.

Avoid Dual Arrests

When multiple persons have assaulted each other, the officer is not required to arrest both persons based upon the above as defined in SDCL 23A-3-2.2, but rather the predominate physical aggressor.

Charging Options

22-18-1. Simple assault--Misdemeanor--Felony for subsequent offenses. Any person who:

- (1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;
- (2) Recklessly causes bodily injury to another;
- (3) Negligently causes bodily injury to another with a dangerous weapon;
- (4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or
- (5) Intentionally causes bodily injury to another which does not result in serious bodily injury; is guilty of simple assault.

Simple assault is a Class 1 misdemeanor.

However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

22-18-1.1. Aggravated assault--Felony.

Any person who:

- (1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- (3) Deleted by SL 2005, ch 120, § 2;

(4) Assaults another with intent to commit bodily injury which results in serious bodily injury;

(5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm; or

(6) Deleted by SL 2005, ch 120, § 2;

(7) Deleted by SL 2012, ch 123, § 4;

(8) Attempts to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth;

is guilty of aggravated assault. Aggravated assault is a Class 3 felony.

Other Charging Options

- Disorderly Conduct (SDCL 22-18-35)
- Interference with Communication Devices (SDCL 49-31-29.2)
- Sexual Assault (SDCL 22-22)
- Weapon Offenses (SDCL 22-14)
- Intentional Damage to Property (SDCL 22-34)
- Animal Abuse (SDCL 40-1)
- Child Abuse (SDCL 26-10-1)
- Trespassing (SDCL 22-35)
- Stalking (SDCL 22-19A)
- Harassing Phone Calls (SDCL 49-31-31)
- Kidnapping/False Imprisonment (SDCL 22-19)

Protection Orders

25-10-3.1. Persons entitled to apply for protection order. Any person who is involved in one of the following relationships with another party:

- (1) Spouse or former spouse;
- (2) Is in a significant romantic relationship;
- (3) Has a child or is expecting a child with the abusing party;
- (4) Parent and child, including a relationship by adoption, guardianship, or marriage; or
- (5) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage; is entitled to apply for a protection order or a temporary protection order pursuant to the provisions of this chapter.

25-10-3.2. Factors for determining significant romantic relationship. For purposes of chapter 25-10, when determining whether a relationship is a significant romantic relationship, the court shall consider, among others, the following factors:

- (1)The length of time of the relationship
- (2)The frequency of interaction between the parties;
- (3)The characteristics and the type of the relationship.

25-10-13. Violation of protection order or no contact order as misdemeanor or felony. If a temporary protection order or a protection order is granted pursuant to this chapter or a foreign protection order recognized pursuant to § 25-10-25 or 25-10-12.1, or if a no contact order is issued pursuant to § 25-10-23 or 25-10-25, and the respondent or person to be restrained knows of the order, the violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes a violation of § 22-18-1, 22-18-1.1, or 22-19A-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section or § 22-19A-16, the factual basis for which occurred after the date of the second conviction, and occurred within ten years of committing the current offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition to other civil or criminal remedies.

Valid Protection Orders

An order that meets the following criteria should be presumed valid and enforceable:

- The names of the parties
- The date issued
- An expiration date in the future or a notation that the order is operative until rescinded or modified by the court
- Specific prohibitions and mandates directed toward the subject of the order

- The name of the issuing court and the signature of a judicial officer or clerk (the signature of the issuing authority need not be raised seal or stamp of the issuing court for an order to be valid)

If the order appears valid on its face and the responding officer has probable cause to believe that the terms of the order have been violated, the suspect should be arrested.

An officer may run Triple I for domestic violence history or call the sheriff's office in the jurisdiction issuing the protection order. State Radio may also verify protection orders that have been issued in South Dakota.

The dispatcher can contact the NCIC National Protection Order Registry to verify out-of-state protection orders. NCIC may be accessed through your local dispatcher via computer link. *Not all states are linked to NCIC. The officer may try calling the sheriff's office in the issuing state or the tribal court of the issuing reservation.

25-10-12.3. Reliance on foreign order--

Immunity from liability. A law enforcement officer may rely upon any foreign domestic violence protection order that has been provided to the officer by any source. The officer may make an arrest pursuant to § 25-10-13 for any violation of the foreign order in the same manner as for violation of a protection order issued in this state. A law enforcement officer may rely on the statement of the person protected by the foreign order that the order is in effect and that the respondent was personally

served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing a foreign order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the foreign domestic violence protection order.

Note:

A petitioner cannot be arrested for a respondent's violation of a protection order issued to protect the petitioner.

The petitioner should not be required to leave the home. In a standoff between petitioner and respondent who claims the dwelling is his because he pays the bills, petitioner is allowed to stay and respondent must vacate the premises.

Firearm Seizure/Removal

If a qualifying order of protection has been issued, the officer should take possession of all weapons in the abuser's possession through voluntary means or through application of local, state, tribal, territorial, and federal law pursuant to departmental policy.

Documentation Chart for Attempted Strangulation Cases

Use this chart when a victim reports being “choked”
or strangled

Breathing Changes	Voice Changes	Swallowing Changes	Behavioral Changes	Other
Difficulty breathing Hyperventilation Unable to breathe	Raspy voice Hoarse voice Coughing Unable to speak	Trouble swallowing Painful to swallow Neck pain Nausea Vomiting	Agitation Amnesia PTSD Hallucinations Combativeness	Dizzy Headaches Fainted Urination Defecation Petechiae

Strangulation Interview Questions

<p>1. Any current pain or discomfort? Where and to what extent?</p> <p>2. Have you noticed any change in your voice or speech?</p> <p>3. Are you having difficulty speaking or breathing?</p> <p>4. Did the attacker use one or both hands or another object?</p> <p>5. Was the attack from the front or from behind?</p> <p>6. Did you feel faint, dizzy or pass-out?</p> <p>7. Did you lose control of your bladder or bowels or did you vomit?</p> <p>8. Did you fear for your life?</p>	<p>9. Have there been any previous attempts at strangulation?</p> <p>10. Do you have any pre-existing injuries?</p> <p>11. Are you pregnant?</p> <p>12. Do you have any injuries hidden by clothing?</p> <p>13. What was happening/what did the assailant say prior to, during and after the incident?</p> <p>14. What caused the assailant to stop the assault?</p> <p style="text-align: center;">*Encourage Medical Attention*</p>
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Risk Assessment Worksheet

The Risk Assessment Worksheet is a tool for Law Enforcement, Judges, and Prosecutors to help determine the level of threat the Offender poses to the victim.

Upon making a DOMESTIC VIOLENCE (DV) arrest the arresting officer will complete the risk assessment form:

1. Officer will complete the Risk Assessment worksheet with the Victim.

- Total points are to be written in the bottom right hand corner.
- Anything over 15 could be considered HIGH RISK.

2. When a Judge is contacted regarding a bond the contacting party should have a copy of the Risk Assessment and relay that information to the Judge when determining the bond.

South Dakota Risk Assessment Worksheet					
	Section 1: High Risk Factors:	Yes	No	Notes	Points yes = 2
1.	Is there a past history of violence with this Victim, other adults, or children? How recent? How many times?				
2.	Has Offender engaged in other types of violent behavior(s)—(Harmed pets, Destroyed property, Committed other acts of violence or Used a weapon(s) or threatened use of violence with a weapon				
3.	Has Offender attempted to or assaulted the Victim by injuries to the head area or ever choked/strangled the Victim?				
4.	Has Offender made threats to harm or kill victim?				
5.	Has Offender threatened suicide?				
6.	Is Victim attempting to, or has Victim attempted to leave Offender?				
7.	Is Victim pregnant?				
8.	Is there an ongoing custody issue or dispute regarding children?				
9.	Does Victim believe Offender is capable of harming or killing Victim?				
10.	Is Offender living outside the immediate area?				
	Section 2: Other Risk Factors:				Points yes =1
1.	Is Offender extremely jealous?				
2.	Does Offender exercise control over the Victim—monitoring phone internet usage, unwanted contact with victim, etc.?				
3.	Does the Offender quickly lose control when there is a disagreement?				
4.	Does Offender abuse alcohol or use drugs?				
5.	Has Offender had prior arrests, orders of protection, violations of orders of protection, other court orders, or tried to avoid law enforcement contact?				
6.	Does Offender have access to weapons?				
7.	Has violence been escalating?				
8.	Is Victim an immigrant?				
9.	Is Victim isolated?				
10.	Is Offender unemployed?				
11.	Has Offender failed to appear in Court in the past?				
Total Points					

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Victim Services

The decision to arrest and prosecute is not up to the victim, but established as mandatory by state law (SDCL 23A-3-21) and that the officer is acting for the state on behalf of the victim.

25-10-36.1. Arrest of domestic abuse victim for outstanding warrant. No law enforcement officer, called to the scene of a domestic abuse complaint, is required to arrest any victim of domestic abuse for an outstanding warrant if:

- (1) The victim is not otherwise liable to arrest for any action arising out of the present incidence of domestic abuse;
- (2) The outstanding warrant is for a nonviolent misdemeanor offense; and
- (3) The victim is the custodial parent or immediate caregiver of a minor child.

However, the victim is subject to arrest on any outstanding warrant after seventy-two hours have passed since the incidence of the domestic abuse call.

The decision of an officer to arrest or not to arrest a victim on an outstanding warrant does not constitute a cause of action against the officer, the law enforcement agency, the employing entity, or any of the employing entity's employees.

Things to Say to the Reluctant Victim

1. I am afraid for your safety.
2. I am afraid for the safety of your children.
3. It will only get worse.
4. I am here for you when you are ready to leave.
5. You don't deserve to be abused.

Provide the victim with the following information:

- Domestic violence shelters/agencies in their area and offer to notify a crisis worker if available. Leave any literature available from domestic violence programs in the area.
- How to get a Protection Order
- A safety plan
- Local shelter crisis line: _____
- DV statewide hotline: 1-800-430-SAFE (7233)
- National Domestic Violence Hotline:
1-800-799-SAFE (7233)

Victims' Compensation Program

The South Dakota Crime Victims' Compensation (CVC) Program provides monetary assistance to victims of violent crimes. This program, administered by the Department of Social Services, can pay a maximum of \$15,000 for expenses incurred as a direct result of personal injury to, or death of, a victim of state, tribal, or federal crimes. More information can be accessed at dss.sd.gov/victimresources/victimservices/eligibility.aspx

McLaughlin
PRETTY BIRD WOMEN HOUSE
Crisis Line: 605.823.7233
Mission

WHITE BUFFALO CALF WOMAN
SOCIETY, INC. (WBCWS)
Crisis Line:
:Domestic Violence: 605.856.2317
:Sexual Assault: 605.828.0200

Mitchell
MITCHELL AREA SAFEHOUSE
Crisis Line: 605.996.4440
Toll Free Crisis Line: 1.888.996.8909

Mobridge
BRIDGES AGAINST DOMESTIC
VIOLENCE
Crisis Line: 605.845.2110

Pierre
MISSOURI SHORES DOMESTIC
VIOLENCE CENTER
Crisis Line: 605.224.7187
Toll Free Crisis Line: 1.800.696.7187

Pine Ridge
OGLALA SIOUX TRIBE VICTIM
SERVICES PROGRAM
Crisis Line: 605.899.0084 or
605.899.0085

Rapid City
WORKING AGAINST VIOLENCE, INC.
(WAVI)
Crisis Line:
Domestic Violence: 605.341.4808
Sexual Assault: 605.341.2046
Toll Free Crisis Line: 1.888.716.9284

Redfield
FAMILY CRISIS CENTER, INC.
Crisis Line: 605.472.0508

Sioux Falls
CHILDREN'S INN
Crisis Line: 605.338.4880
Toll Free Crisis Line: 1.888.378.7398

MITKA MASKE TI KI (MY SISTER'S
FRIEND'S HOUSE)
Crisis Line: 605.977.2130
Toll Free Crisis Line: 1.877.977.2130

THE COMPASS CENTER
Crisis Line: 605.339.0116 or
605.274.1442
Toll Free Crisis Line: 1.877.462.7474

Sisseton
WAC'ANG'A INC. (SWEETGRASS)
Crisis Line: 605.698.4129
Toll Free Crisis Line: 1.888.200.4492

Spearfish
VICTIMS OF VIOLENCE INTERVEN-
TION
Crisis Line: 605.642.7825
Toll Free Crisis Line: 1.800.999.2348

Sturgis
CRISIS INTERVENTION SHELTER
SERVICES, INC. (CISS)
Crisis Line: 605.347.0050
Toll Free Crisis Line: 1.800.755.8432

Vermillion
DOMESTIC VIOLENCE SAFE
OPTION SERVICES (DVSOS)
Crisis Line: 605.624.5311

Watertown
BEACON CENTER
Crisis Line: 605.886.4300
Toll Free Crisis Line: 1.800.660.8014

Winner
WINNER RESOURCE CENTER FOR
FAMILIES
Crisis Line: 605.842.2763
Toll Free Crisis Line: 1.877.695.0558

Yankton
RIVER CITY DOMESTIC VIOLENCE
CENTER
Crisis Line: 605.665.1448