

Domestic Violence and Violations of Court Orders

310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent, and reduce domestic violence and violations of court orders through vigorous enforcement and to address these offenses as serious crimes against society. The policy specifically addresses the commitment of this office to take enforcement action when appropriate, to provide assistance to victims, and to guide deputies in the investigation of domestic violence and violations of court orders (Utah Code 53-25-1102).

310.1.1 DEFINITIONS

Definitions related to this policy include:

Court order - All orders related to domestic violence, jail release agreements, jail release court orders, protective orders, and stalking injunctions 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 - Any crime involving the actual, threatened, or attempted violence or physical harm of a cohabitant. Domestic violence also includes committing or attempting to commit any crime listed in Utah Code 77-36-1 by one cohabitant against another.

Protective order - A protective order or ex parte protective order including Child Protective Orders, Dating Violence Protective Orders, Sexual Violence Protective Orders, Cohabitant Abuse Protective Orders, Criminal Protective Orders, and Workplace Violence Protective Orders (Utah Code 53-25-1101).

Stalking injunction - A civil or criminal injunction or ex parte injunction (Utah Code 53-25-1101).

Jail release agreement - A written agreement specifying release conditions for a suspect who is arrested or issued a citation for a domestic violence offense (Utah Code 53-25-1101; Utah Code 78B-7-801).

Jail release court order - A court order specifying release conditions for a suspect who is arrested or issued a citation for a domestic violence offense (Utah Code 53-25-1101; Utah Code 78B-7-801).

310.2 POLICY

The Emery County Sheriff's Office's response to incidents of domestic violence and violations of court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence and court order violations are criminal behavior. It is also the policy of this office to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

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310.3 OFFICER SAFETY

The investigation of domestic violence and court order violations often places deputies in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all deputies to exercise due caution and reasonable care in providing for the safety of any deputies and parties involved.

310.4 INVESTIGATIONS

The following guidelines should be followed by deputies when investigating domestic violence and court order violations:

- (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, deputies 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) Deputies should list the full name and date of birth (and school if available) of each child who was present at the time of the offense. The names of other children who may be affected but who are not present at that particular time should also be obtained for follow-up.
- (d) When practicable and legally permitted deputies 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 the Investigation Division in the event that the injuries later become visible.
- (f) Deputies should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, deputies 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.
- (h) Firearms or other dangerous weapons should be seized, if appropriate and legally permitted, for safekeeping or as evidence (Utah Code 76-5-106.5; Utah Code 77-36-2.1; Utah Code 78B-7-408).
- (i) Deputies shall 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. Whether the suspect lives on the premises with the victim.
 - 2. Claims by the suspect that the victim provoked or perpetuated the violence.
 - 3. The potential financial or child custody consequences of arrest.

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4. The physical or emotional state of either party.
 5. Use of drugs or alcohol by either party.
 6. Denial that the abuse occurred where evidence indicates otherwise.
 7. A request by the victim not to arrest the suspect.
 8. Location of the incident (public/private).
 9. Speculation that the complainant may not follow through with the prosecution.
 10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or marital status of the victim or suspect.
 11. The social status, community status, or professional position of the victim or suspect.
- (j) If the offense is alleged against an intimate partner, the deputies shall conduct the lethality assessment protocols required by Utah Code 77-36-2.1. The lethality assessment shall be recorded on the appropriate form and the results submitted to the Department of Public Safety while on scene or as soon as reasonably practicable (Utah Code 77-36-2.1).

310.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, deputies 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.

310.4.2 IF NO ARREST IS MADE

If no arrest is made, the deputy 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).
- (b) Document the resolution in a report.

310.5 INVESTIGATIONS OF VIOLATIONS OF COURT ORDERS

Deputies should comply with the following when investigating violations of court orders:

- (a) Deputies should confirm the existence and terms of a court order and determine whether the suspect has been properly served or was present when the order was issued

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1. Deputies should use the statewide domestic violence network to verify an order issued by or registered with a court in this state and determine whether it has been violated (Utah Code 78B-7-113).
 2. Deputies may rely upon a copy of a court order, the statements of the victim, or other reliable information to determine whether there is probable cause to believe that a foreign court order exists and has been violated (Utah Code 78B-7-304; Utah Code 78B-7-116).
- (b) If an order exists but cannot be enforced because the suspect has not been served, deputies should notify the suspect of the order's existence and make a reasonable effort to serve it (Utah Code 78B-7-304).
- (c) Deputies should make reasonable attempts to determine whether a suspect has prior violations of court orders.
1. Prior convictions should be documented in appropriate reports for consideration in charging and bail decisions.
 2. Repeat offenders should be properly charged in accordance with Utah Code 77-35-1.1.

310.5.1 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS

If there is probable cause to believe a valid Canadian domestic violence protection order exists and has been violated, a deputy shall enforce the terms of the order as if it were the order of a court in this state (Utah Code 78B-7-1202).

310.5.2 FOREIGN COURT ORDERS

Various types of orders may be issued by other jurisdictions in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe, or territory shall be enforced by deputies 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; Utah Code 78B-7-116; Utah Code 78B-7-304). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state.

310.6 VICTIM ASSISTANCE

Because victims may be traumatized or confused, deputies should be aware that a victim's behavior and actions may be affected. The following applies to domestic violence and violations of court orders (Utah Code 77-36-2.1; Utah Code 78B-7-113; Utah Code 78B-7-408):

- (a) Deputies who respond to allegations of domestic violence and violations of court orders shall use all reasonable means to protect the victim, prevent further violence, and enforce court orders.
- (b) Victims shall be provided with the office's domestic violence information handout, even if the incident may not rise to the level of a crime.

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- (c) Victims shall also be alerted to any available victim advocates, shelters, and community resources and advised of the results of the lethality assessment if applicable.
- (d) When an involved person requests law enforcement assistance while removing essential items of personal property, deputies shall stand by for a reasonable amount of time.
- (e) If the victim has sustained injury or complains of pain, the deputy shall seek medical assistance for the victim as soon as practicable.
- (f) Deputies should ask the victim whether the victim has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for the victim's safety or if the deputy determines that a need exists.
- (g) Deputies 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.
- (h) If appropriate, deputies shall seek or assist the victim in obtaining an emergency order.
- (i) When applicable, the victim should be provided with the required information from the Department of Public Safety regarding the right to voluntarily turn over a firearm to a law enforcement agency for safekeeping.

310.7 DISPATCH ASSISTANCE

All calls of domestic violence or violations of court orders, including incomplete 9-1-1 calls, should be dispatched as soon as practicable.

Dispatchers are not required to verify the validity of a court order before responding to a request for assistance. Deputies should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

310.8 LEGAL MANDATES AND RELEVANT LAWS

Utah law provides for the following:

310.8.1 STANDARDS FOR ARRESTS

- (a) A deputy responding to a domestic violence call shall arrest or issue a citation to a suspect if there is probable cause to believe an offense has occurred. The offense need not occur in the deputy's presence (Utah Code 77-36-2.2).
 - 1. A deputy shall arrest a suspect whenever there is probable cause to believe that the suspect has violated any of the provisions of a court order and there is evidence the order has been served or the suspect was present when the order was issued (Utah Code 77-36-2.4; Utah Code 78B-7-119).
 - 2. A deputy shall arrest a suspect whenever there is probable cause to believe there will be continued violence against the victim or if there is evidence that the suspect has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense (Utah Code 77-36-2.2).

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3. A deputy shall only release a suspect after issuing a citation if the suspect signs a jail release agreement. A suspect who refuses to sign a jail release agreement shall be taken before a magistrate (Utah Code 78B-7-802).
- (b) A deputy receiving complaints of domestic violence from two or more opposing persons should arrest the predominant physical aggressor. To determine the predominant aggressor, the deputy shall evaluate each complaint separately and consider (Utah Code 77-36-2.2):
 1. Any prior complaints of domestic violence.
 2. The relative severity of injuries inflicted on each person.
 3. The likelihood of future injury to each of the parties.
 4. Whether one of the parties acted in self-defense.
- (c) A deputy shall not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement (Utah Code 77-36-2.2).
- (d) Whenever a suspect is arrested or issued a citation and subsequently released subject to a jail release agreement, the releasing deputy shall (Utah Code 78B-7-802):
 1. Make a reasonable effort to notify the victim of the suspect's release, that the victim has a right to initiate a criminal proceeding, and the importance of preserving evidence (Utah Code 77-36-2.2).
 2. Give the suspect a copy of the jail release agreement.
 3. Transmit information regarding the jail release agreement to the statewide domestic violence network.
 4. Note on the citation that the offense involved a domestic violence offense (Utah Code 77-7-20).
- (e) A deputy shall provide the suspect with a written notice containing the following information (Utah Code 78B-7-802):
 1. The suspect may not telephone, contact, or otherwise communicate directly or indirectly with the victim before being released.
 2. The suspect may not be released except by court order or jail release agreement.
 3. The penalties for violation of a jail release court order or jail release agreement.
 4. That the suspect must appear in court on the next business day after arrest.

310.8.2 REPORTS AND RECORDS

- (a) Reports on incidents of domestic violence and violations of court orders shall include (Utah Code 77-36-2.2):
 1. The deputy's disposition of the case.
 2. The appropriate crime classification.
 3. If no arrest was made, the report shall detail the grounds for not arresting.

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4. If two parties are arrested, the report shall detail the grounds for arresting both parties.
 5. The results of a lethality assessment when required by Utah Code 77-36-2.1. The report, however, shall not reflect information about a referral to a domestic violence organization if one is made as a result of the lethality assessment.
- (b) Reports on violations of a court order should also include specific information to establish that the suspect has been served, including the date of service and the name of the agency that served the order, and the provisions of the order that the suspect is alleged to have violated.
1. Deputies should document their efforts to verify the validity of an order, regardless of whether an arrest is made.
 2. When reasonably available, the arresting deputy should attach a copy of the order to the incident or arrest report.
- (c) The deputy creating the report should provide the victim with the case number of the report. The case number may be placed in the appropriate space on the victim information handout provided to the victim. If the case number is not immediately available, the deputy should explain to the victim how the victim can obtain the information at a later time.
1. The report shall be made available to the victim, upon request, at no cost (Utah Code 77-36-2.2).
- (d) The Administrative Assistant shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred (Utah Code 77-36-2.2).
- (e) The deputy completing a report should document whether the victim has waived, in writing, any condition of a jail release agreement. If the suspect is arrested, whether the victim has made a waiver shall also be documented in the information presented to the magistrate (Utah Code 78B-7-802).
- (f) The Administrative Assistant or the authorized designee shall update the statewide domestic violence network when a person is released upon a written jail release agreement (Utah Code 78B-7-802).

310.9 SERVICE OF COURT ORDERS

When a deputy serves an individual with a protective order which causes the individual to be a restricted person under Utah Code 76-11-302 or Utah Code 76-11-303, the deputy shall verbally provide the individual with the appropriate firearm restriction notifications in accordance with Utah Code 76-11-309 and request the individual's signature on the acknowledgment contained within the protective order document.