

# **CHAPTER 4**

## **MN POST BOARD MANDATED POLICIES**

**SECTION 1**

**POLICY DISSEMINATION AND APPLICATION**

The date and method of dissemination of policies are in each case to be determined by the Chief, but generally the following will apply:

- I. A policy manual is to be provided to each employee.
- II. Copies of newly adopted policies are to be distributed to all employees affected by the policies.
- III. It is the employee's obligation to locate the new policy within the manual. Supplanted policies should be removed and destroyed.
- IV. Supervisory personnel are responsible for keeping employees informed of new policies, procedures, directives and rules and for establishing with each employee an agreed upon understanding of their purpose and meaning.
- V. Employees are to feel free to direct questions about policies to their supervisors. No person should be reluctant to clarify any confusion or misunderstanding that may exist.
- VI. All employees are responsible for carrying out and observing Police Department policies, procedures, rules and directives. Violations subject an employee to corrective action, including the possible application of disciplinary measures.

## **SECTION 2**

### **OFFICER'S RESPONSIBILITIES**

The Hawley City Ordinance establishing the Police Department places certain responsibilities upon the Chief of Police. According to law, a number of activities must be coordinated and specific services provided.

To promote and encourage a better understanding of the role it endeavors to fulfill, the Hawley Police Department makes known its established purpose.

“ “ “ the enforcement of all applicable ordinances, state statutes and federal laws within the City of Hawley.

“ “ “ the detection of crime and the apprehension of criminals.

“ “ “ to cooperate and exchange information with other organizations and agencies, either within or without the state, for the purpose of developing, improving and carrying on an efficient system for the detection of crime and the apprehension of criminals.

“ “ “ to collect and preserve as a record of the City, information concerning the number and nature of offenses known to have been committed in the City , of the legal steps taken in connection therewith from the inception of the complaint to the final discharge of the defendant.

#### **I. Organization**

The Hawley Police Department is a division of the City Government of Hawley. The Police Department maintains broad areas of activity.

Success in the administration of these services requires an intricate balance of people, equipment and money and it is the Police Chief who determines how well this balance is achieved.

The responsibility for overall administration of the Police Department is placed upon the Chief.

#### **II. Records**

A. The Records Section performs clerical, administrative and record keeping duties for the Police Department.

1. Critical duties of this section include the number, classifying and coding of all initial complaint reports and investigative reports as well as the responsibility for entering each incident into the statewide computer system and indexing and filing of all papers for each incident.

2. Establishes a monthly and yearly statistical listing on crime.

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**III. Investigation**

- A. Investigates major crime and apprehension of criminals.
- B. Conducts criminal investigations in cooperation with other agencies.
- C. Contributes to the education of the general public and the business community to promote crime prevention tactics in an effort to reduce crime.
- D. Presents investigative findings to County Attorney's staff and provides testimony in subsequent Court proceedings.

**IV. Communications**

- A. Receive and process complaints as received from the public with regards to Police matters.
- B. Assign Officers to handle complaints or to investigate crimes as complaints are received.
- C. Utilize the telecommunication network which is provided by the Minnesota Criminal Justice Information System and the National Crime Information Center to aid employees of the Department in the performance of their assignments.

**V. Patrol**

- A. Preserve the public peace, prevent crime, detect and arrest violators of the law.
- B. Protect life and property.
- C. Enforce those federal statutes, laws of the State of Minnesota and the ordinances of the City of Hawley which the Department is required to enforce by law.

## **SECTION 3**

### **PROFESSIONAL CONDUCT OF PEACE OFFICERS POLICY**

MN STAT 626.8457

#### **I. POLICY**

It is the policy of the Hawley Police Department to investigate circumstances that suggest an officer has engaged in unbecoming conduct, and impose disciplinary action when appropriate.

#### **II. PROCEDURE**

This policy applies to all officers of this agency engaged in official duties whether within or outside of the territorial jurisdiction of this agency. Unless otherwise noted this policy also applies to off duty conduct. Conduct not mentioned under a specific rule but that violates a general principle is prohibited.

##### **A. PRINCIPLE ONE**

Peace officers shall conduct themselves, whether on or off duty, in accordance with the Constitution of the United States, the Minnesota Constitution, and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

**1. Rationale:** Peace officers conduct their duties pursuant to a grant of limited authority from the community. Therefore, officers must understand the laws defining the scope of their enforcement powers. Peace officers may only act in accordance with the powers granted to them.

##### **2. Rules**

- a) Peace officers shall not knowingly exceed their authority in the enforcement of the law.
- b) Peace officers shall not knowingly disobey the law or rules of criminal procedure in such areas as interrogation, arrest, detention, searches, seizures, use of informants, and preservation of evidence, except where permitted in the performance of duty under proper authority.
- c) Peace officers shall not knowingly restrict the freedom of individuals, whether by arrest or detention, in violation of the Constitutions and laws of the United States and the State of Minnesota.
- d) Peace officers, whether on or off duty, shall not knowingly commit any criminal offense under any laws of the United States or any state or local jurisdiction.
- e) Peace officers will not, according to MN STAT 626.863, knowingly allow a person who is not a peace officer to make a representation of being a peace officer or perform any act, duty or responsibility reserved by law for a peace officer.

##### **B. PRINCIPLE TWO**

Peace officers shall refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system.

1. **Rationale:** Community cooperation with the police is a product of its trust that officers will act honestly and with impartiality. The peace officer, as the public's initial contact with the criminal justice system, must act in a manner that instills such trust.
2. **Rules**
  - a) Peace officers shall carry out their duties with integrity, fairness and impartiality.
  - b) Peace officers shall not knowingly make false accusations of any criminal, ordinance, traffic or other law violation. This provision shall not prohibit the use of deception during criminal investigations or interrogations as permitted under law.
  - c) Peace officers shall truthfully, completely, and impartially report, testify and present evidence, including exculpatory evidence, in all matters of an official nature.
  - d) Peace officers shall take no action knowing it will violate the constitutional rights of any person.
  - e) Peace officers must obey lawful orders but a peace officer must refuse to obey any order the officer knows would require the officer to commit an illegal act. If in doubt as to the clarity of an order the officer shall, if feasible, request the issuing officer to clarify the order. An officer refusing to obey an order shall be required to justify his or her actions.
  - f) Peace officers learning of conduct or observing conduct that is in violation of any law or policy of this agency shall take necessary action and report the incident to the officer's immediate supervisor who shall forward the information to the CLEO. If the officer's immediate supervisor commits the misconduct the officer shall report the incident to the immediate supervisor's supervisor.

**C. PRINCIPLE THREE**

Peace officers shall perform their duties and apply the law impartially and without prejudice or discrimination.

1. **Rationale:** Law enforcement effectiveness requires public trust and confidence. Diverse communities must have faith in the fairness and impartiality of their police. Peace officers must refrain from fostering disharmony in their communities based upon diversity and perform their duties without regard to race, color, creed, religion, national origin, gender, marital status, or status with regard to public assistance, disability, sexual orientation or age.
2. **Rules**
  - a) Peace officers shall provide every person in our society with professional, effective and efficient law enforcement services.
  - b) Peace officers shall not allow their law enforcement decisions to be influenced by race, color, creed, religion, national origin, gender, marital status, or status with regard to public assistance, disability, sexual orientation or age.

**D. PRINCIPLE FOUR**

Peace officers shall not, whether on or off duty, exhibit any conduct which discredits themselves or their agency or otherwise impairs their ability or that of other officers or the agency to provide law enforcement services to the community.

**1. Rationale:** A peace officer's ability to perform his or her duties is dependent upon the respect and confidence communities have for the officer and law enforcement officers in general. Peace officers must conduct themselves in a manner consistent with the integrity and trustworthiness expected of them by the public.

**2. Rules**

- a) Peace officers shall not consume alcoholic beverages or chemical substances while on duty except as permitted in the performance of official duties, and under no circumstances while in uniform, except as provided for in c).
- b) Peace officers shall not consume alcoholic beverages to the extent the officer would be rendered unfit for the officer's next scheduled shift. A peace officer shall not report for work with the odor of an alcoholic beverage on the officer's breath.
- c) Peace officers shall not use narcotics, hallucinogens, or other controlled substances except when legally prescribed. When medications are prescribed, the officer shall inquire of the prescribing physician whether the medication will impair the officer in the performance of the officer's duties. The officer shall immediately notify the officer's supervisor if a prescribed medication is likely to impair the officer's performance during the officer's next scheduled shift.
- d) Peace officers, whether on or off duty, shall not engage in any conduct which the officer knows, or should reasonably know, constitutes sexual harassment as defined under Minnesota law, including but not limited to; making unwelcome sexual advances, requesting sexual favors, engaging in sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature.
- e) Peace officers shall not commit any acts which constitute sexual assault or indecent exposure as defined under Minnesota law. Sexual assault does not include a frisk or other search done in accordance with proper police procedures.
- f) Peace officers shall not commit any acts which, as defined under Minnesota law, constitute (1) domestic abuse, or (2) the violation of a court order restraining the officer from committing an act of domestic abuse or harassment, having contact with the petitioner, or excluding the peace officer from the petitioner's home or workplace.
- g) Peace officers, in the course of performing their duties, shall not engage in any sexual contact or conduct constituting lewd behavior including but not limited to, showering or receiving a massage in the nude, exposing themselves, or making physical contact with the nude or partially nude body of any person, except as pursuant to a written policy of the agency.
- h) Peace officers shall avoid regular personal associations with persons who are known to engage in criminal activity where such associations will undermine the public trust and confidence in the officer or agency. This rule does not prohibit

those associations that are necessary to the performance of official duties or where such associations are unavoidable because of the officer's personal or family relationships.

**E. PRINCIPLE FIVE**

Peace officers shall treat all members of the public courteously and with respect.

**1. Rationale:** Peace officers are the most visible form of local government. Therefore, peace officers must make a positive impression when interacting with the public and each other.

**2. Rules**

- a) Peace officers shall exercise reasonable courtesy in their dealings with the public, other officers, superiors and subordinates.
- b) No peace officer shall ridicule, mock, deride, taunt, belittle, willfully embarrass, humiliate, or shame any person to do anything reasonably calculated to incite a person to violence.
- c) Peace officers shall promptly advise any inquiring citizen of the agency's complaint procedure and shall follow the established agency policy for processing complaints.

**F. PRINCIPLE SIX**

Peace officers shall not compromise their integrity nor that of their agency or profession by accepting, giving or soliciting any gratuity which could be reasonably interpreted as capable of influencing their official acts or judgments or by using their status as a peace officer for personal, commercial or political gain.

**1. Rationale:** For a community to have faith in its peace officers, officers must avoid conduct that does or could cast doubt upon the impartiality of the individual officer or the agency.

**2. Rules**

- a) Peace officers shall not use their official position, identification cards or badges for: (1) personal or financial gain for themselves or another person; (2) obtaining privileges not otherwise available to them except in the performance of duty; and (3) avoiding consequences of unlawful or prohibited actions.
- b) Peace officers shall not lend to another person their identification cards or badges or permit these items to be photographed or reproduced without approval of the chief law enforcement officer.
- c) Peace officers shall refuse favors or gratuities which could reasonably be interpreted as capable of influencing official acts or judgments.
- d) Unless required for the performance of official duties, peace officers shall not, while on duty, be present at establishments that have the primary purpose of providing sexually oriented adult entertainment. This rule does not prohibit officers from conducting walk-throughs of such establishments as part of their regularly assigned duties.



- e) Peace officers shall:
  - not authorize the use of their names, photographs or titles in a manner that identifies the officer as an employee of this agency in connection with advertisements for any product, commodity or commercial enterprise;
  - maintain a neutral position with regard to the merits of any labor dispute, political protest, or other public demonstration while acting in an official capacity;
  - not make endorsements of political candidates while on duty or while wearing the agency's official uniform.

This section does not prohibit officers from expressing their views on existing, proposed or pending criminal justice legislation in their official capacity.

#### **G. PRINCIPLE SEVEN**

Peace officers shall not compromise their integrity, nor that of their agency or profession, by taking or attempting to influence actions when a conflict of interest exists.

1. **Rationale:** For the public to maintain its faith in the integrity and impartiality of peace officers and their agencies officers must avoid taking or influencing official actions where those actions would or could conflict with the officer's appropriate responsibilities.

#### **2. Rules**

- a) Unless required by law or policy a peace officer shall refrain from becoming involved in official matters or influencing actions of other peace officers in official matters impacting the officer's immediate family, relatives, or persons with whom the officer has or has had a significant personal relationship.
- b) Unless required by law or policy a peace officer shall refrain from acting or influencing official actions of other peace officers in official matters impacting persons with whom the officer has or has had a business or employment relationship.
- c) A peace officer shall not use the authority of their position as a peace officer or information available to them due to their status as a peace officer for any purpose of personal gain including but not limited to initiating or furthering personal and/or intimate interactions of any kind with persons with whom the officer has had contact while on duty.
- d) A peace officer shall not engage in any off-duty employment if the position compromises or would reasonably tend to compromise the officer's ability to impartially perform the officer's official duties.

#### **H. PRINCIPLE EIGHT**

Peace officers shall observe the confidentiality of information available to them due to their status as peace officers.

1. **Rationale:** Peace officers are entrusted with vast amounts of private and personal information or access thereto. Peace officers must maintain the confidentiality of

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such information to protect the privacy of the subjects of that information and to maintain public faith in the officer's and agency's commitment to preserving such confidences.

**2. Rules**

- a) Peace officers shall not knowingly violate any legal restriction for the release or dissemination of information.
- b) Peace officers shall not, except in the course of official duties or as required by law, publicly disclose information likely to endanger or embarrass victims, witnesses or complainants.
- c) Peace officers shall not divulge the identity of persons giving confidential information except as required by law or agency policy.

**I. APPLICATION**

Any disciplinary actions arising from violations of this policy shall be investigated in accordance with MN STAT 626.89, Peace Officer Discipline Procedures Act and the law enforcement agency's policy on Allegations of Misconduct as required by *MN RULES* 6700.2000 to 6700.2600.

## SECTION 4

### ALLEGATIONS OF MISCONDUCT MN RULES 6700.2200 through 6700.2600

#### I. POLICY

It is the policy of the Hawley Police Department that any person who believes that an employee of this agency has acted improperly may bring a complaint to the chief law enforcement officer's attention pursuant to the following procedure.

#### II. DEFINITIONS

For the purpose of this policy the terms set forth below are defined as follows:

- A. **Chief Law Enforcement Officer** means the chief of police, sheriff, state law enforcement director or a designee. Within this policy, the chief law enforcement officer will be referred to as CLEO.
- B. **Complainant** means a person who submits a complaint to the CLEO alleging misconduct by an agency member.
- C. **Complaint** means a written statement made to or by a CLEO alleging misconduct.
- D. **Member** means all voluntary and compensated personnel of the agency.
- E. **Discipline** means:
  - 1. oral reprimand,
  - 2. written reprimand,
  - 3. suspension,
  - 4. demotion, or
  - 5. Discharge.
- F. **Exonerated** means a fair preponderance of the evidence established either that:
  - 1. the act or acts complained of did not occur;
  - 2. the agency member named in the complaint was not involved in the alleged misconduct; or
  - 3. the act(s) that provided the basis for the complaint occurred; however, the investigation reveals that such act(s) were justified, lawful or proper.
- G. **Not Sustained** means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

- H. *Sustained*** means a fair preponderance of the evidence obtained in the investigation established that the accused person's actions constituted misconduct.
- I. *Formal Statement*** means the questioning of an agency member in the course of obtaining a recorded, stenographic or signed statement to be used as evidence in a disciplinary proceeding against the agency member.
- J. *Respondent*** means any agency member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed.
- K. *Misconduct*** means:
1. a violation of any agency policy and procedure governing conduct of agency members;
  2. the use of unnecessary or excessive force;
  3. the conviction of any criminal offense;
  4. abuse of authority;
  5. conduct which violates a person's civil rights;
  6. abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference;
  7. sexual harassment as that term is defined under Minnesota law;
  8. intimidation or retribution toward a complainant or witness involved in any complaint proceeding.
- L. *Policies and Procedures*** mean the administrative rules adopted by the agency regulating the conduct of agency members.
- M. *Shall / Will*** means, as used herein, that the action is mandatory.
- N. *May*** means that the action is permissible.
- O. *Receiving authority*** means the person who receives the complaint when the subject of the complaint is a CLEO.

### **III. PROCEDURE**

#### **A. INITIATING COMPLAINT**

1. Anyone who has personal knowledge of facts or reliable hearsay information may file a complaint. Any agency member who has personal knowledge of misconduct shall file a complaint according to the procedures stated herein.

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2. Any agency member shall self-report to the CLEO and to the Peace Officer Standards and Training Board any action, inaction, or condition of that agency member which the agency member reasonably believes would constitute grounds for disciplinary action under any of the Peace Officer Standards and Training Board's regulatory provisions.
3. Upon receiving a complaint against a member within the agency, the CLEO receiving the complaint shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered filed until the complainant signs the CCF.
4. If the person making a complaint sets forth specific believable facts supporting an allegation of misconduct but wishes to remain anonymous, the CLEO receiving the complaint may, with sole discretion, permit the complainant to remain anonymous. In this instance the CLEO shall sign the complaint as the complainant. If the CLEO has reason to believe the complaint is unfounded, the CLEO shall have the authority to require an anonymous complainant to identify himself/herself. If that complainant refuses to do so, the CLEO may refuse to accept a complaint and shall advise the anonymous person of that fact.
5. After a CCF is filed, the CLEO shall sign the document keeping a copy for the agency and providing a copy to the complainant. The CLEO will forward a copy of the document to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.
6. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.
7. Any complaint made against a chief of police shall initially be made to the city administrator, manager or mayor. Any complaint made against a sheriff shall initially be made to the county attorney or the board of county commissioners. Upon receiving a complaint the receiving authority shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered until the complainant signs the CCF.
8. The city administrator, manager, mayor, county attorney or board of county commissioners should refer investigations of alleged misconduct against a CLEO to an outside law enforcement agency or criminal justice agency.

**B. THE INVESTIGATION OF A COMPLAINT**

1. Upon receipt of the Citizen Complaint Form (CCF), the CLEO shall make an initial determination as to whether the facts alleged require a formal investigation. If the CLEO decides that an investigation is not required, the disposition of the

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- investigation is not required. The disposition of the complaint shall be either “not sustained” or “exonerated”. The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may reverse this decision and order a formal investigation.
2. If the CLEO determines a formal investigation is required an appropriate person will be assigned to investigate the complaint. When the CLEO believes an external investigation is appropriate and when the CLEO is the subject of the complaint, the investigation will be assigned to an external agency.
  3. The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.
  4. As soon as possible after being assigned the investigation the investigator shall inform the complainant of his or her name, business phone number and the status of the complaint.
  5. The investigator shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another agency member the investigator shall report that fact to the CLEO or, in the case of a complaint against a CLEO, the appropriate city administrator, manager, mayor, county attorney or the board of county commissioners.
  6. All agency members shall cooperate with the investigation. When the respondent is a licensed peace officer the investigation shall comply with the requirements of MN STAT 626.89 and acts amendatory thereto.
  7. The investigator shall prepare a report which will contain all relevant information organized into the following three (3) sections.
    - a) *Allegations:* an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
    - b) *Investigation:* a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information shall be included.
    - c) *Conclusions:* the investigator’s findings, conclusions as to whether any misconduct occurred and the underlying reasons for the finds and conclusions.
  8. The investigation shall be completed within thirty (30) days of the filing of the complaint unless the CLEO determines there is good cause to grant an extension to

the investigation time. The complainant and respondent shall be informed of any extension.

9. A complaint received through the Minnesota Board of Peace Officer Standards and Training will be handled pursuant to this policy; the Board will be advised of the status of the complaint within 30 days.

### **C. ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION**

1. Upon completion of the investigation the investigator shall submit the report, case file and all investigative notes to the CLEO. The CLEO may require additional investigation or make one of the following decisions: “exonerated,” “not sustained,” or “sustained.”
2. The CLEO may postpone making a decision until any related criminal charges are resolved. The complainant and respondent shall be informed of this decision.
3. If the decision is “exonerated” or “not sustained” the CLEO shall immediately notify the complainant and the respondent of the decision.
4. If the complaint is “sustained” the CLEO will: issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
  - a) take appropriate remedial and/or disciplinary action.
5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CLEO and/or appropriate person shall review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.
6. The investigation may be re-opened by the CLEO at any time if substantial new evidence is discovered concerning the complaint.
7. When a “sustained” disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.

### **D. MAINTENANCE AND DISCLOSURE OF DATA**

1. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedure shall be governed by the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy shall be retained in accordance with the agency’s “Record Retention Schedule.”

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2. All data collected, created or received by the agency in connection with this policy and procedure shall be maintained in accordance with the agency's "Record Retention Schedule."
3. The placement of the disposition report or other data in an employee's personnel file shall be governed by the agency's personnel policy.
4. Access to data collected, created, or received in connection with this policy and procedure may only be authorized by the CLEO or the agency's Data Practices "Responsible Authority," and as provided by Chapter 13, the "Minnesota Government Data Practices Act," or valid court order.



## SECTION 5

### DOMESTIC ABUSE RESPONSE AND ARREST POLICY

Minn. Stat. 629.342

#### I. POLICY

It is the policy of the Hawley Police Department to recognize domestic abuse as a serious problem in today's society. This agency's policy is to protect victims of domestic abuse by ensuring its peace officers understand the laws governing this area.

Peace officers will utilize this policy in response to calls when there may be domestic abuse. This policy prescribes courses of action peace officers should take in response to a domestic call. This agency will aggressively enforce the laws without bias and prejudice based on race, marital status, sexual orientation, economic status, age, disability, gender, religion, creed, or national origin.

#### II. DEFINITIONS

For the purposes of this policy, the words and phrases in this section have the meanings given to them, unless another intention clearly appears.

**A. *Domestic Abuse*** has the meaning given it in Minn. Stat. 518B.01, subd. 2(a), which states:

"Domestic abuse" means the following, if committed against a family or household member by a family or household member:

- (1) physical harm, bodily injury, or assault;
- (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or
- (3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

**B. *Domestic Abuse Program*** means a public or private intervention project or advocacy program which provides support and assistance to the victims of domestic abuse.

**C. *Child*** means a person under the age of 18.

**D. *Family or Household Member*** has the meaning given it in Minn. Stat. 518B.01, subd. 2(b)(1)-(7): spouses, former spouses, parents and children, persons related by blood, and 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 been married or have lived together at any time, and persons involved in a significant romantic or sexual relationship. It also includes a man and a woman if the woman is

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pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

- E. *Domestic Call*** means a request for assistance to a law enforcement agency regarding domestic abuse or any other crime against a family of household member.
- F. *Qualified domestic violence-related offense (QDVRO)*** has the meaning given it in Minn. Stat. 609.02, subd. 16 and includes a violation of or an attempt to violate a domestic abuse order for protection; first or second degree murder; first through fifth degree assault; domestic assault; female genital mutilation; domestic assault by strangulation; first through fourth degree criminal sexual conduct; malicious punishment of a child; terroristic threats; violation of harassment restraining order; stalking; interference with an emergency call; nonconsensual dissemination of private sexual images; and violation of domestic abuse no contact order; and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

If a person arrested for a domestic crime has a prior QDVRO, the new offense may be chargeable as a higher-level crime. (See Enhancement Table appended hereto.)

- G. *Order for Protection (OFP)*** is an order issued under Minn. Stat. 518B.01 by a judge in civil court upon the request of the petitioner. Any family or household member of the abuser (called a respondent) may ask the court for an OFP. The relief granted to the petitioner may include an order for the respondent to stop domestic abuse, no direct or indirect contact with petitioner, temporary custody of minor children, temporary financial support, and/or counseling for the respondent. Other forms of relief are also available. Violating an OFP is a crime.
- H. *Domestic Abuse No Contact Order (DANCO)*** is an order issued under Minn. Stat. 629.75 by a judge in criminal court limiting contact between a defendant and a victim of domestic abuse. DANCOs may be issued as pretrial condition of release and/or as a probationary condition of sentence.
- I. *Harassment Restraining Order (HRO)*** is an order issued under Minn. Stat. 609.748 by a judge in civil court when a petitioner requests a court order preventing another person from having contact with him/her. These orders generally prohibit all contact of any kind (including, but not limited to, phone calls, letters, e-mail, social media and contact through a third party) and may limit the respondent's ability to come within a certain distance of the petitioner's home, work or school. This type of order can be issued no matter what the relationship between the individuals involved. Violating an HRO is a crime.
- J. *Harassment*** has the meaning given to it in Minn. Stat. 609.748, subd. 1(a): a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target.

- K. *Stalking*** has the meaning given to it in Minn. Stat. 609.749, subd. 1: engaging in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim.

### **III. PROCEDURE**

#### **A. DISPATCHING THE CALLS**

**1. Receiving the Domestic Call:** Upon receiving a domestic call, the dispatcher will assign domestic calls a high priority and should assign at least two officers to the call. If only one officer is available, all reasonable attempts should be made to obtain another officer to assist the officer who was initially dispatched.

**2. Information to be Obtained:** The dispatcher receiving a domestic call should attempt to elicit from the caller and should communicate to the responding peace officers as much of the following information as possible:

- the nature of the incident,
- the address of the incident, including apartment number, if applicable,
- the telephone numbers where the caller can be reached,
- whether weapons are involved or present in the dwelling,
- whether someone is injured and the nature of the injury,
- information about the suspect including whether the suspect is present, description, direction of flight, mode of travel, etc.,
- the relationship between the caller and the suspect,
- whether there has been prior calls involving these individuals,
- whether there is an order for protection (OFP), harassment restraining order (HRO) or criminal pre-trial or probationary domestic abuse no contact order (DANCO),
- whether children are present at the scene, and
- whether there are non-English speaking people, or people with mobility impairments or hearing impairments at the scene.

If the caller is the victim, the dispatcher should attempt to keep the caller on the telephone as long as possible and should tell the caller that help is on the way, and when the caller can expect the peace officers to arrive.

If the caller is a witness to an incident in progress, the dispatcher should attempt to keep the caller on the phone and should relay ongoing information provided by the caller to the responding peace officers.

If the responding peace officers are some distance away, and the dispatcher cannot remain on the telephone with the call/victim, the dispatcher should attempt to call back periodically to check on the progress of events, and call again when the officers arrive at the scene. If the dispatcher finds that a victim/caller who was recently available suddenly cannot be reached by phone or there is a persistent busy signal, the dispatcher should relay that information to the officers.

## **B. RESPONDING TO THE CALLS**

- 1. Driving to the Scene:** The peace officers should respond directly and without unreasonable delay to the scene.
- 2. Initial Contact with Occupants:** Upon arriving at the scene of a domestic call, the responding officers should identify themselves as peace officers; explain their presence, and request entry into the home. The officers should ask to see the person who is the alleged victim. The officers should separate parties prior to taking statements. If the person who called the law enforcement agency is someone other than the subject of the call, the officer should not reveal the caller's name. The officer should ensure all of the occupants are safe.
- 3. Entry**
  - Refused Entry – If refused entry, the officers should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused the officers should request the dispatcher to contact the caller.
  - Forced Entry – If access is still refused and the officers have reason to believe that someone is in imminent danger the officers are permitted to force entry.
  - Search Warrant Entry – If the officers are refused entry and have no legal grounds for forced entry and have reasonable grounds to believe a crime has been committed, the officers should contact the appropriate authority to obtain a search warrant.
- 4. First Aid:** After securing the scene, the responding peace officers shall provide the necessary first aid.

## **C. ARREST DECISIONS**

- 1. Making Arrests:** After securing the scene and providing any first aid, the peace officers will conduct an assessment of the lethality of the situation based on the totality of the circumstances and begin a criminal investigation to determine if there is probable cause to believe a crime has been committed based on the evidence and not solely upon the victim's desire to make an arrest. The officers should collect relevant physical evidence including weapons which may have been used, take photographs of the scene or any injuries and take statements from the involved parties and witnesses. Some of the evidence and statements include:
  - photos of the scene,
  - condition of clothing,

- property damage,
- evidence of physical injury including strangulation,
- excited utterances of the victim and the suspect,
- demeanor of the victim and the suspect,
- medical records including the victim's statements to paramedics, nurses and doctors,
- recorded interviews of witnesses including children who may have been present,
- evidence of any prior domestic abuse – related convictions including dates, and
- any existing OFPs, HROs or DANCOs.

NOTE: When determining probable cause, the peace officers should consider their observations and any statements made by the parties involved and any witnesses. Prior convictions may provide the basis for enhancement to a gross misdemeanor or felony charges (see D below).

**2. Factors Not to be Considered in Making the Arrest:**

- ownership, tenancy rights of either party, or the fact the incident occurred in a private place,
- belief that the victim will not cooperate with criminal prosecution or that the arrest may not lead to a conviction,
- verbal assurances that the abuse will stop,
- disposition of previous police calls involving the same victim or suspect,
- denial by either party that the abuse occurred when there is evidence of domestic abuse,
- lack of a court order restraining or restricting the suspect,
- concern about reprisals against the victim,
- adverse financial consequences that might result from the arrest, or
- chemical dependency or intoxication of the parties.

**3. Predominant Aggressor and Dual Arrests:** The agency shall discourage dual arrest<sup>1</sup>. Where there are allegations that each party assaulted the other, the peace officer shall determine whether there is sufficient evidence to conclude that one of the parties is the predominant aggressor based on the following criteria and the officer's judgment:

- comparative extent of any injuries inflicted,
- fear of physical injury because of past or present threats,
- actions taken in self-defense or to protect oneself,
- the history of domestic abuse perpetrated by one party against the other, or

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<sup>1</sup> MN STAT 629.342 which mandates the development of a written domestic abuse arrest policy for every law enforcement agency in the state specifies that the policy "shall discourage dual arrests, include consideration of whether one of the parties acted in self-defense, and provide guidance to officers concerning instances in which officers should remain at the scene of a domestic abuse incident until the likelihood of further imminent violence has been eliminated."

- the existence or previous existence of an order for protection.
- 4. Victim Request Not to Prosecute:** If the officer finds probable cause to believe a domestic abuse offense has been committed and intends to arrest but the victim requests no arrest or prosecution, the officer should inform the victim that the decision to arrest is the officer's and the decision to prosecute lies with the prosecutor.

#### **D. AUTHORITY AND TYPES OF ARREST**

**1. Warrantless Probable Cause Arrest for Fifth Degree Assault or Domestic Assault:** Although the general rule is that officers may not make probable cause arrests for misdemeanors unless the offense occurs in their presence (or a citizen who saw the crime requests an arrest) domestic assault is an exception. A peace officer may arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that the person has, within the preceding 72 hours, assaulted, threatened with a dangerous weapon, or placed in fear of immediate bodily harm any person covered by the "family or household member" definition, even if the assault did not take place in the presence of the peace officer (Minn. Stat. 629.341). A peace officer acting in good faith and exercising due care in making an arrest pursuant to this statute is immune from civil liability that might result from the officer's action.

NOTE: An arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with assaulting the individual's spouse or other individual with whom the charged person resides (Minn. Stat. 629.72).

**2. Level of Arrest for Fifth Degree Assault and Domestic Assault: Misdemeanor, Gross Misdemeanor and Felony:** Assault in the Fifth Degree and Domestic Assault are deemed misdemeanor offenses. However, changes in the statutes have greatly increased the potential for arrests for these crimes at the gross misdemeanor and felony level.

a) *Gross Misdemeanors:* Minn. Stat. 609.224, subd. 2(a), Assault in the Fifth Degree, provides for an enhancement to a gross misdemeanor violation when the offense is against the same victim within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency in Minnesota, or any similar law of another state.

If the charge is Domestic Assault (Minn. Stat. 609.2242) and the current victim is a family or household member and the crime occurs within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency of any of the above offenses against any family or household member, the same gross misdemeanor enhancement applies. The prior conviction need not be against a member of the same family or household.

- b) *Felonies:* If a person commits Assault in the Fifth Degree against the same victim within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency, Assault in the Fifth Degree becomes a felony. The same enhancement applies to Assault in the Fifth Degree against any victim occurring within three years of the first of two or more of these convictions.

Domestic assault against a family or household member is also enhanceable under the same circumstances except that the prior convictions may be against any family or household member. According to Minn. Stat. 609.2247, subd. 2., whoever assaults a family or household member by strangulation is guilty of a felony.

**3.Stalking** The acts which constitute stalking according to Minn. Stat. 609.749 include several which are frequently applicable to domestic abuse situations even when no actual assault occurred.

- a) *Gross Misdemeanors:* A person who stalks another by committing any of the following acts is guilty of a gross misdemeanor:
1. directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
  2. follows, monitors, or pursues another, whether in person or through any available technological or other means;
  3. returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
  4. repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
  5. makes or causes the telephone of another to repeatedly or continuously ring;
  6. repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistance devices for the visually or hearing impaired, or any communication made through any available technologies or other objects; or
  7. knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

Also, according to Minn. Stat. 607.749., subd.1a., the State does not have to prove the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted or intimidated. The intent of the defendant is immaterial. Obtaining a complete domestic abuse history is usually the key to making the determination that the current act, under the circumstances, constitutes the crime of stalking.

- b) *Felony/Felony Enhancements*: A person who commits any offense described in 3.a) (see above) against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony.

Any of the above gross misdemeanors is enhanceable to a felony if committed within ten years of a previous QDRVO conviction or adjudication of delinquency OR if committed against a juvenile OR if committed while possessing a dangerous weapon.

In addition, it is a felony to engage in a pattern of stalking conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause a reasonable person under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim. According to Minn. Stat. 609.749, subd. 5, a “pattern of stalking conduct” means two or more acts (convictions are not necessary) within a five-year period that constitute any of the following offenses: murder, manslaughter, terroristic threats, fifth-degree assault, domestic assault, violation of domestic abuse orders for protection, violation of harassment restraining orders, certain trespass offenses, interference with an emergency call, obscene or harassing telephone calls, letter, telegram, or package opening or harassment, burglary, damage to property, criminal defamation, first- to fifth-degree criminal sexual conduct, and violations of domestic abuse no contact orders.

The stalking statute makes it more important than ever to document not just the facts of the current police call but also the history of abuse or stalking.

- c) Venue (Minn. Stat. 609.749, subp. 1b.): If a suspect commit acts of stalking in different counties, the acts may be consolidated and prosecuted in any county in which one of the acts was committed. If the conduct that constitutes stalking is done through use of a wireless or electronic communication device, the conduct can be prosecuted in the county where either the suspect or victim resides.
- 4. Probable Cause Warrantless Arrest:** The domestic abuse arrest statute (Minn. Stat. 629.72) provides an officer may not issue a citation in lieu of arrest in harassment/stalking, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order cases. According to Minn. Stat. 629.34, subd.1(c)(5) an officer may also make a warrantless probable cause arrest even if the offense did not occur in the officer’s presence if the officer has reasonable cause to believe the offense was a gross misdemeanor or felony (no 72 hour restriction).
- 5. Probable Cause Felony Arrests for Other Crimes:** At a domestic call peace officers shall consider whether other felonies have been committed including but



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not limited to, burglary, felony assault, terroristic threats, kidnapping, false imprisonment, and witness tampering.

**NOTE:** An Assault 5 may be chargeable as burglary in the first degree even if the home is also the offender's if the entry is made without consent of the victim and in violation of an OFP barring the offender from the premises.

- 6. Violation of Court Orders:** The peace officer shall verify whether any of the following orders exist before or during an arrest. The peace officer or someone acting at the officer's direction may make this verification. Methods of verification include personally seeing a copy of the order or obtaining verification from the court or law enforcement agency that has the actual order. The police report shall include identifying information of the specific court order violated, including county of origin, the file number, and the provision allegedly violated.

- a) *Order for Protection (OFP):* A peace officer shall arrest and take into custody without a warrant a person who the peace officer has probable cause to believe has violated any condition of an OFP granted pursuant to Minn. Stat. 518B.01, subs. 6, 7, and 9. Such an arrest shall be made even if the violation of the order did not take place in the presence of the peace officer, if the officer can verify the existence of the order.

**NOTE:** Minn.Stat. 518B.01, subd. 18(a)(2), states that an OFP is not voided even if the respondent was invited back to the residence by the petitioner, and there is no hour limitation for a warrantless arrest for a violation of an OFP.

A violation of an OFP is a misdemeanor but is enhanceable to a gross misdemeanor if the offense occurs within ten years of discharge from sentence for conviction of violation of an OFP or for any conviction of assault, terroristic threats, violation of a harassment order or harassment/stalking. It is enhanceable as a felony if it occurs within ten years of discharge of the first of two or more such convictions.

OFPs and DANCOs can be verified on the State MNJIS system, also known as the Hot Files. HROs are not in the Hot Files system at this time but are still enforceable.

- b) *Harassment Restraining Order (HRO):* A peace officer shall arrest and take into custody a person who the peace officer has probable cause to believe has violated a harassment restraining order pursuant to Minn. Stat. 609.748, subs. 4 and 5, if the officer can verify the existence of the order.

**NOTE:** A person who violates an HRO is guilty of a misdemeanor if the violator knows of the order. This offense is enhanceable to a gross misdemeanor if it occurs within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Per Minn.

Stat. 609.748, subd. 6, (d), it is enhanceable to a felony if the person knowingly violates the order:

- (1) within 10 years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;
- (2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability (as defined in section 363A.03), age, or national origin;
- (3) by falsely impersonating another;
- (4) while possessing a dangerous weapon;
- (5) with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.414, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or
- (6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

- c) *Domestic Abuse No Contact Order (DANCO)* (Minn. Stat. 629.75): A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a DANCO, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer.

The pretrial DANCO is sometimes continued at the time of sentencing with a new, probationary DANCO issued as a condition of probation. This DANCO may be valid for the full probationary period indicated in the order.

The court may rescind a DANCO at any time. However, a victim's production of a copy of an apparently valid court order, absent contrary evidence, provides prima facie basis for arrest whenever there is probable cause to believe a violation of the order has occurred.

- 7. Other Misdemeanors:** At a domestic call, the peace officer shall consider whether other crimes have been committed including but not limited to trespassing, criminal damage to property, disorderly conduct, witness tampering, or assault.

## **E. ASSISTANCE, STAYING AT THE SCENE, CRIME VICTIM RIGHTS, AND SERVICES**

- 1. Staying at the Scene:** If no arrest is made peace officers should remain at the scene of the disturbance until they believe that the likelihood of further imminent abuse has been eliminated. If a domestic abuse intervention program is available the peace officer should make contact for immediate intervention.

**NOTE:** Minn. Stat. 629.342 provides that when a peace officer does not make an arrest, the peace officer must provide immediate assistance to the victim including obtaining necessary medical treatment and providing the victim with the notice of rights pursuant to Minn. State. 629.341, subd. 3.

**2.Assistance to Non-English Speaking Victims or Victims with Communication**

**Disabilities:** The peace officer shall use the resource list established by the law enforcement agency to contact a person to assist in those cases where the participants in the domestic call, including the witnesses, are non-English speaking, are hearing-impaired, or have other communication disabilities. The officer should avoid the use of friends, family or neighbors serving as the primary interpreter for the investigation.

**3.Notice of Crime Victims Rights:** The peace officer shall give the victim of a domestic call a copy of the agency's crime victim notification form.

**NOTE:** It is important to routinely review these forms to ensure that they are current, in compliance with the law, and contain the name of the local domestic abuse program. The Department of Public Safety, Office of Justice Programs, produces the crime victim's rights notice and serves as the contact for the victim's rights information.

**4.Services:** The peace officer should contact the local domestic abuse program by phone as soon as possible on all arrest situations and provide the name and address of the victim and a brief factual account of events associated with the action. This section shall not apply if prohibited by the Minnesota Government Data Practices Act (Minn. Stat. 13.82, subd. 10,).

**F. CHILDREN**

**1.Child Victims:** If a child is present at the scene of a domestic call or is the victim of domestic abuse, the peace officer should determine whether the child has been subjected to physical abuse, sexual abuse, or neglect, and comply with the requirements of Minn. Stat. 626.556, Reporting of Maltreatment of a Minor. The officers shall also attempt to verify whether there has been an Order for Protection (Minn. Stat. 260C.201). If the child has been injured, the officer should escort the child to the nearest hospital for treatment.

**G. REPORTS AND FORMS**

**1.Written Report:** Peace officers shall make a report after responding to a domestic call. If the officer did not arrest or seek an arrest warrant even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest must be documented. The report should include the following:

- detailed statements from the victim, suspect and witnesses;
- description of injuries;

- information about past abuse;
- description of the scene;
- predominant aggressor;
- existence of language barriers;
- presence of elderly victims or those with disabilities; and
- documentation of evidence.

## **H. FURTHER INVESTIGATION**

1. A domestic call shall be turned over to the appropriate investigator for further follow-up if appropriate. If there is an arrest, the investigator shall determine the defendant's criminal record, and if there is evidence of a previous conviction, the peace officer should advise the prosecutors of any enhanced criminal sanctions which may be available.
2. Notwithstanding the fact that the officer has decided not to arrest one of the participants in the domestic call, the peace officer shall thoroughly document all relevant information in the report and shall refer the report to the appropriate prosecutor for review and consideration of criminal charges.

### **Enhancements Table**

Conviction means a plea of guilty or verdict of guilty accepted by the court (Minn. Stat. § 609.02, subd. 5).

Discharge from Offense means the time between conviction and the end of 5 years following discharge from sentence for that offense.

QDVRO means a “Qualified Domestic Violence Related Offense” which includes a violation of or an attempt to violate a domestic abuse order for protection; first or second-degree murder; first through fifth-degree assault; domestic assault; female genital mutilation; domestic assault by strangulation; first through fourth-degree criminal sexual conduct; malicious punishment of a child; terroristic threats; violation of harassment restraining order; stalking; interference with an emergency call; nonconsensual dissemination of private sexual images; and violation of domestic abuse no contact order (DANCO); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories. (Minn. Stat. 609.02, subd. 16)

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Offense	Victim of Offense	Time Limit	Prior Conviction	Offense Level
Assault 5	Same Victim	w/in 10 years of conviction	QDVRO	Gross Misdemeanor
		w/in 10 years of discharge of 1 <sup>st</sup> of 2 or more convictions	QDVRO	Felony
	Any Victim	w/in 3 years of conviction	QDVRO	Gross Misdemeanor
		w/in 3 years of 1 <sup>st</sup> of 2 or more convictions	QDVRO	Felony
Domestic Assault	Family/Household Member (as defined in Minn. Stat. 518B.01, subd. 2.)	w/in 10 years of conviction	QDVRO	Gross Misdemeanor
		w/in 10 years of 1 <sup>st</sup> of 2 or more convictions for Domestic Assault or Assault 5	QDVRO	Felony
Malicious Punishment	Any Victim	w/in 5 years of discharge	Assault 1-5, Domestic Assault, Malicious Punishment, Criminal Sexual Conduct 1-4, or Terroristic Threats	Felony
Violation of Order for Protection or Harassment Restraining Order	Any Victim	w/in 10 years of conviction	QDVRO	Gross Misdemeanor
		w/in 10 years of discharge of 1 <sup>st</sup> of 2 or more convictions	QDVRO	Felony
Stalking	Any Victim	w/in 10 years of conviction	QDVRO	Felony
Interference w/ Privacy	Any Victim	None	Interference w/ Privacy or Stalking	Gross Misdemeanor

<b>Example of Enhancement Reachback:</b>	
Arrest for Assault 5 & Malicious Punishment	1/1/2013
Plea (Accepted) to Assault 5 & Malicious Punishment (Conviction)	6/1/2013
Sentence of 2 years of probation	8/1/2013
Expiration of reachback for <b>any victim</b> for Assault 5	6/1/2016
Discharge from sentence	8/1/2015
Expiration of reachback for <b>any victim</b> for Malicious Punishment	8/1/2020
Expiration of reachback for <b>same victim</b> for Assault 5	6/1/2023

## **SECTION 6**

### **IMPARTIAL POLICING POLICY**

MN STAT 626.8471, subd.4

#### **I. POLICY**

It is the policy of the Hawley Police Department to reaffirm our commitment to impartial policing and to reinforce procedures that serve to assure the public we are providing service and enforcing laws in a fair and equitable manner to all.

#### **II. DEFINITION**

Racial profiling has the meaning given to it in Minnesota Statute 626.8471, Subd. 2. which states:

"Racial profiling" means any action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than:

- (1) the behavior of that individual; or
- (2) information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Racial profiling includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

#### **III. PROCEDURES**

**A.** Policing impartially, not racial profiling, is standard procedure for this agency meaning:

- 1.** investigative detentions, pedestrian and vehicle stops, arrests, searches and property seizures by peace officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the United States Constitution and peace officers must be able to articulate specific facts, circumstances and conclusions that support reasonable suspicion or probable cause for investigative detentions, pedestrian and vehicle stops, arrests, nonconsensual searches and property seizures;
- 2.** except as provided in paragraph **3.**, peace officers shall not consider race, ethnicity, national origin, gender, sexual orientation and religion in establishing either reasonable suspicion or probable cause; and
- 3.** peace officers may take into account the descriptors in paragraph **2.** based on information that links specific, suspected, unlawful or suspicious activity to a particular individual or group of individuals and this information may be used in the same manner officers use specific information regarding age, height, weight, etc. about specific suspects.

**B.** In an effort to prevent the perception of biased law enforcement peace officers shall:

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1. be respectful and professional;
  2. introduce or identify themselves to the citizen and state the reason for the contact as soon as practical unless providing this information will compromise officer or public safety;
  3. ensure the detention is no longer than necessary to take appropriate action for the known or suspected offense;
  4. attempt to answer any relevant questions the citizen may have regarding the citizen/officer contact including relevant referrals to other agencies when appropriate;
  5. provide their name and badge number when requested, preferably in writing or on a business card; and
  6. explain and/or apologize if it is determined the reasonable suspicion was unfounded (e.g. after an investigatory stop).
- C. Supervisors shall ensure all personnel in their command are familiar with the content of this policy and are in compliance.



## **SECTION 7**

### **LIGHTING EXEMPTION OF LAW ENFORCEMENT VEHICLES POLICY**

MN STAT 169.541

#### **I. POLICY**

It is the policy of the Hawley Police Department to provide a uniform guideline for all department personnel to use when operating a department vehicle without headlights, taillights or marine navigational lighting while functioning as a peace officer.

#### **II. DEFINITIONS**

For the purpose of this policy the following definitions apply:

- A. Vehicle:** means a motor vehicle or watercraft owned, leased or otherwise the property of the State of Minnesota or a political subdivision.
- B. Lights:** refers to headlights, taillights and marine navigational lighting as referenced in MN STAT 84.87, 84.928, 169.48 to 169.65 and 86B.511.

#### **III. PROCEDURE**

A peace officer may **not** operate a vehicle without lights contrary to MN STAT 169.541. **LIGHTING EXEMPTION FOR LAW ENFORCEMENT; STANDARDS.** under conditions of limited or reduced visibility as defined in MN STAT 84.87, 84.928, 169.48 to 169.65 and 86B.511:

- on an interstate highway.
- at speeds greater than what is reasonable and prudent under existing weather, road and traffic conditions.
- faster than the posted speed limit.
- in situations where the peace officer is an active participant in the pursuit of a motor vehicle in violation of MN STAT 609.487.

## SECTION 8

### POLICE PURSUIT POLICY

*MN RULES 6700.2701*

#### I. POLICY

It is the policy of the Hawley Police Department to protect lives while enforcing the law and to guide its officers in the safe and reasonable performance of their duties. To accomplish these goals, the following policy is provided to control and regulate emergency vehicle operations. When engaged in emergency vehicle operations in the performance of official duties, drivers of authorized emergency vehicles are granted exemptions from certain traffic laws by State Statute. These exemptions are provided to help protect lives, not to place them at undue risk.

#### II. DEFINITIONS

- A. *Pursuit*:** A multi-stage process by which a peace officer initiates a vehicular stop and a driver resists the signal or order to stop, increases speed, takes evasive action and/or refuses to stop the vehicle. Once the driver refuses to obey the peace officer's signal or order, this pursuit policy and procedure will determine the officer's and agency's actions.
- B. *Termination of a Pursuit*:** A pursuit shall terminate when the pursuing officer(s) turn off the emergency equipment, resume routine vehicle operation and informs dispatch, or when the suspect vehicle stops.
- C. *Divided Highway*:** Any highway that is separated into two or more roadways by:
  - 1. a physical barrier, or
  - 2. a clearly indicated dividing section constructed so as to impede vehicular traffic.
- D. *Channeling*:** To direct vehicular traffic into a progressively narrowing passageway or lane location on the roadway.
- E. *Compelling Path*:** The use of channeling technique with a modified roadblock located at its narrowed end. The compelling path differs from a termination roadblock in that the driver or any vehicle traveling the path has an exit option at the narrowed end.

#### III. PROCEDURE

##### A. Pursuit Considerations

- 1. Pursuit is justified when:
  - a) a vehicle operator fails to stop after being given a visual or audible signal to stop by a peace officer; and

b) there is reasonable expectation of a successful apprehension of the suspect.

**2. Other factors to be considered:**

- the initial decision to engage in a pursuit shall rest primarily with the officer who has initiated the vehicular stop, after considering the elements of this policy.
- these elements shall include, but are not limited to: the crime for which the suspect is wanted (the need to apprehend immediately), and the risk to the community created by the pursuit (traffic, area of pursuit, environmental factors, and weather conditions).
- the officer must continually consider the risks created by the pursuit, as those risks may change during a pursuit.
- terminating a pursuit shall be considered a decision made in the interest of public safety.
- the officer's decision to continue a pursuit may be overridden by a supervisor at any time.

**3. Standards applied to the evaluation of a pursuit, as well as the decision to continue a pursuit shall include the following considerations:**

- is the need to immediately apprehend the suspect more important than the risk created by the pursuit.
- do the dangers created by the pursuit exceed the danger posed by allowing the perpetrator to escape.

**B. Procedures & Tactics for an Officer Engaging in a Pursuit**

1. Emergency vehicles shall be driven in a safe manner and with due regard for public safety.
2. Emergency vehicles operating in emergency mode are permitted to violate certain traffic regulations, when necessary, as long as the operator continues to exercise due care in vehicle operation.
3. The pursuing vehicle shall be known as the primary unit, which will be the unit closest to the fleeing vehicle and the secondary unit, which shall remain at a safe distance behind the primary unit but close enough to provide support and communicate with dispatch. Backup units as needed shall operate at a safe distance to provide support.

**C. Responsibilities of the Primary Unit**

1. The driver of the primary unit shall notify dispatch of the pursuit and shall provide at least the following critical information to dispatch:
  - unit identification.

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- offense for which the suspect is being pursued.
  - suspect vehicle description including license number if reasonably possible.
  - location, direction and speed of both vehicles.
  - description of occupant(s) and if suspect is known to the officer.
  - any other important information about the suspect vehicle or environment (for example, the suspect is traveling without lights, or the officer has lost sight of the vehicle).
2. Based on the known information the supervisor shall make the decision to either take further appropriate action or terminate the pursuit.
  3. No officer will intentionally make vehicle-to-vehicle contact unless this action is in conformance with agency policy on use of force (see agency policy on use of force).
  4. Roadblocks must conform to the agency's policy on use of force.
  5. Only law enforcement vehicles with emergency lights and siren will be used as pursuit vehicles.

### **D. Supervision of Pursuit Activities**

1. Each agency shall outline their procedures regarding who has control over pursuit activities.
2. Procedures regarding control over pursuit activities should:
  - reference who should be notified a unit has become involved in a pursuit.
  - reference who critical information necessary to evaluate the continuation of the pursuit should be directed to.
  - indicate who has the authority to terminate any pursuit.
3. Options to keep in mind during a pursuit include, but are not limited to:
  - parallel pursuits.
  - channeling techniques.
  - creating a compelling path.
4. Post-pursuit chain of command notifications is required and should be identified in each agency's policy.

### **E. Dispatch Responsibilities**

Dispatch shall coordinate critical information as timely and accurately as is reasonably possible.

**F. Factors Influencing the Termination of a Pursuit:**

The driver of the primary unit and the supervisor shall continually evaluate the risks and likelihood of a successful apprehension of the suspect, and shall consider terminating the pursuit under the following conditions.

1. The conditions of the pursuit become too risky for the safe continuation of the pursuit.
2. A supervisor orders it terminated.
3. Information is communicated that indicates the pursuit is out of compliance with policy.
4. Communication is broken.
5. Visual contact is lost for a reasonable period of time or the direction of travel cannot be determined.
6. The suspect is known and could be apprehended later, and delaying apprehension does not create a substantial known risk of injury or death to another.

**G. Interjurisdictional Pursuit**

1. The primary unit shall update critical information to the dispatcher before leaving its jurisdiction.
2. The primary law enforcement vehicle shall remain the primary vehicle in other jurisdictions unless the controlling pursuit authority transfers its authority to another jurisdiction.
3. Upon receiving notification, the pursuit is entering another agency's jurisdiction, the dispatcher shall forward all critical information possessed by the dispatcher to that agency.
4. When a pursuit enters this law enforcement agency's jurisdiction:
  - the dispatcher shall update the critical information to the shift supervisor or other authorized individual identified by the law enforcement agency.
  - the controlling pursuit authority shall determine if the pursuit is in conformance with policy and shall provide appropriate direction to their units.

**H. Air Support**

Once contact is made with air support and air support has the suspect vehicle in sight, the primary pursuit unit shall reduce the level of pursuit to that of support or backup unit.

**I. Care and Consideration of Victims**

1. If during a pursuit an officer observes or is made aware of an injury to an individual, the officer shall immediately notify the dispatcher to have the appropriate emergency units respond.
2. The primary pursuit unit will be responsible for ensuring assistance is provided to people who may have been injured during the course of a pursuit. The primary pursuit unit may delegate the responsibility to render the assistance to a backup unit.

**J. Pursuit Summary Report**

1. The primary officer and the supervisor shall file a pursuit summary report.
2. To ensure compliance with MN STAT 626.5532, the chief law enforcement officer shall ensure the completion of the State pursuit report form and forward it to the Commissioner of Public Safety within 30 days following the incident.
3. As required in MN STAT 626.5532, the report must contain the following elements:
  - a) the reason(s) for, and the circumstances surrounding the incident;
  - b) the alleged offense;
  - c) the length of the pursuit including time and distance;
  - d) the outcome of the pursuit;
  - e) any injuries or property damage resulting from the incident; and
  - f) any pending criminal charges against the driver.

**K. Evaluation and Critique**

After each pursuit the supervisor and law enforcement agency units involved with the pursuit will evaluate the pursuit and make recommendations to the chief law enforcement officer on ways to improve the agency's pursuit policy and tactics.

## **SECTION 9**

### **USE OF FORCE AND DEADLY FORCE POLICY**

MN STAT 626.8452

#### **I. PURPOSE**

It is the policy of the Hawley Police Department to provide officers with guidelines for the use of force and deadly force in accordance with:

MN STATUTE 626.8452 DEADLY FORCE AND FIREARMS USE; POLICIES AND INSTRUCTION REQUIRED;

MN STATUTE 626.8475 DUTY TO INTERCEDE AND REPORT

MN STATUTE 609.06 AUTHORIZED USE OF FORCE;

MN STATUTE 609.065 JUSTIFIABLE TAKING OF LIFE; and

MN STATUTE 609.066 AUTHORIZED USE OF FORCE BY PEACE OFFICERS.

This policy applies to all peace officers and part-time peace officers engaged in the discharge of official duties.

#### **II. POLICY**

It is the policy of this law enforcement agency to ensure officers respect the sanctity of human life when making decisions regarding use of force. Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. Officers shall treat everyone with dignity and without prejudice and use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of others and the officer.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

Officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

The decision by an officer to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for

occasions when officers may be forced to make quick judgments about using such force.

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

This policy applies to all licensed peace officers and part-time peace officers engaged in the discharge of official duties.

Section (4) Procedure, paragraphs (g.1-2), are effective March 1, 2021 and thereafter.

### **III. DEFINITIONS**

- A. *Bodily Harm:*** Physical pain or injury.
- B. *Great Bodily Harm:*** Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.
- C. *Deadly Force:*** Force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.
- D. *De-Escalation:*** Taking action or communication verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.
- E. *Other Than Deadly Force:*** Force used by an officer that does not have the purpose of causing, nor create a substantial risk of causing, death or great bodily harm.
- F. *Choke Hold:*** A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible, and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Choke hold also means applying pressure to a person's neck on either side of the



windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

- G. *Authorized Device:*** A device an officer has received permission from the agency to carry and use in the discharge of that officer's duties, and for which the officer has:
- obtained training in the technical, mechanical and physical aspects of the device; and
  - developed a knowledge and understanding of the law, rules and regulations regarding the use of such a device.

## **IV. PROCEDURE**

### **A. General Provisions**

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. All uses of force shall be documented and investigated pursuant to this agency's policies.

### **B. Duty to Intercede**

Regardless of tenure or rank, an officer must intercede when:

- a. present and observing another officer using force in violation of section 609.066, subdivision 2, or otherwise beyond that which is objectively reasonable under the circumstances; and
- b. physically or verbally able to do so

### **C. Duty to Report**

An officer who observes another officer use force that exceeds the degree of force permitted by law has the duty to report the incident in writing within 24 hours to the chief law enforcement officer of the agency that employs the reporting officer.

**D. De-escalation:**

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of another or the officer and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

**E. Use of Other Than Deadly Force**

1. When de-escalation techniques are not effective or appropriate, an officer may consider the use of other than deadly force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved other than deadly force techniques and issued equipment in the following circumstances:
  - a. effecting a lawful arrest; or
  - b. the execution of legal process; or
  - c. enforcing an order of the court; or
  - d. executing any other duty imposed upon the public officer by law; or
  - e. defense of self or another.

**F. Use of Certain Types of Force**

1. Except in cases where deadly force is authorized as articulated in MN STAT. 609.066 to protect the peace officer or another from death or great bodily harm, officers are prohibited from using:
  - a. Chokeholds,
  - b. Tying all of a person's limbs together behind a person's back to render the person immobile, or;
  - c. Securing a person in any way that results in transporting the person face down in a vehicle.
2. Less than lethal measures must be considered by the officer prior to applying these measures.

**G. Use of Deadly Force**

1. An officer is authorized to use deadly force if an objectively reasonable

officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary. Use of deadly force is justified when one or both of the following apply;

- a. To protect the peace officer or another from death or great bodily harm, provided that the threat:
    - i. can be articulated with specificity by the law enforcement officer;
    - ii. is reasonably likely to occur absent action by the law enforcement officer; and
    - iii. must be addressed through the use of deadly force without unreasonable delay; or
  - b. To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in paragraph (a), items (i) to (iii), unless immediately apprehended.
2. An officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in paragraph (1a), items (i) to (iii).
  3. Where feasible, the officer shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.

## **H. Training**

1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.
2. In addition, training shall be provided on a regular and periodic basis and designed to
  - a. Provide techniques for the use of and reinforce the importance of de-escalation
  - b. Simulate actual shooting situations and conditions; and
  - c. Enhance officers' discretion and judgement in using other than deadly force in accordance with this policy.

3. Before being authorized to carry a firearm, all officers shall receive training and instruction with regard to the proper use of deadly force and to the agency's policies and State statutes with regard to such force. Such training and instruction shall continue on an annual basis.
4. Before carrying an authorized device, all officers shall receive training and instruction in the use of the device including training as it relates to its use in deadly force and/or other than deadly force situations. Such training and instruction shall continue on an annual basis.
5. Officers will carry and use only authorized devices unless circumstances exist which pose an immediate threat to the safety of the public or the officer requiring the use of a device or object that has not been authorized to counter such a threat.
6. With agency approval officers may modify, alter or cause to be altered an authorized device in their possession or control.

**E. Recordkeeping Requirements**

The chief law enforcement officer will maintain records of the agency's compliance with use of force training requirements.

**Effective 12-15-2020.JRB771**

## **SECTION 10**

### **PREDATORY OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION POLICY**

MN STAT 243.166, 243.167, 244.10, 244.052, 244.053,  
and MN STAT Chapter 13

#### **I. POLICY**

It is the policy of the Hawley Police Department to protect the public by disclosing information on predatory offenders residing in this agency's community. This agency will decide what information to disclose and who to disclose it to base on the level of danger posed by the offender, the offender's pattern of offending behavior and the needs of community members to enhance their individual and collective safety.

#### **II. DEFINITIONS**

**A. *Predatory Offender Registration and Community Notification*** refers to the Minnesota law that requires certain predatory offenders to register with the Minnesota Department of Public Safety Predatory Offender Unit. The law also provides for community notification about certain adult predatory offenders who have been incarcerated by the Minnesota Department of Corrections (DOC) or confined by the Minnesota Department of Human Services (DHS).

**B. *Offender Risk Levels*** means the level of notification is governed by the level of risk assigned by the DOC.

Three possible risk levels can be assigned to an offender. They are:

- Level 1 – low risk of re-offending
- Level 2 – moderate risk of re-offending
- Level 3 – high risk of re-offending

*Note:* Some offenders who are required to register as predatory offenders are not assigned a risk level because their sentence was completed prior to predatory offender legislation or because they have not spent time in state or federal prison. These offenders are not subject to community notification.

#### **III. REGISTRATION PROCEDURES**

For questions concerning predatory offender registration refer to the Bureau of Criminal Apprehension (BCA)'s Predatory Offender Registration website at [www.dps.state.mn.us/bca](http://www.dps.state.mn.us/bca) for detailed information, or contact the Predatory Offender Unit (BCA-POR) by calling (651) 793-7070 or 1-888-234-1248.

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When an offender arrives to register with this agency, determine what state the offense was committed in and if the individual is required to register by reviewing the list of registrable offenses on the POR website.

If the offender is required to register, contact the BCA POR to verify the offender is already registered and a DNA sample has been submitted.

- If the offender is already registered, complete a *Change of Information Form* included on the BCA's website at [www.dps.state.mn.us/bca](http://www.dps.state.mn.us/bca).
- If the offender is not registered, complete a *Predatory Offender Registration Form* included on the BCA's website at [www.dps.state.mn.us/bca](http://www.dps.state.mn.us/bca).
- If the offender is from another state, contact the state (information for each state is listed on the BCA's website at [www.dps.state.mn.us/bca](http://www.dps.state.mn.us/bca)) and request a copy of the offender's original registration form, criminal complaint and sentencing documents.

It is recommended the agency verify the address of offenders living in their community.

- If the offender is not living at the registered address, contact the BCA-POR to determine if a *Change of Information Form* was submitted. If it was not, the offender may be charged with failure to notify authorities of a change in residence. To make this charge, contact the BCA-POR to request a prosecution packet. Submit the packet to the county attorney's office to file a formal charge.

*Note:* It must be verified that the offender is no longer residing at his/her last address prior to submitting the prosecution packet for charging. Depending on the county attorney, formal statements may be needed from friends, co-workers, neighbors, caretakers, etc.

## **IV. COMMUNITY NOTIFICATION PROCEDURES**

For questions regarding community notification or the risk level assigned to an offender contact the Risk Assessment/Community Notification Unit of the Department of Corrections (DOC RA/CN Unit) at 651-361-7340 or at [notification.doc@state.mn.us](mailto:notification.doc@state.mn.us). The DOC will answer questions about the notification process and agency responsibilities. The DOC is also available to assist agencies in conducting public notification meetings when an offender subject to notification moves into a law enforcement jurisdiction.

Attached to this policy are examples of forms that are provided to law enforcement agencies by the DOC to assist them in performing community notifications:

1. CONFIDENTIAL - Fact Sheet - Law Enforcement Agency Use Only
2. Law Enforcement Agency Fact Sheet - Notification of Release in Minnesota-Risk Level Two
3. Law Enforcement Agency Fact Sheet - Notification of Release in Minnesota-Risk Level Three

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4. Law Enforcement Fact Sheet - Health Care Facility Notification - Information on a Registered Offender Not for Distribution to Facility Residents
5. Law Enforcement Fact Sheet - Health Care Facility Notification - Information on a Registered Offender for Distribution to Facility Residents
6. VICTIM DATA - CONFIDENTIAL - For Law Enforcement Agency Use Only

### A. Notification Process

Law enforcement agencies receive information from the BCA and DOC pertaining to the risk levels of offenders. The duty of law enforcement to provide notification depends on the risk level assigned as described below. Public notification must not be made if an offender is placed or resides in one of the DOC licensed residential facilities (halfway houses) operated by RS-Eden, Alpha House, 180 Degrees, Damascus Way, or Bethel Work Release. Do NOT disclose any information until the law enforcement agency is notified the offender will move to a residential location.

**Level 1** – Information maintained by law enforcement and may be subject to limited disclosure. *See attachment 1: Confidential Fact Sheet – For Law Enforcement Agency Use Only.*

- Mandatory disclosure
  - Victims who have requested disclosure
- Discretionary disclosure
  - Other witnesses or victims
  - Other law enforcement agencies.

**Level 2** – Information subject to limited disclosure for the purpose of securing institutions and protecting individuals in their care while they are on or near the premises of the institution. *See attachment 2: Law Enforcement Agency Fact Sheet – Notification of Release in Minnesota – Risk Level 2.*

- In addition to Level 1 disclosures, the law enforcement agency may disclose information to:
  - Staff members of public and private educational institutions, day care establishments and establishments that primarily serve individuals likely to be victimized by the offender.
  - Individuals likely to be victimized by the offender.
- Discretionary notification must be based on the offender's pattern of offending or victim preference as documented by DOC or DHS.

**Level 3** – Information subject to disclosure, not only to safeguard facilities and protect the individuals they serve, but also to protect the community as a whole. *See attachment 3: Law Enforcement Agency Fact Sheet – Notification of Release in Minnesota.*

- In addition to Level 2 disclosures, law enforcement shall disclose information to other members of the community whom the offender is likely to encounter, unless public safety would be compromised by the disclosure or a more limited disclosure is necessary to protect the identity of the victim.

- A good faith effort must be made to complete the disclosure within 14 days of receiving documents from DOC.
- The process of notification is determined by the agency. The current standard for a Level 3 offender is to invite the community to a public meeting and disclose the necessary information. Assistance is available from DOC RA/CN Unit.

## **B. Health Care Facility Notification**

Upon notice that a registered predatory offender without a supervising agent has been admitted to a health care facility in its jurisdiction, law enforcement shall provide a fact sheet to the facility administrator with the following information: name and physical description of the offender; the offender's conviction history, including the dates of conviction; the risk level assigned to the offender, if any; and the profile of likely victims. *See attachment 4: Law Enforcement Agency Fact Sheet - Health Care Facility Notification Information on a Registered Offender Not For Distribution to Facility Residents & attachment 5: Law Enforcement Agency Fact Sheet - Health Care Facility Notification Information on a Registered Offender For Distribution to Facility Residents.*

## **C. Specialized Notifications**

### **1. Offenders from Other States and Offenders Released from Federal Facilities Subject to Notification**

- If a local law enforcement agency learns that a person under its jurisdiction is subject to registration and desires consultation on whether or not the person is eligible for notification, the agency must contact the DOC. The DOC will review the governing law of the other state and, if comparable to Minnesota requirements, inform law enforcement that it may proceed with community notification in accordance with the level assigned by the other state.
- If DOC determines that the governing law in the other state is not comparable, community notification by law enforcement may be made consistent with that authorized for risk level 2.
- In the alternative, if a local law enforcement agency believes that a risk level assessment is needed, the agency may request an end-of-confinement review. The local law enforcement agency shall provide to the DOC necessary documents required to assess a person for a risk level.

### **2. Victim Notification**

Law enforcement agencies in the area where a predatory offender resides, expects to reside, is employed, or is regularly found shall provide victims who have requested notification with information that is relevant and necessary to protect the victim and counteract the offender's dangerousness.

DOC will provide victim contact information to the law enforcement agency when there is a victim who has requested notification. *See attachment 6: VICTIM DATA – CONFIDENTIAL – For Law Enforcement Agency Use Only.*



Law enforcement personnel may directly contact the victim. Community victim advocacy resources may also be available to assist with locating a victim and with providing notification. Assistance is also available from the DOC Victim Services staff.

Law enforcement also may contact other victims or witnesses as well as other individuals who are likely to be victimized by the offender.

**3. Homeless Notification Process**

If public notice (Level 2 or 3) is required on a registered homeless offender, that notice should include as much specificity as possible, for example “in the vicinity of\_\_\_\_\_”. These offenders are required to check in with local law enforcement on a weekly basis.

## SECTION 11

### PROCESSION OF PROPERTY SEIZED FOR ADMINISTRATIVE FORFEITURE

MN STAT 609.531

#### POLICY

It shall be the policy of the Hawley Police Department that all employees of the agency, all employees assigned to another law enforcement agency's task force and all employees assigned from an outside law enforcement agency to a task force in which this agency serves as the fiscal agent, shall follow all state and federal laws pertaining to the processing of property seized for forfeiture. Training will be provided by the employing law enforcement agency in consultation with the prosecuting authority to officers who may exercise the use of administrative forfeiture in the performance of their assigned duties. Such training to be conducted whenever the agency policy is changed or modified based upon administrative directives, legislative statutes changes and/or relative court decisions. Training may include but not limited to agency policy, directives, electronic or traditional classroom education.

#### DEFINITIONS

**Cash:** money in the form of bills or coins, traveler's checks, money orders, checks or other forms of electronic money or stored value cards, including but not limited to gift cards, debit cards, gift cards/certificates or other negotiable financial instruments.

**Conveyance Device:** a device used for transportation and includes but is not limited to a motor vehicle, trailer, snowmobile, airplane or vessel and any equipment attached to it. The term "conveyance device" does not include property, which is, in fact, itself stolen or taken in violation of the law.

**Firearms/ammunition/firearm accessories:** a device that projects either single or multiple [projectiles](#) at high velocity. Ammunition is a term meaning the assembly of a projectile and its propellant. Accessories include but are not limited to holsters, gun cases, fire arm optics, suppression devices, cleaning supplies, etc.

**Forfeiture:** the process by which legal ownership of an asset is transferred to a government or other authority.

**Jewelry/Precious Metals/Precious Stones:** The term "precious metals/precious stones" includes items of jewelry such as rings, necklaces and watches that reasonably appear to be made of precious metals or precious stones. Precious metals include but are not limited to gold, silver, platinum, iridium and palladium.

Precious stones, often referred to as gemstones, include but are not limited to diamonds, emeralds and rubies.

**Forfeiture/Seized Property Reviewer:** an Agency employee responsible for reviewing all forfeiture cases and is the liaison between the Agency and prosecutor's office.

**Seizure:** the act of law enforcement officials taking property, including cash, vehicles, etc. that has been used in connection with or acquired by illegal activities.

### **SEIZED PROPERTY SUBJECT TO ADMINISTRATIVE FORFEITURE**

The following property may be seized and is presumed under MN STAT 609.5314 to be subject to administrative forfeiture if the item has a retail value of \$50,000.00 or less:

All money, precious metals and precious stones found in proximity to:

- controlled substances;
- forfeitable drug manufacturing or distributing equipment or devices;  
or
- forfeitable records of manufacture or distribution of controlled substances.

All conveyance devices containing controlled substances with retail value of \$100 or more if possession or sale of the controlled substance would be a felony under MN STAT Chapter 152.

All firearms, ammunition and firearm accessories found:

- in a conveyance device used or intended for use to commit or facilitate the commission of a felony offense involving a controlled substance;
- on or in proximity to a person from whom a felony amount of controlled substance is seized; or
- on the premises where a controlled substance is seized and in proximity to the controlled substance, if possession or sale of the controlled substance would be a felony under MN STAT Chapter 152.

Situations in which forfeiture should not be pursued:

- Seizure of property not listed above must be processed, reviewed and approved by the unit supervisor.

### **PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS**

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When any property as described in the above section is seized, the peace officer making the seizure must prepare the following:

- The proper Notice of Seizure and Intent to Forfeit Property form. This form must be completed to include the following: a list describing each item seized, the name of the individual served with the Notice, location, and the date of seizure. Administrative forfeiture notices are NOT to be given for assets seized under MN STAT 609.5314 if the retail value of the asset exceeds \$50,000.00.
- A receipt for the item(s) seized.

The Notice form also contains information in English, Hmong, Somali and Spanish concerning the right to obtain judicial review and the procedure under MN STAT 609.5314 to follow to obtain it. The form must be dated and signed by the peace officer conducting the seizure. An agency case number must be included on the form. The individual from whom property is seized must be given an opportunity to sign the seizure notice form. If the person refuses, the peace officer conducting the seizure must check the appropriate box indicating the refusal to sign. If property is seized from multiple individuals, a separate seizure form will be completed for each individual. A copy of the seizure form must be given to the individual served.

All property subject to and being processed for forfeiture through the agency must be held in the custody of the agency.

The peace officer conducting the seizure shall forward the original and pink copy of the seizure notices, seized property processing worksheets, property receipts and reports to the Forfeiture/Seized Property Reviewer within 10 days of seizure.

The peace officer conducting the seizure shall inform the Forfeiture/Seized Property Reviewer of the estimated retail value of drugs found in proximity to the asset seized.

### **Cash**

Peace officers shall not seize cash having an aggregate value less than (Agency Discretion), unless pre-recorded buy funds are included in the cash seized. Cash shall be recounted and the amount verified by another employee of the Agency. The property bag and/or inventory receipt shall then be co-signed when cash is involved.

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All forfeitable cash seized will be turned over to the Forfeiture/Seized Property Reviewer or property/evidence room as soon as practicably possible (Agency Discretion) of the seizure.

Prior to deposit with the Forfeiture/Seized Property Reviewer, peace officers shall examine all cash seized to determine whether it contains any buy funds. Peace officers shall document the recovery of all buy funds and deposit those funds with the Forfeiture/Seized Property Reviewer to be returned to the appropriate unit's buy fund account.

Peace officers seizing cash shall also prepare a property inventory. If cash is seized from multiple individuals, a property inventory receipt will be completed for each individual. The property inventory receipt shall specify the total amount of cash seized from each individual. The agency property inventory shall also contain a detailed description of all checks, money orders and/or travelers checks or other financial instruments.

The peace officer conducting the seizure shall provide a copy of the completed property inventory receipt to the Forfeiture/Seized Property Reviewer.

It is the seizing peace officer's responsibility to secure the cash consistent with the agency policy or procedure.

### **Jewelry/Precious Metals/Precious Stones**

Peace officers seizing jewelry, precious metals and/or precious stones will write a detailed description of each item on the property inventory receipt prior to inventorying the items. A copy of the property inventory receipt and any photographs of the jewelry, precious metals and/or precious stones shall be delivered to the Forfeiture/Seized Property Reviewer.

Peace officers seizing jewelry, precious metals and/or precious stones shall deliver those items to the property/evidence room as soon as practicably possible.

### **Conveyance Device**

Upon seizure for forfeiture, all conveyance devices shall immediately be either taken to a secure designated area or to an agency approved impound facility.

Peace officers shall inventory the conveyance device and its contents in accordance with agency policy. Peace officers shall also complete applicable report forms and distribute them appropriately.

### **Firearms/Ammunition/Firearm Accessories**

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When firearms, ammunition or firearms accessories are seized, they shall be inventoried and delivered to the property/evidence room as per agency policy/procedure.

**CASE FILE STATUS**

The Forfeiture/Seized Property Reviewer shall forward all changes to forfeiture status to the supervisor who initiated the case.

**REPORT WRITING**

Peace officers seizing property must complete a report. All reports must include a description of the items seized, where the property is turned-in/inventoried, the name of the individual served, the date the seizure form was served, the name of the serving peace officer and whether or not the individual signed the Notice of Seizure and Intent to Forfeit Property form.

All reports dealing with seized property will be completed within 24 hours of the seizure when practically possible.

**SECTION 12**

**CRIMINAL CONDUCT ON SCHOOL BUSES POLICY**

MN STAT 169.4581

**I. POLICY**

It is the policy of the Hawley Police Department to respond to allegations of criminal conduct which occur within our jurisdiction on school buses. This agency shall work with and consult school officials, transportation personnel, parents, and students when respond to these incidents to protect student safety and deal appropriately with those who violate the law. This policy recognizes that responding to reports of alleged criminal conduct on school buses within this jurisdiction is the responsibility of this agency in cooperation with any other law enforcement agency that has jurisdiction over the alleged offense. This policy is not intended to interfere with or replace school disciplinary policies that relate to student misconduct on school buses.

**II. PROCEDURE**

This agency shall:

- A.** respond to calls for assistance from any citizen, school, or bus transportation company official as they may pertain to criminal conduct on school buses;
- B.** issue citations, release pending further investigation, or apprehend and transport individuals committing crimes on school buses, to the extent authorized by law;
- C.** investigate reports of crimes committed on school buses by using the same procedures followed in other criminal investigations;
- D.** submit reports regarding the incident to superior officers and the prosecuting attorney as required by agency policy;
- E.** follow through with any other investigation necessary to prepare a case pertaining to criminal conduct on school buses as requested by the prosecuting attorney; and
- F.** provide information to the school regarding the incident as required or authorized by law.

## **SECTION 13**

### **RESPONSE TO REPORTS OF MISSING AND ENDANGERED PERSONS POLICY**

MN STAT 299C.51-299C.5655, 390.25 and 626.8454

#### **A. POLICY**

It is the policy of the Hawley Police Department to establish guidelines and responsibilities for the consistent response to, and investigation of, all reports of missing and endangered persons as defined in MN STAT Chapter 299C.52, subd. 1 (c) and (d) (“Minnesota Missing Children and Endangered Persons’ Program” referred to as Brandon’s Law).

This policy addresses investigations where the person has been determined to be both missing and endangered and includes all procedures required by MN STAT 299C.52.

The Hawley Police Department recognizes there is a critical need for immediate and consistent response to reports of missing and endangered persons. The decisions made and actions taken during the preliminary stages may have a profound effect on the outcome of the case. Therefore, this agency has established the following responsibilities and guidelines for the investigation of missing and endangered persons. All peace officers, employed by this agency, will be informed of and comply with the procedures contained in this Model Policy.

#### **II. DEFINITIONS**

**A. *Missing*** has the meaning given it in MN STAT 299C,52, subd. 1 (d), “The status of a person after a law enforcement agency has received a report of a missing person, has conducted a preliminary investigation, and determined that the person cannot be located”.

**B. *Endangered*** has the meaning given it in MN STAT 299C,52, subd. 1, (c), “A law enforcement official has recorded sufficient evidence that the missing person is at risk of physical injury or death. The following circumstances indicate that a missing person is at risk of physical injury or death:

- 1) the person is missing as a result of a confirmed abduction or under circumstances that indicate that the person’s disappearance was not voluntary;
- 2) the person is missing under known dangerous circumstances;
- 3) the person is missing more than 30 days;
- 4) the person is under the age of 21 and at least one other factor in this paragraph is applicable;
- 5) there is evidence the person is in need of medical attention or prescription medication such that it will have a serious adverse effect on the person’s health if the person does not receive the needed care or medication;
- 6) the person does not have a pattern of running away or disappearing;
- 7) the person is mentally impaired;
- 8) there is evidence that the person may have been abducted by a noncustodial parent;



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- 9) the person has been the subject of past threats or acts of violence;
- 10) there is evidence the person is lost in the wilderness, backcountry, or outdoors where survival is precarious and immediate and effective investigation and search and rescue efforts are critical; or
- 11) any other factor that the law enforcement agency deems to indicate that the person may be at risk of physical injury or death, including a determination by another law enforcement agency that the person is missing and endangered.

**C. *Child*** has the meaning given it in MN STAT 299C,52, subd. 1 (a), “Any person under the age of 18 years or any person certified or known to be mentally incompetent”.

**D. *NCIC*** means The National Crime Information Center.

**E. *CJIS*** means The Criminal Justice Information System.

**F. *DNA*** means “DNA” has the meaning given it in MN STAT 299C,52, subd. 1 (b), Deoxyribonucleic acid from a human biological specimen.

### **III. PROCEDURES**

This agency will respond according to the following six types of general procedures:

- Initial Response
- Initial Investigation
- Investigation
- 30 Day Benchmark
- Prolonged Investigation, and
- Recovery/ Case Closure

#### **A. INITIAL RESPONSE**

1. As required by MN STAT 299C.53, subd. 1(a), Law Enforcement shall accept, without delay, any report of a missing person. Law enforcement shall not refuse to accept a missing person report on the basis that:
  - a) the missing person is an adult;
  - b) the circumstances do not indicate foul play;
  - c) the person has been missing for a short amount of time;
  - d) the person has been missing for a long amount of time;
  - e) there is no indication that the missing person was in the jurisdiction served by the law enforcement agency at the time of the disappearance;
  - f) the circumstances suggest that the disappearance may be voluntary;
  - g) the reporting person does not have personal knowledge of the facts;
  - h) the reporting person cannot provide all of the information requested by the law enforcement agency;
  - i) the reporting person lacks a familial or other relationship with the missing person;or

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- j) for any other reason, except in cases where the law enforcement agency has direct knowledge that the person is, in fact, not missing, and the whereabouts and welfare of the person are known at the time the report is filed.
2. Dispatch an officer, to the scene, to conduct a preliminary investigation to determine whether the person is missing, and if missing, whether the person is endangered.
3. Obtain interpretive services if necessary.
4. Interview the person who made the initial report, and if the person is a child, the child's parent(s) or guardian(s).
5. Determine when, where, and by whom the missing person was last seen.
6. Interview the individual(s) who last had contact with the person.
7. Obtain a detailed description of the missing person, abductor, vehicles, etc. and ask for recent photo of missing person.
8. Immediately enter the complete descriptive and critical information, regarding the missing and endangered person, into the appropriate category of the NCIC Missing Person File.
  - a) As required by 42 U.S.C. 5779(a) (Suzanne's Law) law enforcement shall immediately enter missing children less than 21 years of age into the NCIC.
  - b) As required by MN STAT 299C.53, subd. 1(b), if the person is determined to be missing and endangered, the agency shall immediately enter identifying and descriptive information about the person into the NCIC.
9. Enter complete descriptive information regarding suspects/vehicle in the NCIC system.
10. Request investigative and supervisory assistance.
11. Update additional responding personnel.
12. Communicate known details promptly and as appropriate to other patrol units, local law enforcement agencies, and surrounding law enforcement agencies. If necessary, use The International Justice & Public Safety Network (NLETS), the Minnesota Crime Alert Network, and MNJIS KOPS Alert to alert state, regional and federal law enforcement agencies.
13. Notify the family of the Minnesota Missing/Unidentified Persons Clearinghouse services available.
14. Secure the crime scene and/or last known position of the missing person and attempt to identify and interview persons in the area at the time of the incident.
15. Obtain and protect uncontaminated missing person scent articles for possible use by search canines.
16. Activate protocols for working with the media. (AMBER Alert, Minnesota Crime Alert Network)
17. As required by MN STAT Chapter 299C.53, subd. 1(b), consult with the Minnesota Bureau of Criminal Apprehension if the person is determined to be an endangered missing person. Request assistance as necessary.
18. Implement multi-jurisdictional coordination/mutual aid plan as appropriate such as when:
  - a) the primary agency has limited resources;
  - b) the investigation crosses jurisdictional lines; or
  - c) jurisdictions have pre-established task forces or investigative teams.

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19. Based on the preliminary investigation, determine whether or not a physical search is required.

**B. INITIAL INVESTIGATION**

1. Conduct a canvas of the neighborhood and of vehicles in the vicinity.
2. Arrange for use of helpful media coverage.
3. Maintain records of telephone communications/messages.
4. Ensure that everyone at the scene is identified and interviewed separately.
5. Search the home, building or other area/location where the incident took place and conduct a search including all surrounding areas. Obtain consent or a search warrant if necessary.
6. Assign an investigator or officer whose duties will include coordination of the investigation.

**C. INVESTIGATION**

1. Begin setting up the Command Post/Operation Base away from the person's residence. Know the specific responsibilities of the Command Post Supervisor, Media Specialist, Search Coordinator, Investigative Coordinator, Communication Officer, Support Unit Coordinator, and two liaison officers (one at the command post and one at the victim's residence). The role of the liaison at the home will include facilitating support and advocacy for the family.
2. Establish the ability to "trap and trace" all incoming calls. Consider setting up a separate telephone line or cellular telephone for agency use and follow up on all leads.
3. Compile a list of known sex offenders in the region.
4. In cases of infant abduction, investigate claims of home births made in the area.
5. In cases involving children, obtain child protective agency records for reports of child abuse.
6. Review records for previous incidents related to the missing person and prior police activity in the area, including prowlers, indecent exposure, attempted abductions, etc.
7. Obtain the missing person's medical and dental records, fingerprints and DNA when practical or within 30 days.
8. Create a Missing Persons' Profile with detailed information obtained from interviews and records from family and friends describing the missing person's health, relationships, personality, problems, life experiences, plans, equipment, etc.
9. Update the NCIC file, as necessary with any additional information, regarding the missing person, suspect(s) and vehicle(s).
10. Interview delivery personnel, employees of gas, water, electric and cable companies, taxi drivers, post office personnel, sanitation workers, etc.
11. For persons' under the age of 21, contact the National Center for Missing and Exploited Children (NCMEC) for photo dissemination and other case assistance.
12. Determine if outside help is needed and utilize local, state and federal resources related to specialized investigative needs, including:
  - a) Available Search and Rescue (SAR) resources
  - b) Investigative Resources

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- c) Interpretive Services
  - d) Telephone Services (traps, traces, triangulation, etc.)
  - e) Media Assistance (Local and National)
13. Secure electronic communication information such as the missing person's cell phone number, email address(s) and social networking site information.
  14. Appoint an officer who shall be responsible to communicate with the family/reporting party or their designee and who will be the primary point of contact for the family/reporting party or designee. Provide contact information and the family information packet (if available) to the family/reporting party or designee.
  15. Provide general information to the family/reporting party or designee about the handling of the missing person case or about intended efforts in the case to the extent that the law enforcement agency determines that disclosure would not adversely affect the ability to locate or protect the missing person or to apprehend or prosecute any person(s) criminally in the disappearance.

**\*\*\*MISSING FOR OVER 30 DAYS\*\*\***

If the person remains missing after 30 days from entry into NCIC the local law enforcement agency will be contacted by the BCA Missing and Unidentified Persons Clearinghouse to request the following information (if not already received):

- a. DNA samples from family members and, if possible, from the missing person.
- b. Dental information and x-rays.
- c. Additional photographs and video that may aid the investigation or identification.
- d. Fingerprints.
- e. Other specific identifying information.

This information will be entered into the appropriate databases by BCA Clearinghouse personnel. If the person is still missing after 30 days, review the case file to determine whether any additional information received on the missing person indicates that the person is endangered and update the record in NCIC to reflect the status change.

**D. PROLONGED INVESTIGATION**

1. Develop a profile of the possible abductor.
2. Consider the use of a truth verification device for parents, spouse, and other key individuals.
3. Re-read all reports and transcripts of interviews, revisit the crime scene, review all photographs and videotapes, re-interview key individuals and re-examine all physical evidence collected.
4. Review all potential witness/suspect information obtained in the initial investigation and consider background checks on anyone of interest identified in the investigation.
5. Periodically check pertinent sources of information about the missing person for any activity such as phone, bank, internet or credit card activity.

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6. Develop a time-line and other visual exhibits.
7. Critique the results of the on-going investigation with appropriate investigative resources.
8. Arrange for periodic media coverage.
9. Consider utilizing rewards and crime-stoppers programs.
10. Update NCIC Missing Person File information, as necessary.
11. Re-contact the National Center for Missing and Exploited Children (NCMEC) for age progression assistance.
12. Maintain contact with the family and/or the reporting party or designee as appropriate.

**E. RECOVERY/CASE CLOSURE**

Alive

1. Verify that the located person is the reported missing person.
2. If appropriate, arrange for a comprehensive physical examination of the victim.
3. Conduct a careful interview of the person, document the results of the interview, and involve all appropriate agencies.
4. Notify the family/reporting party that the missing person has been located. (In adult cases, if the located adult permits the disclosure of their whereabouts and contact information, the family/reporting party may be informed of this information.)
5. Dependent on the circumstances of the disappearance, consider the need for reunification assistance, intervention, counseling or other services for either the missing person or family/reporting party.
6. Cancel alerts (Minnesota Crime Alert, AMBER Alert, etc), remove case from NCIC (as required by MN STAT 299C.53. subd 2) and other information systems and remove posters and other publications from circulation.
7. Perform constructive post-case critique. Re-assess the procedures used and update the department's policy and procedures as appropriate.

Deceased

1. Secure the crime scene.
2. Contact coroner, medical examiner or forensic anthropologist to arrange for body recovery and examination.
3. Collect and preserve any evidence at the scene.
4. Depending upon the circumstances, consider the need for intervention, counseling or other services for the family/reporting party or designee.
5. Cancel alerts and remove case from NCIC and other information systems, remove posters and other publications from circulation.
6. Perform constructive post-case critique. Re-assess the procedures used and update the department's policy and procedures as appropriate.

## **SECTION 14**

### **Sexual Assault Investigation Policy**

#### **I. PURPOSE**

The purpose of this policy is to provide employees with guidelines for responding to reports of sexual assault. This agency will strive:

- a) To afford maximum protection and support to victims of sexual assault or abuse through a coordinated program of law enforcement and available victim services with an emphasis on a victim centered approach;
- b) To reaffirm peace officers' authority and responsibility to conducting thorough preliminary and follow up investigations and to make arrest decisions in accordance with established probable cause standards;
- c) To increase the opportunity for prosecution and victim services.

#### **II. POLICY**

It is the policy of the Hawley Police Department to recognize sexual assault as a serious problem in society and to protect victims of sexual assault by ensuring its peace officers understand the laws governing this area. Sexual assault crimes are under-reported to law enforcement and the goal of this policy is in part to improve victim experience in reporting so that more people are encouraged to report.

All employees should take a professional, victim-centered approach to sexual assaults, protectively investigate these crimes, and coordinate with prosecution in a manner that helps restore the victim's dignity and autonomy. While doing so, it shall be this agency's goal to decrease the victim's distress, increase the victim's understanding of the criminal justice system and process, and promote public safety.

Peace officers will utilize this policy in response to sexual assault reported to this agency. This agency will aggressively enforce the laws without bias and prejudice based on race, marital status, sexual orientation, economic status, age, disability, gender, religion, creed, or national origin.

#### **III. DEFINITIONS**

For purpose of this policy, the words and phrases in this section have the following meaning given to them, unless another intention clearly appears.

- I. **Consent:** As defined by Minn. Stat. 609.341, which states:
  - (1) Words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the

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existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

- (2) A person who is mentally incapacitated or physically helpless as defined by Minnesota Statute 609.341 cannot consent to a sexual act.
- (3) Corroboration of the victim's testimony is not required to show lack of consent.

- II. **Child or Minor:** a person under the age of 18.
- III. **Medical Forensic Examiner:** The health care provider conducting a sexual assault medical forensic examination.
- IV. **Sexual Assault:** A person who engages in sexual contact or penetration with another person in a criminal manner as identified in MN Statute 609.342 to 609.3451.
- V. **Family and Household Member:** As defined in Minn. Stat. 518.B.01 Subd.2.b. to include:
  - (1) spouses or former spouses;
  - (2) parents and children;
  - (3) persons related by blood;
  - (4) persons who are presently residing together or who have resided together in the past;
  - (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;
  - (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
  - (7) persons involved in a significant romantic or sexual relationship
- VI. **Sexual Assault Medical Forensic Examination:** An examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients.
- VII. **Victim Advocate:** A Sexual Assault Counselor defined by Minn. Stat. 595.02, subd. 1(k) and/or Domestic Abuse Advocate as defined by Minn. Stat. 595.02, subd. 1(1) who provide confidential advocacy services to victims of sexual assault and domestic abuse. Victim advocates as defined provide coverage in all counties in Minnesota. Minnesota Office of Justice Programs (MN OJP) can assist departments in locating their local victim advocacy agency for the purposes outlined in this policy.
- VIII. **Victim Centered:** A victim-centered approach prioritizes the safety, privacy and well-being of the victim and aims to create a supportive environment in which the victim's rights are respected and in which they are treated with dignity and respect. This approach acknowledges and respects a victims' input into the criminal justice response and recognizes victims are not responsible for the crimes committed against

them.

- IX. **Vulnerable Adult:** any person 18 years of age or older who:
- (1) is a resident inpatient of a facility as defined in Minn. Stat. 626.5572. Subd. 6;
  - (2) receives services at or from a facility required to be licensed to serve adults under sections [245A.01](#) to [245A.15](#), except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);
  - (3) receives services from a home care provider required to be licensed under sections [144A.43](#) to [144A.482](#); or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections [256B.0625, subdivision 19a, 256B.0651](#) to [256B.0654](#), and [256B.0659](#); or
  - (4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:
    - (i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and
    - (ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

#### **IV. PROCEDURES**

##### **A. Communications Personnel Response/Additional Actions by Responding Officers**

Communications personnel and/or law enforcement officers should inform the victim of ways to ensure critical evidence is not lost, to include the following:

- 1) Suggest that the victim not bathe, or clean him or herself if the assault took place recently.
- 2) Recommend that if a victim needs to relieve themselves, they should collect urine in a clean jar for testing, and should avoid wiping after urination.
- 3) Asking the victim to collect any clothing worn during or after the assault and if possible, place in a paper bag, instructing the victim not to wash the clothing (per department policy).
- 4) Reassure the victim that other evidence may still be identified and recovered even if they have bathed or made other physical changes.

##### **B. Initial Officer Response**



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When responding to a scene involving a sexual assault, officers shall follow standard incident response procedures. In addition, when interacting with victims, officers shall do the following:

- 1) Recognize that the victim experienced a traumatic incident and may not be willing or able to immediately assist with the criminal investigation.
- 2) The officer shall attempt to determine the location/jurisdiction where the assault took place.
- 3) Explain the reporting process including the roles of the first responder, investigator, and anyone else with whom the victim will likely interact during the course of the investigation.
- 4) Officers are encouraged to connect the victim with local victim advocates as soon as possible. Inform the victim that there are confidential victim advocates available to address any needs they might have and to support them through the criminal justice system process. Provide the victim with contact information for the local victim advocate. Upon victim request the officer can offer to contact local victim advocate on behalf of the victim.
- 5) Ask about and document signs and symptoms of injury, to include strangulation. Officers shall attempt to obtain a signed medical release from the victim.
- 6) Ensure that the victim knows they can go to a designated facility for a forensic medical exam. Offer to arrange for transportation for the victim.
- 7) Identify and attempt to interview potential witnesses to the sexual assault and/or anyone the victim told about the sexual assault.
- 8) Request preferred contact information for the victim for follow-up.

### **C. Victim Interviews**

This agency recognizes that victims of sexual assault due to their age or physical, mental or emotional distress, are better served by utilizing trauma informed interviewing techniques and strategies. Such interview techniques and strategies eliminate the duplication of interviews and use a question and answer interviewing format with questioning nondirective as possible to elicit spontaneous responses.

In recognizing the need for non-traditional interviewing techniques for sexual assault victims, officers should consider the following:

- Offer to have a confidential victim advocate present (if possible) if the victim would benefit from additional support during the process

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- Whenever possible, conduct victim interviews in person
- Make an effort to conduct the interview in a welcoming environment
- Let the victim share the details at their own pace
- Recognize victims of trauma may have difficulty remembering incidents in a linear fashion and may remember details in days and weeks following the assault
- After the initial interview, consider reaching out to the victim within a few days, after at least one sleep cycle to ask if they remember any additional details.
- Depending on the victim, additional interviews might be needed to gather additional information. Offer support from a victim advocate to the victim to help facilitate engagement with the investigative process and healing.
- Some victims do remember details vividly and might want to be interviewed immediately.
- During initial and subsequent victim interviews, officers should note the following information as victims share it, recognizing that a victim may not be able to recall all the details of the assault during a particular interview.
  - 1) Whether the suspect was known to the victim
  - 2) How long the victim knew the suspect
  - 3) The circumstances of their meeting and if there is any indication of the use of drugs or alcohol to facilitate the sexual assault
  - 4) The extent of their previous or current relationship
  - 5) Any behavioral changes that led the situation from one based on consent to one of submission, coercion, fear, or force
  - 6) Specific actions, statements, and/or thoughts of both victim and suspect immediately prior, during, and after assault
  - 7) Relevant communication through social media, email, text messages, or any other forms of communication

### D. Special Considerations—Minors and Vulnerable Adults/Domestic Abuse Victims

#### 1. Minors and Vulnerable Adults

This agency recognizes that certain victims, due to their age or a physical, mental, or emotional distress, are better served by utilizing interview techniques and strategies that eliminate the duplication of interviews and use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. Members of this agency will be alert for victims who would be best served by the use of these specialized interview techniques. Officers, in making this determination, should consider the victim's age, level of maturity, communication skills, intellectual capacity, emotional state, and any other observable factors that would indicate specialized interview techniques would be appropriate for a particular victim. When an officer determines that a victim requires the use of these specialized interview techniques, the officer should follow the guidance below.

- a. Officers responding to reports of sexual assaults involving these sensitive population groups shall limit their actions to the following:
  - (1) Ensuring the safety of the victim;

- (2) Ensuring the scene is safe;
- (3) Safeguarding evidence where appropriate;
- (4) Collecting any information necessary to identify the suspect; and
- (5) Addressing the immediate medical needs of individuals at the scene

- b. Initial responding officers should not attempt to interview the victim in these situations, but should instead attempt to obtain basic information and facts about the situation, including the jurisdiction where the incident occurred and that a crime most likely occurred. Officers should seek to obtain this information from parents, caregivers, the reporting party, or other adult witnesses, unless those individuals are believed to be the perpetrators.
- c. Officers responding to victims with special considerations must comply with the mandated reporting requirements of Minnesota Statute 626.556 and 626.557, as applicable. Officers investigating cases involving victims with special considerations should coordinate these investigations with the appropriate local human services agency where required. Any victim or witness interviews conducted with individuals having special considerations must be audio and video recorded whenever possible. All other interviews must be audio recorded whenever possible.

Not all sexual assaults of minor victims require a mandatory report to social services. This policy recognizes that in certain cases, notifying and/or the involvement of a parent/guardian can cause harm to the minor and/or impede the investigation. Officers responding to the sexual assault of a minor victim that does not trigger a mandated report under Minn. Stat. 626.556 should assess for the impact on the victim and the investigation if parents/guardians were notified before making a decision to involve them.

- d. Officers should obtain necessary contact information for the victim's caregiver, guardian or parents and where the victim may be located at a later time. Officers should advise the victim and/or any accompanying adult(s), guardians or caregivers that an investigating officer will follow up with information on a forensic interview.
- e. The officer should advise the victim's caregiver, guardian or parent that if the victim starts to talk about the incident they should listen to them but not question them as this may influence any future statements.

## 2. Victims of Domestic Abuse

Officers responding to a report of sexual assault committed against a family and household member must also follow the requirements and guidelines in this agency's domestic abuse policy and protocol, in addition to the guidelines in this policy.

## E. Protecting Victim Rights

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- 1) Confidentiality: Officers should explain to victims the limitations of confidentiality in a criminal investigation and that the victim's identifying information is not accessible to the public, as specified in Minn. Stat. section 13.82, subd. 17(b)
- 2) Crime Victim Rights: Officers must provide the following information to the victim:
  - a. Crime victim rights and resource information required to be provided to all victims as specified by Minn. Stat. section 611A.02, subd. 2(b)
  - b. If the suspect is a family or household member to the victim, crime victim rights and resource information required to be provided to domestic abuse victims, as specified by Minn. Stat. section 629.341, subd. 3.
  - c. The victim's right to be informed of the status of a sexual assault examination kit upon request as provided for under Minn. Stat. section 611A.27, subd. 1.
  - d. Pursuant to Minn. Stat. 611A.26, subd. 1, no law enforcement agency or prosecutor shall require that a complainant of a criminal sexual conduct or sex trafficking offense submit to a polygraph examination as part of or a condition to proceeding with the investigation, charging or prosecution of such offense.
- 3) Other information: Officers should provide to the victim the agency's crime report/ICR number, and contact information for the reporting officer and/or investigator or person handling the follow up.
- 4) Language access: All officers shall follow agency policy regarding limited English proficiency.

### **F.Evidence Collection**

- 1) Considerations for Evidence Collection

Officers shall follow this agency's policy on crime scene response. In addition, officers may do the following:

  - a. Collect evidence regarding the environment in which the assault took place, including indications of isolation and soundproofing. The agency should consider utilizing their agency or county crime lab in obtaining or processing the scene where the assault took place. This should be in accordance to any/all other policies and procedures relating to evidence collections.
  - b. Document any evidence of threats or any communications made by the suspect, or made on behalf of the suspect, to include those made to individuals other than the victim.
  - c. In situations where it is suspected that drugs or alcohol may have facilitated the assault, officers should assess the scene for evidence such as drinking glasses, alcohol bottles or cans, or other related items.

- d. If the victim has declined or a medical forensic exam will not be conducted, the officer should obtain victim consent and attempt to take photographs of visible physical injuries, including any healing or old injuries. Victim should be given directions about how to document any bruising or injury that becomes evidence later after these photographs are taken.

**G. Sexual Assault Medical Forensic Examinations**

- 1) Prior to the sexual assault medical forensic examination the investigating officer should do the following:
  - a. Ensure the victim understands the purpose of the sexual assault medical forensic exam and its importance to both their general health and wellness and to the investigation. Offer assurance to the victim that they will not incur any out-of-pocket expenses for forensic medical exams and provide information about evidence collection, storage and preservation in sexual assault cases.
  - b. Provide the victim with general information about the procedure, and encourage them to seek further detail and guidance from the forensic examiner, health care professional, or a victim advocate. Officers and investigators cannot deny a victim the opportunity to have an exam.
  - c. Officers should be aware and if necessary, relay to victims who do not want to undergo an exam that there might be additional treatments or medications they are entitled to even if they do not want to have an exam done or have evidence collected. Victims can seek that information from a health care provider or a victim advocate. If possible, transport or arrange transportation for the victim to the designated medical facility.
  - d. Ask the victim for a signed release for access to medical records from the exam.
- 2) Officers should not be present during any part of the exam, including during the medical history.
- 3) Following the exam, evidence collected during the exam shall be handled according to the requirements of agency policy and Minnesota Statute 299C.106.

**H. Contacting and Interviewing Suspects**

Prior to contacting the suspect, officers should consider the following:

- 1) Conduct a background and criminal history check specifically looking for accusations, criminal charges, and convictions for interconnected crimes, especially crimes involving violence.
- 2) Consider conducting a pretext or confrontational call or messaging depending on jurisdictional statutes. Involvement of a victim should be based on strong consideration of the victim's emotional and physical state. A victim advocate should be present whenever possible to offer support.
- 3) When possible, an attempt would be made to interview the suspect in person.
- 4) In situations where suspects do not deny that a sexual act occurred, but rather assert that it was with the consent of the victim, officers should do the following:

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- a. Collect evidence of past communication, including but not limited to all relevant interaction (including social media) between the suspect and victim.
- b. Identify events that transpired prior to, during, and after the assault in an effort to locate additional witnesses and physical locations that might lead to additional evidence.
- 5) For sexual assaults involving strangers, officers should focus investigative efforts on the collection of video, DNA, and other trace evidence used for analysis to identify the perpetrator (handle evidence collection per agency policy).

### **I. Forensic Examination and/or the Collection of Evidence from the Suspect**

Note: A suspect's forensic examination and/or the collection of evidence from a suspect may be done by either an investigating officer/investigator, Forensic Medical Examiner, or the agency/county crime lab personnel.

- 1) Prior to or immediately after the preliminary suspect interview, photograph any injuries.
- 2) Determine whether a sexual assault medical forensic examination should be conducted.
- 3) Ask for the suspect's consent to collect evidence from their body and clothing. However, officers/investigators should consider obtaining a search warrant, with specific details about what evidence will be collected, and should be prepared in advance to eliminate the opportunity for the suspect to destroy or alter evidence if consent is denied.
- 4) During the suspect's sexual assault medical forensic examination, the investigator, evidence technician, or forensic examiner should do the following:
  - a. Strongly consider penile swabbing, pubic hair combings, and collection of other potential DNA evidence;
  - b. Collect biological and trace evidence from the suspect's body;
  - c. Document information about the suspect's clothing, appearance, scars, tattoos, piercings, and other identifiable marks;
  - d. Seize all clothing worn by the suspect during the assault, particularly any clothing touching the genital area;
  - e. Document the suspect's relevant medical condition and injuries.

### **J. Role of the Supervisor**

Supervisors may do the following:

- 1) Assist officers investigating incidents of sexual assault when possible or if requested by an officer.
- 2) Provide guidance and direction as needed.
- 3) Review sexual assault reports to ensure that necessary steps were taken during initial response and investigations.

### **K. Case Review/Case Summary**

A supervisor should ensure cases are reviewed on an on-going basis. The review process should include an analysis of:

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- 1) Case dispositions
- 2) Decisions to collect evidence
- 3) Submissions of evidence for lab testing
- 4) Interviewing decisions

**SECTION 15**

**EYEWITNESS IDENTIFICATION PROCEDURES MODEL POLICY**

Minn. Stat. 626.8433

**POLICY:**

Officers shall adhere to the procedures for conducting eyewitness identifications set forth in this policy, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols. Photo arrays and line-ups will be conducted by displaying the suspect and fillers sequentially using a blind or blinded administration.

**Purpose:**

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving show-ups, photo arrays, and line-ups. Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should be employed to uncover evidence that either supports or eliminates the suspect identification.

**Definitions:**

**Show-up:** The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to either confirm or eliminate him or her as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

**Line-up:** The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.

**Photo Array:** A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.

**Administrator:** The law enforcement official conducting the identification procedure.

**Blinded Presentation:** The administrator may know the identity of the suspect, but does not know which photo array member is being viewed by the eyewitness at any given time.

**Confidence Statement:** A statement in the witness's own words taken immediately after an identification is made stating his or her level of certainty in the identification.

**Filler:** A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.

**Sequential:** Presentation of a series of photographs or individuals to a witness one at a time.



**Simultaneous:** Presentation of a series of photographs or individuals to a witness all at once.

**Procedure:**

**1. Show-ups**

The use of show-ups should be avoided whenever possible in preference to the use of a lineup or photo array procedure. However, when circumstances require the prompt presentation of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability.

- a. Document the witness's description of the perpetrator prior to conducting the show up.
- b. Conduct a show-up only when the suspect is detained within a reasonably time frame after the commission of the offense and within a close physical proximity to the location of the crime.
- c. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.
- d. If possible, avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by officers, unless safety concerns make this impractical.
- e. Caution the witness that the person he or she is about to see may or may not be the perpetrator—and it is equally important to clear an innocent person. The witness should also be advised that the investigation will continue regardless of the outcome of the show-up.
- f. Do not conduct the show-up with more than one witness present at a time.
- g. Separate witnesses and do not allow communication between them before or after conducting a show-up.
- h. If one witness identifies the suspect, use a line-up or photo array for remaining witnesses.
- i. Do not present the same suspect to the same witness more than once.
- j. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- k. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.

- l. Ask the witness to provide a confidence statement.
- m. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.
- n. Videotape the identification process using an in-car camera or other recording device when feasible.
- o. Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information.

### **Line-up and Photo Array Procedures**

#### **2. Basic Procedures for Conducting a Line-up or Photo Array**

- a. Line-ups will not typically be utilized for investigations, unless conducting a photo array is not possible.
- b. Whenever possible, a blind presentation shall be utilized. In cases where a blind presentation is not feasible for a photo array, a blinded presentation should be used. Live line-ups must be conducted using a blind presentation.
- c. The line-up or photo array should consist of a minimum of six individuals or photographs. Use a minimum of five fillers and only one suspect.
- d. Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's description of the offender.
- e. Avoid the use of fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- f. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.
- g. If there is more than one suspect, include only one in each line-up or photo array.
- h. During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array. However, during a line-up, the suspect's attorney should be present.
- i. Place suspects in different positions in each line-up or photo array, both across cases and with multiple witnesses in the same case.

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- j. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the line-up or photo array.
- k. The witness shall be given a copy of the following instructions prior to viewing the line-up or photo array and the administrator shall read the instructions aloud before the identification procedure.

*You will be asked to look at a series of individuals.*

*The perpetrator may or may not be present in the identification procedure.*

*It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.*

*I don't know whether the person being investigated is included in this series.*

*Sometimes a person may look different in a photograph than in real life because of different hair styles, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker than in real life.*

*You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.*

*The individuals are not configured in any particular order.*

*If you make an identification, I will continue to show you the remaining individuals or photos in the series.*

*Regardless of whether you make an identification, we will continue to investigate the incident.*

*Since this is an ongoing investigation, you should not discuss the identification procedures or results*

- l. The line-up or photo array should be shown to only one witness at a time; officers should separate witnesses so they will not be aware of the responses of other witnesses.
- m. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.
- n. Officers should scrupulously avoid the use of statements, cues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.

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- o. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness's response.
- p. The administrator shall ask the witness to complete and sign an Eyewitness Identification Procedure Form.
- q. Line-up and photo array procedures should be video or audio recorded whenever possible. If a procedure is not recorded, a written record shall be created and the reason for not recording shall be documented. In the case of line-ups that are not recorded, agents shall take and preserve a still photograph of each individual in the line-up.

### 3. Photographic Arrays

#### a. Creating a Photo Array

- 1. Use contemporary photos.
- 2. Do not mix color and black and white photos.
- 3. Use photos of the same size and basic composition.
- 4. Never mix mug shots with other photos and ensure consistent appearance of photograph backgrounds and sizing.
- 5. Do not include more than one photo of the same suspect.
- 6. Cover any portions of mug shots or other photos that provide identifying information on the subject – and similarly cover other photos used in the array.
- 7. Where the suspect has a unique feature, such as a scar, tattoo, or mole or distinctive clothing that would make him or her stand out in the photo array, filler photographs should include that unique feature either by selecting fillers who have the same features themselves or by altering the photographs of fillers to the extent necessary to achieve a consistent appearance.
- 8. Fillers should not be reused in arrays for different suspects shown to the same witness.

#### b. Conducting the Photo Array

- 1. The photo array should be preserved, together with full information about the identification process as part of the case file and documented in a report.
- 2. If a blind administrator is not available, the administrator shall ensure that a blinded presentation is conducted using the following procedures.
  - a. Place the suspect and at least five filler photos in separate folders for a total of six (or more depending on the number of fillers used).
  - b. The administrator will take one folder containing a known filler and place it to the side. This will be the first photo in the series. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that he or she cannot see how the line-up members are ordered. These shuffled folders will follow the first filler photo. The stack of photos is now ready to be shown to the witness.
  - c. The administrator should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness.

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3. The witness should be asked if he or she recognizes the person in the photo before moving onto the next photo. If an identification is made before all of the photos are shown, the administrator should tell the witness that he or she must show the witness all of the photos and finish showing the sequence to the witness, still asking after each photo if the witness recognizes the person in the photo.
4. If possible, the array should be shown to the witness only once. If, upon viewing the entire array the witness asks to see a particular photo or the entire array again, the witness should be instructed that he or she may view the entire array only one additional time. If a second viewing is permitted, it must be documented.

4. Line-ups

a. Conducting the Line-up

1. Live line-ups shall be conducted using a blind administrator.
2. Ensure that all persons in the line-up are numbered consecutively and are referred to only by number.

b. The primary investigating officer is responsible for the following:

1. Scheduling the line-up on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and any witnesses.
2. Ensuring compliance with any legal requirements for transfer of the subject to the line-up location if he or she is incarcerated at a detention center.
3. Making arrangements to have persons act as fillers.
4. Ensuring that the suspect's right to counsel is scrupulously honored and that he or she is provided with counsel if requested. Obtaining proper documentation of any waiver of the suspect's right to counsel.
5. Allowing counsel representing the suspect sufficient time to confer with his or her client prior to the line-up and to observe the manner in which the line-up is conducted.

**References:**

Eyewitness Identification Procedure Form  
Sequential Photo Display Form

Effective 02/01/2021

**SECTION 16**

**EYEWITNESS IDENTIFICATION PROCEDURES MODEL POLICY**

Minn. Stat. 626.8476

Approved by the POST Board on 4/21/22

I. POLICY It is the policy of the (law enforcement agency) to establish procedures and protocols that take necessary precautions concerning the recruitment, control and use of confidential informants.

II. DEFINITIONS

A. Confidential Informant (CI): A person who cooperates with a law enforcement agency confidentially in order to protect the person or the agency's intelligence gathering or investigative efforts and;

1. seeks to avoid arrest or prosecution for a crime, mitigate punishment for a crime in which a sentence will be or has been imposed, or receive a monetary or other benefit; and
2. is able, by reason of the person's familiarity or close association with suspected criminals, to:

- i. make a controlled buy or controlled sale of contraband, controlled substance, or other items that are material to a criminal investigation;
- ii. supply regular or constant information about suspected or actual criminal activities to a law enforcement agency; or
- iii. otherwise provide information important to ongoing criminal intelligence gathering or criminal investigative efforts.

B. Controlled Buy: means the purchase of contraband, controlled substances, or other items that are material to a criminal investigation from a target offender that is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

C. Controlled Sale: means the sale of contraband, controlled substances, or other items that are material to a criminal investigation to a target offender that is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

D. Mental Harm: means a psychological injury that is not necessarily permanent but results in visibly demonstrable manifestations of a disorder of thought or mood that impairs a person's judgment or behavior.

E. Target Offender: means the person suspected by law enforcement personnel to be implicated in criminal acts by the activities of a confidential informant.

F. Confidential Informant File: means a file maintained to document all information that pertains to a confidential informant.

G. Unreliable Informant File: means a file containing information pertaining to an individual who has failed at following an established written confidential informant agreement and has been determined to be generally unfit to serve as a confidential informant.

H. Compelling Public Interest: means, for purposes of this policy, situations in which failure to act would result or likely result in loss of life, serious injury, or have some serious

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negative consequence for persons, property, or public safety and therefore demand action.

I. Overseeing agent: means the officer primarily responsible for supervision and management of a confidential informant.

### III. PROCEDURES

A. Initial Suitability Determination An initial suitability determination must be conducted on any individual being considered for a role as a CI. The initial suitability determination includes the following:

1. An officer requesting use of an individual as a CI must complete an Initial Suitability Report. The report must be submitted to the appropriate individual or entity, as determined by the agency chief executive, to review for potential selection as a CI. The report must include sufficient detail regarding the risks and benefits of using the individual so that a sound determination can be made. The following information must be addressed in the report, where applicable:

- a. Age, sex, and residence
- b. Employment status or occupation
- c. Affiliation with legitimate businesses and illegal or suspicious enterprises
- d. Extent to which potential information, associations, or other assistance could benefit a present or future investigation
- e. Relationship with the target of an investigation
- f. Motivation in providing information or assistance
- g. Risk of adversely affecting an existing or future investigation
- h. Extent to which provided information can be corroborated
- i. Prior record as a witness
- j. Criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged with a crime
- k. Risk to the public or as a flight risk
- l. Consultation with the individual's probation, parole, or supervised release agent, if any
- m. Consideration and documentation of the individual's diagnosis of mental illness, substance use disorder, traumatic brain injury, or disability; and consideration and documentation of the individual's history of mental illness, substance use disorder, traumatic brain injury or disability
- n. Relationship to anyone in law enforcement
- o. Risk of physical harm to the potential CI or their immediate family or relatives for cooperating with law enforcement

p. Prior or current service as a CI with this or another law enforcement organization

2. Prior to an individual's use as a CI, a supervisor or other designated authority must review the Initial Suitability Report and determine if the individual is authorized to serve as a CI.

3. Any prospective or current CI must be excluded from engaging in a controlled buy or sale of a controlled substance if the prospective or current CI: a. is receiving in-patient treatment or partial-hospitalization treatment administered by a licensed service provider for a substance use disorder or mental illness; or b. is participating in a treatment-based drug court program or treatment court; except that c. the prospective or current CI may provide confidential information while receiving treatment, participating in a treatment-

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based drug court program or treatment court. Approved by the POST Board on 4/21/22 3  
4. Documentation and special consideration must be made of the risks involved in engaging a prospective or current CI in the controlled buy or sale of a controlled substance if the individual is known, or has reported, to have experienced a drug overdose in the previous 12 months.

5. Any prospective or current CI who is known to abuse substances, or is at risk for abusing substances, should be provided referral to prevention or treatment services.

6. Any prospective or current CI that has a physical or mental illness that impairs the ability of the individual to understand instructions and make informed decisions should be referred to a mental health professional or other appropriate medical professional, or a case manager/social worker from the county social services agency, or other substance abuse and mental health services.

7. Each CI's suitability must be reviewed every 6 months, at a minimum, during which time the CI's overseeing agent must submit a Continuing Suitability Report addressing the foregoing issues in III.A.1.a-p, and III.A.3-6, where applicable. An initial suitability determination must be conducted on a reactivated CI regardless of the length of inactivity.

8. Any information that may negatively affect a CI's suitability during the course of their use must be documented in the CI's file and forwarded to the appropriate authorized personnel as soon as possible.

9. Supervisors must review informant files regularly with the overseeing agent and must attend debriefings of CIs periodically as part of the informant management process. If a CI is active for more than 12 months, a supervisory meeting with the CI must be conducted without the overseeing agent.

10. CI contracts must be terminated, and the CI file placed in inactive status when the CI has not been utilized for 6 months or more.

### **B. Exigent Confidential Informants**

1. Certain circumstance arise when an individual who has been arrested is willing to immediately cooperate and perform investigative activities under the direction of an overseeing agent. In these circumstances, the initial suitability determination can be deferred and an individual may be utilized as a CI for a period not to exceed 12 hours from the time of arrest if:

- a. The individual is not excluded from utilization as a CI under III.A(3)(a-c) of this policy; and
- b. There is compelling public interest or exigent circumstances exist that demand immediate utilization of the individual as a CI and any delay would significantly and negatively affect any investigation; and
- c. A supervisor has reviewed and approved the individual for utilization as a CI under these circumstances.

2. Upon the conclusion of the 12-hour window, or at any time before, an initial suitability determination must be conducted before the individual engages in any further CI activities.

**C. Special CI Approval Requirements** Certain individuals who are being considered for use as a CI require special review and approval. In all instances, the agency's chief executive or their designee and the office of the prosecutor or county attorney should be consulted prior to the use of these individuals as CIs. These individuals include the following:

#### **1. Juveniles**

- a. Use of a juvenile under the age of 18 for participating in a controlled buy or sale of a



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controlled substance or contraband may be undertaken only with the written authorization of the individual's parent(s) or guardian(s), except that the juvenile informant may provide confidential information.

b. Authorization for such use should be granted only when a compelling public interest can be demonstrated, except that c. Juveniles under the guardianship of the State may not be used as a CI.

2. Individuals obligated by legal privilege of confidentiality.

3. Government officials.

D. General Guidelines for Overseeing CIs General guidelines for overseeing CIs are as follows:

1. CIs must be treated as assets of the agency, not the individual overseeing agent.

2. No promises or guarantees of preferential treatment within the criminal justice system will be made to any informant without prior approval from the prosecuting authority.

3. CIs must not be used without authorization of the agency through procedures identified in this policy.

4. CIs must not be used to gather information purely of a political nature or for other information gathering efforts that are not connected with a criminal investigation.

5. Under no circumstances must an informant be allowed access to restricted areas or investigators' work areas within a law enforcement agency.

6. All CIs must sign and abide by the provisions of the agency's CI agreement.

7. Any physical or mental illness that impairs the CI's ability to knowingly contract or otherwise protect the informant's self-interest must be taken into consideration before the CI signs the agreement.

8. The CI's overseeing agent must discuss each of the provisions of the agreement with the CI, with particular emphasis on the following:

a. CIs may voluntarily initiate deactivation, whereupon the protocols outlined in section E of this policy must be followed.

b. CIs are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon while performing activities as a CI.

c. CIs found engaging in any illegal activity beyond what is authorized by the agency and conducted while under the supervision of an overseeing agent, will be subject to prosecution.

d. CIs are prohibited from engaging in actions or activities that could be deemed entrapment. The meaning of the term and implications of such actions must be explained to each CI.

e. CIs are prohibited from engaging in self-initiated information or intelligence gathering without agency direction and approval. The CI must not take any actions in furtherance of an investigation without receiving specific instruction(s) from the overseeing agent or agency.

f. Every reasonable effort will be taken to ensure the confidentiality of the CI but, upon judicial order, he or she may be required to testify in open court.

g. CIs may be directed to wear a listening and recording device.

h. CIs must be required to submit to a search before and after a controlled purchase. Approved by the POST Board on 4/21/22 5

i. CIs who participate in unplanned or unanticipated activities or meet with a subject(s) under investigation in a location outside of the jurisdictional boundary of the handling

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agency must promptly report that activity or meeting to their overseeing agents.

9. CI activity outside jurisdictional boundaries:
  - a. Investigators handling CIs who engage in operational activity in locations outside the jurisdictional boundaries of the agency must coordinate with counterparts in law enforcement agencies that have jurisdiction in that location where the CI will operate before any activity occurs, or in a timely manner after unanticipated activity occurs and is brought to the attention of the overseeing agent.
  - b. Any decision to defer or delay notice to or coordinate with an outside agency having jurisdiction in the area where a CI has or may operate must be documented, reviewed, and approved by the agency's chief executive or their designee.
10. Officers must take the utmost care to avoid conveying any confidential investigative information to a CI, such as the identity of other CIs, surveillance activities, or search warrants,  
other than what is necessary and appropriate for operational purposes.
11. No member of this agency must knowingly maintain a social relationship with a CI, or otherwise become personally involved with a CI beyond actions required in the performance of  
duty.
12. Members of this agency must not solicit, accept gratuities from, or engage in any private business transaction with a CI.
13. Meetings with a CI must be conducted in private with another officer or agent present and with  
at least one officer or agent of the same sex, except when not practical. The meeting location  
should minimize the potential for discovery of the informant's cooperation and provide sufficient space to complete necessary administrative duties. The meetings must be documented  
and subsequently entered into the individual's CI file.
14. Overseeing agents must develop and follow a communications strategy and plan with the CI  
that minimizes, to the greatest extent possible, the risk of discovery or compromise of the relationship between the agency and the CI. This plan should also aim to prevent the detection,  
compromise, or interception of communications between the overseeing agent and the CI.
15. Procedures must be instituted to assist CIs with concealing their identity and maintaining their  
safety. Care should be given not to expose CIs to unnecessary safety risks.
16. Preceding or following every buy or sale of controlled substances, overseeing agents must screen the CI for any personal safety or mental health concerns, risk of substance abuse, and/or potential relapse in any substance abuse recovery.
  - a. At the request of the CI, or if the overseeing agent deems it necessary, reasonable efforts should be taken to provide the CI with referral to substance abuse and/or mental health services.
  - b. Overseeing agents must document:
    - i. the screening,
    - ii. any referral to services provided to, or requested by, the CI, and

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iii. any refusal by the CI to participate in the screening and/or any refusal by the CI to accept referral to services. Reasons for the CI's refusal must be documented, where applicable.

c. No part of this subsection supersedes MN Stat. 253B.05, sub.2.

17. Reasonable protective measures must be provided for a CI when any member of this agency knows or should have known of a risk or threat of harm to a person serving as a CI and the risk or

threat of harm is a result of the informant's service to this agency.

18. Overseeing agents must:

a. evaluate and document the criminal history and propensity for violence of target offenders; and

b. to the extent allowed, provide this information to the CI if there is a reasonable risk or threat of harm to the CI as a result of the CI's interaction with the target offender.

19. Reasonable efforts and precautions must be made to help protect the identity of a CI during the

time the person is acting as an informant.

20. Whenever possible, officers must corroborate information provided by a CI and document efforts

to do so.

21. The name of a CI must not be included in an affidavit for a warrant unless judicial authority is

obtained to seal the document from the public record or the CI is a subject of the investigation

upon which the affidavit is based.

22. Overseeing agents are responsible for ensuring that information of potential value to other elements of the agency is provided promptly to authorized supervisory personnel and/or other law

enforcement agencies as appropriate.

23. Individuals leaving employment with the agency have a continuing obligation to maintain as confidential the identity of any CI and the information he or she provided unless obligated to reveal such identity or information by law or court order.

E. Establishment of an Informant File System An informant file system must be established as follows:

1. The agency chief executive must designate a file supervisor who must be responsible for developing and maintaining master CI files and an indexing system.

2. A file must be maintained on each CI deemed suitable by the agency.

3. An additional Unreliable Informant File must be established for CIs deemed unsuitable during initial suitability determinations or at a later time.

4. Each file must be coded with an assigned informant control number for identification within the indexing system and must include the following information, where applicable:

a. Name, aliases, and date of birth

b. Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features

c. Emergency contact information

d. Name of the officer initiating use of the informant and any subsequent overseeing agents

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- e. Photograph and criminal history record
  - f. Current home address and telephone number(s)
  - g. Residential addresses in the last five years
  - h. Current employer, position, address, and telephone number
  - i. Social media accounts
  - j. Marital status and number of children
  - k. Vehicles owned and their registration numbers
  - l. Places frequented
  - m. Gang affiliations or other organizational affiliations Approved by the POST Board on 4/21/22 7
  - n. Briefs of information provided by the CI and the CI's subsequent reliability
  - o. Special skills and hobbies
  - p. Special areas of criminal expertise or knowledge
  - q. A copy of the signed informant agreement
5. CI files must be maintained in a separate and secured area.
6. The file supervisor must ensure that information concerning CIs is strictly controlled and distributed only to officers and other authorities who have a need and a right to such information.

### 7. CI File Review

- a. Sworn personnel may review an individual's CI file only upon the approval of the agency's chief executive or their designee.
- b. The requesting officer must submit a written request explaining the need for review. A copy of this request, with the officer's name, must be maintained in the individual's CI file.
- c. Officers must not remove, copy, or disseminate information from the CI file.
- d. CI files must be reviewed only in designated areas of the law enforcement facility and returned as soon as possible to their secure file location.
- e. All disclosures or access to CI files must be recorded by the file supervisor, to include information such as the requesting officer or agency, the purpose of access or disclosure, the information conveyed, and the date and time of access or dissemination.
- f. No portion of an individual's CI file must be entered into any other electronic or related database without controls sufficient to exclude access to all but authorized personnel with a need and a right to know.

### F. Deactivation of Confidential Informants A CI deactivation procedure must be established as follows:

- 1. The overseeing agent must complete a deactivation form that includes, at minimum, the following:
  - a. The name of the agency.
  - b. The name of the CI.
  - c. The control number of the CI, where applicable.
  - d. The date of deactivation.
  - e. The reason for deactivation.
  - f. A notification that contractual agreements regarding monetary re-numeration, criminal justice assistance, or other considerations, specified or not, are terminated.
  - g. A notification that the agency will provide and assist the CI with referral to health services for assistance with any substance abuse disorder and/or physical, mental, or emotional health concerns, as requested or accepted by the CI.
  - h. A signature by the CI or documentation indicating the reason(s) why the CI was unable

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or unwilling to sign the form.

i. A signature by the overseeing agent.

2. All reasonable efforts must be taken to maintain the safety and anonymity of the CI after deactivation

G. Monetary Payments Monetary payments must be managed as follows:

1. All monetary compensation paid to CIs must be commensurate with the value of the information or assistance provided to the agency.

2. All CI payments must be approved in advance by the officer in charge of confidential funds.

3. Officers must provide accounting of monies received and documentation for confidential funds expended. Any documentation of monies paid or received should not contain the true identity of the informant but should use the CI's control number.

4. Two officers must be present when making payments or providing funds to CIs.

5. The appropriate individual, as designated by the agency's chief executive, must ensure that the process for authorization, disbursement, and documentation of CI payments, as well as the accounting and reconciliation of confidential funds, is consistent with agency policy.

6. If a CI is authorized to work with another law enforcement or prosecutorial agency, financial payments must be coordinated between the agencies in a manner that is proportionate to the assistance rendered to each agency and consistent with provision III.F.1. of this policy.

7. Written records of receipts are retained, or justification for the exception is documented when a written receipt is not available.