

CHAPTER XXXI.

DOMESTIC ABUSE

SECTION 31.00. Definitions. For the purposes of this Chapter:

31.01. Domestic Abuse. The term "domestic abuse" means any of the following engaged in by an adult person against his or her spouse, former spouse or adult relative or against an adult with whom the person resides or formerly resided:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of Sec.940.225(1), (2) or (3), Wis. Stats. [Sec. 940.225(1), sexual assault first degree; Sec. 940.225(2) sexual assault second degree; and Sec. 940.225(3) sexual assault third degree.]
4. A physical act, or a threat in conjunction with a physical act, which may cause the other person reasonably to fear imminent engagement in the conduct described under subsections 1, 2 or 3 above.

31.02. Relative. The term "relative" means a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, child, stepchild, father-in-law, mother-in-law, daughter-in-law or son-in-law.

31.03. Other terms. All other pertinent terms shall be as defined in Chapter 968 of the Wisconsin Statutes.

SECTION 31.10. Adoption of Wisconsin Statutes. Except as otherwise properly provided in this Chapter, the provisions of Section 968.075 of the Wisconsin Statutes, as amended from time to time, is hereby adopted by reference and made a part of this ordinance.

SECTION 31.20. Mandatory Arrest. Notwithstanding the provisions of sec. 968.07, Wis. Stats., a Town Constable shall arrest and take a person into custody if:

1. The Constable has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and
2. Either or both of the following circumstances are present:

a. The Constable has a reasonable basis for believing that there is a possibility of continued violence against the alleged victim.

b. There is evidence of physical injury to the alleged victim.

SECTION 31.30. Law Enforcement Policies. The Town Constables shall develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. The policies shall include, but not be limited to, the following:

1. Statements emphasizing that:

a. In most circumstances, other than those under section 31.20 above, [Sec. 968.075(2) Wis. Stats.], a Town Constable should arrest and take a person into custody if the Constable has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime.

b. When the Constable has reasonable grounds to believe that spouses, former spouses or other persons who reside together or formerly resided together are committing or have committed domestic abuse against each other, the Constable does not have to arrest both persons, but should arrest the person whom the Constable believes to be the primary physical aggressor. In determining who is the primary physical aggressor, a Constable should consider the intent of this section to protect victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between these persons, if that history can reasonably be ascertained by the Constable.

c. A Town Constable's decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident.

d. A Town Constable's decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.

2. A procedure for the written report and referral required under Section 31.40 below.

3. A procedure for notifying the alleged victim of the incident of the provisions in Section 31.50 below.

a. In the development of these policies, the Town Constables are encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

b. This subsection does not limit the authority of the Town Constables to establish policies that require arrests under more circumstances than those set forth in Section 31.20 above.

SECTION 31.40. Report Required Where No Arrest. If a Town Constable does not make an arrest under this section when the Constable has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the Constable shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney's office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

SECTION 31.50. Contact Prohibition.

1. Unless there is a waiver under subsection 4 below [Sec. 968.075(5)(c), Wis. Stats.], during the 24 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than attorneys for the arrested person and alleged victim, to contact the alleged victim.

2. An arrested person who intentionally violates this section shall be required to forfeit not more than \$1,000.

3. (a). Unless there is a waiver under subsection 4 below [Sec. 968.075(5)(c), Wis. Stats.], a Town Constable or other person who releases a person arrested for a domestic abuse incident from custody less than 24 hours after the arrest shall inform the arrested person orally and in writing of the requirements under subsection 1 above, the consequences of violating the requirements and the provisions of Sec. 939.621, Wis. Stats. The arrested person shall sign an acknowledgment on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of Sec. 939.621, Wis. Stats. If the arrested person refuses to sign the notice, he or she may not be released from custody.

(b). If there is a waiver under subsection 4 below [Sec. 968.075(5)(c), Wis. Stats.], and the person is released under subsection 1 above, the Town Constable or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver and the provisions of Sec. 939.621, Wis. Stats.

(c). Failure to comply with the notice requirement under subsection 3(a) above [Sec. 968.075(5)(b)1] regarding a person who is lawfully released from custody bars a prosecution under subsection 1 above [Sec. 968.075(5)(a)1, Wis. Stats.], but does not affect the application of Sec. 939.621, Wis. Stats., in any criminal prosecution.

4. At any time during the 24 hour period specified in subsection 1 above [Sec. 968.075(5)(a), Wis. Stats.], the alleged victim may sign a written waiver of the requirements in subsection 1 above [Sec. 968.075(5)(a), Wis. Stats.]. The Town Constable shall have a waiver form available.

5. The Town Constable shall notify the alleged victim of the requirements under subsection 1 above [Sec. 968.075(5)(a), Wis. Stats.] and the possibility of, procedure for and effect of a waiver under subsection 4 above [Sec. 968.075(5)(c), Wis. Stats.].

6. Notwithstanding Sec. 968.07, Wis. Stats., a Town Constable shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated subsection 4 above [Sec. 968.075(5)(c), Wis. Stats.].

SECTION 31.60. Conditional Release. A person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. Unless there is a waiver under Section 31.23 subsection 4 [Sec. 968.075(5)(c), Wis. Stats.], as part of the conditions of any such release that occurs during the 24 hours immediately following such an arrest, the person shall be required to comply with the requirements under Section 31.23 subsection 1 [Sec. 968.075(5)(a), Wis. Stats.] and to sign the acknowledgment under Section 31.23 subsections 3 [Sec. 968.075(5)(b), Wis. Stats.]. The arrested person's release shall be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person. The person is not eligible for release on his or her own recognizance pursuant to a citation issued under Sec. 800.02 or 968.085, Wis. Stats.

SECTION 31.70. Penalty. Any person violating any of the provisions of this Chapter shall be deemed guilty of an offense and upon conviction thereof shall forfeit not more than \$1,000.00 and the costs of prosecution.