

	<b>LANE COUNTY SHERIFF'S OFFICE POLICY</b>	Number: <b>G.O. 7.14</b>
		Issue Date: March 21, 2005
		Revision Date: November 2, 2005; February 17, 2022
<b>CHAPTER:</b> Patrol		Related Policy: G.O. 1.16 (Law Enforcement Employee Domestic Violence), G.O. 7.08 (Incident Response), G.O. 7.13 (Criminal Victim Response Act), G.O. 7.32 (Stalking Law), G.O. 8.01 (Case Assignment & Follow-up Investigation Responsibilities), G.O. 10.10 (Civil Process)
<b>SUBJECT:</b> APA/Child/Elder Abuse		Related Laws: ORS 133.055, ORS 133.310, ORS 133.381, ORS 419B.005 - 419B.045, ORS Chapter 163 and 167

**POLICY:** Employees must act reasonably and within the limits of their authority as defined by statute and judicial interpretation, insuring that the rights of both the individual and society are protected.

**RULE:** None

**DEFINITION:**

1. Child Witness – Any unmarried person who is under 18 years of age and who is NOT the victim of, suspect in, or related to the suspect in a child welfare, criminal or delinquency investigation.
2. Kid's FIRST – Is Lane County's child advocacy center which provides intervention and advocacy for children who are victims of, or witnesses to crime.

**PROCEDURE:**

I. Background

A. Legal Responsibilities

1. Under the provisions of ORS 133.055, this Sheriff's Office is required to perform specific duties at the scene of a domestic disturbances and an arrest is required under certain conditions.
2. ORS 133.310 requires an arrest to be made upon violation of a Restraining Order, and outlines requirements for proof of service.

3. The Restraining Order is valid Statewide, and ORS 133.381 establishes responsibility with the Sheriff's Office of the County in which the order was issued, for transportation and costs, if the arrest is made in any other County.

## II. Domestic Disturbance

### A. Provisions of ORS 133.055, Subsection (2)

Notwithstanding the provisions of subsection (I) of this section, when a Peace Officer is at the scene of a domestic disturbance and has probable cause to believe that an assault has occurred between spouses, former spouses, adult persons related by blood or marriage, persons of opposite sex residing together or who formerly resided together, or believes that one such person has placed the other in fear of imminent serious physical injury, the Deputy shall arrest and take into custody the alleged assailant or potential assailant.

### B. Enforcement

1. This section requires that an arrest be made at the scene of a domestic disturbance, if all of the following elements exist:
  - a. A Peace Officer is at the scene of a domestic disturbance.
  - b. He has probable cause to believe that one of the following crimes has been committed:
    - (1) Assault - any degree
    - (2) Menacing - "... or to believe that one such person has placed the other in fear of imminent serious bodily injury..."
  - c. The offense occurred between:
    - (1) Spouses.
    - (2) Former spouses.
    - (3) Adult persons related by blood or marriage.
    - (4) Persons of the opposite sex residing together.
    - (5) Persons of the opposite sex who formerly resided together.
  - d. Arrest
    - (1) Citations in lieu of custody are specifically forbidden for violations of ORS 133.055(2). An actual custodial arrest must be made.
    - (2) The investigating Deputy will make a custody report, thoroughly documenting the investigation in all domestic disturbance calls involving an apparent violation of ORS 133.055(2).
    - (3) The victim of domestic violence will be advised to contact the District Attorney's Office on the first business day following the arrest to sign the formal complaint.

- (4) The investigating Deputy will include in the body of the report that the victim of domestic violence was advised to appear at the District Attorney's Office.

C. Notice of Legal Rights and Remedies Available

1. Provisions of ORS 133.055 Subsection (3)

Whenever any peace officer has reason to believe that a family or household member has been abused as defined in ORS 107.705, that Deputy shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the District Attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief. (a) An order restraining your attacker from abusing you, (b) an order directing your attacker to leave your household, (c) an order preventing your attacker from entering your residence, school, business or place of employment, (d) an order awarding you or the other parent custody of or visitation with a minor child or children, (e) an order restraining your attacker from molesting or interfering with minor children in your custody, (f) an order directing the party not granted custody to pay support of minor children, or for support of the other party if that party has a legal obligation to do so.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is under \$2500.00.

For further information you may contact:"

- a. The investigating Deputy will personally give to the victim of domestic violence the "Notice of Legal Rights and Remedies Available" card furnished by the Sheriff's Office and indicate in the body of the report that the card was furnished as required by ORS 133.055, Subsection (3).

D. Abuse Defined (In ORS 107.705)

1. Abuse - Means the occurrence of one or more of the following acts between family members or household members:
  - a. Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
  - b. Intentionally, knowingly, or recklessly placing another in fear of imminent serious bodily injury.
  - c. Causing another to engage in involuntary sexual relations by force, threat of force, or duress.
  
2. Family or Household Members - Means one or more of the following:
  - a. Spouses.
  - b. Former spouses.
  - c. Adult persons related by blood or marriage.
  - d. Persons who are cohabitating with each other.
  - e. Persons who have cohabitated with each other or who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing of a petition by one of them, or the unmarried parents of a minor child. Refer to III – Restraining Order.

### III. Restraining Order

#### A. Provisions of ORS 133.310, Subsection (3):

A Peace Officer shall arrest and take into custody a person without a warrant when he has probable cause to believe that:

1. There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c)(d), 107.716, 107.718, 163.735, or 163.738 restraining the person.
2. A true copy of the order and proof of service on the person has been filed as required in ORS 107.720 or 163.741.
3. The Peace Officer has probable cause to believe that the person to be arrested has violated the terms of that order.
4. A foreign Restraining Order protects the person, as defined by ORS 24.185.

#### B. Foreign Restraining Orders will be enforced, and treated as one of our own, in any of the following situations:

1. The protected person supplies a copy of the order, represents that it is the most recent version and that the respondent has been served or has actual

notice.

2. The protected person has filed the foreign order with an Oregon Court.
3. The protected person is identified by the Deputy as a protected person from the information in the databases of LEDS or the National Protective Order Registry (NCIC). Registration and entry into LEDS is not required.

C. Foreign Restraining Order Defined:

1. Qualifying Restraining Order – Means any order issued for the purpose of preventing violence, threatening acts, or harassment against another person; contact or communications with another person; or physical proximity to another person. It could be an ex parte, a temporary, or final order, or from a civil, juvenile, or criminal court. It could be the result of an independent legal case or temporary relief during another lawsuit or labeled something other than a Protective Order, Stalking Order, or Restraining Order.
2. The new law provides civil and criminal immunity for a Peace Officer that makes a mandatory arrest. The protected party can be held criminally liable for misrepresenting the validity, duration, or provisions of the foreign order.
3. This law further requires that the Sheriff’s representative must enter the order into LEDS, if the protected person requests registration and the person:
  - a. Presents a true copy of the order.
  - b. Certifies that it is the most recent order.
  - c. Provides proof of service or other written certification that the respondent has been personally served or received actual notice. The protected person’s certification is sufficient.

D. Enforcement

1. This section requires an arrest to be made if a Peace Officer has probable cause to believe all of the following elements exist:
  - a. There exists a Restraining Order (issued pursuant to ORS 107.095 (1)(c)(d), 107.716, or 107.718) that includes a security amount and an expiration date, or a Stalking Protective Order issued pursuant to ORS 163.735 or 163.738.
  - b. The petitioner, clerk of the circuit court, or other person had delivered a true copy of the order, along with proof of service on

the respondent, to the Sheriff's Office, or the order appears in the Law Enforcement Data System.

- c. The Deputy has probable cause to believe that the person to be arrested has violated the terms of the order.

2. Whenever a Deputy is confronted with a situation that includes a possible violation of ORS 133.310(3), it shall be mandatory that the investigating Deputy verifies that the Restraining Order and proof of service are actually on file in the Law Enforcement Data System. That Deputy shall request that the instructions contained in the document be read to the Deputy.

- a. Based upon this information, the Deputy shall then determine if a violation of that Restraining Order has occurred prior to taking any enforcement action. If there still exists a doubt in the mind of the Deputy, the Deputy shall check with an immediate supervisor for consultation and direction. All arrest reports made in connection with the violation shall have a copy of the Restraining Order and the proof of service attached to that report.
- b. Deputies shall not accept Restraining Orders in the field unless they are at the scene of a domestic disturbance and the petitioner presents a court certified copy of both the order and petition for immediate service upon the respondent. If the petitioner has only one copy of the documents, the Deputy must record the following information:
  - (1) Court of Issuance
  - (2) Court's Case Number
  - (3) The Date Signed
  - (4) The Restrictions Imposed
- c. Deputies will only accept proof of service from a party in the field when that proof has been notarized and is attached to a court certified copy of the Restraining Order. The documents (or information) will be forwarded to the Main Office for entry into L.E.D.S. as soon as possible.

3. Arrest

Citations in lieu of custody are specifically forbidden for violations of ORS 133.310(3). An actual custodial arrest must be made even if the petitioner objects to the arrest.

4. Charge

- a. According to the Lane County District Attorney's Office, all arrests made under authority of ORS 133.310(3) are for Contempt of Court as authorized by ORS 107.095.

- b. It is possible that a situation would occur that would require the charging of both ORS 133.055(2) and 133.310(3).

5. Orders Originating Out-of-County

- a. If an out-of-county Restraining Order is on file, in the Law Enforcement Data System, the Deputy is required to make an arrest, assuming the existing facts warrant such action as outlined in ORS 133.310(3).
- b. In the event of a foreign Restraining Order (one issued from places other than an Oregon Court), the Deputy may be required to make an arrest even though there is no entry in L.E.D.S. (See Section III (A)(4) of this procedure).

E. Exception

1. In an instance where a Restraining Order is on file as required by ORS 107.720 and it is alleged by the petitioner that the respondent had in fact violated the restrictions of the Restraining Order, but the incident was not occurring at the present time and had in fact occurred several hours or even days previous to the reporting of the incident, and the respondent was not creating an immediate threat at the time of the report, a question may arise concerning enforcement action.
2. The intent of the law is to prevent physical injury to the petitioner, to prevent an imminent hazardous or explosive situation from happening or continuing, and to eliminate the potential threat at the time. Normally, the respondent would be present or in the immediate area to constitute cause for immediate arrest. It is imperative that the Deputy have probable cause to believe that the Restraining Order was in fact violated, which would be difficult, based upon just the word of the petitioner without some supportive evidence, such as the presence of the respondent, injury, damage, or support by other witnesses.
3. Therefore, if there is a considerable time delay and the respondent is not present and presenting an immediate threat, the Deputy would be justified in advising the victim or petitioner to contact their attorney and request that the attorney go before the court to seek a contempt of court complaint against the respondent, at which time a warrant would be issued for his/her arrest. If there have been other violations of the law, concurrent with violating the Restraining Order, the Deputy shall take a report and advise the victim to contact the District Attorney's Office to sign a formal complaint against the suspect. A report shall be filed in every case.

#### IV. Child Witness Interviews

- A. The Sheriff's Office should contact a child witness parent or legal guardian when an interview has taken place or needs to occur unless the child meets the requirements for exemption.
- B. When a child witness needs to be interviewed by a Deputy the parent or legal guardian should be notified if feasible, unless the investigation involves the parent or legal guardian.
- C. The Deputy can ask the child witness which parent should be notified to ensure the child witness is as comfortable as possible.
- D. The involved Deputy should document in the report which parent or legal guardian was contacted and who was present during the child witness interview.
- E. Deputies should consider using the Kid's FIRST Center or DHS (Child Welfare) prior to any child witness interview.
- F. If the Deputy is unable to contact the parent or legal guardian of the child witness prior to an interview, then the Deputy should make every effort to contact the parent or legal guardian after the interview and document all efforts.
- G. At all times a Deputy will prioritize the safety of the child before making any notifications to the parents or legal guardians. If there is a safety issue with the child, the Deputy should document such safety issues in their report and contact DHS (Child Welfare) if needed.

#### V. Child Abuse

- A. Abuse of a Child
  - 1. Any assault, as defined in chapter 163 and 167 of the Oregon Revised Statutes, of a child and any physical injury to a child which has been caused other than by accidental means.
  - 2. Any injury that appears to be at variance with the explanation given of the injury, including sexual crimes as defined by statute.
- B. Investigation and Reporting
  - 1. The Deputy will conduct an investigation, as soon as reasonably possible, when members of the Lane County Sheriff's Office receive a report of child abuse, whether physical or sexual. A report will be completed on all such investigation, regardless of disposition, by the end of the Deputy's



shift. A copy of his report will be sent to the Department of Services to Children and Families.

2. If a Deputy conducts an investigation and finds reasonable cause to believe abuse has occurred, the local office of the Department of Services to Children and Families shall be immediately notified orally and informed of the abusive circumstances.
3. When staff is unavailable, notification can be satisfied by faxing (485-8566) a copy of the reported abuse to the Department of Services to Children and Families.
4. Reasonable cause means the Deputy holds a belief that is reasonable under the totality of the circumstances existing at that time and place. The Deputy must be able to point to specific and articulable facts. The oral report shall be followed up with a written report.
5. If a Deputy conducts an investigation where the allegation is a form of sex abuse, or a sexual assault, all of the preceding reporting requirements are still in affect.
6. However, in sex abuse or sexual assault cases, the Deputy will not interview the victim. The victims' parents or guardians will be interviewed as to the nature of the complaint. The parents or guardians of the child will be directed to contact the Multi-Disciplinary Team to make an appointment for the child to be interviewed.
7. The completed report will be faxed by dispatch personnel to the MDT prior to the next business day.
8. Deputies responding to an investigation of reported child abuse shall determine the nature of the reported abuse. If the abuse is physical, the investigating Deputy will cause an examination of the child to be performed to determine the nature of the injuries.
9. ORS 419B.028 authorizes any Law Enforcement agency to photograph any child subject of an investigation for purposes of preserving evidence of the child's condition at the time of the investigation.
  - a. Children ages six years and under may be examined by the Deputy conducting the investigation.
  - b. Children older than six years of age may be examined with the consent of a responsible guardian or taken to a medical facility for examination by medical personnel.

- c. Adolescent children will be examined by a Deputy of the same gender or taken to a medical facility for examination by medical personnel.
  - d. A child twelve years of age or older may refuse to consent to a physical examination to confirm sexual abuse.
- 10. Deputies responding to an investigation of reported child abuse shall not conclude an investigation until such time as a reasonable effort is made to examine the child.
- 11. If reasonable belief exists that child abuse has occurred and it is necessary to enter the residence to examine the child, Deputies shall do so with or without consent of the person responsible for the residence. If Deputies are refused entrance to a residence for the purpose of examining the welfare of a child, a supervisor shall be called to provide assistance. In the event that no reasonable belief exists to enter on behalf of the child and the person refuses Law Enforcement Officer entrance to the premises and/or to examine the potential child abuse victim, a police legal advisor shall be contacted immediately to obtain direction on the next course of action.
- 12. The presence of other children in a residence where there is suspected or reported child abuse is cause for the Deputy to ensure those children are also examined for injury or abuse.
- 13. When an investigation into a reported child abuse produces information to support the allegation, the investigating Deputy shall:
  - a. Orally notify the Department of Services to Children and Families immediately, or if there is no one available, then a fax of the information will suffice.
  - b. Photograph and seize items of evidence relating to the case.
  - c. Photograph and document injuries sustained by the victim.
  - d. Ensure the child is removed from an unsafe environment and placed in shelter care, a medical facility, or with other family members as agreed upon with the Department of Services to Children and Families.
  - e. Make appropriate documentation of the investigation.

VI. Elder Abuse

A. Elder Abuse

- 1. Abuse of any elderly person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

B. Investigating and Reporting

1. ORS 124.060 requires an investigative report be completed when a member of the Sheriff's Office receives a report of elder abuse. The report will be completed and forwarded to the local office of Senior and Disabled Services Division of the Department of Human Resources.
2. This report will be completed and submitted to Senior and Disabled Services regardless of any determination as to whether the report is founded or unfounded. We will assist the Senior and Disabled Services Division in the investigation of elder abuse including gaining access to the allegedly abused elderly person. All reports can be faxed (682-3959).
3. When we receive a report of elder abuse, an investigation shall be initiated promptly to determine the nature and cause of the abuse. If the investigating Deputy finds reasonable cause to believe that abuse has occurred, the Deputy shall notify the local Senior and Disabled Services Division. ORS 124.065
4. The investigation shall include a visit to the named elderly person and consultation with those individuals having knowledge of the facts of the particular case. ORS 124.070
5. Upon completion of the investigation, a written report shall be submitted including any action taken by members of this division, recommended further action, and a determination of whether protective services are needed. ORS 124.070
6. When conducting an investigation of elder abuse, the Deputy or the Senior and Disabled Services Division may photograph or have any victim photographed who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation. ORS 124.080
7. Elder Abuse investigations, the name of the complainant, witnesses and the elderly persons compiled under the provisions of ORS 124.050 to 124.095 are confidential and are not accessible for public inspection. ORS 124.090
8. Deputies shall ensure that arrangements are made for placement of an elderly person if necessary for his/her protection.
9. The investigating Deputy, having reasonable cause to believe that elder abuse has occurred within the preceding 180 days and that the elderly person is in immediate and present danger of further abuse from the

abuser, shall inform the elderly person who has been the victim of abuse of the person's right to obtain a Restraining Order in circuit court.