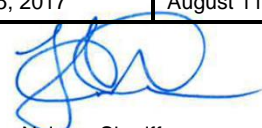




DESCHUTES COUNTY SHERIFF'S OFFICE

Policy Title: Personnel Involved Domestic Violence	Effective Date: March 5, 2014	Policy Number: 6.40
Accreditation Reference: 1.5.5, 2.2.1	Review Date: March 5, 2017	Supercedes: August 11, 2010
Attachments: <ul style="list-style-type: none">• Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions (1 page)• Protection Orders and Federal Firearms Prohibitions (1 page)	 L. Shane Nelson, Sheriff	

I. PURPOSE

The purpose of this policy is to establish procedures for the investigation of domestic violence incidents involving members of the Deschutes County Sheriff's Office.

II. POLICY

While deputies are to respond to domestic violence incidents as they would any other crime, this policy shall be followed during domestic violence investigations involving law enforcement members.

When incidents of domestic violence are alleged to have occurred, the Sheriff's Office will act quickly to protect the victim, investigate thoroughly, arrest the perpetrator upon establishment of probable cause and conduct such administrative and other investigations as deemed necessary.

This policy states the Sheriff's Office position of zero tolerance for domestic violence.

III. DEFINITIONS

Domestic Violence, definitions of domestic violence under State and Federal law will apply for the purpose of this policy as follows:

As defined in ORS 135.230, "Domestic violence" means abuse between family or household members. "Abuse" means:

- a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury;
- b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury;
or
- c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427

"Family or household members" means any of the following:

- a) Spouses.
- b) Former spouses.
- c) Adult persons related by blood or marriage.
- d) Persons cohabiting with each other.
- e) Persons who have cohabited with each other or who have been involved in a sexually intimate relationship.

- f) Unmarried parents of a minor child.

As defined in 18 USC 921(33):

Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that:

- a) is a misdemeanor under Federal, State, or Tribal law; and
- b) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Protective Order is defined in 18 USC 922 g(8):

(8) who is subject to a court order that:

- a) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- c) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- d) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

As defined in 18 USC 921(a) (32), the term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

IV. PROCEDURES

18 U.S.C. § 922 (g) (8) prohibits the respondent of a protective order from possessing firearms and ammunition.

18 U.S.C. § 922 (g) (9), prohibits individuals convicted of misdemeanor domestic crimes from possessing firearms and ammunition.

A. Implications

In the process of adopting this policy of zero tolerance, this agency must review records of all deputies to ensure that they are free of domestic violence convictions. Any Sheriff’s Office member found guilty of domestic violence through any criminal court shall be prohibited from possessing a firearm. This law pertains to past, current and future domestic violence convictions. Subsequently, sworn members shall have their law enforcement powers revoked by the Sheriff. If a deputy is found to have committed an act of domestic violence through an internal investigation, his law enforcement powers may be revoked.

If a Sheriff’s Office member is the respondent of a Restraining Order or Stalking Order, he shall be prohibited from possessing a firearm. Federal law requires that the defendant or respondent of a Restraining Order or Stalking Order receive “actual notice” of a hearing to contest the Order and have an “opportunity to participate” in the hearing.

If a member is the respondent of a Restraining Order or Stalking Order and fails to request a hearing within 30 days or a hearing is requested and the Judge determines that the member is a credible threat and meets the intimate partner requirements as stated in 18 U.S.C. 922 (g) (8), the member will be prohibited from possessing a firearm. Sworn members may have their law enforcement powers revoked.

See attached Federal Guidelines 18 U.S.C. § 922 (g) (8) and (9).

B. Reporting

Employees who are a party to any Restraining Order, issued in any jurisdiction, shall immediately report that fact to their respective supervisors. Supervisors shall immediately forward this information through the chain of command to the Sheriff.

C. Employee Assistance

In response to observed warning signs or at the request of an employee, the Sheriff's Office may offer and/or recommend non-punitive avenues of assistance to employees, their partners or other family members before an act of domestic violence occurs (i.e. Employee Assistance Program or other appropriate counseling service).

Members who disclose to any other member of the Sheriff's Office that they have personally engaged in or been a victim of domestic violence are not entitled to confidentiality. The incident shall be reviewed internally and, if necessary, criminally.

D. Supervisor Responsibility

Supervisors should be aware of on-duty behavior that may be warning signs of domestic violence. These behaviors may include, but are not limited to, stalking and inappropriate surveillance activities, unusually high incidents of physical altercations, injuries, or verbal disputes.

Supervisors should be cognizant of off-duty behavior in which members may be exhibiting signs of possible domestic violence related problems, including: alcohol and/or drug abuse, an increase in controlling behaviors, stalking activity, citizen or fellow member complaints of aggression and inappropriate aggression toward animals.

If a supervisor is informed of an off-duty domestic violence incident, this incident shall be investigated. Supervisors shall immediately make their supervisor aware of any domestic violence incident involving Sheriff's Office members.

The Sheriff shall be informed via chain of command of such circumstances or concerns as soon as possible.

E. Member Responsibilities

All employees are encouraged and entitled to seek assistance through the Employees Assistance Program (EAP) or similar counseling functions to prevent a problem from escalating to the level of criminal conduct against an intimate partner or family member.

1. Members with any knowledge or information of abuse and/or violence involving fellow members must report the information in writing to their supervisor. Failure to do so may subject the member to investigation, disciplinary action or other actions, up to and including termination.
2. All members shall be aware of the responsibility of witness or victim intimidation and coercion. Whenever a member suspects this is occurring, he shall prepare a written report and immediately deliver it to the investigator in charge of the case through the proper chain of command.
3. Members who engage in surveillance activity or threatening, harassing or stalking behavior that interferes with domestic incident cases against fellow members or who intimidate witnesses may be subject to investigation and possible disciplinary action, up to and including termination.
4. Members who fail to cooperate with the investigation of a member related domestic violence case may be subject to investigation and possible disciplinary action, up to and including termination.
5. Any member who falsely reports that a domestic violence victim of a member related domestic violence has committed a crime (such as child abuse or neglect) may be subject to investigation and possible disciplinary action, up to and including termination.
6. Any member who is the subject of or a party to a criminal investigation, or a Restraining or Stalking Order related to domestic violence, regardless of jurisdiction, is required to report that fact to his

supervisor and provide notice of the court dates, times, appearances, and proceedings in a timely manner.

7. Any member who is party to any civil domestic violence Restraining or Stalking Order proceeding, regardless of jurisdiction, shall notify his supervisor in a timely manner of this fact and shall provide a copy of the Order, if issued, to his supervisor.
8. Deputies are prohibited from carrying firearms, whether concealed or displayed, when conducting or attending to personal legal business including, but not limited to:
 - a. Civil procedures
 - b. Arbitrations or mediations
 - c. Attorney meetings
 - d. Family court hearings
 - e. Domestic relations hearings
 - f. Family involved criminal hearings or trials

Also see [Policy 8.20 Firearms](#) and Deschutes County Administrative Policy No. GA-8.

F. Incident Response Protocols

Agency Response

1. All agency members shall accept, document in writing and preserve all calls or reports, including those made anonymously, involving possible member domestic violence as “on-the-record” information. The information shall be forwarded to the respective employee’s supervisor for possible investigative action.
2. A criminal case report shall be completed, including details on date, time, location, circumstances, names (if known), officials notified and actions taken. A case report number shall be assigned and the report filed.
3. A copy of the report that identifies a member as a victim of domestic violence or criminally implicates a member in domestic violence shall be distributed to the Sheriff, via chain of command, for assignment to internal affairs.

Patrol Response

Upon arrival at the scene of a domestic violence incident involving any member of the Sheriff’s Office or any other law enforcement agency, the primary patrol unit shall immediately notify a supervisor. Whenever possible, an outside agency shall be called to investigate the incident if a member of the Sheriff’s Office is involved. The investigation shall be conducted in accordance with Sheriff’s Office policy.

On-Scene Supervisor Response

Whenever possible, a supervisor shall respond to the scene of domestic violence incidents within Deschutes County that involve Sheriff’s Office members. Supervisors shall also respond to domestic violence incidents within the Sheriff’s Office jurisdiction that involve any other law enforcement agency members.

Investigation by Sheriff’s Office

1. The on-scene supervisor should assume command and ensure that the crime scene is secure and that all evidence is collected, including color photographs. Video documentation of the victim and scene should be recorded when such resources are available.
2. In cases where probable cause exists, the on-scene supervisor shall ensure mandatory arrests are made. In discretionary arrest situations, the supervisor will assist the investigating deputy in determining if an arrest should be made.
3. If the offender has left the scene, the supervisor shall ensure a search is conducted and the reports are forwarded to the district attorney’s office.

4. Arrest of both parties involved in a domestic violence incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the primary aggressor is made in accordance with state law.

G. Seizure of Duty Weapons

Whenever a Deschutes County Sheriff's Office deputy or field technician is arrested, the supervisor shall relieve the accused of his Sheriff's Office issued duty weapon(s). If an armed law enforcement officer from another agency or jurisdiction is arrested, that individual's agency will be immediately contacted by the Sheriff's Office supervisor and authorization to seize that individual's duty weapon(s) will be requested. Where allowable under federal, state or local ordinances, all other firearms owned or at the disposal of the accused deputy, field technician or other law enforcement officer shall be removed to ensure the victim's safety.

H. Investigation Considerations

When the Sheriff's Office responds to a domestic violence complaint involving a member from a law enforcement agency, responding Sheriff's Office personnel shall follow the procedures established herein. The responding supervisor shall verbally notify the Sheriff/Chief of Police, or designee, of the accused member's jurisdiction as soon as possible and in writing within 24 hours.

1. In the event that the reported incident involves a sheriff, chief of police, commissioner, or department head, the supervisor shall immediately notify the individual in government who has direct oversight of that individual.
2. In responding to domestic violence situations in which the victim is a law enforcement agency member, standard domestic violence response and investigation procedures shall be followed.
3. In responding to domestic violence incidents where both parties involved are law enforcement members, standard domestic violence response and investigation procedures should be followed. After probable cause is established and the primary aggressor is determined, an arrest should be made and service weapons confiscated pursuant to procedure established herein.

I. Follow-Up

1. The supervisor shall, in a timely manner, debrief all deputies who respond to a law enforcement member domestic violence call. During the debriefing, the supervisor shall:
 - a. review confidentiality guidelines and
 - b. reaffirm that deputies share information only on a need-to-know basis.
2. The supervisor shall establish a clear delineation of assignments in order to assist victims in a coordinated and consistent manner.
3. Arrest warrants charging law enforcement officers with domestic assault and protective orders issued at a later date shall be served by no fewer than two deputies with at least one being of senior rank to the one being served.
4. On-scene and follow-up investigators shall proactively seek out information on existing Restraining and/or Protective Orders and, if found, shall enforce them.
5. Command staff will make decisions concerning referrals, duty assignments and administrative actions.

J. Victim Safety and Protection

1. All members shall keep all information concerning victims confidential, including their whereabouts and safety plans.
2. The victim will be asked whether the victim wants any weapons removed from the home by the Sheriff's Office for safekeeping.
3. All members shall be aware of the increased danger to victims when the victim leaves the abusive partner, and the investigating deputy should caution the victim to be alert to stalking activities on the part of the abuser and assist in safety planning.

4. All members will be aware of possible witness or victim intimidation/coercion. Whenever a member suspects this is occurring, he shall prepare a written report and immediately deliver it to the deputy in charge of the investigation, through proper chain of command.

K. Criminal Conviction

Federal law prohibits any person convicted of a crime stemming from domestic violence incidents from possession of firearms. The Sheriff's Office shall ensure compliance with federal law.

1. Because being armed is an essential deputy and field technician function, any deputy or field technician convicted of any felony or domestic violence crime, as defined herein, shall have his peace officer powers revoked.
2. Non-sworn members convicted of a domestic violence crime shall not be allowed to possess a firearm and shall be subject to disciplinary action up to and including termination.

L. Restraining and Stalking Orders

A member will be prohibited from possessing a firearm if:

1. The member is the defendant or a respondent of a Restraining Order or Stalking Order and the judge has ordered the member not to possess a firearm;
2. The member fails to request a hearing within 30 days; or
3. A hearing is requested and the Judge determines that the member is a credible threat and meets the intimate partner requirements as stated in 18 U.S.C. 922 (g) (8).

Federal law prohibits any person subject to a qualifying Protection Order from possession of firearms. The Sheriff's Office shall ensure compliance with federal law.

1. Because being armed is an essential deputy and field technician function, any deputy or field technician subject to a qualifying Protection Order, as defined herein, shall have his peace officer powers revoked.
2. Non-sworn members subject to a qualifying Protective Order shall not be allowed to possess a firearm and shall be subject to disciplinary action up to and including termination.

M. Prevention, Education and Training

The Sheriff's Office will adhere to a zero tolerance policy toward law enforcement personnel domestic violence. Violations of the policy will not be tolerated. The agency will provide training to members on domestic violence and the zero tolerance policy.

1. Prevention Through Collaboration

The Sheriff's Office shall collaborate with local domestic violence victim advocacy organizations, coordinating councils, the Deschutes County District Attorney's Office and Sheriff's Office members specializing in domestic violence issues and training. In addition, the Sheriff's Office will collaborate with state domestic violence coalitions in the development of domestic violence training curricula and shall use local advocates in the training of members, specifically sworn members.

2. Education

The Sheriff's Office will provide employees with domestic violence training. The instruction may include:

- a. In-Service Training: Periodic in-service training on domestic violence and stalking should be held to review policies and discuss their implementation.
- b. Briefing Training: During briefing, deputies should receive regular instruction about domestic violence and stalking.

3. Early Warning and Intervention

Pre-Hire Screening and Investigation

- a. The Sheriff's Office shall conduct thorough background investigations of all potential new members to determine if domestic violence issues exist.
- b. All member candidates shall be asked about past arrests or convictions for domestic violence-related incidents and past civil protective orders.
- c. Any Sheriff's Office member candidate with a history or conviction of domestic violence shall be eliminated as a member candidate at this point in the hiring process.

Post-Conditional Offer of Employment

- a. The Sheriff's Office shall require a psychological examination of all viable sworn members to be performed by an experienced psychologist or psychiatrist.
- b. The psychological screening will focus on indicators of violent or abusive tendencies or behaviors in the candidate's background.

Post-Hire Intervention

The Sheriff's Office will provide a copy of the agency's policy on domestic violence to new members.

MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under Federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See Title 18 U.S.C. § 922(g)(9) (the Lautenberg Amendment); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 478.11, 478.32.

A qualifying MCDV is an offense that:

- ❖ Is a federal, state, local, tribal or territorial offense that is a misdemeanor under federal, state or tribal law;
- ❖ Has the element of the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the offense was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim;
 - ◆ A person with whom the victim shared a child in common;
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

Affirmative defenses/EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights – the right to vote, sit on a jury, and hold elected office – were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES BY CALLING 1-800-800-3855, OR VISIT WWW.ATF.GOV/FIELD/. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE, PLEASE CONTACT THE NATIONAL CENTER ON PROTECTION ORDERS AND FULL FAITH AND CREDIT AT 1-800-903-0111, PROMPT 2, OR VISIT THEIR WEB SITE AT WWW.BWJP.ORG.

PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment. Title 18 U.S.C. §§ 922(g)(8), 924(a)(2).

A qualifying court order may be issued by a criminal court or a civil court, such as divorce court, family court, magistrate or general jurisdiction court. The following list enumerates the elements that define a qualifying protection order under the Federal firearms prohibition. *Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the Federal firearms prohibition.*

I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)). An **intimate partner** may include:

- ❖ A **spouse** or **former spouse** of the Defendant/Respondent;
- ❖ A person who **cohabitates** or **who has cohabitated** with the Defendant/Respondent (i.e., who resides/resided together in sexual/romantic relationship); or
- ❖ A person with whom the Defendant/Respondent **has or had a child in common** (regardless of whether they ever married or cohabitated).

III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; *or*
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; *or*
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(8) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES BY CALLING 1-800-800-3855, OR VISIT [WWW.ATF.GOV/FIELD/](http://www.atf.gov/field/). FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE, PLEASE CONTACT THE NATIONAL CENTER ON PROTECTION ORDERS AND FULL FAITH AND CREDIT AT 1-800-903-0111, PROMPT 2, OR VISIT THEIR WEB SITE AT WWW.BWJP.ORG.