



KAUA'I POLICE DEPARTMENT



GENERAL ORDER

NUMBER 42.14	INDEX Abuse of Family and Household Members	03-05
ISSUE DATE	CALEA STANDARDS None	REVISED DATE

I. PURPOSE:

- A. The Kauai Police Department is committed to reducing the frequency and severity of domestic violence in the community. Protecting and assisting victims by providing them with support through a combination of law enforcement and community services shall remain a priority for this Department.
- B. The following shall serve as Kauai Police Department guidelines and procedures for investigations involving the Abuse of Family and Household Members.

II. AUTHORITY:

- A. Section 709-906, Hawaii Revised Statutes, "Abuse of Family and Household Members."
 1. It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member may, upon request, transport the abused person to a hospital or safe shelter.

"Family or household member" means, spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in dating relationship as defined under section 586-1, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.
 2. Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member.
 3. A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.
 4. Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer's presence.

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- a. The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- b. Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer may lawfully order the person to leave the premises for a period of separation of forty-eight (48) hours, during which time the person shall not initiate any contact, including by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;
- c. Where a police officer makes the finding referred to in paragraph (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the forty-eight (48) hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- d. All persons who are ordered to leave as stated above shall be given a Written Warning Citation (KPD form 476, revised (7/13) stating the date, time, and location of the warning, and the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;
- e. If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and
- f. The officer may seize all firearms and ammunition that the officer has reasonable grounds to believe were used or threatened to be used in the commission of any offense under this section.

III. PROCEDURES:

A. Investigations

1. An officer assigned to investigate an abuse case involving a family or household member shall submit a written report in RMS. **Reports shall be submitted at the end of each shift.**

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2. The relationship between the victim and the person responsible for committing the abuse must be established to ensure that it falls within the definition of "Family or Household member." The relationship shall be described and documented in the officer's written report.
3. The officer shall make every effort to obtain a written statement from the victim and/or witness(es), including minors, describing the act(s) of abuse. The information shall be documented on Kauai Police Department statement form 548 (02), to supplement the officer's investigative report.

The written statement form shall be signed by the victim or witness, and then subsequently witnessed by the officer. Where applicable, information on the statement form shall include the following:

- a. Name, age, and date of birth
 - b. Permanent and/or temporary address; mailing address
 - c. Place of employment; address
 - d. Contact numbers (phone, cell, pager)
 - e. Relationship to the person committing the abuse
 - f. Description of living arrangement with the abuser
 - g. Children in common with the person committing the abuse, including their names and ages.
 - h. Events surrounding the abuse.
 - i. Description of physical injuries and pain.
 - j. The same information (above) shall be included on statement forms for minors. The parent or guardian shall witness the minor's signature on the form.
4. When a written statement cannot personally be prepared or provided, the officer shall obtain an oral statement from the victim or witness, which shall be documented by the officer on the statement form. The officer shall indicate on the form the statement was provided orally by the victim/ witness, and shall make every effort to have the victim/witness review it, make and initial any changes, then sign the form.
 5. The officer shall make every attempt to have the victim complete and sign the medical waiver form when necessary.

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6. The officer shall recover all pertinent evidence associated with the investigation (i.e. weapons, bloodstained and/or torn clothing, damaged personal or household objects, photographs of injuries and the scene, etc). Recovered evidence shall be recorded on the Property and Evidence form and submitted accordingly.
7. The officer's written report shall include specific facts and details to substantiate an arrest. Similar detail shall be required to justify the reason(s) why an arrest was not made or warranted.
8. The officer shall document any offense related to the incident on a separate RMS incident report. Whenever a person violates the warning citation, the officer shall submit a supplementary report along with the arrest.
9. **Officer's shall not make inquires with victims as to their desire or preference regarding prosecution.**

B. Arrests

1. Mandatory Arrest: Police officers shall make an arrest whenever one or more of the following conditions exists:
 - a. On officer witnesses an act of physical abuse;
 - b. The victim has visible injuries and the identity of the person committing the abuse can be determined;
 - c. The victim complains of pain and gives a written and/or verbal statement to the officer, with substantiating facts and details of the abuse incident;
 - d. State from a witness provides sufficient information to substantiate an arrest. (Especially in situations where a victim is reluctant or refusing to cooperate with an investigation);
 - e. The person refuses or fails to comply with an officer's lawful order to leave the premises of the period of separation.
 - f. The person returns to the premises before the expiration of the period of separation;
 - g. The person initiates any form of contact with the victim, including by telephone or in person, before expiration of the period of separation;
 - h. For any circumstances that is in accordance with 709-906 HRS, which indicates that an officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member.

The victim's preference, indifference toward, or refusal regarding prosecution shall not be a factor in deterring an officer from making an arrest.

2. Primary Aggressor

When an officer receives opposing, conflicting complaints of abuse from two or more persons, or the persons involved have visible injuries that were inflicted one upon the other, every effort shall be made to identify the "Primary Aggressor".

Officers shall make the determination by conducting a thorough investigation, leading to a **one-party arrest** of the Primary Aggressor. In making this determination an officer should consider the following:

- a. Degree of Culpability;
- b. History of Violence: Past acts or patterns of abuse, taking into account prior complaints and reports of domestic violence;
- c. Severity of Injuries: Overall extent suffered by each person;
- d. Observations of injuries with respect to the circumstances described;
- e. Whether either party acted in self-defense, as a mean of self-protection. (Refer to 703-304 HRS Use of Force in Self-Protection; 703-305 HRS. Use of Force for the Protection of Others Persons);
- f. Statements from involved parties and witnesses;
- g. Totality of observations and investigative findings;
- h. **When there is difficulty in determining a Primary Aggressor, the investigating officer shall confer with a supervisor who shall assist in rendering decision.**

3. Self-Protection; Protection of Others

- a. Self-Protection or the protection of others refers to a person's justifiable use of physical force upon another, when the person believes such force is necessary to defend one's self or a third party from what is believed to be the use or imminent use of lawful physical force against the person or third party.

The explicit state of mind is focused on defending one's self or another from unlawful onslaught.

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- b. Parameters surrounding issues of self-protection and the protection of others are comprehensive, with clearly established guidelines outlining circumstances and the extent to which one may apply physical force against another for the aforementioned purpose.
- c. Specific guidelines regarding self-protection and the protection of others are described in Chapter 703-300 HRS; Sections 703-304 HRS and 703-305 HRS.

4. Dual Arrests

- a. Officers shall make every effort to determine a primary aggressor and avoid dual arrests.
- b. Dual arrests should be made only when an investigation clearly shows there were two separate incidents of abuse, occurring at separate times.
- c. An officer shall confer with a supervisor prior to making a dual arrest. Both the officer and supervisor shall articulate in writing the facts and circumstances substantiating such action.

5. Delayed Arrests

- a. In cases where the person responsible for committing the abuse could not be contacted, questioned, or arrested at the scene, the investigating officer shall prepare and issue a Be On the Look Out (BOLO).
- b. It shall be the responsibility of each Watch Sergeant or OIC to ensure the BOLO is properly posted and promptly disseminated to the Tele-Communications Section, Patrol, including on-coming shift supervisors and outlying stations, the Investigative Services Bureau, and Domestic Violence Coordinator.

The Watch Sergeant or OIC shall terminate and remove BOLO's as necessary.

*In addition a follow-up request may also be used in conjunction with, but not in lieu of a BOLO.

- c. When a "wanted" person is subsequently located, prior to making a field arrest an officer shall first ensure the BOLO (and follow-up request) is still active and that an arrest is required.

C. Period of Separation Order and Issuance of Warning Citation

A Period of Separation Order/Warning Citation shall be issued under the following circumstances.

1. In accordance with the guidelines contained in Chapter 709-0906 HRS, as outlined in section II-4 of this General Order;

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2. Following a person's arrest for "Abuse of Family or Household Members," or any arrest made under Chapter 709-0906 HRS;
3. Verbal argument and the threat of physical violence occurring, and/or the officer's knowledge of past acts of physical abuse or harm taking place;
4. The officer must be able to articulate and document circumstances for issuing a warning citation when elements warranting an arrest, such as visible injuries, complain of pain, and authenticated statements are not present.

D. Photographing Injuries

1. Injuries sustained by person(s) involved in an Abuse of Family and Household Members case shall be photographed by Department personnel;
2. Injuries to areas considered intimate or private should be photographed by, and/or in the presence of personnel of the same gender;
3. Copy(s) of photograph(s) shall be forwarded to the Prosecutor's Office for initial review. The Prosecutor's Office will subsequently request the original photograph(s) at the time of trial.

E. Bail

1. Schedule:
 - a. Any person arrested for "Abuse of Family and Household Members" may post the required bail as set forth within the prevailing bail schedule.
2. Conditions:
 - a. Bail receipts are to be prepared and a date set for Family Court in accordance with the prevailing court calendar.
 - b. Bail monies shall be transferred daily to the Fifth Circuit Court during normal business hours.

F. Distribution of Reports

1. When an arrest is made and the person posts bail, a copy of the report, along with KPD form 481, shall be submitted to (and received by) the Kauai County Prosecutor's Office on the first working day following the incident.

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2. If the person arrested cannot post bail, completed reports shall be forwarded to the Prosecutor and disseminated in accordance with current forty-eight (48) hour detention packet procedures.
3. Additionally, copies of all reports shall be forwarded via chain of command to the Department's Domestic Violence Coordinator for subsequent review.

G. Family Violence / Crisis Shelter Program

A family Violence / Crisis Shelter has been established on Kauai by the YWCA / Women's Resource Center. Programs at the facility offer a variety of services to victims of domestic abuse and violent crime.

1. A twenty-four (24) hour crisis hotline provides counseling and accepts referrals on behalf of women who are in need of temporary shelter.

a. **Hotline: Phone 245-6362**

2. Resource Information

All victims shall be given domestic violence resource card as a reference for the following programs and services:

- a. Family Violence Shelter
- b. Services for the procurement of Temporary Restraining Orders
- c. Domestic Violence Intervention Coordinator
- d. Victim Witness Program
- e. Child protective Services

*Resource cards are available through the Kauai Police Department Domestic Violence Coordinator

3. Police officers shall provide victims with transportation to the shelter particularly in immediate crisis situations, whenever a victim is in need of such assistance.
4. Victims may be transported to the Family Violence Shelter under the following conditions:
 - a. A **voluntary request** to be transported and/or admitted to the shelter is made by a victim who has been abused or threatened with abuse;

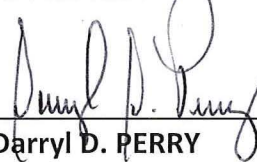
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- b. On behalf of a minor who has been abused or threatened with abuse, and is accompanied by his or her mother. Provided the mother makes a voluntary request for such services;
- c. **Officers shall notify the Family Violence Shelter prior to making any transport.** The Shelter shall have final authority in determining whether a victim is accepted into the facility;
- d. Supervisor and Tele-Communication Section notification shall be made prior to and immediately following any transport.

EMPLOYEES OF THE KAUA'I POLICE DEPARTMENT SHALL ADHERE TO THE PROVISIONS OF THIS DIRECTIVE. TEMPORARY DEVIATIONS MAY BE AUTHORIZED TO MEET UNUSUAL OR UNIQUE SITUATIONS.

APPROVED:


Darryl D. PERRY

Chief of Police

12-01-15

Date