

## Self-Defense Determination

Excerpt from *Domestic Violence Handbook and Training Guide* A reference handbook (<https://praxisinternational.org/wp-content/uploads/2016/02/sheriffhandbook.pdf>) for deputies that outlines the St. Louis County Sheriff's Office patrol (SLCSO) policies for responding to domestic abuse related calls. Pages 15 -17.

**Self-defense Determination:** Deputies are reminded of the four important points of self-defense: 1. The person using force had a reasonable belief that s/he was at risk of bodily harm. This means the deputy needs to ask questions such as: "What did you think was going to happen?" "What were you thinking when you picked up the knife?" or "What made you think that?" If the person responds, "I wasn't going to let him come near me," ask, "Why? What did you think would happen if he came near you?" (Force cannot be used to prevent emotional abuse.) 2. The risk of harm is actual or imminent. The risk cannot be for some undetermined time in the future, as in, "Someday I'm going to whip your \_\_\_\_." 3. The use of force was reasonably necessary to prevent the infliction of bodily harm. In other words, Arnold Schwarzenegger cannot use the same force that Goldie Hawn can. The standard here is about the level of force not its effectiveness. In three reports we read, deputies indicated that the use of force was not reasonable because it was ineffective. Most violence by victims of battering is ineffective, but that does not mean it's not a form of self-defense. 4. Lastly, the use of force is based on the beliefs the person has about the above issues at the time of the incident, not on the intent of the person making the threat. Research shows that more than 50% of victims of domestic violence use violence against their abusers at least once. Most victims use force more than once. This does not mean that the two parties are engaging in "mutual combat." In almost all cases of domestic abuse, one party is using violence as a pattern of coercion and intimidation, and the other is reacting to that violence. In almost all cases one person is far less able to stop the violence against her/him. In almost all cases one person is suffering greater injuries, greater levels of fear, and greater degrees of psychological stress. While some situations may involve a double assault, rarely does the violence result in mutual damage. Arresting both parties and treating them as if they were doing the same thing has shown to be an ineffective and sometimes dangerous intervention. Therefore, this policy attempts to correct that situation by asking the deputy to determine which offender is the most dangerous or dominant in their use of force and to make a custodial arrest of that person. If one party was acting in self-defense, then the deputy will arrest the other party. The county attorney's office will then decide if the second party should be charged with an assault or deferred into a program to find alternative methods of responding to abuse. On rare occasions, when a deputy believes that there is a compelling public safety issue which requires the arrest of both parties and that both parties pose a significant threat of danger

to each other, then the deputy should arrest both parties. At times, a deputy may believe that both parties could seriously injure the other and that both parties need to be arrested for the purpose of placing some kind of state control on them. This does not merely mean, however, that the deputy thinks both might hit again. For example, in the following scenario the deputy may suspect that the woman will hit her abuser again, but would not make a double arrest here. Sara Jenkins and Jeffrey Howe have lived together for six years. Both are serious alcohol abusers. Deputies have responded to their residence many times in the past. Sara was seriously injured in the past but has refused to testify against Jeffrey and he has not been convicted despite two previous arrests. Sara 16 admits that she hit him with the metal rod of a vacuum cleaner and kicked him in the groin. Jeffrey has a slight swelling on his arm where he was hit. She states that she has hit him in the past because it's the only thing he understands. Jeffrey slapped Sara twice leaving a reddened area on her face. Neither party was acting in self-defense in this incident. Both parties are likely to use violence again, but there is still clearly a predominant aggressor here: Sara is in far greater danger of being seriously injured. If we were to slightly alter the above facts we would have cause for a double arrest: Sara hit him with the metal rod and caused Jeffrey to fall backwards over a stool. She then continued to bash him with the metal rod seven or eight times, yelling that she will kill him if he ever touches her again. Sara is still the same victim of domestic abuse, but her violence is escalating to the point where she may seriously injure or kill Jeffrey. Even though Jeffrey can protect himself by not abusing Sara again, there is arguably a compelling public safety issue here and a deputy could decide to arrest both parties. Deputies will rarely see cases where both parties have equal abilities or tendencies to inflict serious harm, but occasionally a deputy might find a case where a victim of ongoing abuse has reached a volatile point in which s/he could take extreme measures. Deputies are called upon to make a reasonable professional judgement. In making this decision, ask yourself, "If I walk away and do nothing, who do I think is mostly likely to seriously harm the other?" That person is most likely your predominant aggressor; common sense should prevail