



California State University, Los Angeles
Department of Public Safety

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SUBJECT: **Response to Domestic Violence**

I. PURPOSE:

To establish procedures for handling domestic violence situations.

II. POLICY:

This department shall treat all alleged domestic violence as criminal conduct and to make arrests whenever there is probable cause to believe a crime has been committed pursuant to penal code statutes, included but limited to, Sections 273.5, 242, 243, and 245.

III. DEFINITIONS:

- A. Abuse. Refers to the intentional or reckless causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent bodily injury to himself or another.
- B. Domestic Violence. Refers to abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, or a person with whom the suspect has had a child or has had a dating or engagement relationship.
- C. Cohabitant. Means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may include whether persons are cohabiting include, but are not limited to:
 - 1. sexual relations between parties while sharing the same living quarters;
 - 2. sharing of income or expenses;
 - 3. joint use of ownership or property;
 - 4. whether the parties hold themselves out as husband or wife;
 - 5. the continuity of the relationship; and/or
 - 6. the length of the relationship.
- D. Officer. Any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.
- E. Victim. A person who is a victim of domestic violence.

IV. PROCEDURES:

- A. Dispute mediation shall not be used as a substitute for appropriate criminal proceedings in domestic violence cases where physical violence has occurred.
- B. The legislated intent of Senate Bill 1472, adding Section 13519 to the California Penal Code, mandates responses to cases of domestic violence shall stress enforcement of laws to protect the victim and communicate the attitude that violent behavior in the home is a criminal behavior and will not be tolerated. The following factors, for example, should not be used to avoid making an arrest:
 - 1. Marital status or domestic relationship of suspect and victim;
 - 2. Sexual preference or orientation of parties;
 - 3. Whether or not the suspect lives on the premises with the victim;
 - 4. Lack of an existing court order;
 - 5. Occupation, community status, and/or potential financial consequences of arrest;
 - 6. Complainant's history or prior complaints;
 - 7. Location of incident (public or private);
 - 8. That the case may not result in prosecution;
 - 9. Assumption that violence is more acceptable in certain cultures;
 - 10. Language abilities or barriers and/or immigration status;
 - 11. Verbal assurances that violence will cease;
 - 12. Complainant's emotional state;
 - 13. Non-visible injuries;
 - 14. Location of the incident (public/private); and/or
 - 15. Speculation that complainant may not follow through with the prosecution, or that the case may not result in a conviction.
- C. Arrest by Police Officers
 - 1. Dual arrests of parties involved in Domestic Violence cases are discouraged, but not prohibited, per Penal Code Section 13701. Additionally, officers shall make reasonable efforts to identify the primary aggressor in any incident.
 - 2. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense.
 - 3. All officers affecting an arrest in domestic violence cases should consider the following guidelines.
 - a. Felony Arrests: When reasonable cause exists to believe that a felony has occurred, an arrest should be made.

- b. Misdemeanor Arrests: Shall be made in accordance with Penal Code Section 836 (c) and (d). Sub-Section (c) addresses violations of DV Restraining Orders and Emergency Protective Orders. Sub-Section (d) outlines the varying types of relationships between suspects and victims and states when an officer may make an arrest for an offense committed in or out of his or her presence.
- c. Citation Release on Misdemeanor Arrests: Officers considering the release of a suspect on a citation shall evaluate the likelihood of a continuing offense. This is one of the statutory conditions under which a field release is not appropriate. The following may support the likelihood of a continuing offense:
 - 1) The arrestee has a history of prior violations of the protective or restraining order.
 - 2) The parties currently reside together.
 - 3) Information leading the officer to believe that there is a pending criminal domestic violence case or a pending civil domestic violence case involving the parties.
 - 4) The arrestee has a history of violence or threats of violence toward the victim or any other person.
 - 5) The arrestee made an expressed or implied threat of violence while violating the order.
 - 6) The arrestee committed a battery or an assault while violating the order.
 - 7) The arrestee has a history of damaging property or threatening to damage property.
 - 8) The arrestee made an expressed or implied threat to damage property while violating the protective order.
 - 9) The arrestee damaged property while violating the protective order.
 - 10) The arrestee was intoxicated or under the influence of any substance while violating the court order.
 - 11) The victim expressed fear of retaliation or future violence if the arrestee is released.

D. Dual Arrests.

1. Dual arrests should be discouraged but are not prohibited pursuant to Penal Code 13701.
2. Officers shall make reasonable efforts to identify and arrest only the primary aggressor. The primary aggressor is the person determined to be the most significant, rather than the first aggressor. Identifying the primary aggressor, the officer shall consider [the same considerations shall apply in situations where protective orders have been issued – Penal Code 836(c)(3)]:
 - a. The intent of the law to protect victims of domestic violence from continuing abuse;

- b. The threats creating fear and physical injury;
- c. The history of domestic violence between the persons involved; and
- d. Whether either person involved acted in self-defense.

E. Private Persons Arrest.

1. In cases where circumstances make it impossible for an officer to make an arrest, the victim shall be informed of his right to make a private person's arrest and the procedure necessary to do so. Such explanation should be made out of the presence of the suspect.
2. Any private person's arrest made in a lawful manner shall be accepted per Penal Code Section 834 and 837.
3. Officers shall accept a private person's arrest and not dissuade a victim from making any lawful private persons arrest.

F. Restraining and Protective Orders: there are three different types of applicable orders. All three orders are enforceable in any county regardless of where issued (Family Code 6381). These orders remain valid regardless of the actions by the protected person [example: protected person allows the restrained person back in the residence, Penal Code 13711(c)].

1. *Emergency protective orders* are obtained by the victim from various departments within the civil court system.
2. *Restraining orders* are obtained by the victim from various departments within the civil court.
3. *Criminal Protective/Stay Away Orders* are issued by the criminal court.
 - a. All restraining orders shall be maintained in a systematic fashion with documentation of proof of service that are readily available to the officers in the field.
 - b. The orders shall be maintained so that all law enforcement officers can readily ascertain the terms and effective dates.
 - c. Records shall maintain a copy of any restraining orders and copy will be placed in Dispatch for immediate access.

G. Request for Emergency Protective Orders, when appropriate.

1. When a law enforcement officer believes that a person is in immediate and present danger of abuse from a household member, Family Code 5241 requires that at least one judge commissioner or referee be available to issue an Ex Parte Emergency Protective Order. Officers shall make attempts to obtain such orders.
2. Due to the diverse community that we serve, the Judicial Council of California has made available the Emergency Protective Order 1295.90 available on line, and in a variety of languages. Officers may access the site at: <http://www.courtinfo.ca.gov/forms> and download the required forms.

3. Ascertain need for Emergency Protective Order.
 - a. When the officer has reasonable ground to believe a person is in immediate and present danger of domestic violence, or a child is in immediate and present danger of abuse by a family or household member, the officer shall inform the complainant as to the availability of Emergency Protective Orders. Regardless of the victim's preference, the officer may request an ex parte Protective Order from a judge.
 - b. Officers should make this determination based on the complainant's allegations of a recent incident of abuse or threat of abuse.
 - c. The officer may request an Emergency Protective Order whether or not the suspect is present or has been arrested.
 - d. The following are examples of situations in which requesting an Emergency Protective Order may be appropriate:
 - 1) The suspect has been arrested for a charge related to domestic violence incident;
 - 2) The suspect has a history of domestic violence;
 - 3) The victim expresses fear of retaliation or further violence; and/or
 - 4) Threats of serious danger have been made to the victim or the victim's family.
4. Requesting an Emergency Protective Order.
 - a. The officer shall contact the judge, commissioner, or referee designated to be on call to issue Emergency Protective Orders by telephone or otherwise and assert grounds for belief that the order is appropriate.
 - b. Upon oral issuance of the order, the officer requesting the order shall reduce it writing.
5. Issued Orders.
 - a. The officer shall serve a copy of the order on the restrained party, if possible. If the officer is not able to serve a copy of the order to the restrained party, an entry will be made into CLETS reflecting, "Service needed". An entry will also be made requesting that any contacting agency who apprises the restrained party of the protective order, provide a written report to this Department reflecting the time, date, location, and name of officer who made the appraisal. Upon receipt of a proof of service notification, an entry will be made into ARMS, as well as a confirmation inquiry into CLETS to ensure the service notice has been properly entered.
 - b. The officer shall give a copy of the order to the protected party.

- c. The officer who requested the order, while on duty, shall carry a copy of the order (Family Code 6273).
 - d. A copy of the order shall be filed with the court as soon as practical after issuance.
 - e. An Emergency Protective Order is valid for five court days after date of issuance, but never longer than seven calendar days after the day of issuance.
6. Enforcement Proceedings: where a violation of an Emergency Order has occurred, arrest shall be made when possible.
 7. Officer Immunity: a law enforcement officer who acts in good faith to enforce an Emergency Protective Order is not civil or criminally liable [Family Code Section 6272 (b)].
- H. Verification of Restraining Orders.
- a. Whenever a complainant advises the existence of restraining order, the officer should ascertain:
 - 1) Whether the restraining order is on file with the department or whether the complainant has a certified copy of order in possession, or whether the order can be verified through the Department of Justice Domestic Violence Restraining Order System (DVROS), Family Code 6380, 6381, and 6383.
 - 2) Whether the order is still valid as to duration of time:
 - If there is no expiration date on a civil protection order, the order is valid three years from the date of issuance, with the exception of permanent orders issued pursuant to a divorce, which never expire.
 - An emergency protective order is valid for five court days after the date of issuance, but never longer than seven calendar days following the day of issuance.
 - The duration of Criminal Protective/Stay-Away Orders varies with each order.
 - 3) Whether proof of service or prior notice exists or that the suspect was in court when the order was made.
 - 4) The terms of order.
 - b. Arrest Criteria and Enforcement Procedures.
 - 1) A violation of restraining order is a misdemeanor under Penal Code Sections 273.6 or 166.4. Make an arrest when there is reasonable cause to believe the subject of the restraining order has violated the order in the presence of the officer or any one of the following conditions is met:

- The existence of the order and proof of service on the suspect has been verified;
 - The complainant produces a valid copy of the order bearing a file stamp of a court and proof of service on the subject;
 - The existence of the order has been verified by the officer – no proof of service is required if the order reflects that the suspect was personally present in court when the order was made; or
 - The existence of the order has been verified, and there is proof that the suspect has previously been admonished by an officer.
- 2) When the officer verifies that a restraining order exists, but can not verify proof of service or prior knowledge of order by suspect, the officer should:
- Inform the subject of the terms of the order;
 - Admonish the subject of the order, that the subject is now on notice and that the violation of the order will result in arrest – if the subject continues to violate the order after being advised of the terms, an arrest should be made – oral notification to the respondent of the terms of the order SHALL BE SUFFICIENT NOTICE FOR ENFORCEMENT of Penal Code 136.2, 273.6, and 12021(g).
 - If the suspect complies after admonishment of the terms, the officer shall make a retrievable report pursuant to Code Section 13730c, showing the suspect was admonished/advised, include the officer's name, time and date. The department's copy of the restraining order will be updated to reflect action taken.
 - The notice of service shall be immediately transmitted to the California Department of Justice Domestic Violence Restraining Order System.
- 3) In the event the suspect has left the scene of the incident, an investigation should be made to determine if a crime has been committed. Penal Code Sections 13730c and 13701(I) require that a retrievable report shall be made and the victim advised of the follow-up criminal procedure and case number of the report.
- c. Orders not Verifiable.
- 1) When the victim is not in possession of a temporary restraining order, stay-away order, and/or in cases of computer error, officers may not be able to confirm the order's validity.
 - 2) Penal Code Section 13730c and 13701(h) requires that officers write a report, give the victim the police report number, and direct the victim to contact the appropriate department unit for follow-up information.

- 3) When an order is not verifiable through the verification of procedures, officers should advise the victim of the right to make a private person's arrest for the appropriate violation.

I. Verification of Stay-Away Order.

1. A stay-away order is issued in a criminal case where the probability of victim intimidation exists and violation of such is a misdemeanor under Penal Code 166.
2. In domestic violence incidents where a person advises an officer that an order exists, the officer should attempt to ascertain the terms and the validity of the order.
 - Request the victim show a copy of the order. Verify, through the department, that the suspect is under the court's jurisdiction; or
 - Verify, through the department, that a criminal protective/stay-away order has been issued against the suspect; and/or
 - Verify through the California Department of Justice Domestic Violence Restraining Order System.
3. Arrest Criteria and Enforcement Proceedings.
 - a. The Code of Civil Procedure Section 540 et seq. and 527.6 requires that when the order has been verified, officers shall effect an arrest if the suspect has violated any terms of the order. The report should note the specific violations of the order and the victim should be given the police report number for reference pursuant to Penal Code Section 13701(I).
 - b. A violation of the order is a violation of Penal Code Section 166.4. This violation can be added to other charges such as assault and battery.
 - c. An act of victim intimidation relating to court proceedings is a violation of Penal Code Section 136 et seq. Examples of intimidation include:
 - Attempting to prevent or dissuade a victim from attending or giving testimony at any proceedings is a misdemeanor [Penal Code 136.1(a)(b)].
 - Attempting to prevent or dissuade a victim from attending or giving testimony by using force, or expressing or implying threat of force or violence related to the court proceeding is a felony [Penal Code 136.1(c)].

J. Reporting: In all cases of domestic violence, officers shall write report and:

1. Identify on its face as a domestic violence incident;
2. Indicate whether or not weapons were involved; and
3. Provide the victim with the case number of the report – if not readily available, explain how the number may be obtained.

K. Tenancy.

1. When a victim requests an officer to remove a person from the premises when no arrest is to be made and it can be shown the victim is in lawful possession of the premises and the person to be removed is not in lawful possession of the premises, the officer shall:
 - a. Request the person to leave the premises and stand by for a reasonable amount of time while the person removes minimal personal belongings.
 - b. If the suspect refuses to leave upon request, arrest the suspect under Penal Code Section 602.5.
 - c. The officer should refer the complainant for a temporary restraining order or other appropriate civil remedy, if the complainant requesting the removal cannot show proof of lawful possession. Lawful Possession of the premises is shown by a rental agreement, canceled rent check, lease, grant deed, verification from a landlord, court order, or other document showing person(s) should be removed.
2. When a victim in a domestic violence incident requests police assistance in removing a reasonable amount of personal property to another location, officers shall stand by a reasonable amount of time until the victim has removed the personal property.

L. Notification of Release: In any case where a suspect is arrested and booked as a result of domestic violence, and the victim requests to be notified when the suspect is released from custody, officers shall adhere to the following;

1. Verbally notify the Watch Commander where the victim resides.
2. Provide the same instructions in writing by reporting them, along with the department's telephone number, in the block of the booking form under "Arresting Officer's Observations and Comments."
3. The police department where the victim resides will contact the victim upon notification of the release of the suspect.
4. A copy of the written instructions on how to contact the victim will be filed with the crime report for the purpose of permanent documentation.

M. Victim Assistance.

1. Assist in obtaining appropriate medical attention if a complainant obtains an injury – whether visible or not.

2. Assist in making arrangements to transport the victim to an alternate shelter if the victim expresses a concern for safety, or the officer determines a need exists.
3. Assist victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit [P.C,13701c (8)].

N. Seizure of Firearms.

1. This provision of the law is permissive and allows the officer discretion.
2. No firearm seized pursuant to this section shall be held less than 48 hours.
3. Provide person from whom the firearm was taken a receipt describing where the firearm can be recovered.
4. If the seized firearm is not used as evidence in a criminal proceeding resulting from the domestic violence incident, or was not illegally possessed, it should be available for return no later than 72 hours after seizure. One exception to the return of a firearm within 72 hours is found in P.C. 12028.5(e), which authorizes the department to initiate a petition in Superior Court to prohibit the release of a weapon where law enforcement has reasonable cause to believe that the return of the firearm or other deadly weapon would be likely to result in endangering the victim of person reporting the assault or threat. The agency must notify the owner of the weapon within in 10 days of the seizure and initiate the petition.

O. Officer Safety: The exercise of reasonable care for the safety of officers and parties involved is paramount. No provision of this policy shall supersede that responsibility.

V. APPENDICES: None.