
DOMESTIC VIOLENCE PROTOCOL
FOR
LAW ENFORCEMENT
2008

***Police Chiefs' Association
of
Santa Clara County***

Adopted February 14, 2008

POLICY STATEMENT

Domestic violence is a serious community problem, which affects individuals of all races, religions and socio-economic backgrounds, including elders and juveniles. Santa Clara County Law Enforcement Agencies, in conjunction with the Santa Clara County District Attorney's Office, agree to respond to acts of domestic violence as crimes. Victims of domestic violence will be treated with respect and dignity and will be given all available assistance by law enforcement personnel responding to an incident of domestic violence.

The Domestic Violence Protocol for Law Enforcement provides guidelines and establishes standards for public safety call takers, dispatchers, first responders and investigators in handling domestic violence incidents. The Protocol seeks to interpret and apply statutory and case law relating to domestic violence incident response and investigation. Particular attention is given to protecting victims of domestic violence, including children, other members of the household and pets, through enforcement of restraining orders, medical care, and working with support agencies to provide alternate shelter, relocation services, counseling and legal services. Local agency training programs and materials will supplement information provided in the Protocol.

All Law Enforcement Agencies must have written policies and standards for officer's response to domestic violence (PC 13701).

This protocol will be updated annually as new legislation, research and best practices are reviewed periodically by the Domestic Violence Council Protocol sub-committee in order to maintain an effective and sensitive response by the law enforcement community to this serious problem. The Community College Chief's of Police also support this protocol.

Lynne Johnson
Chair, Police Chiefs' Association of Santa Clara County

Date

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DEFINITIONS

- A. Abuse means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or another (13700(a) PC).
- B. Cohabitant means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship (includes same sex relationships). Factors that may determine whether persons are cohabiting include, but are not limited to: (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship (13700(b) PC).
- C. Cross-Reporting refers to mandated reporting of suspected child abuse as required under 11165, 11166 and 11172(a) PC and mandated reporting of suspected abuse of elders and dependent adults as required under 15610, 15630 and 15640 WI.
- D. Dating Relationship means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.
- E. Deadly Weapon means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 PC (12028.5 (3)).
- F. Domestic Violence is abuse committed against an adult or any minor who is a spouse, former spouse, cohabitant, former cohabitant, a person with whom the suspect has had a child or is having or has had a dating or engagement relationship (13700(b) PC. Same sex relationships are included.
- G. Domestic Violence Order is a type of restraining order which is issued pursuant to the Domestic Violence Prevention Act, (Family Code Sections 6200-6389), or the Uniform Parentage Act (Family Code Sections 7710 and 7720), or in connection with a dissolution, legal separation or annulment (Family Code Sections 2045, 2047, and 2049), or in cases of elder or dependent adult abuse (Welfare and Institutions Code Section 15657.03). This includes all local Domestic Violence related orders from other states, counties, tribal courts and juvenile courts.
- H. **DOMINANT AGGRESSOR** means the person determined to be the most significant, rather than the first aggressor. In identifying the **dominant aggressor**, the 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 (PC 13701(b)).

- I. Emergency Protective Order (EPRO) is a type of restraining order issued by a Judge or Commissioner at any time, whether or not Court is in session. It is intended to function as a temporary restraining order if a person is in immediate and present danger of domestic violence, elder or dependent adult abuse, child abuse, or where a child is in immediate and present danger of being abducted by a parent or relative or where stalking exists. It can also function as an order (when no custody order is in existence) determining temporary care and control of minor children of the above-described endangered person. **(Family Code Section 6250). An EPRO shall be offered even when an arrest is made.**

- J. Firearm is any device designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion (12001(b) PC).

- K. Officer is defined as any law enforcement officer as defined by Penal Code Sections 830.1 - 830.32.

- L. Pro-Arrest Policy refers to a philosophical position in which physical arrest shall be made in every situation where an arrest is legally permissible; absent exigent circumstances.

- M. Stalking means willfully, maliciously, and repeatedly following or willfully, maliciously, and repeatedly harassing another person and making a credible threat with the intent to place that person in fear for his or her own safety, or the safety of his or her immediate family (646.9 PC).

- N. Stay Away Order is a type of restraining order in a criminal, juvenile delinquency (a Juvenile Probation order can be in effect until the offender's 21st birthday) or civil case involving domestic violence where there is a likelihood of harassment or violence toward the victim by the defendant. A Stay Away Order typically orders a person to stay away from the victim and/or other specified locations. A Penal Code Stay Away Order may remain in effect as long as the defendant is under a court's jurisdiction, including any sentence or probationary period. **The sentencing court in a criminal case is required to issue an order restraining the defendant from any contact with the victim, for up to 10 years, regardless of whether the defendant is sentenced to prison or jail, or is placed on probation. (PC 273.5).** Stay Away Orders are issued pursuant to Penal Code Section 136.2 while a criminal prosecution is pending. Orders may also be issued pursuant to the Civil Harassment Prevention Act (Code of Civil Procedure Section 527.6), Workplace Violence Safety Act (Code of Civil Procedure Section 527.8), Uniform Parentage Act (Family Code Sections 7710 and 7720, Domestic Violence Protection Act 6200 - 6389 Family Code), or in connection with a dissolution, legal separation, or annulment (Family Code Sections 2045, 2047, and 2049). Civil Restraining Orders may be issued for a maximum of 5

years, but may be renewed for the period set forth in the order. Restraining Orders may be issued for a maximum of 10 years pursuant to 646.9(h) PC. The Juvenile and Dependency Court can also issue restraining orders pursuant to W& I Section 213.5 if the minor meets the qualifications listed under sections (a), (b) and (c) of this section.

Authorizes a court, on a showing of good cause, to include in a domestic violence protective order a grant to the petitioner (victim) the exclusive care, possession, or control of any animal owned or kept by the petitioner (victim), and respondent (domestic violence perpetrator). Also authorizes the court to order the respondent (domestic violence perpetrator) to stay away from the animal and to forbid the respondent from taking, concealing, threatening, or harming the animal.

O. Restraining Order is an order, which requires a person to refrain from doing a particular act or acts. It is issued by the Court, with or without notice, to the person who is to be restrained. A restraining order will remain in effect for a set period of time (**usually five years**), which is stated on the face of the order. If no time period is stated on the face of the order, the effective time period is 3 years. Also seen N above, order can be up to 10 years.

P. Temporary Restraining Order is a type of restraining order, which requires a person to refrain from doing a particular act or acts. It is issued by the Court, with or without notice to the person who is to be restrained. A temporary restraining order will remain in effect until a formal court hearing can be held.

Q. Victim means a person who is a victim of domestic violence.

R. Trafficking is depriving or violating the personal liberty of another person with the intent to effect or maintain a felony violation of P.C. 266(procurement for prostitution), P.C. 266h (pimping), P.C. 266i (pandering), P.C. 267 (abduction for prostitution), P.C. 311.4 (using a minor to create obscene matter), or P.C. 518 (extortion), or to obtain forced labor or services. (Penal Code section 236.1)

S. Peaceful Contact Order- No hitting, grabbing, throwing objects, damaging property, or pulling the phone cord out of the wall; knock over, or break furniture; swear at, or about, the victim; tear up important papers; stop the victim from leaving the house; make threats to hit, harm or kill the victim; argue with the victim or a family member; argue or shout so loud that the neighbors are disturbed; have your friends come over and do any of the above; and do not do anything that makes the victim, or the family, frightened, hurt, injured, upset, or disturbed.

COMMON CHARGES

A situation involving domestic violence may result in a violation of one or more of the following sections of the Penal Code: (This list is not exhaustive.)

1. 136.1 - Intimidating or dissuading a witness
2. 148 - Resisting arrest
3. 166 - Violation of a court order
4. 187 - Murder
5. 207 - Kidnapping
6. 236/237 - False imprisonment
7. 236.1 - Trafficking
8. 240 - Assault
9. 243 (a) - Battery
10. 243 (e) - Battery - Spousal/cohabitant/parent of suspect's child/former spouse/fiancée/fiancé/dating and former dating relationship abuse
11. 243.25 - Battery of an elder or dependent adult, who knew or should have known that the victim is an elder or dependent adult
12. 245 - Assault with a deadly weapon / assault with intent to commit great bodily injury
13. 246(a) - Shooting at an inhabited dwelling
14. 246.3(b) - Willfully discharging a BB device in a grossly negligent Manner, which could result in injury or death to a person
15. 261.5 - Unlawful sexual intercourse
16. 262 - Spousal rape, eliminates the reporting and corroboration Requirements. Now consistent with P.C. 261
17. 270.6 - Leaving California with the intent to avoid paying spousal support, after having notice that a court has made a temporary or permanent order
18. 273.5 - Abuse of spouse, former spouse, cohabitant, former cohabitant or parent of suspect's child
19. 273.6 - Violation of a protective order
20. 273a - Child abuse / endangerment
21. 417 - Brandishing a weapon
22. 418 - Forcible entry into the home of another
23. 422 - Criminal threats
24. 459 - Residential burglary
25. 591 - Malicious destruction of a telephone line
26. 591.5 - Unlawful removal, damage of wireless communication Device, or obstructing use of such device to summon law enforcement
27. 594 - Vandalism
28. 597a - Cruelty to Animals
29. 602.5 - Aggravated Trespassing
30. 603 - Forcible entry with damage to property
31. 646.9 - Stalking
32. 653m (c) - Annoying telephone calls - (1) violating court order; or (2) by spouse/cohabitant/parent of suspect's child
33. 12020 (a) - Possession of a dangerous weapon

- 34. 12021(g) - Restrained person possess or attempt to purchase firearm
- 35. 12025 (a) - Possession of a concealed firearm
- 36. 12028.5 - Confiscation of firearms (Authority for seizure).
- 37. 12031 - Possession of a loaded firearm
- 38. 664 - Attempt of any of the above

FREQUENTLY USED PHONE NUMBERS

Adult Protective Services	408-928-3860 or 1-800-414-2002
California Victim Compensation Board Of Santa Clara County	1-800-777-9229 or 408-295-2656
Child Protective Services (child abuse hotline)	408-299-2071 (ofc) 408-975-5851 (fax)
DFCS Joint Response (Access through individual department dispatch centers)	
County Communications (<u>for duty judge after hours</u>)	408-299-2501
Family Court (<u>M-F, 8 AM to 5 PM</u>)	408-534-5702
Victim Notification Service	1-800-464-3568
Victim-Witness Assistance Center for Santa Clara County	408-295-2656

911 CALL-TAKER/DISPATCHER RESPONSE

- A. The dispatcher who receives a domestic violence incident call shall dispatch officers to every reported incident. The dispatcher should, when warranted, give a domestic violence incident call the same priority as any other life threatening call and should, whenever possible, dispatch at least two officers to the scene.
- B. No dispatcher or 911 call-taker, in speaking with a victim of domestic violence, should inquire as to the victim's desire to "prosecute," or "press charges." Any comment or statement which seeks to place the responsibility for enforcement action with the victim is inappropriate.
- C. During the initial call for assistance, the call-taker should ask:
1. Where is the emergency? What address? What apartment number?
 2. Who am I speaking to (spell name)?
 3. What has happened? Is it occurring now?
 4. Has anyone been injured? If yes, is an ambulance needed?
 5. Are you the victim? If no, are you a witness?
 6. Is the suspect present? Is he/she in the same room? Can he/she hear you? What is his/her name? Please describe the suspect and their clothing, and, if not present, his/her expected whereabouts.
 7. Does the suspect have current access to weapons? If yes, what kind? Where are they located?
 8. Is the suspect under the influence of drugs, alcohol or prescription medication? If yes, what substance?
 9. Are children present? How many? Ages?
 10. Are there previous incidents of domestic violence involving the suspect and victim? Have the police been to this address before? If yes, how many times?
 11. Does the victim have a current restraining order?
 12. Is the suspect on probation or parole?
 13. Does the suspect have any mental health issues?
 14. **Do you need an interpreter?**
- D. The safety of domestic violence victims, whether the threat of violence is immediate or remote, should be the primary concern of 911 call-takers. The 911 call-taker should advise the victim to ensure his/her safety. For example, suggest that a victim wait for officers at a neighbor's house or remain on the 911 line.

Upon receipt of a medical report or phone contact made by a medical professional where domestic violence per Penal Code Section 13700 is alleged, the agency of jurisdiction shall respond unless circumstances such as distance or lack of personnel do not allow for quick response.

The responding agency shall make a police report and if not the agency of jurisdiction, shall then forward it to the agency where the offense occurred.

PATROL OFFICER RESPONSE/INVESTIGATION

A. ENFORCEMENT OF LAWS IN DOMESTIC VIOLENCE INCIDENTS

Felony

1. An arrest shall be made in the event that there is probable cause to believe that a felony has occurred. All suspects arrested should be booked into the County Jail or Juvenile Hall. A pro-arrest policy should be implemented by all agencies.
2. If an officer has probable cause to believe that a felony has occurred, an arrest shall be made irrespective of whether the officer believes the offense may ultimately be prosecuted as a misdemeanor.

Misdemeanor

1. The suspect shall be arrested in the event that a misdemeanor domestic violence incident occurs in the officer's presence. Such situations include, but are not limited to, an officer who witnesses an act of domestic violence, a violation of a verifiable restraining order or illegal possession of a weapon.
2. When a misdemeanor domestic violence assault or battery has been committed outside the officer's presence, and the victim is the suspect's spouse, former spouse, cohabitant, former cohabitant, fiancée, parent of his or her child, or a person with whom the suspect has had or is having an engagement relationship or a current or prior dating relationship, a peace officer may arrest the suspect without the need of a private person's arrest. This will also apply if the assault or battery involved a person age 65 or older where the elderly victim is related to the suspect by blood or legal guardianship (836.5 PC).

836(d) PC now makes it possible for officers to arrest when the crime does not take place in their presence where both of the following circumstances apply.

- a. The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

- b. The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.
3. An arrest shall be made if the officer has probable cause to believe that the suspect has violated a domestic violence protective order, restraining order, stalking emergency protective order, or elder abuse protective order, even when the crime did not occur in the officer's presence (836 PC).
4. If a victim complains only of a prior unreported incident and has no complaint of pain or physical injury at the time of the current report, the officer shall make a good faith effort to inform the complainant of his/her right to make a private person's arrest (the arrest must fall within the statute of limitations). If the complainant chooses not to exercise that right, the officer shall submit a report to the District Attorney or Juvenile Probation for review. The arrest must fall within the statute of limitations and meet the requirements listed above in paragraph (3).

B. HANDLING OF THE INCIDENT

1. The existence of the elements of a crime or the willingness of the victim to make a private person's arrest shall be the sole factors that determine the proper method of handling the incident. The following factors, for example, ARE NOT to influence the officer's decision to investigate or arrest in domestic violence incidents except as they relate to the elements of the crime:
 - a. The relationship or marital status of the suspect and the victim, i.e., not married, separated, or pending divorce;
 - b. The fact that the victim and suspect are of the same gender;
 - c. Whether or not the suspect lives on the premises with the complainant;
 - d. The existence or lack of a temporary or other restraining order;
 - e. The potential financial consequence of arrest;
 - f. The complainant's history or prior complaints;
 - g. Verbal assurances that violence will cease;
 - h. The complainant's emotional state;

- i. Injuries are not visible;
 - j. The location of the incident, i.e., public or private;
 - k. Speculation that the complainant may not follow through with the criminal justice process or the arrest may not lead to a conviction.
 - l. The suspect is a juvenile. Officers should be aware that Juvenile Court orders can be in effect until the offender's 21st birthday.
 - m. The complainant's immigration status.
 - n. Whether or not the suspect is present in a restraining order case.
2. Once a suspect is arrested on a misdemeanor offense, he/she should be booked into the County Jail or Juvenile Hall.
 3. The officer should interview the victim, suspect, children, roommates, and any available neighbor witnesses. A warrant check, Domestic Violence Restraining Order System (DVROS) check, criminal history check and Juvenile Probation status check should also be conducted.
 4. An officer shall make no statements which would tend to discourage a victim from reporting an act of domestic violence or requesting a private person's arrest. A peace officer who accepts a private person's arrest is immune from civil liability for false arrest or false imprisonment when, 1) at the time of the arrest, the officer had reasonable cause to believe that the arrest was lawful, 2) the arrest was made pursuant to PC 142 i.e., a victim or witness demanded that the officer receive a private person's arrest, or, 3) the arrest was made pursuant to a charge, upon reasonable cause, of the commission of a felony by the person to be arrested (PC 847).
 5. Pursuant to Penal Code section 13700 et seq., an officer responding to an incident of domestic violence shall prepare a Domestic Violence Incident Report irrespective of the wishes of the victim or the presence or absence of the suspect.

C. INVESTIGATION OF DOMESTIC VIOLENCE CASES

1. Officers arriving at a domestic violence scene should conduct a thorough investigation and submit reports of all incidents of violence and all crimes related to domestic violence. If the incident occurred in another jurisdiction, the officer should contact that jurisdiction to determine which agency will investigate the incident.
2. The following steps should be included in an officer's investigation and subsequent report:

- a. Arrival at scene
 - i. Determine location and condition of victim, suspect, children and pets.
 - ii. Determine if any weapon is involved or in the home. Confiscate and collect as evidence any weapons or firearms used in the incident. If the incident involves any threat to human life or physical assault, officers shall take temporary custody of any firearm or deadly weapon in plain sight or pursuant to a consensual search or other lawful search. If unable to book the weapon (other than firearms) due to size or other extenuating circumstances, photograph the weapon.
 - iii. Provide appropriate level of aid to injured parties.
 - iv. Separate suspect, victim, and witnesses. (Victim should be out of suspect's view.)
- b. Preliminary investigation
 - i. Interview everyone separately – victim, suspect, children, other witnesses. Officers are encouraged to audiotape these statements. If the victim speaks a language other than English, call for another officer conversant in that language or arrange for other neutral and/or certified professional translation services. **Avoid using third party individuals (children, family or neighbors) to translate statements.** Document the names and personal information of all witnesses and translators. Note information concerning the victim's whereabouts for the next few days in the police report.

Document names and ages of children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home. Also document the names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect.

(Note also that suspected child abuse must be cross-reported as required pursuant to PC 11166).
 - ii. Ask victim and suspect if they have pain even if there are no visible injuries. Determine if there are indications of strangulation. Ask the victim if she/he has been forced to have sex against her/his will.
 - iii. Document victims, suspects, and child's condition and demeanor.

- Document torn clothing.
 - Document smeared make-up.
 - Investigate the evidence of injury.
 - Document if victim is pregnant.
 - Document if the victim is under the influence of alcohol or drugs.
- iv. Document and photograph disarray in house.
- v. Document suspect's symptoms of use/influence of alcohol, controlled substances or prescription medications.
- vi. Document size relation of victim and suspect.
- vii. In apparent "mutual combat" situations, try to determine who was the **dominant aggressor** (dual arrests shall be discouraged, when appropriate, but not prohibited per Penal Code Section 13701):
- Was one party in actual fear of the other?
 - Did one party escalate the level of violence, i.e.; did one party react to a slap by beating the other party?
 - Was one party physically larger and stronger than the other?
 - Was there a history of violence by one of the parties against the other? Against other people?
 - Was one party usually the aggressor?
 - Did any injuries appear to be defense wounds?
 - Which party will be in greater danger if nothing is done?
- viii. Check for the existence of any restraining orders against the suspect. If victim has a restraining order against suspect, obtain a copy of the order and valid proof of service (proof of service is not necessary if the suspect was in court when the order was issued). If no copy is available, contact the Department of Justice Domestic Violence Restraining Order System DVROS/CLETS) to verify the existence of the order (Family Code Section 6383(d)). If there is no order, inform victim how to get an order. Officers should be aware that the most recently issued criminal court order takes precedence over previous criminal court orders and over civil orders. However, most criminal court orders will contain a provision that all juvenile and family court orders are to be followed. It is also permissible for a criminal court order to be modified (made more restrictive) by the Family Court.

All family or juvenile court custody or visitation orders made after a criminal protective order has been issued pursuant to P.C. 136.2, must include a reference to, and acknowledge the precedence of enforcement of, any criminal protective order. Any criminal protective order takes precedence over any other order except as stated below regarding Emergency Protective Restraining Order's.

- ix. **The officer shall advise the victim of the availability of an EPRO in every case even if the suspect is arrested. The officer is required to request the protective order if the officer believes the person requesting the order is in immediate and present danger.** (Victim should be out of suspect's view.) If possible, prepare the form before calling the on-duty judge. An emergency protective order shall have precedence in enforcement over any other restraining or protective order (criminal or civil) if all of the following requirements are met: (1) the emergency protective order protects one or more persons who are already protected under another restraining or protective order, (2) the emergency protective order restrains the same person who is restrained under the other order and (3) the provisions of the emergency protective order are more restrictive than the provisions of the other order.
- x. If victim has a restraining order, which has not yet been served on suspect, verbally inform the suspect of the order and note in the report including case number of the Restraining Order. If victim has an extra copy of the order, serve on the suspect and fill out proof of service. If the officer does not have an additional copy of the order he or she shall give verbal notice of the terms and conditions of the order. This shall constitute service and notice for purposes of P.C. 273.6 and 12021(g). This also includes protective orders issued for protection of elders, stalking victims and workplace violence victims (CCP 527.8, FC 6383 and W&I 15657.03). Within one business day of service, the law enforcement agency serving the protective order shall enter the proof of service directly into the DOJ Domestic Violence Restraining Order System (DVROS), including the officer's name and employing agency and shall transmit the original proof of service to the issuing court (FC 6380(d)). If a suspect is given verbal notice of the Order, the officer must advise the suspect to go to the local Family Court to obtain a copy of the Order containing the full terms and conditions of the Order (FC 6383(g)).
- xi. If victim has proof that a copy of the restraining order was sent by mail to the respondent and he/she was present in court

when the initial order was made, this is good service if the only change in the new order is the expiration date.

xii. **Law enforcement is authorized to request the immediate surrender of firearms when a person is served with a domestic violence protective order, rather than having to wait 24 hours for the person to self-surrender the firearms.**

xiii. A restraining order does not allow the use of a civil standby by the restrained person. The “protected person” cannot be in violation of his or her own protective order.

ix Officers shall enforce a restraining order even if it has been issued in another jurisdiction, providing that the order identifies both parties and on its face is currently in effect.

x. Document if the defendant has made any threats against anyone.

c. If suspect taken into custody

i. Document spontaneous statements by the victim and/or suspect.

ii. Prevent communications between suspect and victim/witnesses/children.

iii. Advise suspect of Miranda rights.

iv. Conduct interviews and document statements of the suspect. If a “violent felony” is alleged, the interview of the suspect will be electronically recorded as outlined in the Santa Clara County Police Chiefs’ Association “Recording of Violent Suspect Statement Protocol.” See PC 667.5(c) for a listing of violent felonies.

v. Evaluate the suspect for danger to self or others under 5150 W&I. If appropriate, complete a 5150 W&I form for jail mental health staff.

d. Evidence, Firearms, and Other Deadly Weapons

i. Document and photograph the condition of crime scene (disarray of physical surroundings).

ii. Encourage the victim to contact the investigating agency/follow-up investigator if further bruising occurs.

- iii. Ensure that the victim's and suspects visible injuries are photographed. Make sure that the photos taken preserve the dignity of the victim as much as is possible, and also photograph their faces for identification purposes.
 - iv. If necessary for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm or other deadly weapon is present at the location and confiscate any firearm or deadly weapon discovered pursuant to paragraph vi below, and note this in the report (13730 (3) PC). If an EPRO is issued request the immediate surrender of firearms once the perpetrator is served. (Family Code 6389).
 - v. Check in the Consolidated Firearms System (CFS) and Prohibited Armed Persons (PAP) file to determine if firearms are registered to any involved person or if any involved person is prohibited from owning firearms.
 - vi. Seize any firearm or other deadly weapon located in plain sight, discovered pursuant to a consensual search or other lawful search, as necessary for the protection of officers or other persons present (12028.5 PC).
 - vii. Seize any firearms possessed in violation of 12021(a) PC – convicted felons, or 12021(c) PC – other specified misdemeanor convictions.
 - viii. If a firearm is confiscated, issue a receipt to the owner describing the firearm and listing the serial number or other known identifier. Explain that the weapon will be returned within five business days after the owner or possessor demonstrates compliance with PC 12021.3 (must apply to the State Department of Justice for a determination of whether he or she is eligible to possess a firearm). If the weapon is seized as evidence of a crime or the owner of the firearm is subsequently prohibited from possession by a restraining order, the firearm will not be returned (12028.5 PC). If the person does not file the receipt with the court within 48 hours after being served with the protective order it is a violation of the protective order.
(Refer to Firearms Relinquishment Protocol for further details).
- e. Medical treatment
- i. Obtain authorization for release of medical records from victim, if possible.
 - ii. Document extent of injuries/treatment, if known.

- iii. Obtain names, addresses, and phone numbers of fire and emergency medical personnel treating the victim, if possible.
 - iv. Transport or call for transport of victim and children to a hospital for treatment when necessary, or stand by until victim or children can safely leave.
- f. Completing Crime Report
- i. Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
 - ii. Ensure that elements of all involved crimes are included in the report.
 - iii. Document any injuries victim and suspect have sustained.
 - iv. Document that victim received the Domestic Violence Resource Card per Penal Code Section 13701 (i).
 - v. Document past history of violence and check for existence of a restraining order.
 - vi. Document prior domestic violence incidents at that address involving the alleged abuser or victim.
 - vii. Document statements of victim, suspect, and all witnesses including children.
 - viii. Document physical evidence obtained.
 - ix. Document probation/parole status.
 - x. Document whether alcohol, illegal drugs or prescription drugs were involved by the alleged abuser.
 - xi. Document names, ages and relationship of children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home.

Also document the names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect. Include information on their whereabouts after the incident.
 - xii. Document if any pets were threatened, harmed, or there is evidence of animal abuse.

xiii. Document whether the officer found it necessary, for the protection of the officer or other persons present, to inquire of the victim, abuser, or both, whether a firearm or other deadly weapon was present at the location (13730 PC).

xiv. If a valid restraining order prohibits firearms possession or ownership by a person involved in the incident, the officer shall make record in the crime or incident report of:

- Inquiries made to determine if the restrained person possesses any firearms,
- The results of efforts made to locate and seize any unlawfully possessed firearms.

xv. If a violation of a restraining order is alleged:

- In the police report, describe the specific terms of the order that were violated by the restrained person.
- Attach a printout of the order from DVROS.
- Request of records or communications personnel that information on the reported violation is entered into the Domestic Violence Restraining Order System (DVROS). (See the California Department of Justice Information Bulletin #02-05-BCIA, dated April 4, 2002.)

3. When documenting a domestic violence-related crime, identify the report as a domestic violence incident on the face of the report as required by Penal Code Section 13730 (c).
4. If a victim spontaneously states that prosecution is not desired, the victim should be told that the decision to prosecute is made by the District Attorney. Officers shall not advise victims of domestic violence that the victim has the authority to "press" charges or "drop" charges.
5. Officers shall furnish victims with a "Domestic Violence Resource Card" which includes the phone number for the Victim/Witness Assistance Center in Santa Clara County (408-295-2656) and the toll free number for the California Victim Compensation and Government Claims Board (1-800-777-9229). The card shall also include the names and phone numbers of shelters or counseling centers and state that domestic violence or assault by a person who is known to the victim or who is the spouse of the victim is a crime. The California Victim Compensation and Government Claims Board can authorize a cash payment or reimbursement to an adult victim of domestic violence for specified expenses. Counseling funds for children may also be available for those identified in the police report. **The card shall also include the**

statement that the victim has a right to have a domestic violence advocate and a support person of the victim's choosing present at any follow-up interview by law enforcement authorities, prosecutors, or defense attorneys. (679.05 P.C.) Officers should strongly consider providing additional DV resource cards to support persons, friends and family at the scene.

6. When completing a Probable Cause Affidavit or Juvenile Contact Report, officers will ensure that the following information is provided.
 - a. The officer shall complete all applicable sections of the Affidavit or Juvenile Contact Report forms, including non-narrative portions.
 - b. The narrative portion of the Affidavit or Juvenile Contact Report shall thoroughly detail the injuries received and how they were inflicted. The officer should not merely check one of the boxes to indicate extent of injuries, as this information is often subjective. If the injury involved is "complaint of pain only," this fact shall be explicitly stated. This is necessary to avoid calling the officer back to clarify the Affidavit. If a felony arrest is made on an injury involving complaint of pain with no visible injuries, the officer shall give a detailed description of the force used, including type of force, number of blows inflicted, etc. (i.e., fist, open hand slap, etc.).

A description of the extent and severity of the pain is also necessary.

- Does the victim have difficulty breathing?
 - Does the victim have difficulty standing or moving?
 - Is the victim experiencing other restrictions as a result of the injuries?
- c. The officer shall note whether the victim has received medical attention, and the results, if known. Officers should inform the victim to seek medical attention.
 - d. Strangulation attempts shall be explicitly described. It should be noted whether hands or a ligature device was used. The force of the attempt should be detailed. If present, consider additional charges of 664/187 PC, attempted murder or 245 PC, assault with force likely to produce great bodily injury.
 - Did the victim lose consciousness?
 - Does the victim have difficulty breathing or swallowing?
 - Are there any marks visible on the victim's neck?
 - Does the victim complain of a hoarse or raspy voice as a result of the injuries?
 - Is there indication of petechiae (rupture of the small capillaries, usually in the eyes, head or neck area above the point of constriction)?

- e. In any domestic violence incident, the officer shall note on the Probable Cause Affidavit or Juvenile Contact Report whether an Emergency Protective Order was granted by a judge or was declined by the victim.

FOLLOW-UP INVESTIGATION

- A. All domestic violence reports prepared by officers pursuant to Penal Code section 13700 et seq., should be reviewed and given follow-up investigation as needed.
- B. Follow-up investigations should be geared to the requirements of the District Attorney's Family Violence Unit.
 - 1. Follow-up investigations should include the following:
 - a) Verify the inclusion of all investigative steps described above regarding patrol officer response/investigation.
 - b) Obtain medical records, if available.
 - c) Preserve a copy of the 911 recording involving the original call for assistance, as needed.
 - d) Interview/re-interview the victim, witnesses, and suspect as necessary. **Remind victim of his/her right to have a domestic violence advocate and a support person of their choosing present at the interview. The domestic violence advocate must advise the victim of any limitations on the confidentiality of communications between the victim and the advocate. If the presence of the person would be detrimental to the purpose of the interview the support person and/or advocate can be excluded.** If a "violent felony" is alleged, the interview of the suspect will be electronically recorded as outlined in the Santa Clara County Police Chiefs' Association "Recording of Violent Suspect Statement Protocol." See PC 667.5(c) for a listing of violent felonies.

If on-scene language translation assistance was provided by a family member, neighbor, or other uncertified person, it is necessary to re-interview the victim or witnesses by a court certifiable translator.

Remember; avoid using third party individuals (children, family members or neighbors) to translate statements.

- e) Contact the victim to inform him/her of the status of the case and the intended referral to the District Attorney or Juvenile Probation.
 - f) Photograph injuries to the victim (irrespective of whether photos were taken by the responding officer).
 - g) Record name, address, and phone number of two close friends or relatives of the victim who will know the victim's whereabouts 6-12 months from the time of the incident.
 - h) Conduct a complete CJIC, CII and NCIC criminal history check of the suspect. When appropriate, conduct a Juvenile Probation records check. Also conduct queries on the suspect in the Consolidated Firearms System (CFS), Prohibited Armed Persons (PAP), Domestic Violence Restraining Order System (DVROS), and the Violent Crime Information Network (VCIN). Attach results of these checks to the investigator's report.
 - i) If children are present or living in the home, a copy of the incident or crime report shall be provided to the designated on-site Department of Family and Children Services (DFCS) social worker. Law enforcement agencies without a designated on-site DFCS social worker shall fax a copy of the incident or crime report to DFCS at (408) 975-5851. (Note also that suspected child abuse must be cross-reported as required by 11165, 11166 and 11172(a) PC.) (DFCS, 408-299-2071).
 - j) Suspected elder or dependent adult abuse must be cross-reported as required by 15610, 15630 and 15640 W&I. (Adult Protective Services, 408-975-4900 or 800-414-2002.)
 - k) Those agencies working or having an operational agreement with victim advocacy agencies shall provide a copy of the police report to them.
2. Follow-up investigation shall not consider the desire of the victim to "drop" charges in assessing whether the case should be submitted to the District Attorney's Family Violence Unit.
 3. Investigative personnel handling domestic violence cases should analyze each domestic violence case by asking the following questions:
 - a. Can the elements of the offense be established without the testimony of the victim?
 - i. If the answer is "yes," the case should be submitted to the District Attorney or Juvenile Probation Department for review, irrespective of the wishes of the victim.

- ii. If the answer is "no," the next question should be considered.
- b. Will the victim come to court and tell the truth if subpoenaed to do so by the District Attorney?
 - i. If the answer is "yes," the case should be submitted to the District Attorney or Juvenile Probation Department for review.
 - ii. If the answer is "no," can further investigation locate additional witnesses or evidence which would allow prosecution without a cooperative victim, such as:
 - witness statements;
 - prior inconsistent statements;
 - physical evidence;
 - content of 911 recording;
 - circumstantial evidence;
 - defendant's statements;
 - spontaneous statements.

If so, the evidence should be obtained and the case should be submitted to the District Attorney or Juvenile Probation Department.

If not, the case need not be submitted, but should be filed with Records pursuant to Penal Code Section 13700 et seq.

- 4. Under **NO CIRCUMSTANCES** should a victim be asked if he/she wishes to "press charges" or "drop charges." Investigative personnel should not ask a victim if he/she wants to "prosecute" his/her partner. The focus of the investigative follow-up should be on the questions contained above in section 3 and the victim should be informed that the decision to proceed is out of his/her control.
- 5. Officers arriving at a medical facility in response to a phone call or report made by a medical professional shall prepare a Domestic Violence Incident Report irrespective of the wishes of the victim.
- 6. If the crime involves the use of a firearm, the reports shall be submitted to the District Attorney's Office or Juvenile Probation Department for review.
- 7. A law enforcement agency may file a petition to prevent the return of a firearm or other deadly weapon.

The petition must be filed within 60 days, unless good cause can be provided for an extension, in which case the petition must be filed within 90 days (PC 12028.5).

ENFORCEMENT OF RESTRAINING ORDERS

Police officers involved in domestic violence investigations deal primarily with civil restraining orders. However, restraining orders are also issued in criminal courts as a sentence imposition or as a condition of probation. Civil restraining orders are of three types:

An Emergency Protective Restraining Order (EPRO) is requested by a police officer in urgent circumstances. The EPRO is authorized by a Duty Judge after receiving a telephonic application from the requesting officer. An EPRO is valid for five court days or seven calendar days, providing the protected person sufficient time to obtain a Temporary Restraining Order. See local agency policies and procedures for instructions on obtaining an EPRO. **(Refer to Pages 16 viii. regarding precedence).**

A Temporary Restraining Order (TRO) is obtained in court by a protected person upon submission of an application, including an affidavit explaining the need for the order. A TRO is valid for a limited period of time, usually about a month, until a court hearing is conducted to receive testimony from both the restrained and protected persons. A protected person may receive assistance from a victim advocacy agency in applying for a TRO.

A Restraining Order (RO) (also known as an Order After Hearing) is issued by a judge for a longer period of time, typically five years. However, the order can be extended beyond five years upon request of the protected person at the time the RO is scheduled to expire. **(Can be issued for up to 10 years – refer to Page 7,N).**

- A. Domestic violence restraining orders will be enforced by all law enforcement officers. Under Penal Code Section 273.6(a), it is a misdemeanor for the restrained party to intentionally and knowingly violate any of the protective orders issued pursuant to the Uniform Parentage Act, Family Code, Code of Civil Procedure, Welfare & Institutions Code, the Domestic Violence Prevention Act, the Workplace Violence Safety Act or the Civil Harassment Prevention Act. Penal Code Section 273.6 (d) makes it a felony to violate a restraining order, with violence or threat of violence, after suffering a prior conviction for violation of Penal Code Section 273.6 within 7 years.

The elements of the crime require willful disobedience of the terms of the order. Proof of Service shows that the suspect has the necessary knowledge to be in violation of the order.

Verbal notice by the officer of the terms of the Order is sufficient notice for the purpose of Section 273.6 PC (Family Code Section 6383(e)).

However, in order to successfully prosecute a later violation of the order, the officer who delivered verbal notification must be able to testify that the subject notified was positively identified as the restrained person.

Each agency shall ensure the original Proof of Service is filed with the court issuing the order and a copy retained with the police report. Note: The terms and conditions of the restraining order remain valid and enforceable, in spite of the acts of the victim, and may be changed only by order of the court. **The “protected person” in a criminal or civil order cannot be in violation of his or her own protective order.**

Penal Code Section 273.6 shall apply to the following orders:

1. An order enjoining any person from directly or indirectly contacting, telephoning, contacting repeatedly with the intent to harass, molesting, attacking, striking, threatening, stalking, sexually assaulting, battering, harassing, or disturbing the peace of the other person or other named family and household member(s) or pets.
 2. An order excluding one person from the family dwelling or the dwelling of the other person/party or other named family and household member(s) or pet.
 3. An order enjoining a person from specified behavior that the court determined was necessary to effectuate the orders.
- B. Criminal Protective Orders (also known as Stay Away Orders) are typically ordered in domestic violence cases as a condition of a supervised own-recognition release, or an adult or juvenile sentence, and will be enforced by all law enforcement officers. This order is valid until the order is terminated or modified by the court. Information in support of the need for a Stay Away Order should be included by the police officer in the Probable Cause Affidavit or Juvenile Contact Report.
- C. Officers shall make arrests for any violations under the above sections that they observe. A victim still retains his/her right to make a private person's arrest. A misdemeanor warrant less arrest shall be made absent exigent circumstances if an officer has reasonable cause to believe that the person violated a restraining order outside his/her presence (836(c)(1) PC), (13701 P.C)
- D. If, at the scene of a domestic disturbance a person shows or informs the officer of the existence of a restraining order, it is crucial to establish the present status and terms of the order. Pursuant to Penal Code Section 13710, each Law Enforcement Agency shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents. These records shall include orders which have not yet been served, orders issued pursuant to Penal Code section 136.2, restraining

orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

All civil restraining orders are in the statewide registry available to all law enforcement.

1. Upon request, law enforcement agencies shall serve the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody (13710(c) PC). Verbal notice by the officer of the terms of the order is sufficient. However, in order to successfully prosecute a later violation of the order, the officer who delivered verbal notification must be able to testify that the subject notified was positively identified as the restrained person (FC 6383(e)). Within one business day of service, the law enforcement agency serving the protective order shall enter the proof of service directly into the DOJ Domestic Violence Restraining Order System (DVROS), including the officer's name and employing agency and shall transmit the original proof of service to the issuing court (FC 6380(d)). Once the order is served, an arrest may be made if the suspect refuses to comply with the terms of the order.
2. If the officer cannot verify the order, it may be enforced through a private person's arrest procedure. If it is the officer's opinion that the elements of the crime do not exist, the officer may then consider a release per Penal Code Section 849(b).
3. If a Restraining Order violation has occurred and the suspect is not present, the officer will submit a crime report of the appropriate violation and the officer will attempt to locate the suspect and arrest pursuant to Section 836(c) PC.

Under **NO CIRCUMSTANCES** shall an officer fail to prepare a crime report on a restraining order violation simply because the suspect is no longer present.

4. If a violation of a restraining order is alleged, the officer shall request of records or communications personnel that information on the reported violation is entered into the Domestic Violence Restraining Order System (DVROS).
 5. A restraining order issued in a criminal case of domestic violence has precedence over any conflicting civil orders affecting the parties, unless it is an EPRO, which is more restrictive. (PC 136.2 (h)(2))
- E. When responding to any domestic violence incident, an officer shall advise the victim of the availability of an Emergency Protective Restraining Order (EPRO) in every case.
1. In arrest situations, the following procedures should be implemented:

- a. When a person is arrested based upon an allegation of a recent incident of abuse or threat of abuse or in danger of stalking, and the officer can assert reasonable grounds to believe that a person is in immediate and present danger of domestic violence, or child abuse, or where a child is in immediate and present danger of being abducted by a parent or relative, which would require restraint if the defendant were to be released from custody (e.g., bail, OR, 849, or no PC found), then the police officer shall be required to explain the EPRO to the victim and ascertain if the victim desires one. Where the officer fears for the safety of the victim, but the victim does not desire an EPRO, an investigating officer shall request one on behalf of the victim. (Family Code 6275). The officer shall advise the victim that an EPRO has been issued. Every effort should be made to provide the victim with a copy of the EPRO at the earliest opportunity.
- b. If an EPRO is appropriate, the application should be completed. The officer should note on the application whether or not the suspect has been arrested, or will be arrested when located. During normal court hours the police officer should call the Family Court at (408) 534-5601 and ask to speak to a judge available to process an EPRO. After 5 PM on weekdays, on weekends, and holidays, the police officer should call County Communications at (408) 299-2501 and ask for the Duty Judge to call back. The police officer should leave the phone number where he/she can be reached. Officers should ensure that the telephone equipment is operational before requesting that the Duty Judge utilize that number. If the Duty Judge is not available, the officer should ask to speak to another Judge.

Note: The Duty Judge may elect to call County Communications at 408 299-2501 and request that the phone call be transferred to the number where the officer is located. This will protect the privacy of the Duty Judge's home phone number if the Duty Judge is calling into a private residence.

- i. Police Officers should be advised that EPROs are not provided at the County Jail or Juvenile Hall nor is a Stay Away Order automatically issued.
- ii. An officer should not request a Stay Away Order or an EPRO on the probable cause affidavit or Juvenile Contact Report. If he/she feels a restraining order is required upon defendant's release, follow the EPRO procedures.

Information in support of the need for restraint should be included in the probable cause affidavit or Juvenile Contact Report.

iii. The functions of each order do not necessarily overlap. The Court Order provides a mechanism for supervision of a criminal defendant or juvenile offender, including ensuring court appearances, and it often includes drug and weapon conditions. The EPRO provides the victim with a way to enter the Civil Justice System with protection already in place.

2. In a non-arrest situation where an EPRO is desired, the officer should complete an application then contact the Duty Judge or Family Court for evaluation and issuance of the EPRO.
3. If issued, EPRO legislation requires an officer to make a reasonable attempt to serve the restrained party. If he or she is present or can be readily contacted, serve the order and complete the Proof of Service on the form. Document whether and how the order was served in the police report. Persons subject to RO's are **required to turn over all firearms when told to do so by law enforcement. Refer to Firearms Relinquishment Protocol if necessary.** Copies of the EPRO should be distributed as follows:

Original	– Court
Yellow	– Restrained Person
Pink	– Protected Person
Goldenrod	– Law Enforcement Agency

4. Once an EPRO is issued, it is the responsibility of the police agency to promptly file the EPRO with the Family Court at 170 Park Center Plaza, San Jose, California 95113.
5. A judicial officer may also issue an EPRO if a peace officer asserts reasonable grounds to believe that a person is stalking another person as defined in PC 646.9 (authority PC 646.91).

F. Officers shall enforce out-of-state protective or restraining orders that are presented to them if conditions below are met. "Out-of-state" orders include those issued by U.S. Territories, Indian tribes, and military agencies.)

1. The order appears valid on its face
2. The order contains both parties' names
3. The order has not yet expired (Full Faith and Credit Provision of the Violence Against Women Act, Family Code 6400-6409).

Officers should check CLETS to determine if the order has been registered in California. If the order is not registered, an attempt should be made to contact the foreign jurisdiction or its registry for confirmation of validity. If validation cannot be substantiated, contact the Duty Judge for an EPRO,

but the out-of-state protective or restraining order must still be enforced if it meets the above criteria. If not registered in California parties should be advised to immediately register the order through the Family Court.

- G. When an officer verifies that a restraining order has been issued, the officer shall make reasonable efforts to determine if the restraining order prohibits the possession of firearms and/or requires the relinquishment of firearms. If the order prohibits firearms possession, the officer will make reasonable efforts to:
1. Inquire of the restrained person, if present or contacted during the investigation, if he/she possesses firearms.
 2. Inquire through the CLETS, and the Consolidated Firearms System (CFS) to determine if any firearms are registered to the restrained person.
 3. Inquire of the protected person whether the restrained person possesses any firearms.
 4. Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search.
 5. Law enforcement is authorized to request the immediately surrender of firearms when a person is served with a domestic violence protective order, rather than having to wait 24 hours for the person to self-surrender the firearms.
- H. If a restraining order prohibits firearms possession, the officer shall make record in the crime or incident report of:
1. Inquiries made to determine if the restrained person possesses any firearms.
 2. The results of efforts made to locate and seize any unlawfully possessed firearms.
- I. All law enforcement agencies shall have the responsibility of receiving and storing firearms surrendered pursuant to a restraining order for residents in their jurisdiction.
- J. Each county law enforcement agency having responsibility for the investigation of domestic violence shall adopt policies and procedures addressing the receipt, storage and release of firearms surrendered or seized pursuant to a restraining order.

VICTIM ASSISTANCE

- A. If a victim has injuries, visible or not, which require medical attention, officers shall administer first aid, as appropriate, and offer to arrange for proper medical treatment. The officer shall transport or call for transport of the victim and children to a hospital for treatment when necessary, or stand by until the victim and children can safely leave.
- B. When a **victim** in a domestic violence incident requests police assistance in removing a reasonable amount of personal property (e.g., a suitcase) to another location, officers shall stand by a reasonable amount of time until the party has safely done so.
- C. In all domestic violence incidents, an officer shall:
 1. 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.
 2. Explain options available to the victim including the private person's arrest process, temporary restraining orders, Emergency Protective Restraining Orders, and in cases of arrest, the follow-up procedures in ensuing criminal or juvenile delinquency proceedings.
 3. Advise the victim of available community resources and the California Victims' Compensation and Government Claims Board. (This includes the victim of an alleged battery or corporal injury to a domestic partner). Pursuant to Penal Code Section 13701, officers shall furnish victims with a "Domestic Violence Resource Card" which includes the phone number for the Victim/Witness Assistance Center in Santa Clara County (408-295-2656) and the toll free number for the California Victim Compensation and Government Claims Board (1-800-777-9229). The card shall include the names and phone numbers of shelters or counseling centers, and state that domestic violence or assault by a person who is known to the victim or who is the spouse of the victim is a crime. The card will contain an explanation of the Santa Clara County Victim Notification Service 1-800-464-3568.

It will also state that the victim has the right to have a domestic violence advocate and a support person of the victim's choosing present at any follow-up interview by law enforcement authorities, prosecutors, or defense attorneys.

4. Verify and enforce court issued protective orders pursuant to this protocol.
 5. Exercise reasonable care for the safety of the officers and parties involved. No provision of this instruction shall supersede that responsibility.
 6. Provide a copy of the report relating to domestic violence to the victim at no charge when requested, or to the representative of the victim if the victim is deceased (FC 6228).
- D. If the suspect is taken into custody, the victim will be provided the option of having her/his phone number blocked by the Santa Clara County Department of Corrections to prevent the suspect from contacting the victim while the suspect is in custody.

MILITARY SUSPECTS

- A. All domestic violence incidents involving military suspects shall be handled according to this law enforcement protocol if:
1. The incident occurred outside the boundaries of a military facility; or
 2. Local law enforcement agencies are called to assist in handling such an incident.
- B. The intent of this policy is to eliminate all informal referrals, diversions, or report taking omissions in the handling of domestic violence incidents involving military personnel.
- C. No informal agreements with military police or a suspect's commanding officer shall take precedence over a suspect's arrest and prosecution by non-military authorities.

LAW ENFORCEMENT SUSPECTS

All domestic violence incidents involving law enforcement suspects should be handled according to this protocol.

Any officer investigating an alleged incident of domestic violence involving a law enforcement suspect shall have an on-duty supervisor notified as soon as possible. The investigating agency shall notify the employing agency as soon as possible after the incident or initial report. All alleged incidents of domestic violence involving suspects who are employed as peace officers will be reviewed by the District Attorney's Office. All reports and information regarding suspects who are employed as peace officers shall be delivered to the suspect's law enforcement employer as soon as practical at the completion of the investigation.

The investigating agency shall contact local domestic violence agencies for assistance when referring the victim to an advocate trained in working with victims of domestic violence perpetrated by law enforcement suspects.

JUVENILE SUSPECTS

All provisions of this protocol, including pro arrest and booking of the perpetrator, whether a felony or misdemeanor, offering the victim an Emergency Protective Order, enforcing Protective and Restraining Orders, shall be applied to all juvenile cases of domestic violence. Domestic violence, as defined by the Penal Code, is violence perpetrated against juveniles as well as adults.

TRAINING

- A. Each law enforcement agency shall conduct mandated domestic violence training for members of the agency per 13519(b) PC and 13730 PC.
- B. The goals of the training are to inform officers of:
 - 1. The domestic violence and stalking laws;
 - 2. This Protocol;
 - 3. The department's domestic violence policy and procedures;
 - 4. The signs and dynamics of domestic violence, including the effects on children;
 - 5. Police officer investigative techniques;
 - 6. District Attorney Family Violence Unit policies;
 - 7. Juvenile Delinquency Domestic Violence Court procedures;
 - 8. Victim advocacy groups working in their jurisdiction; and,
 - 9. Domestic violence issues specific to various cultures and lifestyles.
- C. Additional training should include written bulletins, DVD's, videotapes, verbal reminders, and updates during patrol briefings. The "Domestic Violence Law Enforcement Protocol Training Comments" attachment may be used as a supplemental discussion guide, **as well as the Firearms Relinquishment Protocol.**
- D. The Chief of Police, Sheriff, or his/her designee, shall ensure the review of his/her department's training policies annually and make any revisions deemed necessary.

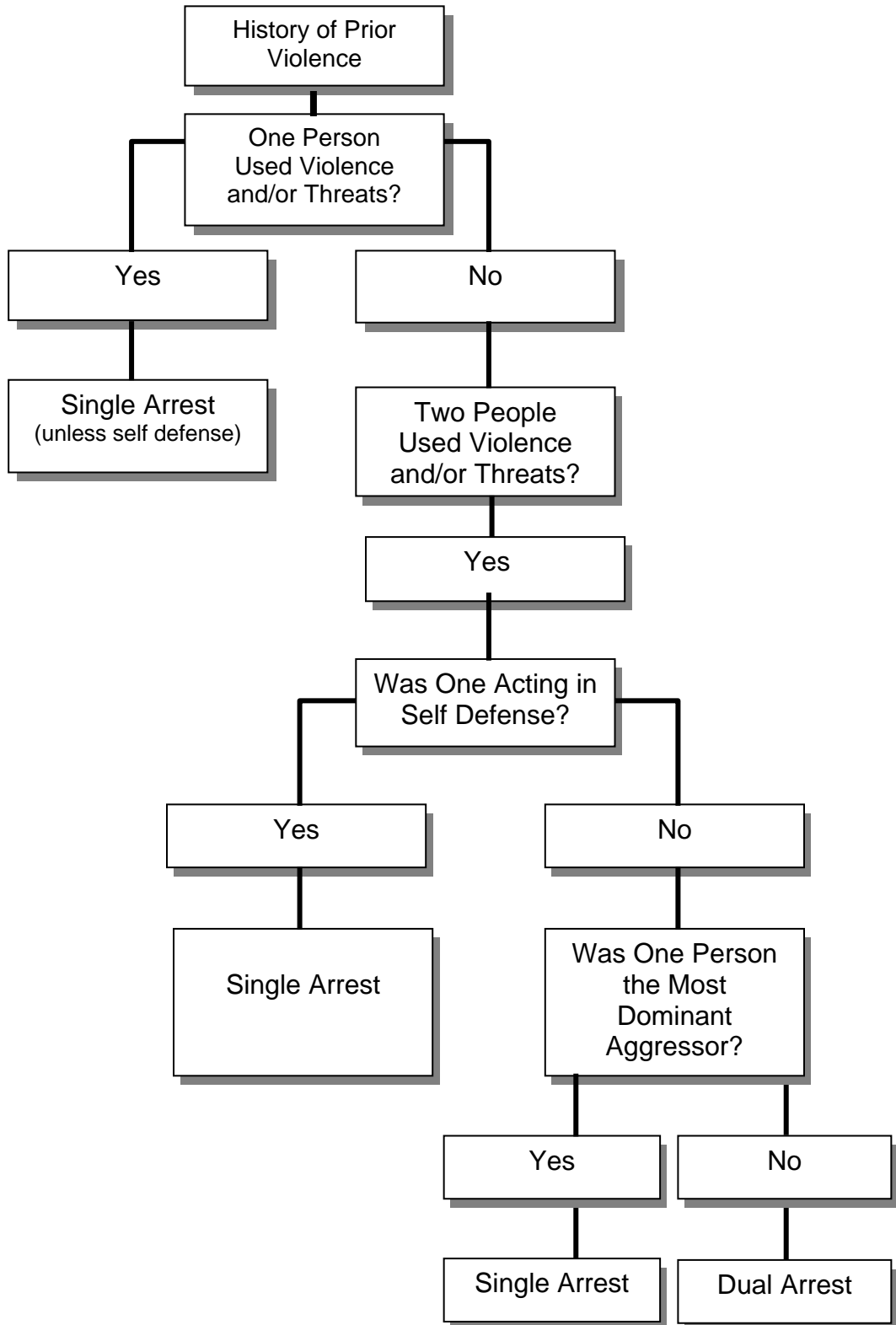
DOMESTIC VIOLENCE STATUTES

All Penal Code statutes listed below apply equally to adults and juveniles.

	Law Enforcement Response	Spouse/ Cohabitant Assault	Restraining Orders	Emergency Protective Orders	Confiscating Firearms	Domestic Violence Battery
Victim's Relationship to Defendant	PC 13700	PC 273.5	FC 6218	FC 6300	PC 12028.5	PC 243(e)
Spouse	X	X	X	X	X	X
Former Spouse	X	X	X	X	X	X
Cohabitant	X	X	X (a)	X (a)	X (a)	X
Former Cohabitant	X	X	X	X	X (a)	X
Dating Relationship	X		X	X	X (c)	X (b)
Engaged or Formerly Engaged	X		X	X	X (c)	X
Co-parent	X	X	X	X	X (c)	X
Child	X		X	X	X	
Parents & Other People Related by Consanguinity (aunts, uncles, grandparents, etc.)	X		X	X	X	

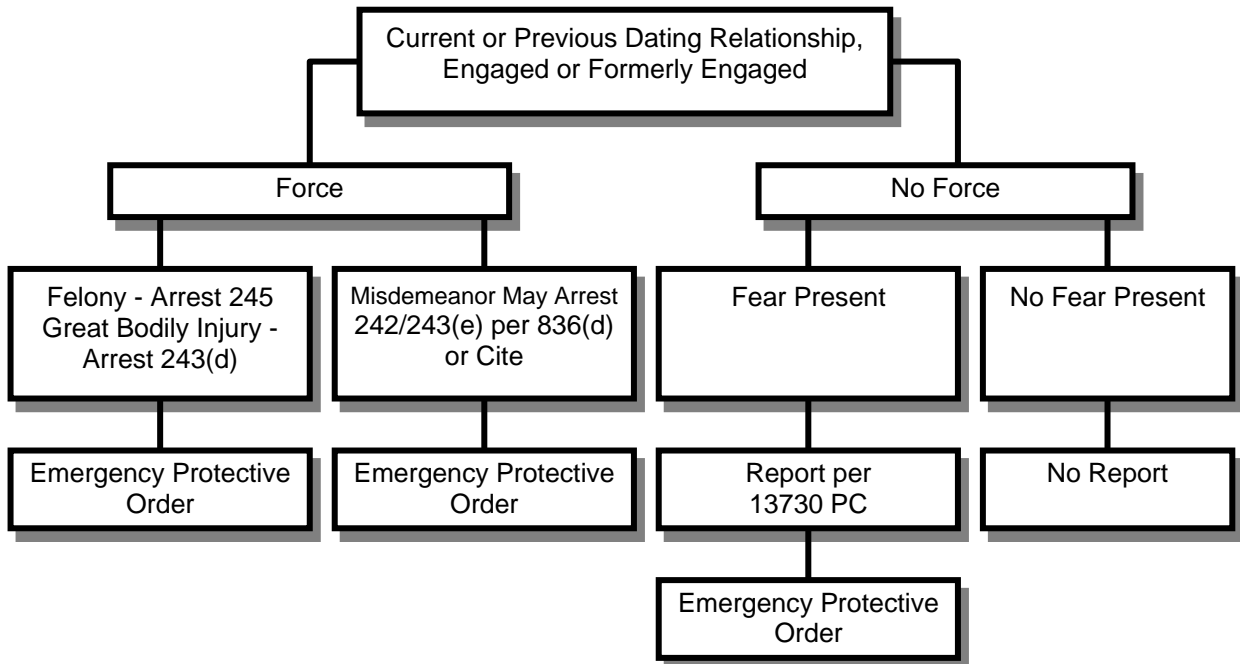
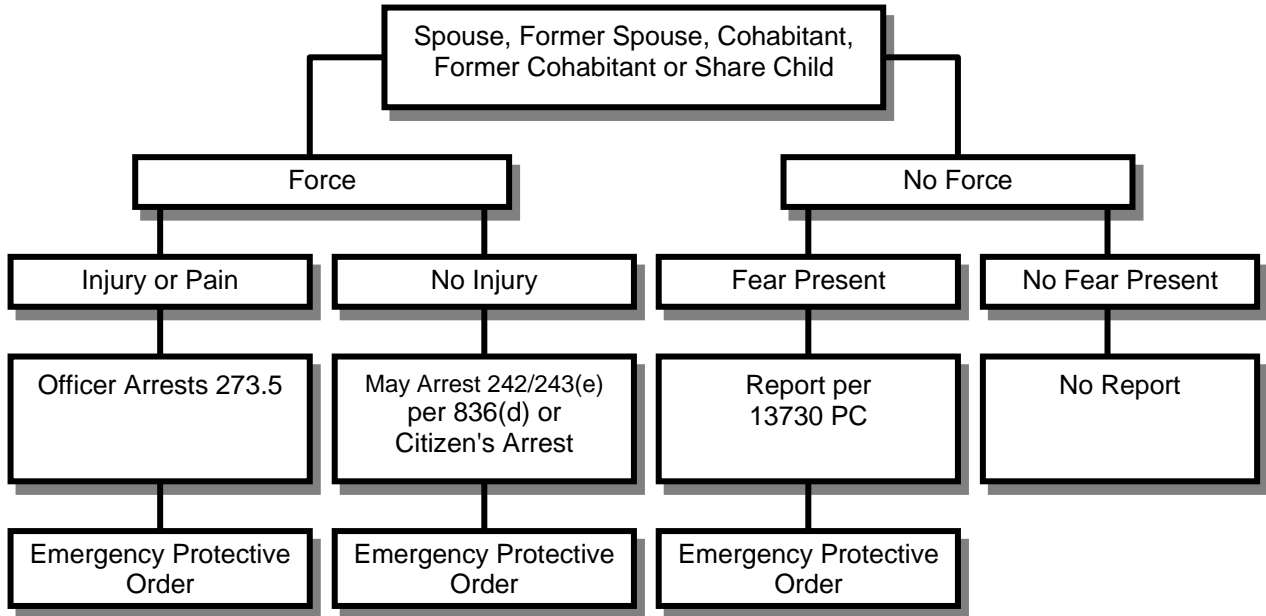
- (a) Cohabitants are included under household resident.
- (b) Current or former.
- (c) Must be living together

DOMINANT AGGRESSOR “DECISION TREE”



DOMESTIC VIOLENCE FLOW CHART

Processes charted below apply to both adult and juvenile cases.



Restraining Order Admonition

What should you do if a court order prohibits you from contacting a protected person and the protected person initiates contact with you?

The law (Penal Code Section 13710 (b) clearly states that the terms and conditions of the protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

This means if the protected person calls you, invites you over or contacts you in any manner you must quickly end all such contact. You must hang up the phone, decline the invitation or leave the immediate area where they are. If you don't do this, you can and will be arrested for violating the protective order.

The protective order prohibits you from having any contact with the protective person. This order does not prohibit them from contacting you, therefore they are not breaking the law, but you are if you continue the contact.

In order for a protective order to be lifted the party requesting the order must return to court and make that request. That individual will get a document (piece of paper) showing that the order was rescinded. If the protected person tells you the order was lifted ask to see the document, make a copy of it and carry it on your person at all times.

Assistance for Domestic Violence Victims
SVCCJ Santa Clara County
Victim Witness Assistance Center
(408) 295-2656

Who is eligible?

“Victim” – anyone who suffers physical injury or threat of physical injury as a result of a crime that occurs in California providing the person is willing to assist law enforcement in the investigation and/or prosecution of the crime. A California resident, victimized elsewhere, may also be eligible for assistance. Children who reside in a home where domestic violence has occurred are also considered victims, regardless of whether they witnessed the crime.

“Derivative Victim” – other members of the victim’s family or household (parent, sibling, spouse, grandparents, grandchildren) who are affected emotionally or financially by the crime. Persons who become primary caretakers of children as a result of a crime may also be considered derivative victims.

Persons protected by a permanent restraining order, even if a crime report has not been filed.

What assistance is available?

- Emergency housing or shelter. When the need is immediate, police officers may authorize victims to seek lodging (hotel, motel) for later reimbursement. Up to \$700 is available for emergency temporary housing expenses.
- Counseling and mental health treatment up to \$10,000 for victims and \$3,000 for derivative victims (a higher limit of \$10,000 is available to some derivative victims). Children who reside in a home where domestic violence has occurred are considered direct victims.
- Home security installation or improvement up to \$1,000.
- Medical and dental expenses.
- Moving or relocation expenses up to \$2,000 per household.
- Qualifying wage or income loss due to a crime related disability.
- Support loss for dependents of deceased or disabled victims, up to \$70,000 per household.
- Job retraining for disabled victims.
- Home or vehicle renovation or retrofitting for permanently disabled victims up to \$70,000.
- Funeral and/or burial expenses up to \$7,500.

- Crime scene clean-up up to \$1,000 for homicides that occurred in a residence performed by persons licensed by the State.

Important: Victims should file a claim to establish eligibility whether or not there is current need.

Questions & Answers

How can police officers assist a victim in obtaining assistance through the Victim Witness Assistance program?

Police officers should always provide a domestic violence victim with the phone number for the Victim Witness Assistance Center and explain benefits available through this program.

During weekday business hours, police officers may call the Victim Witness Assistance Center to refer a victim and facilitate the submission of an application by the victim. Victims may also call the Victim Witness Assistance Center directly. Completion of a Letter of Recommendation for Victims of Domestic Violence (form attached) by a police officer will expedite requests for temporary lodging, permanent relocation, or a residential security upgrade.

When emergency temporary housing (hotel, motel) is needed after business hours, a police officer should explain to a victim that reimbursement for temporary housing expenses is available through the Victim Witness Assistance program. The officer should complete a Letter of Recommendation for Victims of Domestic Violence (form attached), fax this to the Victim Witness Assistance Center, and instruct the victim to call the Center as soon as possible during business hours to submit an application for assistance.

Note: A referral via a Letter of Recommendation may be made by any law enforcement officer, including a probation officer or parole agent.

Are all persons involved in a domestic violence incident eligible for assistance?

No, those ineligible for assistance include:

- Perpetrators or persons who committed an associated crime
- Persons who were not victims but participants in mutual combat
- Persons under supervision for a felony conviction (even if a domestic violence victim) except when the victim is killed, then funeral and burial expenses may be covered but not medical expenses.
- Victims who are unwilling to assist law enforcement in the investigation and/or prosecution of the crime

How quickly can a victim receive reimbursement for qualifying expenses?

Once an application is submitted and a copy of the crime report received by the Victim Witness Assistance Center, a reimbursement check for qualifying expenses can usually be issued to the victim on the same day.

Must a victim provide assistance to law enforcement in the investigation and prosecution of the crime before benefits are provided?

The Victim Witness Assistance Center will accept the law enforcement referral as valid at the time application is made, including law enforcement's affirmation that the victim intends to support prosecution. Benefits will be provided based upon this understanding. If a victim later refuses or neglects to assist law enforcement, the victim will be refused additional benefits through the Victim Witness program. If a victim receives benefits through the Victim Witness program, then refuses or neglects to assist law enforcement in the investigation and/or prosecution of the crime, will the victim be required to repay the State?

Under these circumstances, the Victim Witness Assistance Center **must** report to the State that assistance rendered to the victim **may be** an "overpayment." The State could attempt to collect this money from the beneficiary by demand letter or lien. In practice, this typically occurs only when victim misuses money provided through the program, e.g. buys alcohol, drugs or otherwise mispends money that was provided for a specific purpose, such as a permanent relocation. The program may also pursue the victim for any overpayment.

Why should a victim file a claim absent a present need for assistance?

Victims must establish eligibility for assistance within one year of the incident date. Child victims may file up to one year after their 18th birthday. Late applications may be allowed under some restricted good cause guidelines. Once a victim establishes eligibility, the victim may request assistance at anytime thereafter should the need arise.

Are emergency housing and permanent relocation both available to a victim?

Yes, a victim may request emergency housing and assistance in permanently relocating to another home. However, assistance provided for emergency housing (up to \$700) is included in victim's maximum permanent relocation benefit of \$2,000 per qualifying family or household member.

For additional information or to apply for assistance, contact:

The SVCCJ Santa Clara County Victim-Witness Assistance Center:
777 North First Street, Suite 220
San Jose, CA 95112
(408) 295-2656
www.victim.org

Law Enforcement Letter of Recommendation
for Victims of Domestic Violence

Instructions: Use this form to expedite an emergency request for a residential security upgrade, obtaining temporary lodging, or permanent relocation benefits. The recommendation must document that the request for benefits is urgent based upon concerns for the safety of the victim.

Print or photocopy the completed form on agency letterhead and contact the Victim-Witness Assistance Center at 295-2656 for further instructions.

Date: _____

Victim: _____

Law Enforcement Agency: _____

Crime Report #: _____

The above named victim is in urgent need for the following services necessary to ensure and protect the victim's safety:

- _____ residential security upgrade
- _____ temporary lodging
- _____ permanent relocation

Describe below the circumstances that have caused the victim concern for his/her safety and necessitated the urgent request for assistance.

Title and Name of Investigating Officer: _____

Phone #: _____ Date: _____

Signature: _____

2008 Domestic Violence Law Enforcement Protocol Training Comments

In addition to legislative and other changes included in the revised protocol, trainers are encouraged to discuss the following issues with members of their organizations.

Firearm relinquishment. Law enforcement is authorized to request the immediate surrender of firearms when a person is served with a domestic violence protective order, rather than having to wait 24 hours for the person to self-surrender the firearms. See Protocol attached.

Pets provision. The law now allows a court, on a showing of good cause, to include in a DV protective order a grant to the petitioner (victim), the exclusive care, possession or control of any animal owned or kept by the victim and respondent (perpetrator). Also authorizes the court to order the respondent to stay away from or take, conceal, threaten or harm the animal protected.

EPRO's denied. EPROs are occasionally denied by the reviewing magistrate. If the requesting officer or follow-up investigator still has concerns for the victim's safety, the District Attorney's Office would like to know and might be able to help in writing the affidavit or speaking with the magistrate. In these circumstances, please contact **the DA's office**.

Children residing in or visiting the home. List in the police report the names and dates of birth of all children residing in the home or visiting the home where the incident occurred, even if the children did not witness the incident or were not present at the time it occurred. This will prompt police records personnel to provide a copy of the report to CPS and will qualify the child for counseling and relocation reimbursement, if necessary.

Victim's rights to a domestic violence advocate and support person. A new law signed in July 2004 provides that a law enforcement officer must advise a domestic violence victim that they have the right to a domestic violence advocate and support person of the victim's choosing present at any follow-up interview by law enforcement authorities, prosecutors or defense attorneys. The officer's obligation can be met by providing the Domestic Violence Resource Card as required by PC Section 13701 (i). Officers should strongly consider giving the DV Resource card to support persons, family and friends at the scene.

Pursuant to PC 11106, police officers are authorized to disseminate to a domestic violence victim information from DOJ regarding the number and description of any firearms the perpetrator has purchased or obtained. This information may be given about a person if he or she is being prosecuted, or is serving a sentence for, a domestic violence offense, or is the subject of an EPRO or TRO.

