
DOMESTIC VIOLENCE PROTOCOL
FOR
LAW ENFORCEMENT
2002

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

Adopted February 14, 2002

POLICY STATEMENT

Recognizing that domestic violence is a serious community problem, 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. In addition, the Police Chiefs' Association of Santa Clara County recognizes that acts of domestic violence are a serious problem among juveniles, and therefore has included juveniles in this Protocol.

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, provision of 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.

As more is learned about successful ways of preventing and responding to domestic violence, this protocol will be updated. New legislation and research will be reviewed periodically by a sub-committee of the Police Chiefs' Association of Santa Clara County in order to maintain an effective and sensitive response by the law enforcement community to this serious problem.

Chief Gregg Giusiana
Chair, Police Chiefs' Association of Santa Clara County

Date

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TABLE OF CONTENTS

DEFINITIONS	7
COMMON CHARGES	10
911 CALL-TAKER/DISPATCHER RESPONSE	11
PATROL OFFICER RESPONSE/INVESTIGATION	13
FOLLOW-UP INVESTIGATION	22
ENFORCEMENT OF RESTRAINING ORDERS	25
VICTIM ASSISTANCE	31
MILITARY SUSPECTS	33
LAW ENFORCEMENT SUSPECTS	34
JUVENILE SUSPECTS	35
TRAINING	36
DOMESTIC VIOLENCE STATUTES	37
ATTACHMENTS	
<ul style="list-style-type: none">• Domestic Violence Statutes• Dominant Aggressor “Decision Tree”• Domestic Violence Flow Chart• Restraining Order Admonition	

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.
- 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.
- 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 a fully emancipated 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. 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.

- I. **“Emancipation”** means the conferral of certain rights of majority upon a minor. A person under the age of 18 is an emancipated minor if any of the following conditions is satisfied: the person has entered into a valid marriage, whether or not the marriage has been dissolved; the person is on active duty with the armed forces of the United States; or the person has received a declaration of emancipation pursuant to Section 7122 of the Family Code.
- J. **“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. The issuance of an EPRO is not precluded by an arrest.
- K. **“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).
- L. **“Officer”** is defined as any law enforcement officer as defined by Penal Code Sections 830.1 - 830.32.
- M. **“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.
- N. **“Stalking”** means maliciously, and repeatedly, following or harassing behavior towards another person and making a credible threat with the intent to place that person in reasonable fear for his or her own safety, or the safety of his or her immediate family.
- O. **“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. 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 3 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.

- P. **“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, 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.
- Q. **“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.
- R. **“Victim”** means a person who is a victim of domestic violence.

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. 240 - Assault.
8. 243 (a) - Battery.
9. 243 (e) - Battery - Spousal/cohabitant/parent of suspect's child/former spouse/fiancée/fiancé/dating and former dating relationship abuse.
10. 245 - Assault with a deadly weapon / assault with intent to commit great bodily injury.
11. 246 - Shooting at an inhabited dwelling.
12. 261.5 - Unlawful sexual intercourse.
13. 262 - Spousal rape.
14. 273.5 - Abuse of spouse, former spouse, cohabitant, former cohabitant or parent of suspect's child. (Cannot be used when the victim is an unemancipated minor).
15. 273.6 - Violation of a protective order.
16. 273a - Child abuse / endangerment
17. 417 - Brandishing a weapon.
18. 418 - Forcible entry into the home of another.
19. 422 - Criminal threats.
20. 459 - Residential burglary.
21. 591 - Malicious destruction of a telephone line.
22. 594 - Vandalism
23. 597a - Cruelty to Animals
24. 602.5 - Aggravated Trespassing.
25. 603 - Forcible entry with damage to property.
26. 646.9 - Stalking.
27. 647 (f) - Public drunkenness.
28. 653m (c) - Annoying telephone calls - (1) violating court order; or (2) by spouse/cohabitant/parent of suspect's child.
30. 12020 (a) - Possession of a dangerous weapon.
31. 12025 (a) - Possession of a concealed firearm.
32. 12028.5 - Confiscation of firearms (Authority for seizure).
33. 12031 - Possession of a loaded firearm.
34. 664 - or attempt of any of the above

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 these questions:
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, if not present, his/her expected whereabouts.
 7. Are weapons involved? If yes, what kind? **Where are they located?**
 8. Is the suspect under the influence of drugs or alcohol? 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?
- 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, a victim could wait for officers at a neighbor's house or remain on the 911 line.

- E. 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.

836(d) PC, effective 1/01/01, 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. 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 (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.

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 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 that 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.
2. Once a suspect is arrested on a misdemeanor offense, he/she should be booked into the County Jail or Juvenile Hall unless the officer can identify a strong likelihood that the offense will not continue once the officer leaves the scene and that there has been no prior history of domestic violence.

In determining whether prior violence has occurred, 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, if possible.

3. 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.
4. 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, **and children.**
 - 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. 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. If the victim speaks a language other than English, call for another officer conversant in that language or arrange for other translation services. Document the names and personal information of all witnesses **and translators**. Note information concerning the victim's whereabouts for the next few days.

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. Include information on their whereabouts after the incident. **(Note also that suspected child abuse must be cross-reported as required under 11165, 11166 and 11172(a) PC.)**

- 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 victim's, suspect's, and child's condition and demeanor.
 - Document torn clothing.
 - Document smeared make-up.
 - Investigate the evidence of injury.
 - Document if victim is pregnant.
- iv. Document disarray in house.
- v. Document suspect's symptoms of use/influence of alcohol or controlled substances.
- 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?
- 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.**

- ix. Advise victim of the availability of an Emergency Protective Order (EPRO), and ask if one is desired. (Victim should be out of suspect's view.) If so desired, prepare the form before calling the on-duty judge.
 - 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. Return the original proof of service to the victim for filing with the court. 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 (Family Code Section 6383(g)).
 - xi. If victim has proof that a copy of the restraining order was mailed 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. 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.
 - xiii. **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.**
- c. If suspect taken into custody
- i. Document spontaneous statements.
 - ii. Prevent communications between suspect and victim/witnesses/**children**.
 - iii. Advise suspect of Miranda rights.
 - iv. Conduct interviews.
 - 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 condition of crime scene (disarray of physical surroundings).
 - ii. Photograph crime scene, if applicable. Encourage the victim to contact the investigating agency/follow-up investigator if further bruising occurs.
 - iii. Ensure that the victim's/suspect's visible injuries are photographed
 - 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 (13730 PC).**
 - v. **Check in the Automated Firearms System (AFS) 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 or discovered pursuant to a consensual 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 may be returned within 48 to 72 hours. If the weapon is seized as evidence of a crime, it will not be returned (12028.7 PC).**
- 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, ambulance or paramedic 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/suspect have sustained.
 - iv. Document that victim received referral 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/drugs were involved by the alleged abuser.
 - xi. Document names and ages of children who were present and/or residing in the home **or who were not present but reside in the home** at the time the offense occurred. Include information on their whereabouts after the incident.
 - xii. Document if any pets were 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 (13370 PC).**
 - xiv. **If a valid restraining order prohibits firearms possession**

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.**

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 misinform 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 (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.
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, including the non-narrative portions of the form.
 - 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.
- 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 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 Domestic 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 tape involving the original call for assistance, as needed;
 - d. Interview/re-interview witnesses, as necessary;
 - 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 Automated Firearms System (AFS), **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 will be made available to Child Protective Services (CPS). (Note also that suspected child abuse must be cross-reported as required by 11165, 11166 and 11172(a) PC.) (Child Protective Services, 408 299-2071).**

- j. **Suspected elder or dependent adult abuse must be cross-reported as required by 15610, 15630 and 15640 WI. (Adult Protective Services, 408 928-3860 or 800 414-2002.)**
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 Domestic 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 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 tape;
 - circumstantial evidence;
 - defendant's statements.

If so, the evidence should be obtained and the case should be submitted to the District Attorney.

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.

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, providing the protected person sufficient time to obtain a Temporary Restraining Order. See local agency policies and procedures for instructions on obtaining an EPRO.

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 three years. However, the order can be extended beyond three years upon request of the protected person at the time the RO is scheduled to expire.

- 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, 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 needed 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)). 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” 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 by mail 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.
 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.
 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 warrantless 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). **The law enforcement agency serving the order shall make record of service in the Domestic Violence Restraining Order System (DVROS) (6380 (d) FC).** 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. A restraining order issued in a criminal case of domestic violence has precedence over any conflicting civil orders affecting the parties.
(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).

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. In extraordinary circumstances where the officer fears for the safety of the victim, but the victim does not desire an EPRO, an investigating officer may request one on behalf of the victim.
 - 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) 299-7044 or (408) 299-7345** and ask to speak to the Supervising Judge. During nighttime hours, 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.
 - 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 restraint 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. **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 their 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, you can 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 Automated Firearms System (AFS) 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.**

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 party 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 and 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 (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 also include an explanation of the Santa Clara County Victim Notification Service.
 - 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.

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; and
 - 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 shall be handled according to this protocol. There shall be no deviation from the protocol merely because the suspect is employed by a law enforcement agency.

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.

JUVENILE SUSPECTS

All provisions of this protocol, including mandatory arrest and booking of the perpetrator, whether a felony or misdemeanor, and offering the victim an Emergency Protective Order, shall be applied to all juvenile cases of domestic violence. Domestic violence, as defined by the Penal Code, is violence perpetrated against emancipated juveniles only. In cases where the victim is an unemancipated juvenile, a charge of 273.5(a) PC cannot be made. Officers should review the various Penal Code sections to ensure that appropriate charges are used when dealing with juveniles. However, officers shall charge suspects in these cases under other Penal Code sections as set forth in this Protocol.

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 Domestic 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, videotapes, verbal reminders, and updates during patrol briefings.
- D. The Chief of Police, or his/her designee, shall ensure the review of his/her department's training policies annually and make any revisions deemed necessary.

Attachments

Domestic Violence Statutes
Dominant Aggressor "Decision Tree"
Domestic Violence Flow Chart
Restraining Order Admonition

DOMESTIC VIOLENCE STATUTES

February 2002

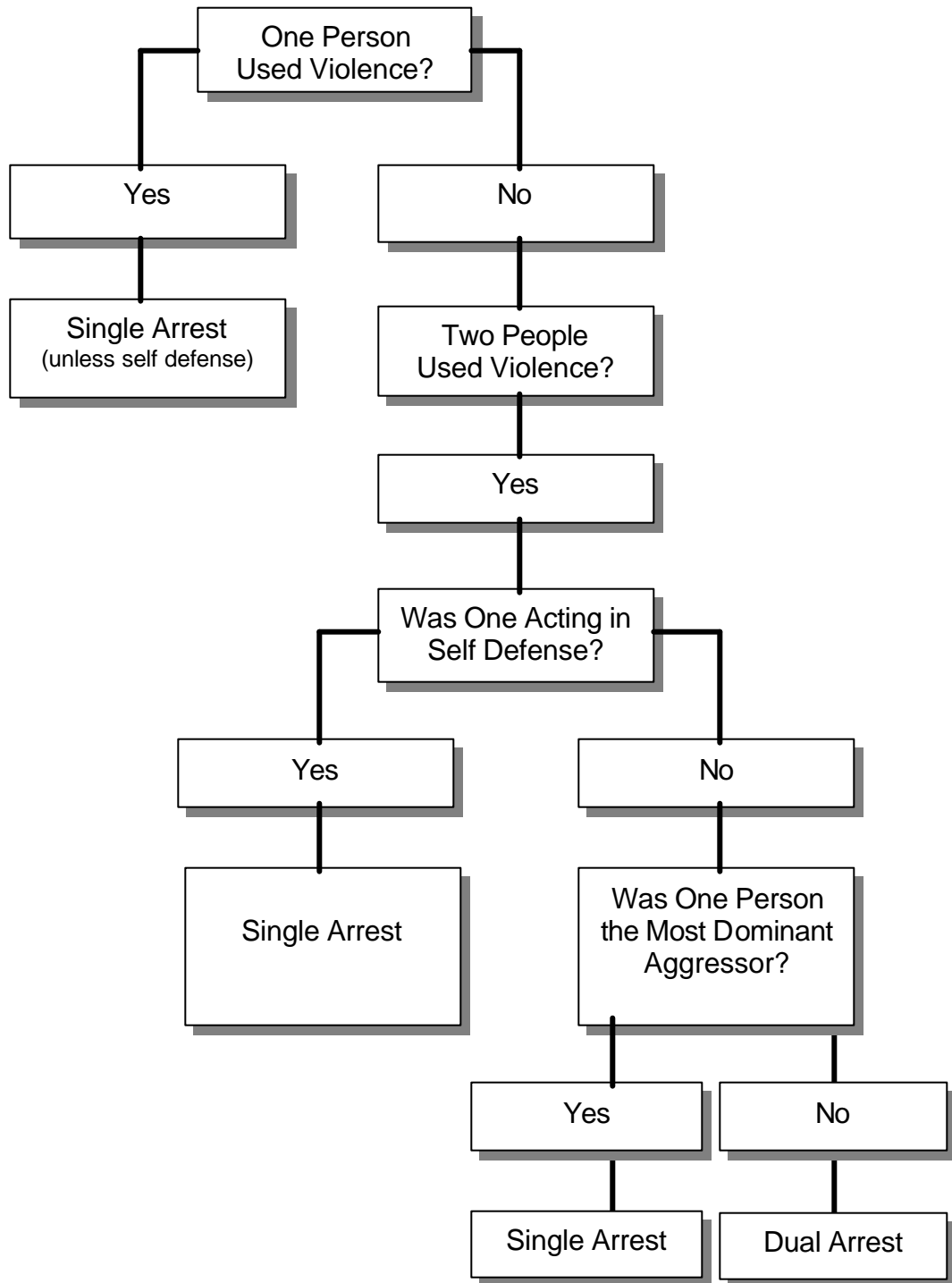
	Law Enforcement Response	Spouse/ Cohabitant Assault	Restraining Orders	Emergency Protective Orders	Confiscating Firearms	Domestic Violence Battery
Victim's Relationship to Defendant	PC 13700	PC 273.5	FC 6218	FC 6300	PC 12028.5	PC 243(e)
Spouse	X	X	X	X	X	X
Former Spouse	X	X	X	X	X	X
Cohabitant	X	X	X (a)	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	
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

