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***DOMESTIC VIOLENCE PROTOCOL***

***FOR***

***LAW ENFORCEMENT***

***2014***

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

**Adopted March, 2014**

## POLICY STATEMENT

Domestic violence is a serious community problem which affects individuals of all races, religions, sexual orientations, and socio-economic backgrounds. It impacts people of all ages including seniors 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.

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Chief Dennis Burns  
Chair, Police Chiefs' Assoc. of Santa Clara County

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Date

**POLICE CHIEFS' ASSOCIATION OF  
SANTA CLARA COUNTY  
MEMBERSHIP**

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- **CAMPBELL POLICE DEPARTMENT**  
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DEPARTMENT**  
Chief Mike Sellers
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PUBLIC SAFETY**  
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## ACKNOWLEDGEMENT

The Domestic Violence Protocol for Law Enforcement was developed in 1993 at the request of the Police Chiefs' Association of Santa Clara County and the Domestic Violence Council. Participants in this work included:

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Significant changes in the protocol for **2014** are highlighted in **bold** text.

We acknowledge those who reviewed the Domestic Violence Law Enforcement Protocol and recommended amendments and updates:

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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.
- K. Officer is defined as any law enforcement officer as defined by Penal Code Sections 830.1 - 830.32.
- L. Peaceful Contact Order - No hitting, grabbing, throwing objects, damaging property, or pulling the phone cord out of the wall; knocking over, or breaking furniture; swearing at, or about, the victim; tearing up important papers; stopping the victim from leaving the house; making threats to hit, harm or kill the victim; arguing with the victim or a family member; arguing or shouting so loud that the neighbors are disturbed; having your friends come over and do any of the above; and do anything that makes the victim, or the family, frightened, hurt, injured, upset, or disturbed.
- 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. 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 see P below, order can be up to 10 years.
- O. 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).

- P. 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 21<sup>st</sup> birthday) or civil case involving domestic violence upon a good cause belief that harm to, or intimidation, or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, 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 for up to 10 years. 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 for any domestic violence related offense (PC 136.2).

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.

PC 136.2 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). PC 136.2 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.

- 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. Authorizes a private, postsecondary educational institution to seek a temporary restraining order and injunction on behalf of a student, and, at the discretion of the court, any number of other students at the campus, when a student has suffered a credible threat of violence made off campus, "which can reasonably be construed to be carried out or to have been carried out at the school campus. CCP 527.85 (NOTE: Does not

apply to public schools).

- R. Trafficking is depriving or violating the personal liberty of another person with the intent to effect or maintain a felony violation of PC 266 (procurement for prostitution), PC 266h (pimping), PC 266i (pandering), PC 267 (abduction for prostitution), PC 311.4 (using a minor to create obscene matter), or P.C. 518 (extortion), or to obtain forced labor or services (PC Section 236.1)
- S. U-Visa - Created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000. It is available to noncitizens who: 1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and 2) have been helpful, are being helpful or are likely to be helpful with the investigation or prosecution of the crime. The U-visa provides eligible immigrants with authorized stay in the United States and employment authorization.
- T. Victim means a person who is a victim of domestic violence.

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## **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 – <b>typically criminal court order</b>  |
| 4.  | 187       | - | Murder  |
| 5.  | 207       | - | Kidnapping  |
| 6.  | 236/237   | - | False imprisonment  |
| 7.  | 236.1     | - | Human 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 (d)   | - | Battery with serious bodily injury  |
| 12. | 243.25    | - | Battery of an elder or dependent adult, who knew or should have known that the victim is an elder or dependent adult            |
| 13. | 245(a)(1) | - | Assault with a deadly weapon  |
| 14. | 245(a)(4) | - | Assault by means of force likely to produce great bodily injury   |
| 15. | 246(a)    | - | Shooting at an inhabited dwelling   |
| 16. | 261.5     | - | Unlawful sexual intercourse   |
| 17. | 262       | - | Spousal rape, eliminates the reporting and corroboration  |

- 18. 270.6 - requirements. Now consistent with P.C. 261  
Leaving California with the intent to avoid paying spousal support, after having notice that a court has made a temporary or permanent order
- 19. 273.5 - Abuse of spouse, former spouse, cohabitant, former cohabitant, parent of suspect's child, **fiancé, current or previous dating relationship**
- 20. 273.6 - Violation of a protective order (Cross ref to CCP 527.85 pg 8)  
**Typically family law or civil protective orders**
- 20. 273a - Child abuse / endangerment
- 21. 368 - Crimes against elder or dependent adults
- 22. 417 - Brandishing a weapon
- 23. 418 - Forcible entry into the home of another
- 24. 422 - Criminal threats
- 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. 603 - Forcible entry with damage to property
- 30. 646.9 - Stalking
- 31. 653m (a) - Obscene or threatening calls or electronic contacts
- 32. 653m (b) - Making repeated, annoying telephone calls or electronic contacts.
- 33. 653m (e) - 653m (a) and (b) are violated when a person knowingly permits any telephone or electronic communication under the person's control to be used for the purposes prohibited by these subdivisions.
- 34. 29825 - Restrained person possess or attempt to purchase firearm
- 35. 25400 - Possession of a concealed firearm
- 36. 18250 - Confiscation of firearms (Authority for seizure).
- 37. 25850(a) - Possession of a loaded firearm
- 38. 653.2 - Electronically distributing, publishing, e-mailing, or making available for download, personal identifying information of an electronic message of a harassing nature, about another person, with the intent to place the person in reasonable fear for his or her safety, or his or her immediate family's safety, and for the purpose of imminently causing the person unwanted physical contact, injury or harassment by a third party.
- 39. 528.5m - Knowingly and without consent, credibly impersonating another actual person through or on an Internet Web site or by other electronic means, for purposes of harming, intimidating, threatening, or defrauding another person.
- 40. 664 - Attempt of any of the above

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## ***FREQUENTLY USED TELEPHONE NUMBERS***

Adult Protective Services	408-975-4900 or 1-800-414-2002
Asian Americans for Community Involvement	408-975-2739
Bay Area Legal Aid	1-888-330-1940
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)
Community Solutions	877-363-7238
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
Family Violence Center	408-277-3700
Next Door Solutions to DV	408-279-2962
YWCA Silicon Valley Support Network Program	1-800-572-2782
Victim Notification Service	1-800-464-3568
SV Faces - Victim-Witness Assistance Program	408-295-2656
Maitri, Santa Clara County, South Asian Hotline	1-888-862-4874

## 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. Do you need an interpreter? What language?
  2. Where is the emergency? What address? What apartment number?
  3. Is this a gated Community? What is the pass code?
  4. Who am I speaking to (spell name)?
  5. Are you the victim? If no, what is your relationship to the victim?
  6. What has happened? Is it occurring now?
  7. Has anyone been injured? If yes, is an ambulance needed?
  8. 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, where are they?
  9. Does the suspect have current access to weapons? If yes, what kind? Where are they located?
  10. Is the suspect under the influence of drugs, alcohol or prescription medication? If yes, what?
  11. Does the suspect have any mental health issues?
  12. Are children present? How many? Ages?
  13. 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?
  14. Does the victim have a current restraining order?
  15. 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, 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. If the agency of jurisdiction cannot respond, the agency shall request a courtesy report be taken by the local jurisdiction and submitted as soon as practical to the agency of jurisdiction (where the domestic violence incident 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 (PC 836(d)).

PC 836(d) 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, emergency protective order, or elder abuse/dependent adult protective order, even when the crime did not occur in the officer's presence (PC 836). When a police officer makes an arrest for violating Penal Code sections 243(e) or 273.5, the peace officer is not required to inform the victim of their right to make a citizen's arrest. (PC 836)
4. In situations involving suspected mutual combat or where mutual protective orders have been issued under subdivision 10 (commencing with Section 6200) of the Family Code, prior to making an arrest, the officers shall make reasonable efforts to identify, and may arrest, the "dominant aggressor" involved in the incident without a warrant (PC 836 (3)).
5. Persons arrested for crimes specified in PC 1270.1, including the following crimes, cannot be released at the scene:
  - i. PC 243 (e)(1) - misdemeanor domestic violence
  - ii. PC 273.5 - domestic violence with corporal injury
  - iii. PC 422 – where the offense is punishable as a felony
  - iv. PC 273.6 or 166 – violation of a protective order if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party; or
  - v. PC 646.9 - stalking

These arrestees must be taken to jail, after which they may post bail. If they are to be released for more or less than the scheduled bail or on their own recognizance, a hearing must be held in open court pursuant to PC 1270.1. (Note: No cite and release). A judge or magistrate may, with respect to a bailable felony offense or a misdemeanor offense of violating a restraining order, increase bail without a hearing, provided an oral or written declaration of facts justifying the increase is presented under penalty of perjury by a sworn police officer.

6. If a victim only informs a law enforcement office 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 Department 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 or state of sobriety;
  - 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 21<sup>st</sup> birthday.
  - m. The complainant's immigration status.
  - n. Whether or not the suspect is present in a restraining order case.
  - o. If the suspect is a law enforcement officer, follow the procedures

outlined on page 42.

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. Interviews should be digitally recorded if possible. 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. (PC 18250

iii. There are now three additional instances when a search warrant can be requested and issued in a case (PC 1524).

1) At the premises occupied or under the control of, the person arrested for a domestic violence incident involving a threat to human life or a physical assault as provided in 12028.5 (b) above.

2) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody of, a person described in W&I 8102 (a). W&I 8102 (a) permits a peace officer to confiscate a firearm or other deadly weapon from a person who is detained for examination of his or her mental condition.

3) When the property or things to be seized include a firearm/ammunition that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms and or ammunition pursuant to Family Code 6389 (restraining order prohibiting abuse or excluding from dwelling) and:

a) the prohibited firearm and or ammunition is possessed, owned, or in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Family Code 6218 and,

b) the person has been lawfully served with that order, and

c) the person has failed to relinquish the firearm as required by law.

4) Consider contacting the on-call Deputy District Attorney in charge of search warrants.

iv. Provide appropriate level of aid to injured parties.

v. 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 strongly encouraged to audiotape these statements.
- ii. If a person being interviewed speaks a language other than English, the interview should be conducted in the individual's primary language by a qualified interpreter. An investigating officer may need to call for another bilingual officer fluent in that language, a telephone interpreter, a qualified civilian interpreter, or arrange for other certified professional translation services. Avoid using third party individuals (children, family members, neighbors, or bystanders) for interpretation except during exigent circumstances. Once the exigent circumstance has passed, the officer should utilize a qualified interpreter. Document the names and personal information of all witnesses and interpreters.
- iii. Document names and ages of all 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 AND children who may not reside in the home but whose parents are involved in the domestic violence incident.

(Note also that suspected child abuse must be cross-reported as required pursuant to PC 11166).

- iv. Ask victim and suspect if they have pain even if there are no visible injuries. Determine if there are indications of strangulation. Victims should be encouraged to seek medical attention if there has been strangulation even if there are no visible injuries.
- v. Ask the victim if she/he has been forced to have sex against her/his will.
- vi. Document and photograph the victim's, suspect's, and child's condition and demeanor including:
  - Bruises, cuts, marks, pulled hair or other injuries
  - Torn clothing.
  - Smearred make-up.
  - If victim is pregnant, a senior or juvenile.
  - If any of the parties are under the influence of alcohol, drugs, or prescription medication.

- Condition and disarray of the house.
- vii. **Inquire and fully investigate any allegations of previous reported or unreported acts of domestic violence or child abuse.**
- viii. Document size relation of victim and suspect.
- ix. **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).** Please refer to the dominant aggressor chart found on page 43 and attempt to make the following determinations:
- 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 or pattern of control by one of the parties against the other? Against other people?
  - Who has access to and control of resources?
  - Who has injuries that do not appear to be consistent with statements made?
  - 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?
- x. 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.
- xi. **The officer shall advise the victim of the availability of an EPRO and civil restraining orders in every case even if the**

**suspect is arrested and in criminal situations where the victim is fearful. The officer is required to request the protective order if the officer believes the person requesting the order is in immediate and present danger even if the victim does not want the order. The judge should hear your concerns and will make the decision whether or not the EPRO will issue. (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.

- xii. **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 PC 273.6 and 12021(g). This also includes protective orders issued for protection of elders/dependent adults, their family members, household members or conservator, 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)).
- xiii. 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.
- xiv. When serving any protective order, including but not limited to

criminal, civil and Emergency Protective Orders, law enforcement officers shall request the immediate surrender of firearms and ammunition rather than having to wait 24 hours for the person to self-surrender the firearms and ammunition. County Firearm Removal Protocols should be followed.

- xv. Note information concerning the victim's whereabouts for the next few days in the police report. Obtain any emergency/secondary contact information. This should include name, relationship, telephone number(s) and address.
- xvi. An officer may pursuant to their department's policies, conduct a Lethality Assessment for First Responders and put the victim in immediate contact with a domestic violence advocate.

3. The "protected person" cannot be in violation of his or her own protective order.

- a. 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.
- b. Document if the defendant has made any threats against anyone.

4. If suspect taken into custody:

- a. Document spontaneous statements by the victim and/or suspect.
- b. Prevent communication between suspect and victim/witnesses/children.
- c. Advise suspect of Miranda rights. The Miranda Admonition should be read to suspects in their primary language by a qualified interpreter.
- d. 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.
- e. 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.

## 5. Photographs

- i. Document and photograph the condition of crime scene (i.e., disarray of physical surroundings).
- ii. Ensure that the victim's and suspect's 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.
- iii. Encourage the victim to contact the investigating agency/follow-up investigator if further bruising occurs.

## 6. Firearms and Ammunition

- i. If necessary for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm/ammunition or other deadly weapon is present at the location and confiscate any firearm/ammunition or deadly weapon discovered pursuant to paragraph v. 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). A search warrant can also be obtained. (See Pg. 16 Section C, 2, a,iii).
- ii. 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.
- iii. Seize any firearm/ammunition 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 (18250 PC).
- iv. Seize any firearms possessed in violation of 29800(a) PC – convicted felons, or 29805 PC – other specified misdemeanor convictions.
- v. 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 sections 33850 and 33855 (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 (PC 33850, 33855, 34000). 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).

## 7. 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.
- v. If there is reasonable suspicion of child abuse or neglect, a cross-report must be made to DFCS and officers must follow the Joint Response Protocol.
- vi. Determine if a party had been strangled. When appropriate, call for immediate medical care and advise to seek medical care even if there is no visible injury.

## 8. 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 and document:
  - any injuries victim and suspect have sustained.
  - that victim received the Domestic Violence Resource Card per Penal Code Section 13701 (i).
  - past history of violence and check for existence of a restraining order.
  - prior domestic violence incidents at that address involving the alleged abuser or victim.
  - statements of victim, suspect, and all witnesses including children.

- physical evidence obtained.
  - probation/parole status.
  - whether alcohol, illegal drugs or prescription drugs were involved by the alleged abuser.
  - 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 AND children who may not reside in the home but whose parents are involved in the domestic violence incident.
  - 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.
  - if any pets were threatened, harmed, or there is evidence of animal abuse.
  - 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).
  - **any emergency/secondary contact information. This should include name, relationship, telephone number(s) and address.**
  - **all email addresses should be obtained.**
  - **all cellular and text messaging contact information should be obtained.**
  - **obtain all employment information.**
- iii. 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/ammunition.
  - The results of efforts made to locate and seize any unlawfully possessed firearms/ammunition, including requesting a search warrant (see pg 16).
- iv. 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.)

9. 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).
10. 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.
11. Officers shall furnish victims with the following information:
  - 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. **Victims should be encouraged to contact a shelter or counseling center in order to receive important information about safety issues and services that are available to them.**
  - 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.
  - The Attorney General's/SCCO card on Marsy's Rights (Prop 9)
  - Inform the victim of their right to request in writing that the landlord change the locks of their dwelling unit within 24 hours when they are the victim of domestic violence, sexual assault, or stalking. The victim must give the landlord a copy of the police report or restraining order (which was written in the last 180 days). The landlord must also give the victim a key to the new locks. The victim also has the right to change the locks if the landlord fails to do so, regardless of any provision in the lease to the contrary. The victim must then give the landlord a key to the new locks. If the victim and restrained person live together the victim can make the same request of the landlord in

writing but needs to provide the landlord with a copy of the restraining order (written within the last 180 days) that excludes the perpetrator from the tenant's dwelling unit (CC 1941.5, CC1941.6)

12. 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. **The victim should be asked to sign a medical release form.**
  - 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, 245 PC, assault with force likely to produce great bodily injury, or 243(d), battery with serious 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)?

- **Photograph injuries within 48 hours after the abuse.**

- 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.
- f. If there is a taking of a hostage or the barricading of a location by the perpetrator the officer is authorized to use an electronic amplifying or recording device to eavesdrop on and/or record, any oral communication within a particular location in response to the taking of the hostage or the barricading of a location if
- (1) the officer reasonably believes that an emergency situation exists involving the immediate danger of death or serious physical injury to any person; and
  - (2) the officer reasonably determines that the emergency situation requires that eavesdropping occur immediately; and
  - (3) there are grounds upon which an order could be obtained pursuant to 18 U.S.C. 2516(2) for the offenses specified in it (i.e. murder, kidnapping, or other crimes dangerous to life, limb, or property, and punishable by imprisonment for more than one year). PC 633.8.
- g. **A police officer may request a higher bail either orally or in writing for the defendant by making a declaration (i.e. probable cause affidavit) under the penalty of perjury setting forth facts and circumstances in support of his or her belief that the scheduled bail amount is not sufficient to ensure the defendant's appearance in court or to ensure the protection of a domestic violence victim (PC 1270.1).** The crimes specified are serious felonies, violent felonies, threatening a witness, domestic violence felonies, domestic violence misdemeanors, criminal threats, stalking and domestic violence restraining order violations if the defendant made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of the protected party.

## ***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 and medical release forms, 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.
      - 1. Follow-up interviews should be recorded, 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, and all reenactments should be video recorded.
      - 2. If on-scene language interpretation assistance was provided by a family member, neighbor, or other uncertified person, it is necessary to re-interview the victim or witnesses by a qualified interpreter such as a qualified bilingual officer, telephone/language line interpreter or a qualified civilian interpreter. Avoid using third party individuals (children, family members, bystanders or neighbors) to translate statements.
  - e. **When a victim has suffered an injury, follow-up photographs should be taken within 48 hours after the physical abuse and note changes to injuries. Ensure photographs are taken if injuries were not photographed by the field officer.**
  - f. Remind victim of their 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.

g. Contact the victim to inform him/her of the status of the case and the intended referral to the District Attorney or Juvenile Probation.

**h. Record names, addresses, and phone numbers of two close friends or relatives of the victim who may know the victim's whereabouts 6-12 months from the time of the incident.**

i. 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.

j. 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)

k. 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)

l. 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," 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).

C. A detective in charge of investigating a stalking or repeated harassment matter should contact the victim, introduce themselves, provide a case number to the victim and inform the victim that they should provide the case number whenever there are further reports of any harassing or stalking behavior.

## ***OBTAINING, SERVING AND ENFORCING RESTRAINING ORDERS***

Police officers involved in domestic violence investigations deal primarily with civil restraining orders. However, restraining orders are also issued in criminal courts at the time of arraignment and after a person has had their criminal case adjudicated.

### **There are three types of Civil Restraining Orders:**

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 Page 18, ix 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 time period, statutorily up to 21 days unless there is good cause and then 25 days, 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.

- 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, **credibly impersonating**, or disturbing the peace of the other person or other named family and household member(s) or pets. (as described in Family Law Code 6320)
  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 at the time of arraignment or upon the final adjudication of case. 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. **SERVING AND ENFORCING CIVIL RESTRAINING ORDERS:**

Law enforcement agencies may be requested to serve a protective order issued by the Family Law Court, Juvenile Dependency Court, or Civil Court. Typically these orders are served by the Santa Clara County Sheriff's Office or by a civilian process server.

The following is the general procedure that should be followed

when serving a protective order:

1. The Family Court, Juvenile Dependency Court, or Civil Court will send a copy of the protective order to the Sheriff's Office. The request will include a form indicating if there may be firearms in the possession of the restrained party. These cases should receive top priority by the agency serving the protective order.
  2. A law enforcement officer serving a protective order MUST request that all firearms and ammunition immediately be surrendered to the officer. (FC 6306)
  3. The officer may take temporary custody of any firearm or deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. (PC 18250).
  4. If the firearm is not immediately surrendered, a restrained party must provide proof of surrender of a firearm within 48 hours. An investigation for a violation of PC 273.6 should be conducted if the restrained party does not show proof of surrender of the firearm within 48 hours to the agency serving the order. The agency of jurisdiction should conduct this investigation after being notified by the agency which served the protective order.
  5. The investigating agency may consider obtaining search warrant pursuant to Penal Code section 1524(9) or Penal Code section 1524(11) to seize the firearm.
- D. Officers shall make arrests for any violations under the above sections that they observe. A victim still retains their 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). In situations where mutual protective orders have been issued under subdivision 10 (commencing with section 6200 of the Family Code) prior to making an arrest, the officer shall make reasonable efforts to identify, and may arrest, the dominant aggressor of the restraining order violation without a warrant. (PC 836 (3)).
- E. 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). 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. 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)). The officer should also be able to identify the conditions disclosed to the restrained party. Notification should be memorialized for future reference.
3. 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).
4. 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.

5. 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).

## **F. Conflicting Orders – What to Enforce**

### **1. January 1, 2014 – July 1, 2014**

The most recently issued criminal court protective order takes precedence over previous criminal court orders and over civil orders. Many 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.

The most recent civil order takes precedence over prior civil orders.

### **2. Effective July 1, 2014**

Family Code sections 6383 and 6405, as modified, will take effect on July 1, 2014.

The general rule is that the most restrictive order should be enforced if there is more than one protective order in effect. In other words, law enforcement should enforce a no-contact restraining order regardless if it is issued in criminal or civil court.

a. ***Emergency Protective Orders:*** If one of the orders is an Emergency Protective Order, and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.

b. ***No-Contact Order:*** A no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.

c. ***Criminal Order:*** If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any non-conflicting terms of the civil restraining order remain in effect and enforceable.

d. ***Family or Civil Order:*** If more than one family or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

G. When addressing any domestic violence incident, an officer shall advise the victim of the availability of an Emergency Protective Restraining Order (EPRO) or civil restraining order, in every case even if the suspect is arrested and in non-criminal situations where the victim is fearful. The officer

is required to request the protective order if the officer believes the person requesting the order is in immediate and present danger. (Refer to Page 18, ix.)

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 must 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. Even if the suspect is no longer at the scene, an EPRO request is appropriate. 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. **Upon obtaining an Emergency Protective Order, a Law Enforcement Officer Must take the following FOUR (4) actions (Family Code section 6723):**
  - a. **Serve the order on the restrained person. An officer is 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.**
  - b. **Give a copy to the Protected Person.**
  - c. **File a copy with the Court. 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.**
  - d. **Enter the order into the Department of Justice's computer database.**
  - e. **Copies of the EPRO should be distributed as follows:**

<b>Original</b>	<b>– Court</b>
<b>Yellow</b>	<b>– Restrained Person</b>
<b>Pink</b>	<b>– Protected Person</b>
<b>Goldenrod</b>	<b>– Law Enforcement Agency</b>
4. 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).

5. Persons subject to restraining orders are required to turn over all firearms/ammunition when told to do so by law enforcement. Refer to Firearms Relinquishment Protocol if necessary.
- G. 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.

- H. When an officer verifies that a restraining order has been issued, 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. Request the immediate surrender of firearms and ammunition 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.
  6. Request a search warrant. (See Pg 17, C, 2, iii).
- I. A restrained party may not own, possess or purchase a firearm or ammunition. (FC 6389) An investigating agency may need to:

1. Inquire if the restrained person possesses any firearms or ammunition.
  2. Investigate the results of efforts made to locate and seize any unlawfully possessed firearms or ammunition.
- J. All law enforcement agencies shall have the responsibility of receiving and storing firearms surrendered pursuant to a restraining order for residents in their jurisdiction.
- K. 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.
- L. A restrained party should get a “Property Removal Order” signed by a Judge in order to obtain and effectuate a civil standby order to remove personal property.

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## ***VICTIM ASSISTANCE***

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- 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, changing of locks and in cases of arrest, the follow-

up procedures in ensuing criminal or juvenile delinquency proceedings.

3. Advise the victim about the Victim's Rights Act of 2008, and provide the victim with a DOJ or Santa Clara County "Marsy's Card."
  4. 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).
  5. **Officer should inform the victim that the domestic violence resource card states 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 conducted by law enforcement authorities, prosecutors, or defense attorneys. Officers should also advise that a victim can contact one of the advocacy centers immediately.**
  6. Verify and enforce court issued protective orders pursuant to this protocol.
  7. Exercise reasonable care for the safety of the officers and parties involved. No provision of this instruction shall supersede that responsibility.
  8. 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 even if the victim is not deceased (FC 6228). A qualifying representative of a living victim is a parent, guardian, adult child, or adult sibling who presents to law enforcement identification and a signed authorization (if the victim is age 12 or older) by the victim allowing the family member to act on the victim's behalf; an attorney for the victim who presents to law enforcement identification and a written proof that he or she is the attorney for the victim; and a conservator of the victim who presents identification and a copy of the letters of conservatorship demonstrating that he or she is appointed conservator of the victim.
- 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.

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## ***MILITARY SUSPECTS***

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- 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.
- D. The Field Officer should determine the suspect's military status (active or reserve) and current duty station.

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## ***LAW ENFORCEMENT SUSPECTS***

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All domestic violence incidents involving peace officer suspects, as statutorily defined, should be handled according to this protocol.

Any field officer investigating an alleged incident of domestic violence involving a law enforcement suspect must notify an on-duty supervisor or watch commander as soon as possible. The investigating officer shall not leave the scene of the investigation until the on-duty supervisor or watch commander has been notified. 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 their 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.

Each law enforcement agency should follow its protocol for conducting an internal investigation regarding the incident.

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## ***JUVENILE SUSPECTS***

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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.

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## **TRAINING**

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- A. Each law enforcement agency shall conduct mandated domestic violence training for members of the agency per 13519(b) PC and 13730 PC. In addition, the Domestic Violence Council and its sub-committees, in partnership with the Santa Clara County Police Chief's Association and the District Attorney's office, will conduct a four (4) hour "Train the Trainer" course on the annual changes to this protocol in the spring of each year. In addition, topical and relevant training will supplement the training of the protocol, and can include, but is not limited to:
- victim's rights,
  - understanding victims and batterers,
  - understanding the effects of DV on children,
  - understanding how to determine the dominant aggressor,**
  - lethality assessments,
  - death review,
  - proper investigation techniques,
  - cultural and language sensitivity,
  - restraining orders,
  - firearms laws,
  - victim advocacy groups and resources,
  - DA and Court policies and procedures, and
  - Other relevant topics.
- B. 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.
- C. 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.

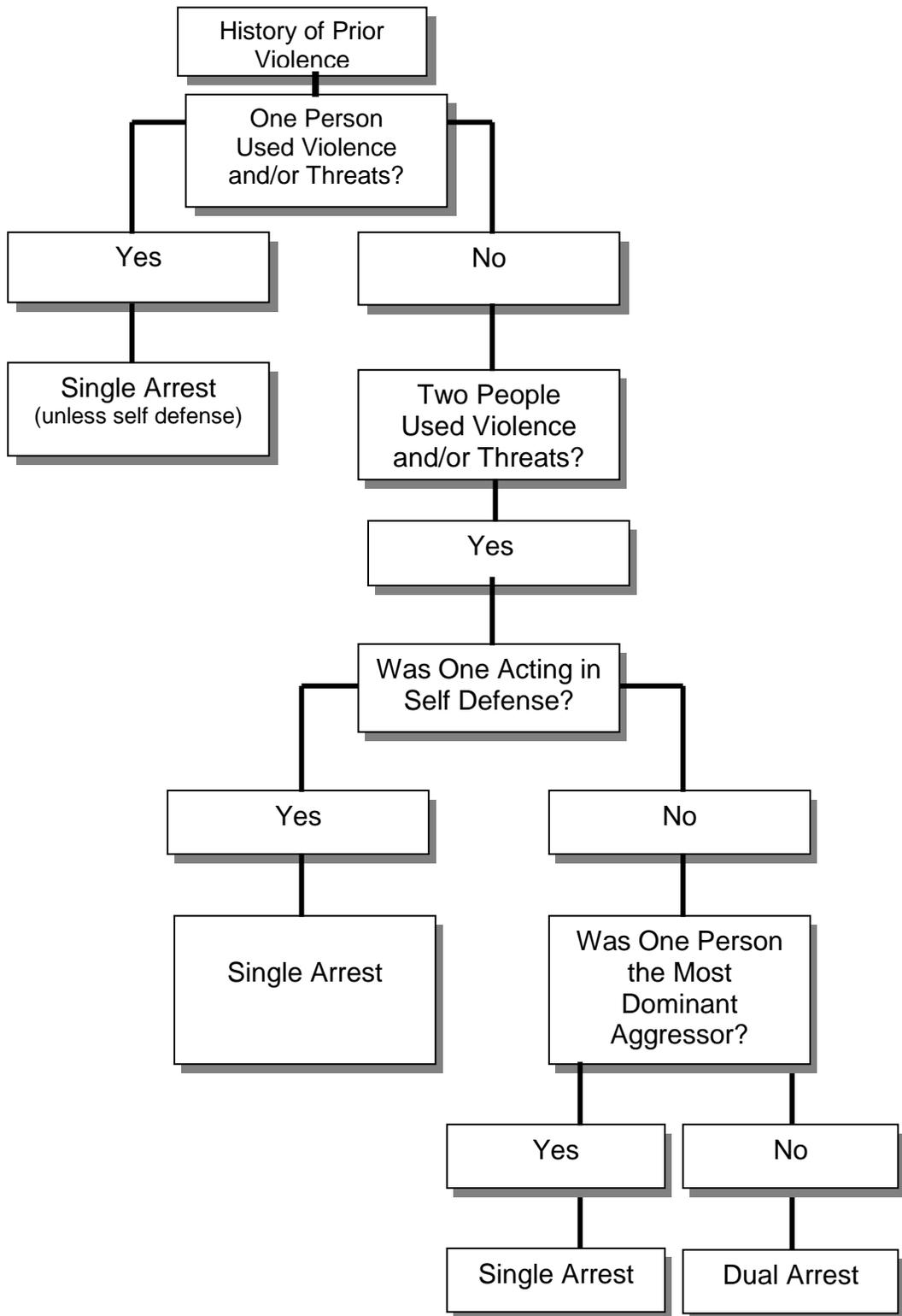
	Law Enforcement Response	Spouse/ Cohabitant Assault	Restraining Orders	Emergency Protective Orders	Confiscating Firearms	Domestic Violence Battery
Victim's Relationship to Defendant	PC 13700	PC 273.5	FC 6218	FC 6300	PC 12028.5	PC 243(e)
Spouse	X	X	X	X	X	X
Former Spouse	X	X	X	X	X	X
Cohabitant	X	X	X (a)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

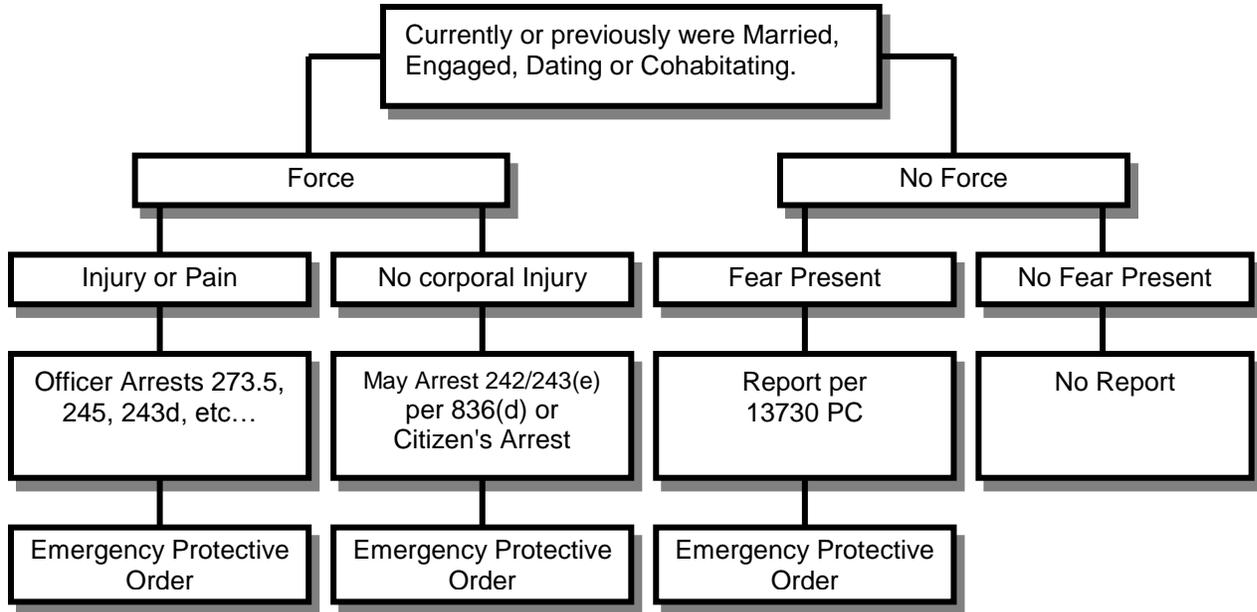
(c) Must be living together

## **DOMINANT AGGRESSOR “DECISION TREE”**



# DOMESTIC VIOLENCE FLOW CHART

Processes charted below apply to both adult and juvenile cases.



See pg. 19 for possible questions to determine the Dominate Aggressor.

## 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 do not 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  
SV FACES - Victim Witness Assistance Program  
(408) 295-2656

Who is eligible for the California Victim Compensation Program?

“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 (may include, but not limited to: parent, sibling, spouse, grandparents, grandchildren) who are affected emotionally by the crime. Persons who become primary caretakers of children as a result of a crime may also be considered derivative victims and minor witnesses who suffer emotional injury as a result of seeing or hearing a violent crime. This includes minors in close proximity to the victim.

What assistance is available through the Victim Compensation Program?

Temporary Lodging. When the need is immediate, police officers may recommend victims to seek lodging (hotel, motel) for later reimbursement.

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 upgrade 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 \$63,000 combined and shared by all derivative victims.

Job retraining for disabled victims.

Home or vehicle renovation or retrofitting for permanently disabled victims up to \$63,000.

Funeral and/or burial expenses up to \$5,000.

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

**Important:** Victims are encouraged to file a claim with the California Victim Compensation Program to establish eligibility whether or not there is a 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 Program and explain benefits available through this program.

During weekday business hours, police officers may call the Victim Witness Assistance Program 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 Law Enforcement Relocation Recommendation Form (form attached) by a police officer will help expedite requests for temporary lodging, permanent relocation, or a home security upgrade.

When temporary lodging (hotel, motel) is needed after business hours, a police officer should explain to a victim that reimbursement for temporary lodging expenses is possible through the Victim Witness Assistance Program. The officer should complete a Law Enforcement Relocation Recommendation Form (form attached), fax the form to the Victim Witness Assistance Program, and instruct the victim to call the Program as soon as possible during business hours to submit an application for assistance.

**Note:** A Letter of Recommendation may be made by any law enforcement officer, and can include a probation officer, a parole agent, a District Attorney or a Judge.

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

No, those ineligible for assistance include:

- Perpetrators or persons who committed the crime
- Persons who were 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, a copy of the crime report has been received, and all other relevant documents are submitted, the Victim Witness Assistance Program may issue a reimbursement check for qualifying expenses on the same day, if there is an immediate need or within 15 days.

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

The Victim Witness Assistance Program 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 California Victim Compensation program.

**If a victim receives benefits through the California Victim Compensation 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 misspends money that was provided for a specific purpose, such as a permanent relocation.

**What are the time limitations for seeking assistance through the California Victim Compensation Program?**

Effective January 1, 2013, victims must establish eligibility for assistance within three year of the incident date. Late applications may be allowed under some restricted good cause guidelines. Once a victim establishes eligibility, the victim may request assistance at anytime thereafter.

**Is temporary lodging and permanent relocation both available to a victim?**

Yes, a victim may request temporary lodging and assistance with permanent relocation. However, assistance provided for temporary lodging is included in the victim's maximum relocation benefit of \$2,000 per qualifying family or household member.

For additional information or to apply for assistance, contact:

SV FACES - Victim Witness Assistance Program:  
777 North 1st Street, Suite 220  
San Jose, CA 95112  
Phone: (408) 295-2656 Fax: (408) 289-5430  
[www.svfaces.org](http://www.svfaces.org)

## Law Enforcement Relocation Recommendation Form

This form is to help law enforcement officers document a threat to the personal safety of a crime victim seeking relocation benefits from the Victim Compensation Program (VCP) pursuant to GC 13957(a)(8). This form may be used with or without a letter from law enforcement. If a letter is submitted without this form, it must be on the law enforcement agency's letterhead and contain the information requested on this form.

<b><u>Victim Information</u></b>	
Name:	SSN:
Address:	
City:	State: Zip:
Phone:	VCP Application ID (if known):
<b><u>Crime Information</u></b>	
Crime Date:	Crime code:
Crime Report Number:	Has the Perpetrator been convicted?
Is the Perpetrator incarcerated?	If yes, what is the expected release date?
Please describe the nature of the threat to the victim's personal safety, if any. Use additional paper if necessary. (You may include information about the nature of the crime, past history of assault or stalking, verbal threats, etc.):	
In your opinion, is/was it necessary for the victim to relocate for his or her personal safety? YES <input type="radio"/> NO <input type="radio"/>	
<b><u>When Completed by Law Enforcement</u></b>	
Law Enforcement Officer providing the information (printed name):	
Agency name:	Contact phone number:
Signature:	Date:
<b><u>For Victim Witness Center use only:</u></b>	
If form is not fully complete, contact the LE agency and complete the missing information in red ink and complete the sections below	
Law Enforcement Officer providing the information:	
Law Enforcement Agency Name:	Contact number:
VW Center Advocate completing this form:	Contact number:
VW Center name and code no.:	Date:

## 2014 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.

**For a current copy of this Protocol, the Firearms Relinquishment Protocol and other DV related resources, visit <http://dvc.sccgov.org>**

**Victim's rights.** On November 4, 2008, state voters approved Prop 9, the Victims' Bill of Rights Act of 2008: Marsy's Law. This measure amended the California Constitution to provide additional rights to victims. This card contains specific sections of the Victims' Bill of Rights and resources for the victim. (See attached).

**Law Enforcement Relocation Recommendation Form** –Trainers should provide multiple copies or place this form on an accessible computer system for officers and detectives to use. All previous copies should be shredded.

**Annual Training** - the Domestic Violence Council and its sub-committees, in partnership with the Santa Clara County Police Chief's Association and the District Attorney's office, will conduct a four (4) hour "Train the Trainer" course on the annual changes to this protocol in the spring of each year. In addition, topical and relevant training will supplement the training of the protocol.

**Lethality Assessment Tool** - Agencies are encouraged to use some form of lethality assessment in dealing with domestic violence cases. Model forms can be obtained from the Los Gatos/Monte Sereno PD or SCCO Probation Department. Please see a copy of the tool at the end of this protocol.

**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 Firearms Relinquishment Protocol.

**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.

**EPROs 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 should be notified. Considerations should be given to preparing a written affidavit or having further discussions with the magistrate.

**Children residing in or visiting the home.** List in the police report the 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 AND children who may not reside in the home but whose parents are involved in the domestic violence incident. 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.

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.

Civil Code 1941.5 requires a landlord to change the locks of a domestic violence, sexual assault, or stalking victim's dwelling unit upon written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report (each written within the last 180 days) that names the tenant as a domestic violence, sexual assault, or stalking victim. Also requires the landlord to give the victim a key to the new locks. If the victim changes the locks he/she must also give the landlord a new key.

This section also applies when the restrained person is a tenant of the same dwelling unit (Civil Code 1941.6). The victim must give written notice to the landlord and a copy of the restraining order (written within the last 180 days) that excludes the restrained person from the tenant's dwelling unit.

A victim is permitted to change the locks if the landlord fails to do so, regardless of any provision in the lease to the contrary.

## SANTA CLARA COUNTY DOMESTIC VIOLENCE LETHALITY ASSESSMENT FOR FIRST RESPONDERS

Date:	Case #:
Officer:	Agency:
Victim:	Offender:
Victim's Safe Numbers to Call: Home: Cell: Work:	Would you like to provide names/phone numbers of 2 people that can reach you? 1. 2.
Is the victim monolingual/limited English proficient? If yes, what language do they speak?	
<input type="checkbox"/> Check here if the victim did not answer any of the questions.	
<b><i>If the victim answers YES to any of questions 1-3, please call the appropriate domestic violence crisis hotline and have the counselor speak with the victim.</i></b>	
1. Has your current or previous partner ever used a weapon against you or threatened you with a weapon?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
2. Have they threatened to kill you or someone else?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
3. Do you think your current or previous partner might try to kill you?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
<b><i>If the answers to the above questions are NO but at least 4 of the questions below are YES please contact the hotline.</i></b>	
4. Do they have a gun or can they easily get one?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
5. Have they ever tried to choke/strangle you?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
6. Are they violently or constantly jealous or try to control most of your daily activities?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
7. Have you left or separated from your partner after living together or being married?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
8. Are they unemployed?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
9. Have they tried to commit suicide?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
10. Do you have a child that he knows is not his?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
11. Do they follow or spy on you or leave threatening messages?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer
12. Is there anything else that worries you about your safety? If yes, what concerns do you have?	
<b><i>Officers are encouraged to call the hotline whenever they believe the victim is in a potentially lethal situation regardless of the victim's responses to the questions above.</i></b>	
Check one: <input type="checkbox"/> Victim screened in based on responses <input type="checkbox"/> Victim did not screen in <input type="checkbox"/> Victim screened in based on the belief of officer	
Did the victim speak with the hotline counselor? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>NORTH COUNTY HOTLINE:</b> <b>YWCA Support Network</b> <b>1-800-572-2782</b> <b>FAX: 408-295-0608</b>	<b>CENTRAL COUNTY HOTLINE:</b> <b>Next Door Solutions</b> <b>408-279-2962</b> <b>FAX: 408-441-7562</b>
<b>SOUTH COUNTY HOTLINE:</b> <b>Community Solutions</b> <b>1-877-363-7238</b> <b>FAX 408-782-9469</b>	
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<b>PLEASE FAX THIS DOCUMENT TO THE APPROPRIATE DOMESTIC VIOLENCE AGENCY</b>	

### **Purpose of the Lethality Assessment:**

This evidence based Lethality Assessment form is a user-friendly, straightforward instrument that predicts danger and lethality in domestic incidents between intimate or former intimate partners to a high degree. Research shows that **only 4% of intimate partner murder victims ever used domestic violence services**. This Assessment encourages victims in high danger to seek domestic violence program services to prevent serious injury or death.

Step 1 – Fill out the Assessment Form with the victim.

Step 2 - If any of the first three answers are yes, ask the victim to call the agency's local advocacy agency and ensure they make contact. You may need to dial the number for them if they are upset.

Step 3 – If they talk to someone, check the box that they spoke to a hotline counselor.

Step 4 – If they answer yes to one of the first three questions but do not want to speak to a hotline counselor right away, note the victim's safe phone numbers to call and fax the Lethality Assessment to the appropriate DV organization at the bottom of the form.

Step 5 – If the victim answers yes to the first three answers, or a significant number of follow up questions are yes, but they refuse to speak to a hotline counselor advise the victim that in your opinion, he/she is in high danger for lethality and you highly encourage them to seek DV program services. Fax the Lethality Assessment to the appropriate DV organization at the bottom of the form.

Step 6 – Provide them with the DV resource card, case number and Marsy's card as per the DV protocol.

Step 7 – Please fax all Lethality Assessment forms to the appropriate DV organization listed on the bottom of the form regardless of the answers or whether or not the victim answered any of the questions.