

SANTA CLARA POLICE DEPARTMENT GENERAL ORDER 91.1

DOMESTIC VIOLENCE

ISSUED APRIL 2006

91.1.1 Purpose and Definitions

Introduction

The purpose of this section is to set forth policies and procedures for domestic violence cases and temporary restraining orders in compliance with Penal Code Section 13701. These guidelines do not address child abuse cases or cases of domestic dispute where there is no domestic violence or criminal violation. All officers shall follow these guidelines, which have been distributed County-wide as the 'Domestic Violence Protocol for Law Enforcement'. Please see protocol. [2009DomesticViolenceProtocolFinal \(2\).pdf](#)

Definitions:

"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).

"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).

"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.

"Dating Relationship" means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.

"Deadly Weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020PC (12028.5(3)PC).

"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.

"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

91.1

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.

“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 (13701(b)PC).

"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 dependant 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) The issuance of an ERPO is not precluded by an arrest.

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

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

"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.

“Restraining Order” is an order, which requires a person to refrain from doing a particular act or acts. It is issued by the Court, with or without notice, to the person who is to be restrained. A restraining order will remain in effect for a set period of time, which is stated on the face of the order. If no time period is stated on the face of the order, the effective time period is 3 years.

“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 (646.9PC).

"Stay Away Order" is a type of restraining order in a criminal, juvenile delinquency (a Juvenile Probation order can be in effect until the offender’s 21st birthday) or civil case involving domestic violence where there is a likelihood of harassment or violence toward the victim by the defendant. A Stay Away Order typically orders a person to stay away from the victim and/or other specified locations. A Penal Code Stay Away Order may remain in effect as long as the defendant is under a court’s jurisdiction, including any sentence or probationary period. Stay Away Orders are issued pursuant to Penal Code section 136.2 while a criminal prosecution is pending. Orders may also be issued pursuant to the Civil Harassment Prevention Act (Code of Civil Procedures Section 527.6),

Workplace Violence Safety Act (Code of Civil Procedure Section 527.8), Uniform Parentage Act (Family Code 7710 and 7720, Domestic Violence Prevention Act 6200 – 6389 Family Code) or in connection with a dissolution, legal separation, or annulment (Family Code Sections 2045, 2047, and 2049). Civil Restraining Orders may be issued for a maximum of 3 years, but may be renewed for the period set forth in the order. Restraining Orders may be issued for a maximum of 10 years pursuant to 646.9(h) PC. 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 section (a), (b) and (c) of this section.

"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.

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

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

91.1.2 General Provisions

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.

Officers shall treat all alleged domestic violence as alleged criminal conduct. Officers shall treat requests for police assistance and criminal investigation from victims of domestic violence the same as all other requests for assistance in cases where there has been physical violence or the threat thereof.

Even though crisis intervention is highly valuable, it should not be substituted for appropriate law enforcement actions in domestic violence cases where obvious physical violence has occurred.

91.1.3 Patrol Response/Investigation

Enforcement of Laws in Domestic Violence Incidents

Felony:

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.

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.

91.1

Any exceptions to this pro-arrest provision must be made by a supervisor or Watch Commander who is present at the scene. Reasons for the exception shall be included in the investigating officer's report documenting the incident.

Misdemeanor:

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.

When a misdemeanor domestic violence assault or battery has been committed outside the officer's presence, and the victim is the suspect's spouse, former spouse, cohabitant, former cohabitant, fiancée, parent of his or her child, or a person with whom the suspect has had or is having an engagement relationship or a current or prior dating relationship, a peace officer may arrest the suspect without the need of a private person's arrest. This will also apply if the assault or battery involved a person age 65 or older where the elderly victim is related to the suspect by blood or legal guardianship (836.5PC).

836(d) PC, effective 1/01/01, now makes it possible for officers to arrest when the crime does not take place in their presence where both of the following circumstances apply:

- 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.
- 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.

An arrest shall be made if the officer has probable cause to believe that the suspect has violated a domestic violence protective order, restraining order, stalking emergency protective order, or elder abuse protective order, even when the crime did not occur in the officer's presence (836PC).

If a victim complains only of a prior unreported incident and has no complaint of pain or physical injury at the time of the current report, the officer shall make a good faith effort to inform the complainant of his/her right to make a private person's arrest (arrest must fall within the statute of limitations). If the complainant chooses not to exercise that right, the officer shall submit a report to the District Attorney or Juvenile Probation for review.

The existence of the elements of a crime or the willingness of the victim to make a private person's arrest shall be the sole factors that determine the proper method of handling the incident. The following factors, for example, are not to influence the officer's decision to arrest in domestic violence incidents except as they relate to the elements of the crime:

- The relationship or marital status of the suspect and the victim, i.e., not married, separated, or pending divorce;
- The fact that the victim and suspect are of the same gender;

- Whether or not the suspect lives on the premises with the complainant;
- The existence or lack of a temporary or other restraining order;
- The potential financial consequence of arrest;
- The complainant's history or prior complaints;
- Verbal assurances that violence will cease;
- The complainant's emotional state;
- Injuries are not visible;
- The location of the incident, i.e., public or private;
- Speculation that the complainant may not follow through with the criminal justice process or that the arrest may not lead to a conviction.
- The suspect is a juvenile. Officers should be aware that Juvenile Court orders can be in effect until the offender's 21st birthday.

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

In determining whether prior violence has occurred, the officer should interview the victim, suspect, children, roommates, and any available neighbor witnesses. A warrant check, Domestic Violence Restraining Order System (DVROS) check, criminal history check and Juvenile Probation status check should also be conducted, if possible.

An officer shall make no statements that 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:

- At the time of the arrest, the officer had reasonable cause to believe that the arrest was lawful,
- 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,
- The arrest was made pursuant to a charge, upon reasonable cause, of the commission of a felony by the person to be arrested (PC847).

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.

Investigation of Domestic Violence Cases

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.

The following steps should be included in an officer's investigation and subsequent report:

91.1

Arrival at scene

Determine location and condition of victim and suspect, and children.

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.

Provide appropriate level of aid to injured parties.

Separate suspect, victim, and witnesses (Victim should be out of suspect's view).

Preliminary investigation

Interview everyone separately - victim, suspect, children, other witnesses. Officers are encouraged to audiotape these statements. If the victim speaks a language other than English, call for another officer conversant in that language or arrange for other professional translation services. Avoid using children to translate statements. Document the names and personal information of all witnesses and translators. Note information concerning the victim's whereabouts for the next few days.

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

(Note also that suspected child abuse must be cross-reported as required pursuant to PC 11165, 11166 and 11172(a).

Ask victim and suspect if they have any pain even if there are no visible injuries. Determine if there are indications of strangulation. Ask the victim if he/she has been forced to have sex against his/her will.

Document victim's, suspect's, and child's condition and demeanor.

- Document torn clothing.
- Document smeared make-up.
- Investigate the evidence of injury.
- Document if victim is pregnant.

Document and photograph disarray in house.

Document suspect's symptoms of use/influence of alcohol or controlled substances.

Document size relation of victim and suspect.

In apparent “mutual combat” situations, try to determine who was the dominant aggressor (dual arrests shall be discouraged, when appropriate, but not prohibited per Penal Code Section 13701):

- Was one party in actual fear of the other?
- Did one party escalate the level of violence, i.e., did one party react to a slap by beating the other party?
- Was one party physically larger and stronger than the other?

- Was there a history of violence by one of the parties against the other? Against other people?
- Was one party usually the aggressor?
- Did any injuries appear to be defense wounds?

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 suspect was in court when the order was issued). If no copy is available, contact the Department of Justice Domestic Violence Protective Order Registry (Domestic Violence Restraining Order System DVROS/CLETS) to verify the existence of the order (Family Code Section 6383(d)). If there is no order, inform victim how to get an order. Officers should be aware that the most recently issued criminal court order takes precedence over previous criminal court orders and over civil orders. However, most criminal court orders will contain a provision that all juvenile and family court orders are to be followed. It is also permissible for a criminal court order to be modified (made more restrictive) by the Family Court. All family or juvenile court custody or visitation orders made after a criminal protective order has been issued pursuant to P.C. 136.2 must include a reference to, and acknowledge the precedence of enforcement of, any criminal protective order. Any criminal protective order takes precedence over any other order except as stated below regarding EPRO's.

Advise victim of Emergency Protective Order (EPRO), and ask if one is desired (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.

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 the victim has an extra copy of the order, serve on the suspect and fill out proof of service. If the officer does not have an additional copy of the order he or she shall give verbal notice of the terms and conditions of the order. This shall constitute service and notice for purposes of P.C. 273.6 and 12021(g). This also includes protective orders issued for protection of elders, stalking victims and workplace violence situations (CCP 527.8, FC 6383 and W&I 15657.03). Within one business day of service, the law enforcement officer serving the protective order shall submit the proof of

91.1

service (via Records) 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)).

If victim has proof that a copy of the restraining order was mailed to the respondent and he/she was present in court when the initial order was made, this is good service if the only change in the new order is the expiration date.

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

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.

If suspect taken into custody

- Document spontaneous statements by the victim and/or suspect.
- Prevent communications between suspect and victim/witnesses/children.
- Advise suspect of Miranda rights.
- Conduct interview and document statements of the suspect. If a "violent felony" is alleged, the interview of the suspect will be electronically recorded as required in the Santa Clara County Police Chief's Association "Recording of Violent Suspect Statement Protocol." See 667.5(c) for a listing of violent felonies.
- 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.

Evidence, Firearms, and other Deadly Weapons

Document condition of crime scene (disarray of physical surroundings).

Photograph crime scene, if applicable. Encourage the victim to contact the investigating agency/follow-up investigator if further bruising occurs.

Ensure that victim and suspect's visible injuries are photographed. Make sure that the photos taken preserve the dignity of the victim as much as possible, and also photograph their faces for identification purposes.

If necessary for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm or other deadly weapon is present at the location and

confiscate any firearm or deadly weapon discovered pursuant to the paragraph below, and note this in the report (13730 PC).

Check in the Consolidate 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.

Seize any firearm or other deadly weapon located in plain sight, discovered pursuant to a consensual search or other lawful search, as necessary for the protection of officers or other persons present (12028.5 PC).

Seize any firearms possessed in violation of 12021(a) PC – convicted felons, or 12021(c) PC – other specified misdemeanor convictions.

If a firearm is confiscated, issue a receipt to the owner describing the firearm and listing the serial number or other known identifier. Explain that the weapon will be returned within five business days after the owner or possessor demonstrates compliance with PC 12021.3 (must apply to the State Department of Justice for a determination of whether he or she is eligible to possess a firearm). If the weapon is seized as evidence of a crime or the owner of the firearm is subsequently prohibited from possession by a restraining order, the firearm will not be returned (12028.5 PC).

Medical treatment

Obtain authorization for release of medical records from victim, if possible.

Document extent of injuries/treatment, if known.

Obtain names, addresses, and phone numbers of fire, ambulance or paramedic personnel treating the victim, if possible.

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.

Completing Crime Report

Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim / suspect.

Ensure that elements of all involved crimes are included in the report.

Document any injuries victim / suspect have sustained.

Document that victim received referral per Penal Code Section 13701(i).

Document past history of violence and check for existence of a restraining order.

91.1

Document prior domestic violence incidents at that address involving the alleged abuser or victim.

Document statements of victim, suspect, and all witnesses including children.

Document physical evidence obtained.

Document probation/parole status.

Document whether alcohol/drugs were involved by the alleged abuser.

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

Document if any pets were threatened, harmed, or there is evidence of animal abuse.

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

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

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

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 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).

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).

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.

Officers shall furnish victims with a "Domestic Violence Resource Card" which includes the phone number for the Victim/Witness Assistance Center in Santa Clara County (408-295-2656)

and the toll free number for the California Victim Compensation and Government Claims Board (800-777-9229). The card shall also include the names and phone numbers of shelters or counseling centers and state that domestic violence or assault by a person who is known to the victim or who is the spouse of the victim is a crime. The California Victim Compensation and Government Claims Board can authorize a cash payment or reimbursement to an adult victim of domestic violence for specified expenses. Counseling funds for children may also be available for those identified in the police report. The card shall also contain the statement that the victim has the right to have a domestic violence counselor 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 shall provide all crime victims with the tri-fold brochure that includes the Victim's Bill of Right's ([Marsy's Law](#)), Sexual Assault Victim Information and Domestic Violence Information.

When completing a Probable Cause Affidavit or Juvenile Contact Report, officers will ensure that the following information is provided:

- The officer shall complete all applicable sections of the Affidavit or Juvenile Contact Report forms, including non-narrative portions.
- 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?
- 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.
- Strangulation attempts shall be explicitly described. It should be noted whether hands or a ligature device was used. The force of the attempt should be detailed. If present, consider additional charges of 664/187 PC, attempted murder or 245 PC, assault with force likely to produce great bodily injury.
 - Did the victim lose consciousness?
 - Does the victim have difficulty breathing or swallowing?
 - Are there any marks visible on the victim's neck?

91.1

- 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)?

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

91.1.4 Follow-Up Investigation

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.

Follow-up investigation should be geared to the requirements of the District Attorney's Domestic Violence Unit.

Follow-up investigations should include the following:

- Verify the inclusion of all investigative steps described above regarding patrol officer response/investigation;
- Obtain medical records, if available;
- Preserve a copy of the 911 tape involving the original call for assistance, as needed;
- Interview / re-interview the victim, witnesses, and suspect, as necessary. Remind victim of his/her right to have a domestic violence counselor and a support person of their choosing present at the interview. If the presence of the person would be detrimental to the purpose of the interview the support person can be excluded. If a "violent felony" is alleged, the interview of the suspect will be electronically recorded as required in the Santa Clara County Police Chief's Association "Recording of Violent Suspect Statement Protocol." See 667.5(c) for a listing of violent felonies.
- If on-scene language translation assistance was provided by a family member, neighbor, or other uncertified person, it may be necessary to re-interview the victim or witnesses by a court-certifiable translator;
- Contact the victim, to inform him/her of the status of the case and the intended referral to the District Attorney or Juvenile Probation;
- Photograph injuries to the victim (irrespective of whether photos were taken by the responding officer);
- Record name, address and phone number of two close friends or relatives of the victim who will know the victim's whereabouts 6-12 months from the time of the incident;
- Conduct a complete CJIC, CII and NCIC criminal history check of the suspect. When appropriate, conduct a Juvenile Probation records check. Also conduct queries on the suspect in the Automated Firearms System (AFS), Prohibited Armed Persons (PAP), Domestic Violence Restraining Order System (DVROS), and the Violent Crime Information Network (VCIN). Attach results of these checks to the investigator's report.
- 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 Child Protective Services (CPS) social worker. Law

enforcement agencies without a designated on-site CPS social worker shall fax a copy of the incident or crime report to CPS at (408) 975-5851. (Note also that suspected child abuse must be cross-reported as required by 11165, 11166 and 11172(a) PC.) (Child Protective Services, 408 299-2071).

- Suspected elder or dependent adult abuse must be cross-reported as required by 15610, 15630 and 15640 WI. (Adult Protective Services, 408-928-3860 or 800-414-2002.)

Follow-up investigation shall not consider the desire of the victim to “drop” charges in assessing whether the case should be submitted to the District Attorney’s Domestic Violence Unit.

Investigative personnel handling domestic violence cases should analyze each domestic violence case by asking the following questions:

- Can the elements of the offense be established without the testimony of the victim?

If the answer is “yes,” the case should be submitted to the District Attorney for review, irrespective of the wishes of the victim.

If the answer is “no,” the next question should be considered.

- Will the victim come to court and tell the truth if subpoenaed to do so by the District Attorney?

If the answer is “yes,” the case should be submitted to the District Attorney for review.

If the answer is “no,” can further investigation locate additional witnesses or evidence which would allow prosecution without a cooperative victim, such as:

- witness statements;
- prior inconsistent statements;
- physical evidence;
- content of 911 tape;
- circumstantial evidence;
- defendant’s statements;
- spontaneous statement.

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

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

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 and the victim should be informed that the decision to proceed is out of his/her control.

91.1

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.

91.1.5 Enforcement of Restraining Orders

Domestic violence restraining orders will be enforced by all law enforcement officers. Under Penal Code Section 273.6(a), it is a misdemeanor to intentionally and knowingly violate any of the protective orders issued pursuant to the Uniform Parentage Act, Family Code, the Domestic Violence Prevention Act, the Workplace Violence Safety Act or the Civil Harassment Prevention Act. Penal Code Section 273.6(d) makes it a felony to violate a restraining order, with violence or threat of violence, after suffering a prior conviction for violation of Penal Code Section 273.6 within 7 years. The elements of the crime require willful disobedience of the terms of the order. Proof of Service shows that the suspect has the needed knowledge to be in violation of the order. Verbal notice by the officer of the terms of the Order is sufficient notice for the purpose of Section 273.6 PC (Family Code Section 6383(e)). The Department 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 enforceable, in spite of the acts of the victim or suspect, 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:

- An order enjoining any party from directly or indirectly contacting, telephoning, contacting repeatedly by mail with the intent to harass, molesting, attacking, striking, threatening, stalking, sexually assaulting, battering, harassing, or disturbing the peace of the other party or other named family and household member.
- An order excluding one party from the family dwelling or the dwelling of the other party or other named family and household member.

An order enjoining a party from specified behavior which the court determined was necessary to effectuate the orders.

Stay Away Orders are typically ordered in domestic violence cases as a condition of a supervised own-recognition release and will be enforced by all law enforcement officers. This order is valid until the order is terminated or modified, at which time police agencies are once again notified via the SLETS System. Pretrial Services also takes responsibility for victim notification.

Information in support of the need for a Stay Away Order should be included by the police officer in the Probable Cause Affidavit.

Officers shall make arrests for any violations under the above sections that they observe. A victim still retains his/her right to make a private person's arrest. A misdemeanor warrantless arrest shall

be made absent exigent circumstances if an officer has reasonable cause to believe that the person violated a restraining order outside his/her presence (836(c)(1) PC), (13701 P.C.).

If, at the scene of a domestic violence 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.

Upon request, law enforcement agencies shall serve the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody (13710(c) PC). Verbal notice by the officer of the terms of the order is sufficient. However, in order to successfully prosecute a later violation of the order, the officer who delivered verbal notification must be able to testify that the subject notified was positively identified as the restrained person (FC 6383(e)). Once the order is served, an arrest may be made if the suspect refuses to comply with the terms of the order.

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).

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.

If a violation of a restraining order is alleged, the officer shall request of Records 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 #20-05-BCIA, dated April 4, 2002).

A restraining order issued in a criminal case of domestic violence has precedence over any conflicting civil orders affecting the parties, unless it is an EPRO, which is more restrictive. (PC 136.2(h)(2))

When responding to any domestic violence incident, an officer shall advise the victim of the availability of an Emergency Protective Restraining Order (EPRO).

In arrest situations, the following procedures should be implemented:

91.1

- When a person is arrested based upon an allegation of a recent incident of abuse or threat of abuse or in danger of stalking, and the officer can assert reasonable grounds to believe that a person is in immediate and present danger of domestic violence, or child abuse, or where a child is in immediate and present danger of being abducted by a parent or relative, which would require restraint if the defendant were to be released from custody (e.g., bail, OR, 849, or no PC found), then the police officer shall be required to explain the EPRO to the victim and ascertain if the victim desires one. In extraordinary circumstances where the officer fears for the safety of the victim, but the victim does not desire an EPRO, an investigating officer may request one on behalf of the victim.
- If an EPRO is appropriate, the application should be completed. During normal court hours the police officer should call the Family Court at 299-8582 and ask to speak to the Supervising Judge. If no answer, call 299-7365 or 299-8523 and ask for a judicial officer. During nighttime hours, weekends, and holidays the police officer should call County Communications at 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. If the Duty Judge is not available, the officer should ask to speak to another Judge.

Police officers should be advised that EPRO's are not provided at the jail nor is a Stay Away Order automatically issued.

An officer should not request a Stay Away Order or an EPRO on the probable cause affidavit. If he/she feels a restraint is required upon defendant's release, follow the EPRO procedures. Information in support of the need for restraint should be included in the probable cause affidavit.

The functions of each order do not necessarily overlap. The Supervised Own Recognizance Order provides a mechanism for supervision of a criminal defendant 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.

In a non-arrest situation where the EPRO is desired, the officer should complete an application and contact the Duty Judge or Family Court for evaluation and issuance of the EPRO.

If issued, EPRO legislation requires an officer to make a reasonable attempt to serve the restrained party. If he or she is present or can be readily contacted, serve the order and complete the Proof of Service on the form. Give the restrained person's (canary) copy to him or her. Document whether and how the order was served in the police report.

Once an EPRO is issued, it is the responsibility of the department to promptly file the EPRO with the Family Court at 170 Park Center Plaza, San Jose, CA 95113.

A judicial officer may 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 646.91).

Officers shall enforce out-of-state protective or restraining orders that are presented to them if:

- The order appears valid on its face.
- The order obtains both parties' names.
- The order has not yet expired.

(Full Faith and Credit Provision of the Violence Against Women Act, Family Code 6380.5).

Officers should check CLETS to determine if the order has been registered in California. If the order is not registered, an attempt should be made to contact the foreign jurisdiction or its registry for confirmation of validity. If validation cannot be substantiated, you can contact the Duty Judge for an EPRO, but the out-of-state protective or restraining order must still be enforced if it meets the above criteria.

If not registered in California, parties should be advised to immediately register the order through the Family Court.

91.1.6 Victim Assistance

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.

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.

In all domestic violence incidents, an officer shall:

- 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.
- Explain options available to the victim including the private person's arrest process, temporary restraining orders, Emergency Protective Restraining Orders, and in the case of arrest, the follow-up procedures and ensuing criminal proceedings.
- Advise the victim of available community resources and the State Victim Assistance Program. (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 "Victims of Domestic Violence Card" which includes the toll free number for the California Victims' Compensation Program. The card shall include the names and phone numbers of shelters or counseling centers, and state that domestic violence or assault by a person who is known to the victim or who is the spouse of the victim is a crime. The card will also include an explanation of the Santa Clara County Victim Notification Service). It will also state that the victim has the right to have a domestic violence counselor and a support person of the victim's choosing present at any follow-up interview by law enforcement authorities, prosecutors or defense attorneys.

91.1

- Verify and enforce court issue protective orders pursuant to this protocol.
- Exercise reasonable care for the safety of the officers and parties involved. No provision of this instruction shall supersede that responsibility.

91.1.7 Military Suspects

All domestic violence incidents involving military suspects shall be handled according to this law enforcement protocol if:

- The incident occurred outside the boundaries of a military facility; or
- Local law enforcement agencies are called to assist in handling such an incident.

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.

No informal agreements with military police or a suspect's commanding officer shall take precedence over a suspect's arrest and prosecution by the non-military authorities.

91.1.8 Law Enforcement Suspects

All domestic violence incidents involving law enforcement suspects shall be handled according to this law enforcement protocol. There shall be no deviation from the protocol merely because the suspect is a law enforcement officer.

Any agency investigating an alleged incident of domestic violence involving a law enforcement suspect shall notify the employing agency as soon as possible after the incident. 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.

91.1.9 Juvenile Suspects

All provisions of this protocol, including mandatory 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.

91.1.10 Monthly Reporting of Domestic Violence Incidents

The Services Division shall prepare a monthly report of all Domestic Violence related incidents documented during that period and shall forward a copy of this report to the Bureau of Criminal

Statistics as an attachment to the "Return A - Monthly Return of Offenses Known to the Police". This report will comply with the requirements as set forth in Section 13730(a) P.C.

91.1.11 Training

The Santa Clara Police Department shall conduct mandated domestic violence training for members of the agency per 13519(b) PC (every two years) and 13730 PC.

The goals of the training are to inform officers of:

- The domestic violence laws;
- The department's domestic violence policy and procedures;
- The signs and dynamics of domestic violence;
- Police officer investigative techniques; and
- District Attorney Domestic Violence Unit policies.

Additional training should include written bulletins, videotapes, verbal reminders, and updates during patrol briefings.

The Chief of Police, or his/her designee, shall ensure the review of the department's training policies annually and make any revisions deemed necessary.

91.1

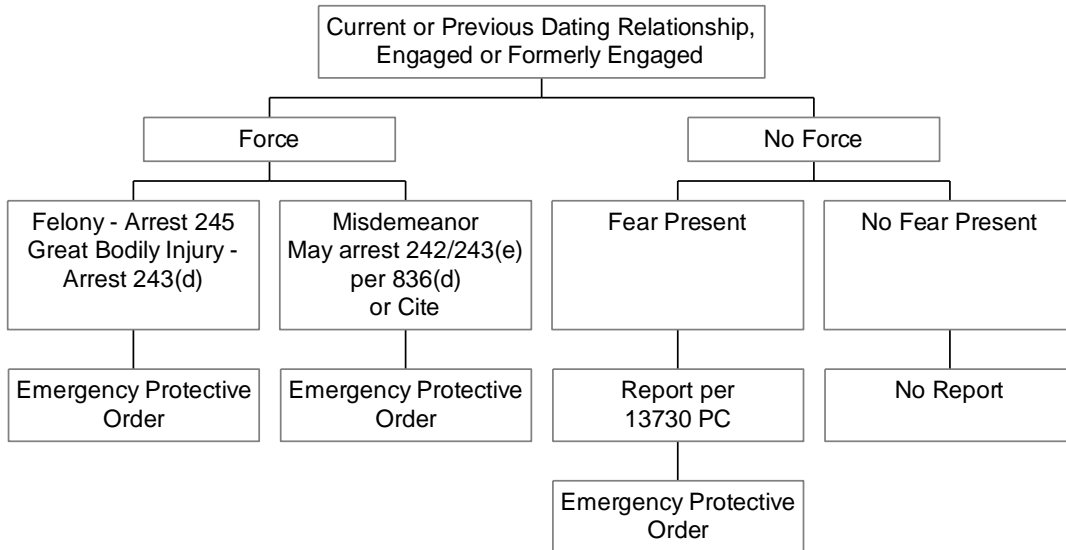
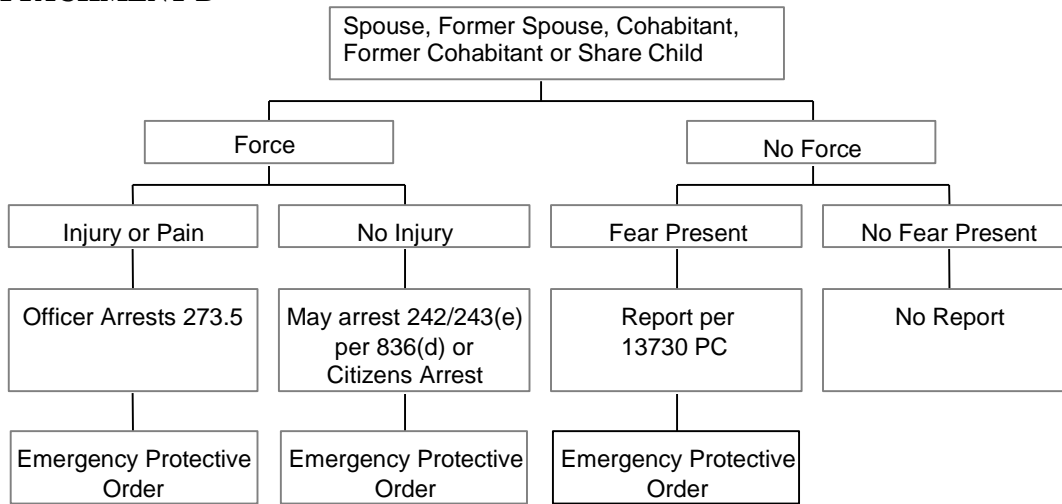
ATTACHMENT A

DOMESTIC VIOLENCE STATUTES (2006)

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

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

ATTACHMENT B



DOMINANT AGGRESSOR “DECISION TREE”

