

■ Guidelines for Law Enforcement ■



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Guidelines for Law Enforcement Response to Domestic Violence

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California Commission on
Peace Officer Standards and Training

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Guidelines for Law Enforcement
Response to Domestic Violence
April 2004



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FOREWORD

Penal Code Section 13519 requires the Commission on Peace Officer Standards and Training to establish guidelines and training for law enforcement response to domestic violence. The original publication on this topic was produced and provided to law enforcement in 1988.

These updated guidelines reflect recent law changes and contemporary thinking concerning domestic violence. They are deliberately brief and are intended to be elaborated upon by law enforcement administrators and training presenters.

It is important that law enforcement agencies create and enforce policies that comply with the domestic violence statutes. Agencies are also encouraged to establish partnerships with advocacies, health care providers, and community resources within their jurisdiction. These collaborative efforts best serve the victims and families, and send the message to the batterer and the community that domestic violence is a crime and will not be tolerated.

The Commission appreciates the efforts of the POST Domestic Violence Advisory Committee members who reviewed and updated the guidelines.

For questions concerning the guidelines, please contact the Training Program Services Bureau at (916) 227- 4885. Questions concerning the basic course curriculum requirements should be directed to the Basic Training Bureau at (916) 227- 4252. For questions concerning required update training, please contact your area consultant in the Training Delivery Bureau at (916) 227- 4863.



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Executive Director

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INTRODUCTION

Historically, law enforcement agencies utilized a variety of dispute resolution methods as alternatives to arrest in domestic violence incidents. Public sentiment, lack of prosecution of domestic violence cases, and departmental priorities represented some of the factors that influenced law enforcement officers to make no arrest in a majority of cases.

In January 1986, SB 1472 (Watson) modified Penal Code sections 13519, and 13700 *et seq* to focus on the importance of law enforcement response to domestic violence in the state of California. It was the intent of the Legislature to address domestic violence as a serious crime against society, to assure victims of domestic violence the maximum protection from abuse, and to communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated.

Penal Code Section 13701 specifically mandates all law enforcement agencies to develop, adopt, and implement written policies and standards that define response and handling of domestic violence calls for service and investigations. The guidelines were originally produced in 1986 to assist law enforcement in developing their policies to comply with PC 13701. This update is designed to serve as a reference for agencies electing to review and revise current domestic violence policies. Departmental policies and procedures may be more specific than, and may supersede, these guidelines.

It is not the intent of the Legislature to remove a peace officer's individual discretion, nor is it the intent of the Legislature to hold individual peace officers liable for exercising such discretion.

When the word "shall" is used, the appropriate legal citation is referenced. When the word "should" is used, law enforcement agencies should consider the substitution of the word with "shall." Penal Code Section 13700 specifies the following definitions, which are included for clear understanding of these guidelines. The definitions in this section do not define specific crimes but establish the categories when specific mandates apply.

“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, herself, or another.

“Domestic Violence” means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child, or is having or has had a dating or engagement relationship. For purposes of this document, “cohabitant” means two unrelated persons living together for a substantial period of time resulting in some permanency of relationship. Factors that may assist in determining 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.

“Domestic Violence” as defined in Penal Code Section 12028.5 (weapons seizure) includes the same relationships and conduct as described above. Domestic violence for weapons seizure also includes: a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected, and any other person related by consanguinity or affinity within the second degree. Abuse also includes sexual assault, to molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protection order issued pursuant to Part 4 (commencing with Section 6300 of Division 10 of the Family Code.)

“Dual Arrest” means an arrest of more than one party involved in the domestic violence incident.

“Traumatic Condition” means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

ENFORCEMENT OF LAWS

GUIDELINE 1 **Enforcing Laws Relating to Domestic Violence**

California Domestic Violence legislation encourages the creation of agency policies that promote arrest where there is reasonable cause or probable cause that a domestic violence offense has been committed (PC 13701 amended 1/1/96). The following factors, for example, should **not** be used to avoid making an arrest:

1. Whether or not the suspect lives on the premises with the victim;
2. Existence or lack of restraining/protective orders;
3. Complainant's preference that an arrest be made, or not be made;
4. Occupation, community status, and/or potential financial consequences of arrest;
5. Complainant's history of prior complaints;
6. Verbal assurances that the violence will cease;
7. Complainant's emotional state;
8. Non-visible injuries;
9. Location of the incident (public/private);
10. Speculation that complainant may not follow through with the prosecution;
11. Speculation that the case may not result in a conviction;
12. Assumptions that violence is more acceptable in certain cultures;
13. Language barriers and/or immigration status; or
14. Sexual preference/orientation of the parties.

The covered relationships for determining domestic violence include:

1. A spouse or former spouse;
2. A cohabitant or former cohabitant;
3. A person with whom the suspect has had a child;
4. A dating or engagement relationship or former dating or engagement relationship;
5. Adults and minors (AB 2826 amended PC13700 Covered Parties, 1/03); or
6. Same sex relationships.

The covered conduct (legal mandate) includes:

1. Causing or attempting to cause bodily injury (violence); or
2. Placing another in fear of imminent serious bodily injury to themselves or others (threats).

GUIDELINE 2 Dual Arrest

These polices discourage, but do not prohibit, dual arrest. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident [PC 13701(b)].

The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. To determine the dominant aggressor, officers will consider:

1. The intent of the law to protect victims of domestic violence from continuing abuse.
2. Threats creating fear of physical injury;
3. The history of domestic violence between the persons involved; or
4. Whether either person acted in self-defense.

These same considerations shall apply in situations where mutual protective orders have been issued [PC 836(c)(3)].

FELONY ARREST

GUIDELINE 3 Probable Cause

Officers should make an arrest when there is probable cause that a felony has been committed. Considerations specific to domestic violence include:

1. A covered relationship existing between the parties; and
2. Corporal Injury inflicted resulting in a traumatic condition.

MISDEMEANOR ARREST

GUIDELINE 4 Probable Cause or Violation of Protective Orders

1. Officers shall make an arrest when there is probable cause to believe that a misdemeanor has occurred in their presence.
2. Officers shall make an arrest without a warrant or citizen's/private person's arrest whether or not the offense was committed in their presence for violations of certain domestic violence protective or restraining orders.
3. Officers shall, consistent with subdivision (b) of Section PC 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer [PC 836(c)(1)] under the following conditions:
 - a. When a peace officer is responding to a call alleging a violation of domestic violence protective or restraining order, stalking emergency protective order, or elder abuse restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of the Penal Code, or paragraph (2) of subdivision (a) of PC 1203.097; or

- b. If a domestic violence protective or restraining order has been issued by the court of another state, tribe, or territory, and the peace officer has probable cause to believe that the restrained party committed an act in violation of the order, and had notice of the order and its conditions.
4. Officers may make a warrantless arrest when:
 - a. There is reasonable cause to believe that an assault or battery has occurred;
 - b. The arrest is made as soon as probable cause arises; and
 - c. The covered parties are as follows:
 - i. Current or former spouse, fiancé, fiancée;
 - ii. Current or former cohabitant as defined in Section 6209 of the Family Code;
 - iii. A person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of PC 243;
 - iv. A person with whom the suspect has parented a child or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3, commencing with Section 7600 of Division 12 of the Family Code);
 - v. A child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories;
 - vi. Any other person related to the suspect by consanguinity or affinity within the second degree; or
 - vii. Any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship [PC 836(d)].

CITIZEN'S ARREST

GUIDELINE 5 **Good Faith Effort to Inform Victim of Right to Citizen's/Private Person's Arrest**

1. Any time a peace officer is called to a domestic violence incident and cannot make an arrest, the officer shall make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest [PC 836(b)].
2. Officers shall not attempt to dissuade the victim from the decision to make a citizen's/private person's arrest.
3. Officers no longer commit a felony for refusing to accept certain citizen's arrests (amended PC 142 and 847). PC 142 had required law enforcement to accept a citizen's/private person's arrest. Failure to accept the arrest was a felony. This bill no longer requires an officer to accept that arrest if made pursuant to PC 837 (citizen's arrest).
4. There is no civil liability for false arrest or false imprisonment for a citizen's arrest when the arrest was lawful or the officer had reasonable cause to believe the arrest was lawful, the arrest was based upon reasonable cause to believe that a felony was committed, or the arrest was made pursuant to PC 142, 837, 838, or 839 (magistrate orders a peace officer to arrest for a public offense in magistrate's presence; person making an arrest to summon persons to help with the arrest; peace officer has reasonable cause to believe an arrest is lawful (PC 847).

GUIDELINE 6 **Citation Releases**

1. If a person is arrested for a misdemeanor violation of a protective order involving domestic violence, the person **shall** be taken before a magistrate instead of being released on citation, unless the arresting officer determines there is not a reasonable likelihood that the offense will continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested (PC 853.6).

2. Officers considering the release of a suspect on a citation shall evaluate the likelihood of a continuing offense and statutory conditions under which a field release is not appropriate. Any of the following may support the likelihood of a continuing offense:
 - a. Suspect has a prior history of, or arrests or citations involving domestic violence;
 - b. Suspect is violating a criminal court stay-away order;
 - c. Suspect has previously violated, or is currently violating, a valid restraining/protective order;
 - d. Suspect has a prior history of other assaultive behavior (e.g., arrest/convictions for battery or aggravated assaults);
 - e. Statements of the victim or witnesses that the suspect has a history of physical abuse;
 - f. Statements of the victim or witnesses expressing fear of retaliation or further violence should the suspect be released; or
 - g. Information obtained about the suspect's alcohol or drug abuse, access to weapons, suicide threats or attempts, threats of kidnapping family members, or a history of mental illness.

RESTRAINING AND PROTECTIVE ORDERS

GUIDELINE 7 Obligation to Maintain Records and Enforce Restraining Orders

1. Law enforcement agencies shall maintain complete and systematic records of all protection orders with respect to domestic violence incidents, including orders that have not yet been served, issued pursuant to PC 136.2, restraining orders, and proofs of service in effect [PC 13710(a)(1)].
2. Law enforcement officers responding to domestic violence calls shall check on the existence, terms, and effective dates of protection orders.
3. If there are multiple, inconsistent orders, criminal restraining orders take precedence over civil restraining orders. If both orders are of the same type, the most recently issued takes precedence.
4. These orders remain valid regardless of the actions of the protected person. For example, if the protected person allows the restrained party back into the residence, the order remains valid [PC 13711(c)].
5. When victims are not in possession of the order and officers cannot verify that they exist, officers shall write a report and provide the victims with the number and direct them to appropriate follow up contacts.
6. Foreign protective or restraining orders that are issued by another state, or by a tribal or territorial court related to domestic or family violence, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory. There shall be a presumption of validity where an order appears authentic on its face (FC 6400 *et seq*).

Registration of this order in California is not necessary for it to be considered valid and enforceable. (FC 6400 *et seq*).

7. Officers shall, consistent with PC 13700(b), make a lawful arrest of a person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer, in response to an alleged violation of a domestic violence protective or restraining order when the peace officer has probable cause to believe the restrained party has notice of the order and has committed an act in violation of the order [PC 836 (c)(1)].

8. If the suspect has fled the scene, all due diligence will be expended to locate the suspect. If the suspect is not located officers shall write a report regarding the incident.
9. Officers shall enforce any workplace/corporate restraining order obtained by an employer to protect an employee who may be subject to violence as a result of domestic violence or harassment (CCP 527.8).
10. Officers shall enforce any harassment order obtained by a victim (CCP527.6).
11. Officers have a duty to serve unserved domestic violence and harassment orders when at a domestic violence incident and whenever the suspect is in custody.
12. Within one business day of service of a court order, a law enforcement officer who serves a protective order shall submit proof of service directly into the Domestic Violence Restraining Order System (DVROS), including the officer's name and agency, and transmit the original proof of service form to the issuing court.

GUIDELINE 8 Request Emergency Protective Orders When Appropriate

1. An officer may request an ex parte Emergency Protective Order (EPO) from an on-call judge if there are reasonable grounds to believe:
 - a. A person is in immediate and present danger of domestic violence;
 - b. A child is in immediate and present danger of abuse by a family or household member;
 - c. A child is in danger of abduction by a family member;
 - d. A person is in danger of, or has been stalked; or
 - e. An elderly person or dependant adult is in immediate and present danger of abuse (other than financial abuse).
2. Officers should make a determination based on allegations of a recent incident of abuse or threat of abuse.
 - a. Officers may request an EPO whether or not the suspect is present or has been arrested.

3. Officers shall contact the on-call judge, commissioner, or referee designated to issue EPO's by telephone, or otherwise, and assert grounds for the belief that the order is appropriate.
4. Upon oral issuance of the order by the on-call judicial officer, the peace officer requesting the order shall reduce it to writing, using the approved judicial council form, and sign the order.
5. Officers shall serve a copy of the emergency protective order on the restrained party if the party can be reasonably located.
6. The officer shall give a copy of the EPO to the protected party.
7. Within one business day of service of a court order, any law enforcement officer who serves a protective order shall submit proof of service directly into the DVROS, including the officer's name and agency, and transmit the original proof of service form to the issuing court (FC 6250).

GUIDELINE 9 Tenancy

Officers should request a person who is not in lawful possession of the premises to leave the premises when:

1. The complainant is in lawful possession of the premises; and
2. The complainant has requested that the person leave the premises.

GUIDELINE 10 Dispatcher Response to Domestic Violence and Violation of Court Orders Calls

1. Agencies shall develop, adopt, and implement written policies and standards for dispatchers' response to domestic violence calls reflecting that calls reporting threatened, imminent, or on-going domestic violence shall be ranked among the highest priority calls (PC 13702).
2. Dispatchers are not required to verify the validity of a protective order before responding to the request for assistance.

WEAPONS AND OFFICER SAFETY

GUIDELINE 11 Weapons

1. Officers at the scene of a domestic violence incident involving a threat to human life or a physical assault shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search, as necessary for the protection of the officers or persons present (PC 12028.5).
2. If the weapon is not kept as evidence or contraband, and it can be lawfully possessed by the person in possession, officers shall keep the weapon for no less than 48 hours nor more than five business days after the seizure unless a civil action is to be filed.
3. If officers believe the return of the weapon or other deadly weapons taken pursuant to these provisions would likely result in endangering the victim or the person reporting the assault or threat, the officers or their agency may initiate a petition in Superior Court to determine if a firearm or other deadly weapon should be returned.
4. Officers should document in the report the presence of all weapons, the basis for any seizures, if weapons were discovered or disclosed but not seized, and the reason the weapons were not seized [PC 13730 (c)].
5. A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provision of a protective order as defined in PC136.2, FC 6218, or Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provision of subdivision (g) of PC 12021.

GUIDELINE 12 Officer Safety

Officers shall exercise officer safety and reasonable care for the safety of the parties involved. No provision of this guideline shall supersede that responsibility.

VICTIM ASSISTANCE MANDATES

GUIDELINE 13 Emergency Assistance to Victims

Officers at the scene of a domestic violence incident must provide the victim with needed emergency assistance. This includes but is not limited to:

1. Medical attention;
2. Transportation to a shelter;
3. Transportation to a hospital for treatment when necessary;
4. Police/civil standby for removing personal property; and
5. Assistance in safe passage out of the victim's residence.

GUIDELINE 14 Assist Victims in Pursuing Criminal Options

Provide victims with the report number, if available, and direct them to the proper investigation units.

GUIDELINE 15 Written Notice to Victims

Furnish Written Notice to Victims at the Scene Including:

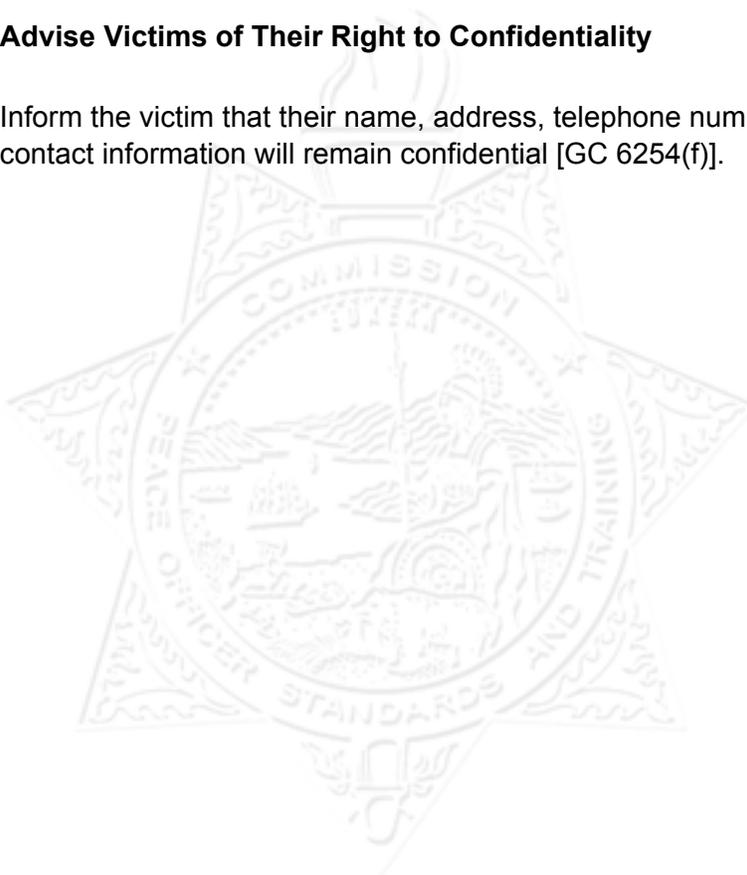
1. Notice that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released from jail at any time.
2. Information about other services in the community, where available, and how to contact them.
3. Information about shelter services and how to contact them.
4. Information about California's victim compensation program, and contact number: 1-800-777-9229.
5. Informing victims of domestic violence that they may ask the district attorney to file a criminal complaint.

6. Informing victims of their right to go to the superior court and file a petition requesting any of the following orders for relief:
 - a. Order restraining the attacker from abusing victim and other family members;
 - b. Order directing the attacker to leave the household;
 - c. Order preventing the attacker from entering the residence, school, business, or place of employment of the victim;
 - d. Order awarding the victim or the other parent custody of, or visitation with, a minor child or children;
 - e. Order restraining the attacker from molesting or interfering with minor children in the custody of the victim;
 - f. Order directing the party not granted custody to pay support of minor children if that party has a legal obligation to do so;
 - g. Order directing the defendant to make specified debit payments coming due while the order is in effect; or
 - h. Order directing that either or both parties participate in counseling.
7. Inform the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings and other expenses for injuries sustained, damage to property, and other related expenses incurred by the victim or any agency that shelters the victim.
8. In cases where the alleged violation is of subdivision (e) of PC 243 or Sections 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card shall be provided to the victim that contains, but is not limited to, the following information:
 - a. Names and phone numbers of hotlines for local shelters for battered women and rape victim counseling centers within the county, including those centers specified in PC13837, and the 24-hour counseling service telephone numbers;
 - b. Proper procedures for a victim to follow after sexual assault;
 - c. Statement that sexual assault by a person who is known to the victim, including the victim's spouse, is a crime;

- d. Statement that domestic violence or assault by a person who is known to the victim, including the victim's spouse, is a crime; and
 - e. Statement that protective orders are enforceable in any state, territory, or reservation and information on how to contact agencies in those jurisdictions;
9. Provide information to determine an arrested person's custodial status and release information.

GUIDELINE 16 Advise Victims of Their Right to Confidentiality

Inform the victim that their name, address, telephone number, and other contact information will remain confidential [GC 6254(f)].



REPORTS

GUIDELINE 17 Write a Report on all Domestic Violence Incidents

1. Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code. In all incidents of domestic violence, a report shall be written and shall be identified on its face as a domestic violence incident [PC 13730(c)]. The report shall include at least the following information:
 - a. A notation of whether the officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance;
 - b. A notation of whether the officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim; and
 - c. A notation of whether the officers who responded to the domestic violence call found it necessary for their protection, or the protection of other persons present, to inquire whether a firearm or other deadly weapon is present at the location, and if the inquiry disclosed the presence of a firearm or other deadly weapon.

Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to PC 12028.5.
2. Upon request, agencies must provide to a domestic violence victim, or if the victim is deceased, their representative, report face sheets (within two days or with good cause, within five days) and incident reports (within five days or with good cause, within ten days) at no charge, and during regular business hours. The victim or their representative must provide valid identification.
3. When reports of domestic violence are made by medical clinics, hospitals or any health care practitioners who are mandated reporters, agencies should respond and take all information necessary for a report. If the victim is no longer at the location, officers should attempt to locate the individual for follow-up investigation.

CHILDREN

Children have historically been the invisible victims of domestic violence. They are frequently injured or emotionally scarred by living with and witnessing domestic violence. Officers are encouraged to locate, calm, and reassure all children.

GUIDELINE 18 Interaction With Children

1. Officers should locate and identify all children in the home at a domestic violence scene.
2. Officers should list all children in the report (full name and date of birth), who reside at the location, or who are in the home periodically for court ordered visitations, even if they were not interviewed, for eligibility for victim's compensation.
3. Officers should interview all children in the home even if the parents state they didn't observe the incident. Documentation of these interviews should include:
 - a. A description of the child's location;
 - b. A description of child's demeanor; and
 - c. Quotations of statements made by the child.