

Domestic Violence

321.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. The policy specifically addresses the commitment of this department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic violence.

321.1.1 DEFINITIONS

Definitions related to this policy include:

Court order - All forms of orders related to domestic violence that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

321.1.2 SANTA CRUZ COUNTY LAW ENFORCEMENT CHIEF'S ASSOCIATION DOMESTIC VIOLENCE PROTOCOL FOR LAW ENFORCEMENT

Recognizing that domestic violence is a serious community problem, Santa Cruz County Law Enforcement Agencies, in conjunction with the Santa Cruz County District Attorney's Office, agree to respond to, acts of domestic violence as a crime.

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.

As more is learned about successful ways of preventing and responding to domestic violence, this protocol will be updated. New legislation and research will be reviewed periodically by a subcommittee of the Domestic Violence Commission of Santa Cruz County in order to maintain an effective and sensitive response by the law enforcement community to this serious problem.

321.1.3 DEFINITIONS

- (a) **Domestic Violence**-Is abuse committed against a person 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.
- (b) **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.
- (c) **Victim**-Means a person who is a victim of domestic violence.
- (d) **Pro-Arrest Policy**-Refers to a philosophical position in which physical arrest is encouraged in every situation where an arrest is legally permissible.
- (e) **Officer**-Is defined as any law enforcement officer employed by a local police department or sheriffs office, consistent with California Penal Code §§ 830.1 and 830.2.

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- (f) **Restraining Order**-Is a generic term referring to any court order which prohibits a person from engaging in certain behavior or going certain places. The order may be civil (Emergency Protective Order, Temporary Restraining Order or "Permanent" Order After Hearing) or part of a criminal case (Criminal Protective Order).
1. Civil orders are valid after service and remain valid until the date specified on the order or until revoked or modified by the issuing court. Domestic Violence Temporary Restraining Orders and Permanent Orders After Hearing will say "Domestic Violence Prevention" on their face. Emergency Protective Orders will need to be read to determine if they are issued because of domestic violence.
 2. Criminal orders are valid after service and remain valid until the date specified on the order or until revoked or modified. Criminal orders are not valid if the court no longer has jurisdiction (EXAMPLES - Probation could be terminated or the case dismissed without a conviction). Criminal Protective Orders do not specify whether the case involved domestic violence and the determination will need to be made based on the parties involved and the charges associated with the criminal case.
- (g) **Cohabitant**-Means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. 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.
- (h) **Traumatic Injury**-As defined in Penal Code § 273.5, "is 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." It refers to an abnormal condition of a living body produced by violence. It is much less than great bodily injury, the injury may be minor, but it requires more than soreness and tenderness to an area of the body. Some minor injuries that are considered traumatic include bruises, abrasions, and redness. More is needed than just emotional harm or pain.
- (i) **Penal Code § 273.5 a Corporal Injury to Spouse, Cohabitant, or Child's Parent**-Willful infliction of corporal injury resulting in a traumatic condition upon a person who is the spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the offender's child.

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- (j) **Penal Code § 243 (e)(1)**-Domestic Battery: Willful and unlawful use of force or violence upon another who is a spouse; a person with whom the defendant is cohabiting; a person who is the parent of the defendant's child; former spouse; fianc; or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.
- (k) **Penal Code § 273.6 (a)**-Violation of Domestic Violence Civil Court Order: Any intentional and knowing violation of a civil protective order relating to domestic violence.
- (l) **Penal Code § 166 (c) (I)**-Violation of a Criminal Protective Order: A willful and knowing violation of any criminal protective order in a criminal proceeding involving domestic violence, whether before or after conviction.

321.1.4 PATROL OFFICERS RESPONSE/INVESTIGATION

- (a) 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. Responding officers should never assume the victim will be cooperative or available at a later time. Officers should treat their preliminary investigation as if the victim will not be available for later court proceedings.
- (b) The following details should be included in an officer's investigation and subsequent report:
- (c) Arrival at scene
 1. Determine location and condition of victim and suspect and other possible witnesses whether present or not present at scene, including children.
 2. Determine if any weapon was involved or is in the home.
 3. Provide appropriate level of aid to injured parties.
 4. Separate suspect, victim, and witnesses. (Victim should be out of suspect's view.)
- (d) Preliminary investigation
 1. Interview everyone separately - victim, suspect, children, other witnesses.
 2. In cases involving non-English speaking victims and there is not a bilingual officer available every effort should be made to secure an independent interpreter and not use a child or relative of the victim or suspect.
 3. Tape-recording of a non-certified translated statement will allow for independent verification of the translation later on. The qualifications of the person being used as an interpreter should always be noted in the report.
 4. Document spontaneous statements made by victim and suspect.

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5. When practical, the officer shall tape record the victim's statement.
 6. Identify all involved parties. Ask for names, addresses and phone numbers of witnesses who may have left scene prior to the officer's arrival.
 7. Ask victim and suspect if they have pain even if there are no visible injuries.
 8. Document victim's and suspect's condition and demeanor.
 - (a) Document victim's emotional state (i.e. crying).
 - (b) Document torn clothing.
 - (c) Document smeared make-up.
 - (d) Document evidence of injury.
 - (e) Document disarray in house.
 9. Document the physical size of the victim and the suspect.
 10. Inquire directly about self defense issues. Minimally, ask each person at the end of their statements if they ever struck the other person and if they were ever struck by the other person.
- (e) Domestic violence situations involving both parties resorting to aggressive physical violence are rare. In most cases there will be an aggressive participant and a defensive participant. It is the challenge of law enforcement to determine who is the dominant aggressor. Written policies should discourage, unless otherwise appropriate, dual arrest incidents. Peace officers shall evaluate all factors involved in the dispute and make reasonable efforts to determine who was the dominant aggressor. Some important factors maybe the intent of the law to protect victims of domestic violence from continuing abuse, threats creating fear of physical injury, past history of domestic violence between the involved parties and actions taken in self defense. In situations in which both parties appear to be victims try to determine:
- (a) Was one party in actual fear of the other?
 - (b) Did one party escalate the level of violence, i.e., did one person react to slap by beating the other?
 - (c) Who called the police?
 - (d) Was one party physically larger and stronger than the other?
 - (e) Was there a history of violence by one of the parties against the other or against other people?
 - (f) Is one party usually the aggressor?
 - (g) Did any injuries appear to be defense wounds?

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- (f) Obtain a photograph of the suspect and have the victim identify the person in the photograph as being the person who committed the acts described. This allows the case to proceed without the victim, if that becomes necessary.
- (g) If the victim has a restraining order against the suspect, obtain a copy of the order and proof of service. If not, inform the victim how to get an order.
- (h) Advise victim of Emergency Protective Order (EPO), and ask if one is desired. The victim should be out of suspect's presence.
- (i) If the protected person has not yet served the restrained person with the order, the officer shall inform the restrained person of the order and its terms. The officer may verify the existence of the order in two ways:
 - (a) The protected person produces a copy of the order, or
 - (b) The officer verifies the existence of the order through dispatch.
- (j) If, at the protected person's request, the officer hands the order to the restrained person, the officer shall note this in the report, indicating specifically which documents were given to the restrained person.
 - (a) The officer shall complete a proof of service, Criminal Justice Council Form 140, for filing with the Superior Court.
- (k) Advise the victim/witness of his/her right to request confidentiality pursuant to Penal Code Section 293 and Government Code Section 6254. Document the request in the report.
- (l) The victim should be advised that prosecution of the suspect is the decision of the District Attorney's Office. The victim should never be asked if he/she wishes to "press" or "drop" charges, or will cooperate in the prosecution of the offender.
- (m) Upon completion of their investigation, officers will supply victims with an emergency resource card. The resource card information will be regularly updated by each agency to ensure accurate referrals for the victims.
- (n) Where the law enforcement agency has a memorandum of understanding (MOU) with an advocacy agency to provide crisis support, the officer shall follow the applicable procedure for notifying that advocacy agency to provide telephone or in person crisis response.
- (o) If the suspect is taken into custody:
 - (a) Document spontaneous statements.
 - (b) Prevent communications between suspect and victim/witness.
 - (c) Advise suspect of Miranda rights, when appropriate.
 - (d) Take statements.

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- (e) Request a bail increase, if appropriate.
- (p) On many of the domestic violence charges, when bail is increased from the bail schedule, that person is unable to post bail until after they have been arraigned in court. This effectively creates a longer "cooling off period" which is helpful for the investigation and advocacy in the period immediately following an assault, and maximizes victim safety.
 - (a) Evidence
 - (a) Document condition of the crime scene (disarray of physical surroundings).
 - (b) Photograph crime scene.
 - (c) Ensure that victim's/suspect's injuries are photographed.
 - (d) Impound and/or photograph weapons and other evidence.
 - (b) Firearms
 - (a) Consider Penal Code Section 12021, prohibiting certain persons from owning or possessing firearms.
 - (b) Under Penal Code Section 12028.5, an officer shall confiscate firearms or other deadly weapons in plain view or discovered pursuant to a consensual search during a domestic violence call as is necessary for the protection of law enforcement or others.
- (q) Officer must give owner a receipt describing weapon, date weapon may be recovered and where weapon may be recovered.
- (r) In cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or the threat, the agency shall advise the owner and within 30 days of the seizure, initiate a petition in Superior Court to determine if the firearm or other deadly weapon should be returned.
 1. No weapon shall be held less than 48 hours.
- (s) Medical treatment
 1. Obtain authorization for release of medical records from victim and secure medical records, if possible.
 2. Obtain name of treating physician(s) and nurse(s).
 3. Document extent of injuries/treatment, if known.
 4. Obtain names, addresses, and phone numbers of fire, ambulance or paramedic personnel treating the victim.

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5. Obtain name of reporting party.
 6. Document if reporting party is a mandated reporter.
- (t) Completing crime report
1. 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. A report shall include the following:
 - (a) A notation of whether the officer or 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 (Penal Code Section 13730).
 - (b) A notation of whether the officer or 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 (Penal Code Section 13730).
 - (c) A notation whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon.
 1. 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 Penal Code Section 12028.5 (Penal Code Section 13730).
 - (d) A notation whether the couple has any children and if they were present during the violence on this occasion or past occasions.
 - (e) All law enforcement agencies will include with their domestic violence report a completed "SANTA CRUZ COUNTY DOMESTIC VIOLENCE REPORT" form.
- (u) Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
- (v) Document all names, addresses, phone numbers of named parties including, if possible, the name, address and phone number of a contact person for the victim should she/he decide to move.
- (w) Ensure that the elements of all involved crimes are included in the report.
1. Document and describe in detail any injuries victim/suspect have sustained.

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- (x) Describe location of injury (i.e. 5 inch gash on inside, lower left arm.)
- (y) Document that the victim received a referral per Penal Code Section 13701 et seq.
- (z) Document past history of violence.
- (aa) Document statements of victim, suspect, and all witnesses.
- (ab) Document physical evidence obtained.
- (ac) Document probation/parole status.
 - 1. The officer should attempt to determine if the suspect is on parole or probation.
 - (a) During business hours, Adult Probation is to be contacted directly by the officer or by Dispatch.
 - (b) After hours, Juvenile Hall is to be contacted to access suspect's probation status.
 - 2. If the suspect is on parole or probation, the suspect's Parole or Probation Officer should be notified as soon as possible of the investigation.
 - 3. A copy of the report should be distributed to Parole or Probation.
 - 4. An effort should be made to determine if any of the suspect's actions are a violation of parole or probation and appropriate action should be taken.
- (ad) 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).
- (ae) The officer must request the report be forwarded to Child Protective Services for all incidents where children reside in the home and a violation of Penal Code sections 273.5, 243(e)(1), 273.6 or 166(c)(1) has occurred.
- (af) WELFARE OF CHILDREN AT THE SCENE
 - (a) When there are children present at the scene of a domestic violence incident and it becomes necessary for either parents (or guardians) to be removed from the scene (arrest, medical treatment, hospitalization, etc.), the officer should contact CPS immediately or as soon as practical. CPS should be afforded the opportunity to respond and participate in interviews, investigations and the decision making regarding protective custody or placement.
- (ag) ARREST PROCEDURES IN DOMESTIC VIOLENCE CASES
 - (a) Physical arrest of domestic violence offenders allows victims an opportunity to be free of violence, assess their situation and contact family and professional support. It also allows time for investigation and follow up. For some offenders, physical arrest is the point at which they choose to no longer use violence in their relationships.

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- (a) A pro-arrest policy is implemented by all law enforcement agencies.
- (b) The existence of the elements of a crime shall be the sole factor that determines the proper method of handling the incident. The following factors, for example, are not to influence the officer's course of actions in domestic violence incidents except as they relate to the elements of the crime.
 - (c) The relationship or marital status of the suspect and the victim, i.e., not married, separated, or pending divorce;
 - (d) The fact that the victim and suspect are of the same gender;
 - (e) Whether or not the suspect lives on the premises with the victim;
 - (f) The existence or lack of a temporary restraining order;
 - (g) The potential financial consequence of arrest;
 - (h) The victim's history of prior complaints;
 - (i) Verbal assurances that the violence will cease;
 - (j) The victim's emotional state;
 - (k) Lack of visible injuries;
 - (l) The location of the incident, i.e., public or private;
 - (m) Belief that the victim may not follow through with the criminal justice process or that the arrest may not lead to a conviction.
- (ah) The authority to arrest in domestic violence cases comes from various sources. Officers are authorized to arrest when there is probable cause to believe a felony has occurred, when a warrant has been issued, when a crime occurs in their presence, when probable cause to believe a domestic violence assault or battery has occurred and the officer makes the arrest as soon as probable cause has arisen, and when an officer has probable cause to believe a restraining order has been violated.
- (ai) Private persons may make an arrest for any public offense committed in their presence or the private person has reasonable cause to believe that a felony has been committed.
 1. **FELONY:** 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 (Penal Code § 836(a)).
 2. **DOMESTIC VIOLENCE ASSAULT OR BATTERY:** As soon as probable cause arises, an officer should arrest a suspect for assault or battery occurring in a domestic relationship whether or not the offense occurs in the officer's presence (Penal Code § 836(d)).

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3. DOMESTIC VIOLENCE RESTRAINING ORDER: An arrest should be made when an officer has probable cause to believe that a person with knowledge of the order has violated a term of that order whether or not the offense occurs in the officer's presence. (Penal Code § 836(c)).
4. PRIVATE PERSON'S ARREST: If an officer is not going to arrest a party, the officer shall make a good faith effort to inform the victim of his or her right to make a private person's arrest. This information shall include advising the victim how to safely execute the arrest.
 - (aj) It is a crime to refuse to accept a private person's arrest. PC 142. However, an Attorney General opinion has stated that after accepting the arrest, an officer may release the person from custody pursuant to PC 849. Additionally, PC 847 grants immunity from civil suit for accepting a private person's arrest.
 1. No officer shall make any statements which would tend to discourage a victim from reporting an act of domestic violence or requesting a private person's arrest.
 - (ak) While a physical arrest is preferred, there may be situations in misdemeanor cases where a "cite and release" may be more appropriate. If in a misdemeanor case 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 the officer may cite and release the suspect.
 1. In determining whether prior violence has occurred, the officer should interview the victim, suspect, children, and any available neighbors or witnesses separately.
 2. A warrant check and a criminal history check must also be conducted.
 3. It is strongly recommended that the decision to cite and release be approved by a supervisor.
 - (al) Similarly, all persons arrested for violation of a domestic violence restraining order shall be taken to jail. A citation, in lieu of physical arrest, may occur only if:
 1. The officer believes that there is not a reasonable likelihood the offense would continue or resume.
 2. The officer believes that the safety of persons or property would not be immediately endangered by release of the person arrested.
 3. Approval from a supervisor is strongly recommended (Penal Code Section 853.6).

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321.2 POLICY

The University of California Santa Cruz Police Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

321.3 OFFICER SAFETY

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

321.4 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic violence cases:

- (a) Calls of reported, threatened, imminent or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
- (b) When practicable, officers should obtain and document statements from the victim, the suspect and any witnesses, including children, in or around the household or location of occurrence.
- (c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.
- (d) When practicable and legally permitted, video or audio record all significant statements and observations.
- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Detective Bureau in the event that the injuries later become visible.
- (f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement and make an arrest or seek an arrest warrant if appropriate.
- (h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence. If the domestic violence involved threats

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of bodily harm, any firearm discovered in plain view or pursuant to consent or other lawful search must be taken into temporary custody (Penal Code § 18250).

- (i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- (j) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:
 - 1. Marital status of suspect and victim.
 - 2. Whether the suspect lives on the premises with the victim.
 - 3. Claims by the suspect that the victim provoked or perpetuated the violence.
 - 4. The potential financial or child custody consequences of arrest.
 - 5. The physical or emotional state of either party.
 - 6. Use of drugs or alcohol by either party.
 - 7. Denial that the abuse occurred where evidence indicates otherwise.
 - 8. A request by the victim not to arrest the suspect.
 - 9. Location of the incident (public/private).
 - 10. Speculation that the complainant may not follow through with the prosecution.
 - 11. The racial, cultural, social, professional position or sexual orientation of the victim or suspect.

321.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, officers should:

- (a) Advise the victim that there is no guarantee the suspect will remain in custody.
- (b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- (c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

321.4.2 IF NO ARREST IS MADE

If no arrest is made, the officer should:

- (a) Advise the parties of any options, including but not limited to:
 - 1. Voluntary separation of the parties.
 - 2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).

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- (b) Document the resolution in a report.

321.5 VICTIM ASSISTANCE

Victims may be traumatized or confused. Officers should:

- (a) Recognize that a victim's behavior and actions may be affected.
- (b) Provide the victim with the department's domestic violence information handout, even if the incident may not rise to the level of a crime.
- (c) Alert the victim to any available victim advocates, shelters and community resources.
- (d) Stand by for a reasonable amount of time when an involved person requests law enforcement assistance while removing essential items of personal property.
- (e) Seek medical assistance as soon as practicable for the victim if he/she has sustained injury or complains of pain.
- (f) Ask the victim whether he/she has a safe place to stay. Assist in arranging to transport the victim to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists.
- (g) Make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (h) Seek or assist the victim in obtaining an emergency order if appropriate.

An officer shall advise an individual protected by a Canadian domestic violence protection order of available local victim services (Family Code § 6452).

321.6 DISPATCH ASSISTANCE

All calls of domestic violence, including incomplete 9-1-1 calls, should be dispatched as soon as practicable.

Dispatchers are not required to verify the validity of a court order before responding to a request for assistance. Officers should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

321.7 FOREIGN COURT ORDERS

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe, or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court or foreign order shall be enforced, regardless of whether the order has been properly registered with this state (Family Code § 6403).

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).

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321.8 VERIFICATION OF COURT ORDERS

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and where appropriate and practicable:

- (a) Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.
 - 1. If a determination is made that a valid foreign order cannot be enforced because the subject has not been notified or served the order, the officer shall inform the subject of the order, make a reasonable effort to serve the order upon the subject, and allow the subject a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice (Family Code § 6403).
- (b) Check available records or databases that may show the status or conditions of the order.
 - 1. Registration or filing of an order in California is not required for the enforcement of a valid foreign order (Family Code § 6403).
- (c) Contact the issuing court to verify the validity of the order.
- (d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

321.9 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

321.9.1 STANDARDS FOR ARRESTS

Officers investigating a domestic violence report should consider the following:

- (a) An arrest should be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). Any decision to not arrest an adult when there is probable cause to do so requires supervisor approval.
 - 1. Officers are only authorized to make an arrest without a warrant for a misdemeanor domestic violence offense if the officer makes the arrest as soon as probable cause arises (Penal Code § 836).
- (b) An officer responding to a domestic violence call who cannot make an arrest will advise the victim of his/her right to make a private person's arrest. The advisement should be made out of the presence of the suspect and shall include advising the victim how to safely execute the arrest. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions in the Private Persons

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Arrests Policy for options regarding the disposition of private person's arrests (Penal Code § 836(b)).

- (c) Officers shall not cite and release a person for the following offenses (Penal Code § 853.6(a)(3)):
 - 1. Penal Code § 243(e)(1) (battery against spouse, cohabitant)
 - 2. Penal Code § 273.5 (corporal injury on spouse, cohabitant, fiancé/fiancée, person of a previous dating or engagement relationship, mother/father of the offender's child)
 - 3. Penal Code § 273.6 (violation of protective order) if violence or threats of violence have occurred or the suspect has gone to the workplace or residence of the protected party
 - 4. Penal Code § 646.9 (stalking)
 - 5. Other serious or violent felonies specified in Penal Code § 1270.1
- (d) In responding to domestic violence incidents, including mutual protective order violations, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant, rather than the first, aggressor (Penal Code § 13701). In identifying the dominant aggressor, an officer shall consider:
 - 1. The intent of the law to protect victims of domestic violence from continuing abuse.
 - 2. The threats creating fear of physical injury.
 - 3. The history of domestic violence between the persons involved.
 - 4. Whether either person acted in self-defense.
- (e) An arrest shall be made when there is probable cause to believe that a violation of a domestic violence court order has been committed (Penal Code § 13701; Penal Code § 836), regardless of whether the offense was committed in the officer's presence. After arrest, the officer shall confirm that a copy of the order has been registered, unless the victim provides a copy (Penal Code § 836).

321.9.2 COURT ORDERS

- (a) An officer who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located, and shall provide the person protected or the person's parent/guardian with a copy of the order. The officer shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).
- (b) At the request of the petitioner, an officer at the scene of a reported domestic violence incident shall serve a court order on a restrained person (Family Code § 6383; Penal Code § 13710).

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- (c) Any officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)(2)).
- (d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).
- (e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the officer shall notify the protected individual that reasonable efforts shall be made to contact the person subject to the order. The officer shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide him/her with a record of the order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

321.9.3 PUBLIC ACCESS TO POLICY

A copy of this domestic violence policy will be provided to members of the public upon request (Penal Code § 13701).

321.9.4 REPORTS AND RECORDS

- (a) A written report shall be completed on all incidents of domestic violence. All such reports should be documented on the appropriate form, which includes information and notations specific to domestic violence incidents as required by Penal Code § 13730.
- (b) Reporting officers should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence victim information handout provided to the victim. If the case number is not immediately available, an explanation should be given regarding how the victim can obtain the information at a later time.
- (c) Officers who seize any firearm or other deadly weapon in a domestic violence incident shall issue the individual possessing such weapon a receipt that includes the name and residential mailing address of the owner or person who possessed the weapon and notice of where the weapon may be recovered, along with the applicable time limit for recovery (Penal Code § 18250; Penal Code § 18255; Penal Code § 33800; Family Code § 6389(c)(2)).

321.9.5 RECORD-KEEPING AND DATA COLLECTION

This department shall maintain records of court orders related to domestic violence and the service status of each (Penal Code § 13710), as well as records on the number of domestic violence related calls reported to the Department, including whether weapons were used in the incident or whether the incident involved strangulation or suffocation (Penal Code § 13730). This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Communications Manager to maintain and report this information as required.

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321.9.6 DECLARATION IN SUPPORT OF BAIL INCREASE

Any officer who makes a warrantless arrest for a felony or misdemeanor violation of a domestic violence restraining order shall evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. If there is reasonable cause to believe that the scheduled bail amount is insufficient to assure the arrestee's appearance or to protect the victim or family member of a victim, the officer shall prepare a declaration in support of increased bail (Penal Code § 1269c).