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2012

**UNIFORM MARIN COUNTY LAW ENFORCEMENT PROTOCOL  
FOR THE HANDLING OF DOMESTIC VIOLENCE CASES**

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Endorsed by

The Marin County Police Chiefs' Association

On March 8, 2012

- This protocol is in accordance with Penal Code Section 13701(a). Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls.
- This protocol is in accordance with Penal Code Section 13702. Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for dispatchers' responses to domestic violence calls.
- This protocol is in accordance with Penal Code Section 13732. Child protective service agencies, law enforcement, prosecution, child abuse and domestic violence experts, and community based organizations serving abused children and victims of domestic violence shall develop, in collaboration with one another, protocols as to how law enforcement and child welfare agencies will cooperate in their response to incidents of domestic violence in homes in which a child resides.

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### ACKNOWLEDGMENT

This protocol has been adapted from those of San Diego, Ventura, and Santa Clara Counties. We gratefully acknowledge their contribution.

## POLICY STATEMENT

Law enforcement agencies of the County of Marin and all incorporated cities within Marin County will respond to acts of domestic violence as a crime, regardless of the relationship of the parties.

The official response to cases of domestic violence shall stress the enforcement of laws to protect victims and shall communicate the attitude that domestic violence is criminal behavior and will not be tolerated.

The overriding goal of law enforcement is to optimize and coordinate available resources for the handling of domestic violence cases.

Victims of domestic violence will be treated with respect and dignity and will be given all available assistance by law enforcement personnel responding to an incident of domestic violence.

The Marin County policy is PRO-ARREST, in order to break the pattern of violence and to deter future abuse. This does not mean that an officer must arrest someone at every incident. Every effort should be made to prevent dual arrests. A self-defense determination shall be made before making a dominant aggressor determination. Dominant aggressor only applies when the officer has determined that both parties acted illegally and neither acted in self-defense. The officer must use caution and prudence in making the decision to arrest, meaning that the officer should consider and later document all the evidence readily available at the time of the decision. (*See Appendix 2.*) (Pen. Code §13701(b).) Every effort should be made to prevent dual arrests.

When officers treat each call as part of an ongoing case, the pattern will emerge and the safety needs of all victims become more evident.

The fundamental purpose of battering is to control what the victim says, thinks, feels, and does. Victims are rarely in a position to "tell all." Take great care not to endanger victims with what they have shared about the offender, the abuse, and their situation.

Training will be provided regularly to enhance law enforcement's response to domestic violence incidents.



## DEFINITIONS

- A. Abuse means intentionally or recklessly causing, or attempting to cause, bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. (Pen. Code §13700(a).)
- B. Cohabitant means two unrelated adult 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, 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. (Pen. Code §13700(b).)
- C. Domestic Disturbance is an argument or disagreement within the family or between cohabitants, or persons in a dating relationship, that does not involve violence, threats of violence, or court order violations. Law enforcement personnel will prepare a brief dispatch written report or other retrievable documentation on any domestic dispute reported to Marin County law enforcement agencies.
- D. Domestic Violence is abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or is having or has had a dating or engagement relationship.
- E. Dating Relationship means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations. (Fam. Code §6210.)
- F. 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. (Pen. Code §13701(b).) (*See Appendix 2.*)

- G. Stalking occurs when a person willfully, maliciously, and repeatedly follows or willfully, maliciously, and repeatedly harasses another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family. (Pen. Code §646.9(a).)
- H. Harasses means engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. (Pen. Code §646.9(e).)
- I. Course of Conduct means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.” (Pen. Code §646.9(f).)
- J. Credible Threat means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary that the suspect had the intent to actually carry out the threat, and the present incarceration of a person making the threat shall not be a bar to prosecution. Constitutionally protected activity is not included within the meaning of “credible threat.” (Pen. Code §646.9(g).)
- K. Immediate Family means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. (Pen. Code §646.9(l).)
- L. Domestic Violence Order is a protective order which is issued pursuant to the Domestic Violence Protection Act (Fam. Code §§6200-6389), or the Uniform Parentage Act (Fam. Code §§7710, 7720), or in connection with a dissolution, legal separation, or annulment ((Fam. Code §§2045, 2047, 2049), or in cases of elder or dependent abuse (Welf. & Inst. Code §15637.03). This includes Domestic Violence Orders from other states, counties, tribal courts, or juvenile courts.
- M. Emergency Protective Order (EPO) is obtained by a law enforcement officer in the field when an officer believes a victim of domestic violence or a family or household member is in immediate or

present danger of domestic violence. It is an ex parte order issued by a judicial officer at any time, whether or not court is in session, to restrain certain acts of abuse, and/or to exclude a person from a dwelling, and/or other specified acts, and/or to provide for child custody. (Fam. Code §§6215, 6240, et seq.) A judicial officer may issue an EPO where the law enforcement officer asserts reasonable grounds to believe either or both of the following: (a) that a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought; (b) that a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member. An EPO shall be offered to all victims even when an arrest is made.

The expiration of such an order is the earlier of the following:

1. The close of judicial business on the fifth court day following the day of its issuance; or
2. The seventh calendar day following the day of its issuance. (Fam. Code §6256.)

- N. Officer is defined as any officer or employee of a local police department or sheriff's office, and any peace officer of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in California Penal Code Section 830.2, or a housing patrol officer, as defined in subdivision (d) of California Penal Code Section 830.31, or a peace officer, as defined in subdivisions (a) and (b) of Section 830.32. (Pen. Code §13700(c).)
- O. Pro-Arrest Policy refers to a position that prioritizes arrest over misdemeanor citation, letter notification or warrant in situations where an arrest on probable cause is legally permissible.
- P. Protective Order is an order that requires a person to restrain from doing a particular act or acts. It is issued by the criminal court, with or without notice to the person who is to be restrained. A Protective Order will remain in effect for a set period of time, which is stated on the face of the order. A Protective Order shall be in writing and entered into CLETS.

- Q. 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, upon a good cause belief that harm to, or intimidation of, or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, by the defendant. A Stay Away Order typically orders a person to stay away from the victim and/or other specified locations. A Penal Code Stay Away Order may remain in effect as long as the defendant is under a court's jurisdiction, including any sentence or probationary period. The sentencing court in a criminal case is required to consider issuing an order restraining the defendant from any contact with the victim, for up to 10 years, regardless of whether the defendant is sentenced to prison or jail, or is placed on probation. (Pen. Code §273.5). A Stay Away Order shall be in writing and entered into CLETS.

Stay Away Orders are issued pursuant to Penal Code Section 136.2 while a criminal prosecution is pending. Civil Restraining Orders may be issued pursuant to the Civil Harassment Prevention Act (Code of Civ. Proc. §527.6), Workplace Violence Safety Act (Code of Civ. Proc. §527.8), Uniform Parentage Act (Fam. Code §§7710 and 7720, 6200-6389), or in connection with a dissolution, legal separation, or annulment (Fam. Code §§2045, 2047, and 2049). Civil Restraining Orders may be issued for a maximum of 5 years, but may be renewed for the period set forth in the order. In cases of stalking, Restraining Orders may be issued for a maximum of 10 years pursuant to Penal Code Section 646.9(k). The Juvenile and Dependency Court can also issue restraining orders pursuant to Welfare and Institutions Code Section 213.5 if the minor meets the qualifications listed under subsections (a), (b), and (c) of this section.

On a showing of good cause, a court may include in a protective order a grant to the petitioner (victim) the exclusive care, possession, or control of any animal owned or kept by the petitioner (victim), and respondent (domestic violence perpetrator). Also authorizes the court to order the respondent (domestic violence perpetrator) to stay away from the animal and to forbid the respondent from taking, concealing, threatening, or harming the animal. (Fam. Code §6320(b).)

- R. Victim means a person who is a victim of domestic violence. (Pen. Code §13700(d).)
- S. A traumatic condition is defined as a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force. Strangulation and choking are recognized as a specified manner of inflicting a traumatic condition. (Pen. Code §273.5(c).)

## REPORTING REQUIREMENTS

A report shall be written on all incidents of domestic violence. This is the intent of the California Legislature. (Pen. Code §13730.)

1. The report shall be identified as a domestic violence incident report.
2. The report shall note whether the officer or officers who responded to the call found it necessary to inquire of the victim, the alleged abuser, or both, whether a firearm or deadly weapon was present at the location. If there was such an inquiry, the report should indicate whether the inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or deadly weapon discovered by an officer at the scene shall be subject to confiscation pursuant to Penal Code Section 12028.5. (Pen. Code §13730(c)(3).)
3. The report shall identify whether the officer or officers who responded to the call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance. (Pen. Code §13730(c)(1).)
4. The report shall document whether a child resides in the residence where the domestic violence incident occurred. This shall include the name and date of birth of the child.
5. The report shall note whether any law enforcement agency has previously responded to a domestic violence incident at the same address involving the same parties. (Pen. Code §13730(c)(2).)
6. After determining if either party acted in lawful self defense, the investigating officer must make reasonable efforts to identify the dominant aggressor. In identifying the dominant aggressor, an 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. (*See Appendix 2.*) (Pen. Code §13701(b).)
7. The victim of domestic violence shall be provided the incident report case number at the scene, when possible, or at a later date. (Pen. Code §13701(c)(8).)

## COMMON CHARGES

A situation involving domestic violence may result in, but is not limited to, a violation of one or more of the following sections of the Penal Code and Health and Safety Code:

136.1 PC	- Intimidating or dissuading a witness
148 PC	- Resisting arrest
166.4 PC	- Criminal contempt
166(a)(4) PC	- Willful disobedience of the terms of any lawfully issued, out-of-state court order, including orders pending trial.
166(d)(1) PC	- A person who owns, possesses, purchases, or receives a firearm knowing he/she is prohibited from doing so under a protective order under Penal Code Section 136.2, Code of Civil Procedure Sections 527.6, 527.8, or Family Code Section 6218, can be charged with a felony or misdemeanor.
187 PC	- Murder
203 PC	- Mayhem
207 PC	- Kidnapping
236 PC	- False imprisonment
240 PC	- Assault
242 PC	- Battery
243(d) PC	- Battery with serious bodily injury
243(e) PC	- Battery against a spouse, cohabitant, or person who is a parent of defendant's child, or former spouse, fiancé/fiancée, or former fiancé/fiancée or person with whom the defendant currently has, or has previously had a dating relationship.
243.25 PC	- Battery of an elder or dependent adult, with knowledge that the victim is an elder or dependent adult
245 PC	- Assault with a deadly weapon or by means of force likely to produce great bodily injury
246 PC	- Shooting at an inhabited dwelling
261.5 PC	- Unlawful sexual intercourse
262 PC	- Spousal rape
270.6 PC	- Leaving California with the intent to avoid paying spousal support, after having notice that a court has made a temporary or permanent order awarding such support.
273a PC	- Child endangerment
273d PC	- Willful infliction of corporal injury to child

- 273.5 PC - Willful infliction of corporal injury (domestic violence) against spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.
- 273.6 PC - Violation of a protective order
- 2716(g)(1) PC - same language as Penal Code Section 166(d)(1). Cross-reference to Penal Code Section 12021(g).
- 417(a)(1) PC - Brandishing a weapon
- 418 PC - Forcible entry into the home of another
- 422 PC - Criminal threats
- 459 PC - Residential burglary
- 591 PC - Malicious destruction of a telephone
- 591.5 PC - Unlawful removal, damage of wireless communication device, or obstructing use of such device to summon law enforcement
- 594(b) PC - Vandalism
- 597 PC - Cruelty to animals (implication is that the victim will suffer the same fate)
- 602.5 PC - Trespassing
- 603 PC - Forcible entry with damage to property
- 646.9 PC - Stalking
- 647(f) PC - Public drunkenness
- 11550 HS - Being under the influence of drugs
- 653m(a) PC - Obscene or threatening phone calls or electronic contacts
- 653m(b) PC - Making repeated, annoying telephone calls or electronic contacts.
- 653m(e) PC - 653m (a) and (b) are violated when a person knowingly permits any telephone or electronic communication under that person's control to be used for purposes prohibited by these subdivisions.
- 653.2 PC Electronically distributing, publishing, e-mailing, or making available for download, personal identifying information of an electronic message or images of a harassing nature, about another person, with the intent to place the person in reasonable fear for his or her safety, or his or her immediate family's safety and for the purpose of imminently causing the person unwanted physical contact, injury or harassment by a third party.
- Various Sections - Possession of a dangerous weapon. For example, see Penal Code Sections 22210, 24310, and 33220.
- 29825(a) PC - Purchasing or receiving a firearm while subject to a domestic violence protective order (EPOs, TROs, orders after hearing or 136.2 orders) which contains notice of prohibiting the purchase of or receiving of a firearm.

- 29825(b) PC      - Owning or possessing a firearm while subject to a domestic violence protective order, which includes a prohibition from possessing or owning a firearm, who was personally served with or was present in court when the order was made and actual notice of the prohibition was given.
- 25400 PC      - Possession of a concealed firearm
- 25850 PC      - Possession of a loaded firearm
- 25900 PC
- 664 PC      - Attempting any of the above



9-1-1 OPERATOR/DISPATCHER RESPONSE

TO DOMESTIC VIOLENCE CALLS

- A. The dispatcher who receives a call reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order, including orders issued pursuant to Penal Code Section 136.2, and restraining orders, shall rank the call among the highest priority calls (Pen. Code §13702). The dispatcher will dispatch officers to every reported incident. The dispatcher, whenever possible, should dispatch two officers to the scene.
- B. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance (Pen. Code §13702). However, every law enforcement agency must make available information as to the existence and status of court orders to officers responding to a harassment call. (Code Civ. Proc. §527.6(h).)
- C. No dispatcher or 9-1-1 operator, in speaking with a victim of domestic violence, will discuss the victim's desire to "press charges," "drop charges," or "prosecute." It is inappropriate for any dispatcher or 9-1-1 operator to make any comment or statement which seeks to place the responsibility for enforcement action with the victim.
- D. Follow your agency's protocol for handing of 9-1-1 calls. The following information is vital to domestic violence calls for assistance:
  - 1. Do you need an interpreter? What language?
  - 2. What is the emergency? What address? What apartment number? Call back number?  
Other phone number where caller might be located?
  - 3. Is this a gated community? What is the pass code?
  - 4. Has anyone been injured? If yes, is an ambulance needed?
  - 5. Who is the suspect and is he/she present? If not, a description of the suspect and his/her expected whereabouts.
  - 6. Are weapons involved or available? If yes, what kind?
  - 7. Who am I speaking to? Are you the victim? If no, are you a witness?
  - 8. What has happened? What is happening now?
  - 9. Is the suspect present? Is he/she in the same room? Can he/she hear you? What is his/her name? Please describe the suspect and their clothing, and, if not present, where are they?
  - 10. Are there children present? How many?

11. How are you related?
  12. Is the offender under the influence of drugs or alcohol? If yes, what substance?
  13. Does the victim have a current restraining order? Has the suspect been served with the order?
  14. If possible, continue to gather additional information such as: Have the police been to the address before? Have they been involved in prior domestic violence incidents, etc.?
  15. The dispatcher or 9-1-1 operator should make every effort to keep a victim of domestic violence on the telephone until officers arrive.
- E. The safety of domestic violence victims, whether the threat of violence is immediate or removed, should be the primary concern of 9-1-1 operators. 9-1-1 operators shall advise victims to protect themselves as best they can, including, but not limited to, waiting for officers at a friend's house or simply leaving the residence if the batterer may return. Advise the caller that if he/she chooses to leave for safety purposes to remember to take cell phone, keys, money, and a credit card if there is time. If the victim chooses to leave, the dispatcher should obtain information where he/she intends to go and how he/she can be contacted including his/her cell phone number. The victim should be instructed to contact law enforcement when he/she reaches a point of safety.
- F. The 9-1-1 operator should be aware that the 9-1-1 tape frequently becomes a valuable piece of evidence in the prosecution of domestic violence cases and should, therefore, make every effort to have the victim describe what happened in detail, as well as the suspect if he/she is available and it is safe for the victim.

PATROL OFFICER RESPONSE AND INVESTIGATION  
IN DOMESTIC VIOLENCE CASES

A. ENFORCEMENT OF LAWS IN DOMESTIC VIOLENCE INCIDENTS

Felony

1. An arrest should be made in the event that there is probable cause to believe that a felony has occurred. All suspects arrested will be booked into the county jail. A pro-arrest policy will be implemented by all departments.
2. If an officer has probable cause to believe that a felony has occurred, an arrest should be made irrespective of whether the officer believes the offense may ultimately be prosecuted as a misdemeanor, or not at all.

Misdemeanor

1. The suspect should be arrested in the event that a misdemeanor domestic violence incident occurs in the officer's presence.
2. When a misdemeanor domestic violence assault or battery has been committed outside the officer's presence, and the victim is the suspect's spouse, former spouse, cohabitant, former cohabitant, fiancée, parent of his or her child, or a person with whom the suspect has had or is having an engagement relationship or a current or prior dating relationship, a peace officer may arrest the suspect without the need of a private person's arrest. (Pen. Code §836.) 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. (Pen. Code §836.5.)

Penal Code Section 836(d) makes it possible for officers to arrest when the crime does not take place in their presence where both of the following circumstances apply:

- a. The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

- b. The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.
- 3. An arrest shall be made if the officer has probable cause to believe that the suspect has violated a domestic violence protective order, restraining order, emergency protective order, or elder abuse protective order, even when the crime did not occur in the officer's presence. (Pen. Code §836.)
- 4. When a misdemeanor not meeting the requirements of Penal Code Section 836 occurs outside the officer's presence, the officer must make a good faith effort to inform the victim or witness of his/her right to make a private person's arrest and how to safely execute the arrest.

Whenever possible, such discussion shall be held out of the presence of the suspect. An officer shall not dissuade complainants from making a citizen's arrest. An officer shall not ask the complainant if he/she would be willing to go forward with prosecution.

B. HANDLING OF THE INCIDENT

- 1. The existence of the elements of a crime and/or the willingness of the victim or witness to make a private person's arrest, where appropriate, 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 course of actions in domestic violence incidents:
  - a. The relationship or marital status of the suspect and the victim, i.e., not married, separated, or pending divorce.
  - b. The fact that the victim and suspect are of the same gender.
  - c. Whether or not the suspect lives on the premises with the victim.
  - d. The existence or lack of a temporary restraining order.
  - e. The potential financial consequence of arrest.
  - f. The victim or witness' history or prior complaints.
  - g. Verbal assurances that violence will cease.
  - h. The victim or witness' emotional state or state of sobriety.
  - i. Injuries are not visible.
  - j. The location of the incident (i.e., public or private).

- k. Speculation that the victim or witness may not follow through with the criminal justice process or that the arrest may not lead to a conviction.
  - l. The suspect is a juvenile. Officers should be aware that Juvenile Court orders can be in effect until the offender's 21st birthday.
  - m. The victim's or witness' immigration status.
  - n. Whether the suspect is present or absent in a restraining order case.
- 2. Once a suspect is arrested on a misdemeanor offense, the arrestee should be booked into the county jail or juvenile hall.
  - 3. In determining whether prior violence has occurred, the officer should interview the victim, suspect, children, roommates, and any available neighbor or other witnesses. A warrants check, automated records check, and criminal history check, and Juvenile Probation status check should also be conducted.
  - 4. The officer shall consider the issuance of an Emergency Protective Order as described as described below of this Uniform Marin County Law Enforcement Protocol for the Handling of Domestic Violence Cases.
  - 5. In both misdemeanor and felony arrests, the officer should consider preparing a declaration to increase bail above the scheduled amount, or to deny an OR release, if it appears that the defendant may not appear in court or if the defendant's release from custody may pose a serious threat to the victim's well-being. (Pen. Code §§1269, 1270, 1275.) The passage of Proposition 189 in 1994 allows, in part, for no bail in felony offenses involving acts of violence on another person, or felony sexual assault on another person, when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others. (Cal. Const., art. I, § 12.) The on-call judge is available for telephonic requests for bail increases. If the on-call judge does increase bail, an affidavit/order must be submitted to the judge the following morning so that she/he can sign the order, before the suspect is arraigned. The original must be delivered to the jail, with a copy to the District Attorney's Office, Superior Court Desk. The District Attorney's Office is available to assist in the preparation of the affidavit/order to increase bail. (*See Appendix 4 for bail enhancement application form.*)

6. An officer shall make no statements or comments about the surrounding circumstances of the incident or the victim that would tend to belittle a victim or which would tend to discourage a victim from reporting an act of domestic violence or requesting a citizen's arrest.

A peace officer who accepts a private person's arrest is immune from civil liability for false arrest or false imprisonment when (1) at the time of the arrest, the officer had reasonable cause to believe that the arrest was lawful (Pen. Code §836, misdemeanor domestic violence, or Pen. Code §836.5, misdemeanor elder abuse); (2) the arrest was made pursuant to Penal Code Section 142, i.e., a victim or witness demanded that the officer receive a private person's arrest; or (3) the arrest was made pursuant to a charge, upon reasonable cause, of the commission of a felony by the person to be arrested. (Pen. Code §847.)

7. Pursuant to Penal Code Section 13730, 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.
8. An officer 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 peace officer or other persons present. When such weapons are taken into custody, the officer must review Penal Code Sections 12028.5, and 12028.7, to ensure that the statutorily mandated procedures are followed.

C. INVESTIGATION OF DOMESTIC VIOLENCE CASES

1. Upon arrival at a domestic violence related incident, the officer's first duty should be to provide for the safety of the officers and parties involved. Officers arriving at a domestic violence scene should conduct a thorough and diligent investigation, including determining the dominant aggressor, and submit reports of all incidents of domestic violence and all crimes related to domestic violence. (Pen. Code §13700, et seq.) If the incident occurred in another jurisdiction, the officer should contact that jurisdiction to determine which agency will investigate the incident.

The Marin County policy is PRO-ARREST in order to break the cycle of violence and to deter future abuse. *(See Appendix 1 for a brief overview of the pattern of abuse.)* At times, there are situations in which both parties have been violent toward one another. It will be necessary determining issues of self defense and determining who is the dominant aggressor. The dominant aggressor is the person most likely to inflict injury and the person least likely to be afraid. In identifying the dominant aggressor, the officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, whether or not threats were made. It also will be necessary to look at criminal history and history of abuse, both documented and undocumented (check other jurisdictions), to make this determination. It is critical to interview all potential witnesses, including children and neighbors. Avoid mutual arrests if at all possible. Be sure that self-defense is absolutely not an issue. *(See Appendix 2.)*

When investigating an incident of domestic violence, do not overlook the welfare of children. If a child resides in a home where a domestic violence incident occurs, this fact must be documented in your report and a copy sent to Child Protective Services. If such a child witness(es) is present during a domestic violence incident, you must also determine if the child is in danger and, if necessary, remove the child from the home.

2. The following steps should be included in an officer's investigation and subsequent report:
  - a. Officer Safety
    - i. Exercise reasonable care for the safety of officers and parties involved.
  - b. Arrival At Scene
    - i. Determine location and condition of victim, suspect, children, and pets.
    - ii. Determine if any weapon is involved or in the home. Confiscate and collect as evidence any weapons or firearms used in the incident. If the incident involves any threat to human life or physical assault, officers shall take temporary custody of any firearm or deadly weapon in plain sight or pursuant to a consensual or other lawful search. If unable to book the weapon (other than firearms) due to size or other circumstances, photograph the weapon.

- iii. Determine what, if any, crime has occurred.
- iv. Provide appropriate levels of aid to injured parties, including summoning an ambulance if injuries require.
- v. Separate victim, suspect, and witnesses.

(NOTE: This includes removing victim from suspect's line of sight. If it is necessary to remove one party from inside the residence to the outside area, and officer safety permits, the suspect should be removed outside and the victim allowed to remain inside in a protected environment.)

c. Preliminary Investigation

- i. Note victim's and witnesses' first statements to officer upon arrival. The best practice is to audio-record all first statements taken at the crime scene.

[NOTE. -- Victim's spontaneous statements may be admissible or victim's statements may be admissible if you are investigating an ongoing emergency.]

- ii. Interview victim, suspect, children, and witnesses separately. Officers are encouraged to audio record these segments. If the victim speaks a language other than English, call for another officer conversant in that language or arrange for other neutral and/or certified professional translation services. Avoid using interested individuals (children, family, or neighbors) to translate statements. Document the names and personal information and contact information of all witnesses and translators. Note information concerning the victim's whereabouts for the next few days in the police report.
- iii. Interview children. (Were they present when the violence occurred? Did they hear it? How often has violence occurred in the home?) Document children's names and ages. Determine and document child's demeanor. 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 or suspect.



*(Note that suspected child abuse must be cross-reported as requires by Penal Code Section 11166.)*

- iv. Document victim's, suspect's, and children's conditions and demeanor:
  - Document torn clothing
    - Photograph clothing while on person
    - Seize torn or damaged clothing
  - Document and photograph smeared make-up
  - Investigate and photograph evidence of injury
  - Document if victim is pregnant
  - Document if the suspect or victim is or appears to be under the influence of alcohol or drugs.
- v. Note and photograph any disarray or signs of disturbance at the house or other location.
- vi. Document size relation of victim and suspect.
- vii. In apparent "mutual combat" situations, determine who was the **dominant aggressor**:

#### FACTORS TO CONSIDER TO DETERMINE DOMINANT AGGRESSOR

- Size of the parties
- Use of weapons
- Is one party stronger than the other?
- Is one party specially trained in martial arts, boxing, or hand-to-hand combat techniques?
- Who is afraid?
- Who has the more serious injuries?
- Location and nature of injuries (offensive vs. defensive)
- Did one party escalate the level of violence (push followed by serious beating)?
- History of abuse (is one person usually the aggressor)

- Timing of the second arrest (person claimed to have been assaulted only after arrested)
- Existence of court protective orders
- Demeanor of the parties
- Use of alcohol and/or other drugs
- Existence of corroborating evidence or witnesses
- Criminal history
- Other legal defenses such as self-defense

#### INDICATORS OF DEFENSIVE INJURIES

- Wounds on victim's palm(s) of hand(s)
- Wounds on inside and outside of victim's anus
- Bumps on the victim's head (especially the back)
- Bite marks on perpetrator's chest, biceps, forearms
- Scratches on perpetrator's face, chest, neck (strangulation cases)
- Bruising behind ears of victim (strangulation cases)

*Remember, self-defense does not include acts inflicted to punish or retaliate.*

- viii. Give the victim the required victim assistance form per Penal Code Section 13701(c)(9)(A)-(H). *(See Appendix 3--example form.)*
- ix. Refer the suspect to batterer intervention programs.
- x. Check for the existence of ANY restraining orders against the suspect. If the victim has a restraining order against suspect, obtain a copy of the order and valid proof of service (proof of service not necessary if suspect was in court when the order was issued). If no copy is available, contact the Department of Justice Domestic Violence Restraining Order System (DVROS/CLETS) to verify the existence of the order. (Fam. Code §6383(d).) A faxed copy of a certified temporary order IS valid. If there is no order, inform victim how to get an order.

- If the victim has a restraining order which has not yet been served on suspect, inform the suspect of the order and note it in the report. 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.
  - If victim has proof that a copy of the restraining order was sent by mail to the respondent and he/she was present in court when the initial order was made, this is good service if the only change in the new order is the expiration date.
  - 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.
- xi. Advise the victim regarding an emergency protective order (EPO) in every case, even if the suspect is arrested, and in non-criminal situations where the victim is fearful. The officer is required to request the protective order if the officer believes the person requesting the order is in immediate or present danger. If possible, prepare the form before calling the on-duty judge.
- xii. Officers are authorized to request the immediate surrender of firearms when a person is served with a domestic violence protective order, rather than having to wait 24 hours for the person to self-surrender the firearms.
- xiii. Obtain descriptive information regarding the victim: date of birth, height, weight, color of hair and eyes, location of nearest relative and relevant phone numbers. (This will be useful, if necessary, to locate victim in future.)
- xiv. When a party in a domestic violence incident requests police assistance in removing a reasonable amount of personal property (e.g., a suitcase) to another location, officers shall stand by a reasonable amount of time until the party has safely done so. *\*\*Note, that an officer may not assist a restrained person in acts that would violate the restraining order or a protective order.*

- xv. The officer shall not advise victims of domestic violence that they can "press" charges or "drop" charges. The decision to prosecute is made by the District Attorney. The victim and suspect will be advised that once a crime report is taken he/she has no control over the decision to prosecute.
- xvi. Arrests should be made pursuant to Penal Code Section 836 under the following circumstances: for any felony crime, including Penal Code Section 273.5; for a misdemeanor Penal Code Section 243(e)(1), when the assault or battery (without injury) was upon 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, pursuant to Penal Code Section 836(d). An arrest shall be made for violations of Penal Code Section 273.6(a) per Penal Code Section 13701(b).
- xvii. Advise the victim of right to private person's arrest in misdemeanor cases for which there is no exception under Penal Code Section 836.
- xviii. Ask the following risk assessment questions of every victim. Include responses in the written report. Asking a minimum of three risk questions at the scene will frequently result in information accessible to prosecutors, defense attorneys, probation, and the court, even when the victim cannot be reached before the first appearance.
- Do you think he/she will seriously injure you or your children? Why do you think so or think not?
  - Does he or she own or have access to guns?
  - Describe incident when you were most harmed or afraid?
  - What is the frequency of the violence and is it changing?
  - Has he or she ever forced you to perform sexual acts under the threat of violence?
  - How frequently and seriously does he or she intimidate, threaten, or assault you?
  - Describe the most frightening event/worst incidence of violence involving him or her.

- Do you have concerns about or is there any history of victim/witness intimidation?

d. Identifying and Responding to Strangulation Cases

Effective 2012, the definition of "traumatic condition" in Penal Code Section 273.5 has been amended to include a definition of strangulation that is defined as the perpetrator obstructing the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. This amendment recognizes the long known medical evidence that strangulation is a serious crime and a marker of risk to the victim. Previous strangulation increases the risk for lethal assaults. Only four pounds of pressure for ten seconds can cause unconsciousness and death can result in as little as one or two minutes, depending on the pressure applied. Injuries are often not immediately evident. Strangulation may lead to death up to 30 hours after an incident.

Initial Symptoms:

- Breathing Changes -- Difficulty breathing; hyperventilation; unable to breath
- Voice Changes -- Raspy, hoarse voice; coughing; unable to speak
- Swallowing Changes -- Trouble swallowing; painful to swallow; neck pain; nausea; vomiting
- Behavioral Changes -- Agitation; amnesia; PTSD, hallucinations; combativeness
- Eye Changes -- Ruptured capillaries in the eyes, under the eyelids, on the face or on the neck
- Other Symptoms -- Dizzy; headaches; fainted; urination; defecation

Responding to Strangulation:

- Seek emergency medical assistance at the scene
- Make self-defense and dominant aggressor determination
- Flag the case for prompt follow-up

- Evidence collection should include, but not be limited to, obtaining information in about the way the victim was strangled (e.g., hands, forearms, knees, or any object that restricted the victim's airway); checking the suspect for wounds inflicted by the victim (for example, scratches to face or arms, bruises on shins from being kicked, scratches to hands and elbow area, bite marks to arms and chest); locating and seizing weapons used; photographing and collecting damaged property; obtaining medical/dental release(s) from the victim; photographing all injuries of both parties, no matter how minor; taking a full-body photograph of the victim to identify the victim and the location(s) of injury(ies); taking a close-up photo of face and neck at different angles including follow-up photos at 48 hours.

Report writing that documents the totality of the incident in addition to the strangulation; using the word "strangulation" vs. "choke," except when recording the victim's exact words; using the phrase "consistent with strangulation"; recording the victim's description of injury(ies), even if there are no visible signs.

e. Identifying And Responding To Stalking Cases

Be alert to the possibility that any single report of domestic abuse could be part of a pattern of stalking behavior. Be aware of the possibility that actions that would not otherwise be illegal or might not cause alarm in another context could be examples of stalking behavior.

Stalking signals danger and the combination of stalking and physical abuse is a higher indicator of lethality than either behavior alone. Stalking cases can appear insignificant to the patrol officer at first because they often manifest as violations of protective orders or harassing phone calls which can be a low priority for response. Often, nothing physically has happened yet to the victim. Viewed in isolation, individual stalking incidents often appear innocent, but once identified as part of a pattern of behavior of unwanted contact imposed on the victim by the perpetrator, the seriousness of the behavior becomes apparent. Critical first steps in any stalking investigation are to acknowledge the legitimacy of the victim's fear and recognize that stalking behavior can indeed be the precursor of significant violence.

- f. If Suspect Taken Into Custody
  - i. Record spontaneous statements.
  - ii. Prevent communications between suspect and victim/witnesses/children.
  - iii. Record alibi statements.
  - iv. Advise suspect of rights.
  - v. Obtain waiver.
  - vi. Obtain statements.
  - vii. Request that the jail block the suspect's ability to telephone the victim.
  - viii. Request the jail, or the arresting agency, to notify the victim if the suspect is to be released.
  - ix. Obtain bail enhancement if necessary and appropriate. *(See Appendix 4.)*
- g. Evidence, Firearms, and Other Deadly Weapons
  - i. If possible, audio or video record statements.
  - ii. If possible, have victim and suspect complete a written statement.
  - iii. Ensure that victim's/suspect's injuries are photographed on the day of the incident and several days thereafter. Make sure to photograph their faces for identification purposes.
  - iv. Photograph crime scene.
  - v. Note condition of crime scene (disarray of physical surroundings).

vi. Identify, impound and/or photograph weapons/firearms and other evidence. (Pen. Code §12028.5.) For example, if the victim states the defendant wrapped the phone cord around her neck, seize the cord as evidence. If the victim points out property damaged by the suspect, seize it if possible.

vii. Firearms and Other Deadly Weapons

- Seize any firearm, ammunition, or other deadly weapon located in plain sight, discovered pursuant to a consensual search or other lawful search, as necessary for protection of officers or other persons present. (Pen. Code §12028.5(b).)
- If necessary, for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm, ammunition, or other deadly weapon is present at the location. If that inquiry discloses a firearm or other deadly weapon, confiscate the weapon pursuant to Penal Code Section 12028.5. Note this in the incident report. (Pen. Code §13730.)
- If an EPO is issued, request the immediate surrender of firearms once the perpetrator is served. (Fam. Code §6389.)
- Check in the Consolidated Firearms System (CFS) and Prohibited Armed Persons (PAP) file to determine if firearms are registered to any involved person or if any involved person is prohibited from owning firearms.
- Seize any firearms possessed by convicted felons in violation of Penal Code Section 12021(a), or people with certain misdemeanor convictions, as specified in Penal Code Section 12021(c).



- 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 Penal Code Section 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 a firearm is subsequently prohibited from possession by a restraining order, the firearm will not be returned (Pen. Code §12028.5). If the person does not file the receipt with the court within 48 hours after being served with the protective order, it is a violation of the protective order.
  - A search warrant for the suspect or his real or personal property may be obtained if the suspect owns a or is in possession of or has custody or control of a firearm and there is a prohibition regarding firearms pursuant to Family Code Sections 6389 or 6218 and the suspect has been lawfully served with the order. (Pen. Code §1524(a)(11).)
- viii. Preserve as evidence the 9-1-1 dispatch tape(s) regarding this incident. (Note request in report.)
- ix. Upon request send 9-1-1 tape and all photos to District Attorney's Office.
- h. Medical Treatment
- i. Arrange transportation of victim and children to hospital for medical treatment, if necessary, or stand by until victim and children can safely leave.
  - ii. Obtain a medical records release signed by the victim at the scene. (*See Appendix 5 for example waiver.*)
  - iii. Send waiver signed by victim to medical facility as soon as possible and obtain copy of records for report including doctor's name, address, and phone number.
  - iv. Document complaints of injuries.

- v. Obtain names, addresses, and phone numbers of ambulance or paramedic personnel treating the victim.

- i. Confidentiality

- i. Penal Code Section 293 regarding sexual assault crimes and Government Code Section 6254(f)(2) requires the ADDRESS OF THE VICTIM be deleted from crime reports for the crimes listed below. Further, these sections require DELETING THE NAME OF THE VICTIM from the crime report at the victim's request. If so requested, you should not refer to the victim by name, but rather Jane or John Doe, or victim, and submit a separate document (*see Appendix 6 for example waiver*) with the private information to the District Attorney, in a sealed envelope, when the case is submitted for review. This is applicable to the following crimes:

Sexual Assault Penal Code Sections:

261, 261.5, 262, 264, 264.1, 286, 288, 288a, or 289

Violence Penal Code Sections:

273a, 273d, 273.5, 422.6, 422.7, 422.75, or 646.9

\* Note: 243(e)(1) PC and 273.6 PC do not apply to 293 PC.

- ii. Advise victim of confidentiality if arrest is made for 273.5 PC, 646.9 PC, or other stated offense.
- iii. Ask if the victim wishes to have confidentiality. If so, prepare report as stated above.

j. Completing Crime Report

- i. Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
- ii. Ensure that elements of all involved crimes are included in the report and document:
  - Any injuries victim and suspect have sustained. Documentation should include a description in the police report, as well as photographs and medical reports, if medical treatment was obtained.
  - That victim received the Domestic Violence Resource Card per Penal Code Section 13701(c)(9)(H)(i) and paragraph vii. below.
  - Past history of violence and check for existence of a restraining order.
  - Prior domestic violence incidents at that address involving the alleged abuser or victim.
  - Statements of victim, suspect, and all witnesses, including children.
  - Physical evidence obtained.

- Probation/parole status.
  - Whether alcohol, illegal drugs, or prescription drugs were involved by the abuser or victim.
  - Names, ages and relationship of children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home.
  - Names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect. Include information on their whereabouts after the incident.
  - If any pets were threatened, harmed, or there is evidence of animal abuse.
  - Whether the officer found it necessary, for the protection of the officer or other persons present, to inquire of the victim, abuser, or both, whether a firearm or other deadly weapon was present at the location. (Pen. Code §13730.)
- iii. If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them. *Use objective interpreters (someone who is not a family member or a percipient witness) to obtain statements and/or audio-recorded statements.*
- iv. If a valid restraining order prohibits firearms and ammunition possession, or ownership by a person involved in the incident, the officer shall make record in the crime or incident report of:
- Inquiries made to determine if the restrained person possesses any firearms or ammunition;
  - The results of efforts made to locate and seize any unlawfully possessed firearms and ammunition.

- v. 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 the Domestic Violence Restraining Order System (DVROS).
  - Request of records or communications personnel that information on the reported violation is entered into the DVROS. (See the California Department of Justice Information Bulletin #02-05-BCIA, dated April 4, 2002.)
- vi.. Was victim photographed? If so, note in report and send photographs to the District Attorney with the report.
- vii. Officers shall furnish victims with the following information and record that they did so. (Pen. Code §13701(c)(9).) (*See Appendix 3.*)
- A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time. (Pen. Code §13701(c)(9)(A).)
  - Referrals for victim services, including the phone number for a shelter, information about other community services, and the phone number for the California Victims Compensation Program (1-800-777-9229). (Pen. Code §13701(c)(9)(B-D).)
  - A statement informing the victim of domestic violence that he or she may ask the District Attorney to file a criminal complaint. (Pen. Code §13701(c)(9)(E).)
  - A statement informing the victim of the right to go to the Superior Court and file a petition requesting any orders for relief described in Penal Code Section 13701(c)(9)(F)(i-vii).

- A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, consistent with Penal Code Section 13701(c)(9)(G).
  - A “Victims of Domestic Violence” card, which shall include Penal Code Section 13701(c)(9)(H). (*See Appendix 3.*)
  - The names and phone numbers for local shelters, victim hotlines, and counseling centers.
  - A simple statement on the proper procedures for a victim to follow after a sexual assault.
  - A statement that sexual assault by a person who is known to the victim is a crime.
  - A statement that domestic violence or assault by a person who is known to the victim is a crime.
  - The Attorney General’s card on Marsy’s Law Rights (Calif. Const., art. I, §28(b)(17)). (*See Appendix 9.*)
- viii. Document past history of violence (include report number(s)), whether or not reported to law enforcement. (*NOTE: Past incidents of violence may be admissible to show defendant's disposition, pursuant to Evidence Code Section 1109.*)
- ix. If possible, record name, address, and phone number of two close friends or relatives of the victim who will know of her/his whereabouts 6-12 months from the time of the investigation. If victim indicates he/she will be leaving the home, document when and where he/she will be leaving.

x. 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). When responding to a domestic disturbance where there is no actual violence or other violation of the law, the officer will ensure that the proper dispatch code indicating no domestic violence or other appropriate record of the incident is made.

k. Submitting Crime Report To District Attorney

If the suspect is in custody before 6:00 a.m., the crime report must be submitted to the District Attorney by 9:30 a.m. in order for the District Attorney to review the case for charging, for afternoon arraignment.

If the suspect is not located or booked, submit the report to the District Attorney's Office within 24 hours of the incident. Note on the prosecution request form if an arrest warrant is requested.

Upon request from the District Attorney, the records clerk will send the prior reports of violence or contact card.

Include the victim's daytime telephone number, work number, and a number where he/she will be for the several days after the incident so that the victim/witness advocate from the District Attorney's Office will be able to make contact upon receipt of the report. [NOTE: This is also important so we can show diligent efforts to locate the victim. See Evidence Code Section 240 and 1370.]

l. Re-Contact the Victim

Officers/Investigators should contact the victim within 72 hours of the offense to determine if further law enforcement assistance is needed and to take follow up photographs if there were allegations of injury.

m. Access to Domestic Violence Reports

Law enforcement agencies are required to provide, at no cost, one copy of all domestic violence face sheets and incident reports, to a domestic violence victim (as defined in Family Code Section 6211), **or to his or her representative if the victim is deceased, (as defined in Family Code Section 6228(g))**, upon request. Absent good cause, the face sheet must be made available during business hours, within 48 hours of request (and no more than five working days of the request with good cause); the incident report within five working days of request (or 10 days with good cause). Therefore, incident reports should be completed in an expeditious manner. Requesting parties must present identification. Only cover reports and face sheets made within five years of the date of completion of the incident report are affected. (Fam. Code §6228.)



## OBTAINING EMERGENCY PROTECTIVE ORDERS

Emergency Protective Orders (EPO) are intended as a temporary measure of protection until a victim can obtain a more permanent Temporary Restraining Order (TRO). An EPO should be requested when there is concern for the safety of the victim, regardless of whether a criminal violation occurred.

EPOs are available by telephone at all times, whether or not the court is in session. (Fam. Code §6241.)

The officer shall use the following procedures:

1. The officer shall advise the victim of the existence and availability of the orders; however, the victim's consent to obtain an EPO is not required.
2. An EPO will be prepared by a law enforcement officer whether or not a victim of domestic violence requests such protection, when the officer believes such an order is necessary to protect the victim. If a law enforcement officer does not request or obtain an EPO, the officer should document the reasons why it was deemed unnecessary.
3. Have available the Application for Emergency Protective Order. (*See Appendix 7.*) Complete lines 1 through 7 on the application.
4. It is not necessary that an assaultive crime has actually occurred for the EPO to be initiated. Recent violent acts or threats of violence, coupled with the likelihood of imminent violence is the only criteria required to request the order.

Penal Code Section 646.91 also allows EPOs to be issued where a peace officer asserts reasonable grounds to believe that a person is in immediate and present danger of stalking, based upon that person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the target in reasonable fear for his or her safety, or the safety of his or her immediate family.

5. The EPO covers not only the adult requesting the protection but also can provide temporary custody of minor children to the victim.

6. The fact that the endangered person had left the household to avoid abuse, or the fact that the suspect left the house or was arrested, does not affect the availability of the EPO. (Fam. Code §6254.)
7. If an EPO concerns an endangered child, the child's parent or guardian who is not a restrained person, or a person having temporary custody of the endangered child, may apply to the court for a restraining order under Section 213.5 of the Welfare and Institutions Code.
8. Pursuant to department policy, contact the on-duty magistrate, identify yourself, and state your purpose. Record on line 8 of the application who you contacted and when. The magistrate will ask you a series of questions regarding the incident, based on the answers listed on lines 1 through 5. The officer should also be prepared to answer questions relating to the incident, such as past history or whether restraining orders had been previously applied for or issued.
9. Record whether the application was granted or denied on line 8, and sign the form. If one is approved, the Emergency Protective Order section must be completed.
10. The approving magistrate will give specific instructions on what is to be recorded on lines 9 through 12 of the Emergency Protective Order section. The remainder of the lines will be completed after the service is completed.
11. The on-call magistrate will evaluate and determine the suitability of the EPO taking into consideration the following criteria:
  - a. The victim/complainant's perception of being in imminent jeopardy.
  - b. Whether the domestic violence related incident was assaultive in nature.
  - c. Whether the offense committed was a felony or misdemeanor.
12. A law enforcement officer who requests an EPO shall reduce the order to writing and sign it (Fam. Code §6270) after the court grants the order.

13. A law enforcement officer who requests an EPO shall do all of the following:
  - a. Obtain an incident or case number for the domestic violence incident. Inform appropriate personnel that the number will also be used on an EPO, so that they may obtain additional information they require. Write this number in the Incident Case Number box in the upper right hand corner of the application.
  - b. Serve the order on the restrained person, if the restrained person can reasonably be located. Verbal notice is sufficient, with follow-up attempts to personally serve the restrained person.
  - c. Give a copy of the order to the protected person or, if the protected person is a minor child, to a parent or guardian of the endangered child who is not a restrained person, if the parent or guardian can reasonably be located, or to a person having temporary custody of the endangered child (even if the restrained person has not been served). Admonish the victim to retain these papers until the expiration of the order.
  - d. File a copy of the order with the court as soon as practicable after issuance. (Fam. Code §6271.)
14. A law enforcement officer shall use every reasonable means to enforce an EPO, and when acting in good faith to enforce an EPO, an officer is not civilly or criminally liable. (Fam. Code §6272.)
15. Emergency Protective Order legislation requires an officer to make a reasonable attempt to serve the restraining order. The officer who requests the EPO shall carry copies of the order while on duty in order to make reasonable attempts to serve the EPO. (Fam. Code §6273.) If the restrained party is present or can be readily contacted, serve the order. Record whether and how the order has been served in the incident or crime report. Give the restrained person a copy of the order.
16. Persons subject to EPOs are required to turn over all firearms when told to do so by law enforcement.

## ENFORCEMENT OF RESTRAINING ORDERS

- A. 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 a protective order, as defined in Section 6218 of the Family Code (*includes EPO, TRO, and orders after hearing obtained the civil court or in the Family Law Court*) or of an order issued pursuant to Section 527.6 or Section 527.8 of the Code of Civil Procedure.

Penal Code Section 273.6(d) makes it a felony to violate a restraining order, with violence or a "credible threat" of violence (see Pen. Code §139), after suffering a prior conviction within seven years for violation of Penal Code Section 273.6.

In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant. (Pen. Code §136.2(e)(2).)

It is the policy of law enforcement agencies within the County of Marin that if there is probable cause that a protective order issued under Section 6200, et al (EPOs, TROs, and orders after hearing), Section 7700, et al, and Section 136.2 of the Penal Code (criminal protective order) has been violated, the perpetrator shall be arrested, absent exigent circumstances (which should be spelled out in the report) (pursuant to Penal Code Section 13701(b)). Anyone so arrested for a misdemeanor violation of a protective order for domestic violence will be booked in the Marin County Jail and NOT released on a promise to appear citation. It is further the policy that anyone booked into the Marin County Jail by any agency for a misdemeanor violation of a protective court order will not be released except upon a court order or required posting of bail. (Ref. 853.6 P.C. and MCSO ADM OP 94-01.) A copy is to be submitted with the work copies of the case and arrest reports.

Penal Code Section 273.6 shall apply to the following orders:

1. An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

2. An order excluding a party from the family dwelling or from the dwelling of the other.
  3. An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a) of Penal Code Section 273.6.
- B. Orders issued in criminal cases under Penal Code Sections 136.2 and 1203.097; which pertain to domestic violence and harassment are punishable under Penal Code Section 166(c)(1), will be enforced by all law enforcement officers.
- C. Officers will make arrests for any violations under the above sections (either Penal Code Section 273.6 or Penal Code Section 166(c)(1) orders) that they observe. If the officer arrives at the scene and observes the defendant in violation of the terms of the order, the officer shall make an arrest for a misdemeanor occurring in his/her presence.

Authority to arrest for misdemeanor court order, violations, even if they occur outside the officer's presence, applies to the following orders: domestic violence protective or restraining orders issued under the Family Code (EPOs, TROs, or orders after hearing per Domestic Violence Prevention Act); Code of Civil Procedures Section 527.6 (harassment); Welfare and Institutions Code Section 213.5 (juvenile court protective orders); Penal Code Section 136.2 (criminal court stay away orders); Penal Code Section 1203.097 (orders issued as a condition of probation); or orders issued by courts of other states, commonwealths, territories, or insular possessions subject to U.S. jurisdiction, military tribunals, and tribes. (Pen. Code §836(c)(1).)

Note that an officer shall arrest and book at the county jail a suspect for a misdemeanor violations of Penal Code Sections 273.6 and 166(c)(1) (for orders issued under Penal Code Section 136.2), even if the crime occurred outside of the officer's presence. (Pen. Code §836(c)(1).) *(See Section A for details.)*

- D. Law enforcement officers receiving copies of Protective Orders will forward them to the Records Division, who will enter appropriate information in the state-wide computer system.
- E. If at the scene of a domestic disturbance a person shows or informs the officer of the existence of a Protective Order, it is crucial to establish the present status and terms of the order. Officers shall ask the following questions to determine the current status:

1. Is there a Protective Order on file? It will be filed under the name of the person restrained. If the officer cannot verify the order, it must be enforced through a citizen's arrest procedure.
2. What is the date of the order? Has it been signed by a Superior Court judge and filed by the court (a filed document has the court clerk's "filed" stamp and the date filed on the upper portion of the first page of the document--usually in the upper right hand corner)?
3. What is the expiration date? If there is no expiration date stated on the face of the domestic violence restraining order, it is valid for three years. (Fam. Code §6345.)
4. What are the terms of the order?
5. Is there a Declaration of Service on file, proof of notice in court, or has another officer given the needed notice to the person to be restrained?
6. Officers present at a harassment or domestic violence scene must, on request of a plaintiff, serve an order on a defendant. (Code Civ. Proc. §527.6(h); Fam. Code §6383(a).) However, to avoid undue pressure on the victim, once an officer becomes aware of the existence of a legal restraining or protective order, it can and should be served on the defendant regardless of the victim's request.
7. Within one business day of service, any law enforcement officer who served a protective order shall submit the proof of service directly into the Department of Justice Domestic Violence Restraining Order System, including his or her name and law enforcement agency, and shall transmit the original proof of service form to the issuing court. (Fam. Code §6380(d)(1).)
8. Out-of-State Protection Orders: A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes, in and of itself, probable cause to believe that a valid foreign protection order exists. (Fam. Code §6403(a).)

- F. The existence of the following information shows that the suspect has the needed knowledge to be in violation of the order.
1. The elements of the crime require willful disobedience of the terms of the order. A violation of Penal Code Section 273.6 requires an "intentional and knowing" violation.
  2. If this information is not established, the suspect cannot be arrested at the time of the disturbance.
  3. If the Declaration of Service is not on file and notice by another officer has not been established, proceed to give a copy of the order, if available, to the suspect.
    - a. If the victim has an extra copy of the order then serve the order on the suspect to keep.
  4. Advise the suspect that they are now subject to the terms of the order and can be arrested for any further violations.
  5. Report through your department procedure that you have served a copy of the order on the defendant.
  6. Release a copy of the Proof of Service to the victim, and file the Proof of Service as part of the report and the department will ensure that the original Proof of Service is filed with the appropriate court.
- G. If the victim does not have a copy, advise him/her to carry one in the future, and to have an extra copy for service on the suspect if he/she has not been served.
1. Advise the suspect that there is an order in effect.
  2. The officer can have the terms of the order read over the phone by the records/dispatch staff and can then inform the suspect.
  3. An arrest may be made at this time if the suspect refuses to comply with the terms of the order.

- H. If a protective order violation has occurred and the suspect is not present, the officer will submit a crime report of the appropriate misdemeanor violation.

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.



FOLLOW-UP INVESTIGATION  
IN DOMESTIC VIOLENCE CASES

- A. All domestic violence reports prepared by officers pursuant to Penal Code Sections 13700, et seq., shall be referred to investigations personnel for review and follow-up investigation as needed.

"Investigations personnel" refers to a detective, inspectors, investigative specialist, or other designated personnel.

Investigations personnel receiving domestic violence-related crime and arrest reports shall process them in the same manner as all other criminal violations.

Whenever possible, investigative personnel will be specifically designated to handle domestic violence cases.

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

1. At a minimum, follow-up investigations submitted to the District Attorney for consideration should include the following:
  - a. Verify the inclusion of all investigative steps described above regarding patrol officer response/investigation.
  - b. Obtain medical records, if not already obtained.
  - c. Interview background witnesses who may not have been available to the patrol officer at the time of the incident (e.g., neighbors).

- d. Re-interview witnesses as necessary.
- Note: Prior to the initial interview by law enforcement authorities or the prosecutor pertaining to any criminal action arising out of a domestic violence incident, the victim shall be notified orally or in writing that she or he has the right to have a domestic violence advocate and support person of her choosing present at the interview and at any interview by the defense attorney or defense investigators. The domestic violence advocate must advise the victim of any limitations on the confidentiality of communications between the victim and the advocate. The support person can be excluded if the law enforcement authority determines that his or her presence would be detrimental to the purpose of the interview. An initial investigation to determine whether a crime has been committed and the identity of the suspects does not constitute a law enforcement interview for purposes of these requirements. (Pen. Code §679.05.)
  - If on-scene language translation assistance was provided by an uncertified person, it is necessary to re-interview the victim or witnesses by a court-certifiable translator.
- e. If possible, contact the victim and witnesses to inform them of the status of the case and the intended referral to the District Attorney or Juvenile Probation.
- f. Obtain subsequent photographs of injuries to the victim (particularly where there were no initial photos taken or the initial photos did not show injuries to the victim).
- g. Record name, address, and phone number of two close friends or relatives of the victim who will know the victim's whereabouts 6-12 months from the time of the incident.
- h. Conduct a complete CJIC, CII, and NCIC criminal history check of the suspect. When appropriate, conduct a Juvenile Probation records check. Also conduct queries on the suspect in the Consolidated Firearms System (CFS), Prohibited Armed Persons (PAP), Domestic Violence Restraining Order System (DVROS), and the Violent Crime Information Network (VCIN). Attach results of these checks to the investigator's report.

- i. Suspected child abuse must be cross-reported as required by Penal Code Sections 11165, 11166, and 11171(a).
  - j. Suspected elder or dependent adult abuse must be cross-reported, as required by Welfare and Institutions Code Sections 15610, 15630, and 15640.
2. Follow-up investigation shall not consider the desire of the victim to "drop" charges in assessing whether the case should be submitted to the District Attorney's Domestic Violence Unit.
3. Investigative personnel handling domestic violence cases should analyze each domestic violence case by asking the following questions:
  - a. Can the elements of the offense be established without the testimony of the victim?
    - i. If the answer is "yes," the case should be submitted to the District Attorney or Juvenile Probation Department for review, irrespective of the wishes of the victim.
    - ii. If the answer is "no," can further investigation locate additional witnesses or evidence which would allow prosecution without a cooperative victim, such as:
      - witness statements
      - prior inconsistent statements
      - physical evidence
      - content of 9-1-1 recording
      - circumstantial evidence
      - defendant's statements
      - spontaneous statements

If so, the evidence should be obtained and the case should be submitted to the District Attorney or Juvenile Probation Department.

4. Under no circumstances should a victim be asked if he/she wishes to "press charges" or "drop charges." Investigative personnel shall not ask a victim if they want to "prosecute" their partner. The victim should be informed that the decision to proceed is out of his/her control.
5. If the victim presents with a different version of the incident, the person/investigator taking the statement should incorporate some of the following question and note in report:
  - a. Financial concerns;
  - b. Contact with the defendant after the incident;
  - c. Dissuasion by defendant--fearful of defendant;
  - d. Child custody/visitation issues;
  - e. Immigration concerns.

NOTIFICATION TO DEPARTMENT OF JUSTICE  
REGARDING DOMESTIC VIOLENCE RESTRAINING ORDERS

Family Code Section 6385 requires that law enforcement immediately notify the Department of Justice (DOJ) upon receipt of a copy of a domestic violence restraining order and the subsequent proof of service. Notifying DOJ is accomplished via the California Law Enforcement Telecommunications System (CLETS) when the information regarding domestic violence restraining orders is entered into the Domestic Violence Restraining Order System (DV/ROS).

MAINTAINING RECORDS OF SERVICE OF PROTECTION ORDERS

- A. Law enforcement agencies are required to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, including orders which have not yet been served, 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. (Pen. Code §13710(a).)
- B. The terms and conditions of the protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court. (Pen. Code §13710(b).)
- C. Upon request, law enforcement agencies shall serve the party to be restrained at the scene or a domestic violence incident or at any time the party is in custody. (Pen. Code §13710(c).)

MILITARY SUSPECTS

- A. All domestic violence incidents involving military suspects shall be handled according to this law enforcement protocol.
- B. The intent of this policy is to eliminate all informal referrals or report-taking omissions in the handling of domestic violence incidents involving military personnel.
- C. No informal agreements with base patrol or a suspect's commanding officer shall take precedence over a suspect's arrest and prosecution by non-military authorities.

## RESPONDING TO LAW ENFORCEMENT, DISTRICT ATTORNEY

### AND PUBLIC FIGURE INVOLVED ALLEGATIONS OF DOMESTIC VIOLENCE

- A. All domestic violence incidents involving law enforcement officers, District Attorney personnel and public figures, such as elected officials, shall be handled according to this law enforcement protocol.
- B. Request that a supervisor be dispatched to the scene.
- C. Under the direction of the on-scene supervisor, conduct a criminal investigation, make an arrest decision, and process evidence in accordance with department policy and this protocol.
- D. If a person is arrested, the investigating supervisor shall inform the arrestee's employer of the arrest.
- E. If the arrestee is an officer from the same agency as the responding officer, the on-scene supervisor shall recover that person's badge, his/her law enforcement identification card, and his/her service weapon.
- F. Notify the department's public information officer to prepare for media inquiries.

## TRAINING

- A. Each law enforcement agency shall establish a written schedule for annual or semi-annual training for members of the agency on domestic violence. (Pen. Code §§13700, et seq.)
- B. The goals of the training are to inform officers of:
  - 1. The domestic violence laws, including but not limited to, any updates to the domestic violence laws.
  - 2. The department's domestic violence policy and procedures.
  - 3. The dynamics of domestic violence and batterer behavior.
  - 4. Police officer safety techniques.
  - 5. District Attorney Domestic Violence Unit policies.

C. Training should include written bulletins, videotapes, verbal reminders, updates during daily briefings, and presentations given periodically by the District Attorney's Domestic Violence Unit Personnel.

D. Law Enforcement Internal Safety Auditing.

On a quarterly basis, internal review of domestic violence reports should be conducted. In addition, it is recommended that 911 Dispatch calls also be randomly audited. Sample audit questions:

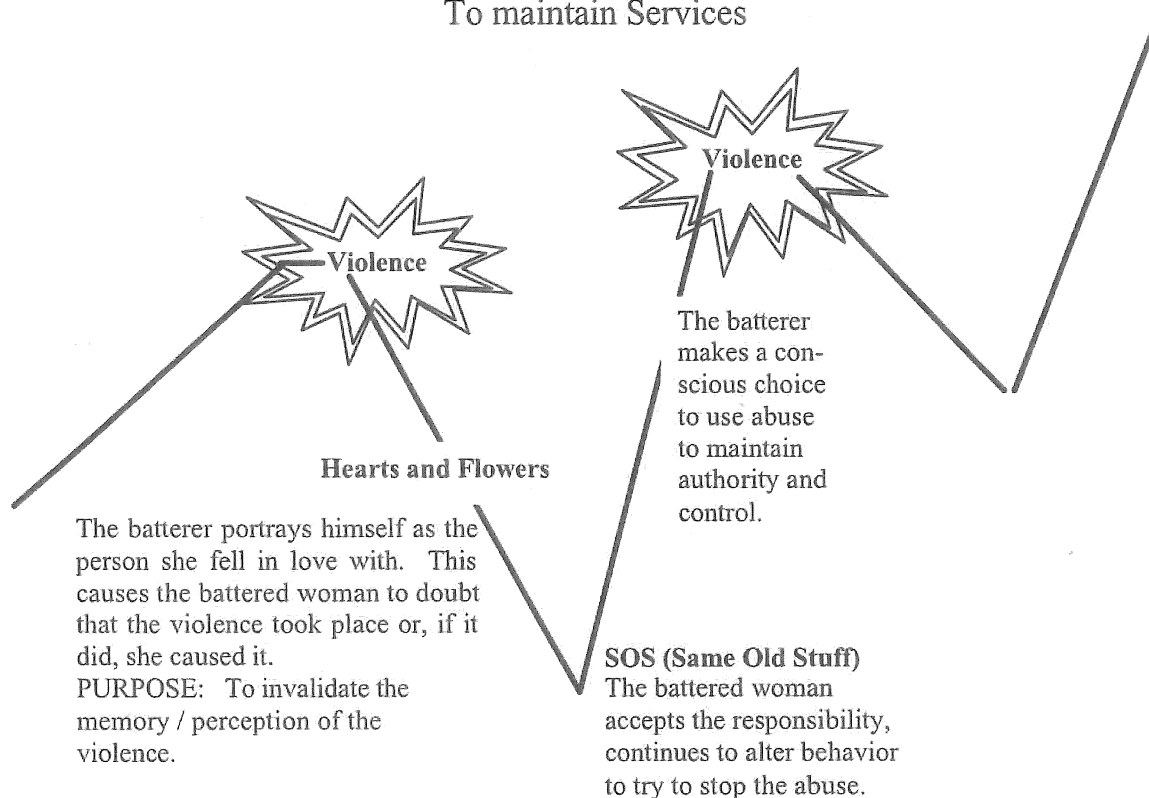
1. Was the Marin County Uniform Law Enforcement Protocol followed?
2. Was self-defense determined?
3. Was it necessary to determine the dominant aggressor?
4. Were medical services sought on strangulation cases?
5. Were translation services requested for monolingual, non-English speaking victims?
6. Were the three risk assessment questions asked?
7. Was a report written?

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

## PATTERN OF ABUSE

This is the batterer's pattern, he has control over the frequency and severity.

Purpose: To maintain Authority  
To maintain Services



The batterer is in control of the pattern, NOT the victim.  
The pattern has intent.

The pattern usually increases in frequency and intensity as it repeats.

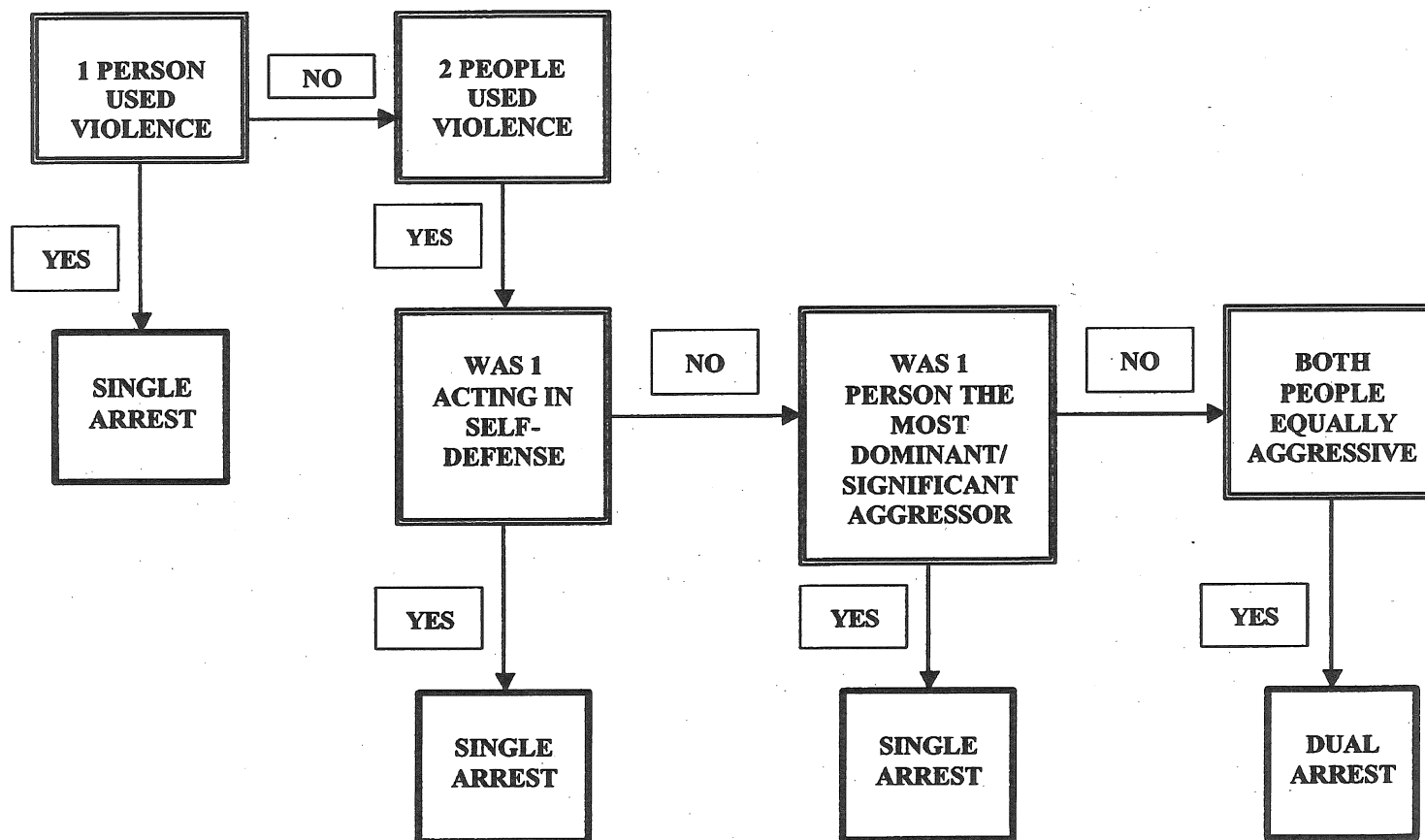
The "Hearts and Flowers" stage often disappears over time.

The continuation of the pattern results in homicide, suicide, or both.

The pattern will not stop without some kind of intervention.



## PRIMARY / DOMINANT AGGRESSOR "DECISION TREE"



(EXAMPLE)  
**MARIN COUNTY**  
**INFORMATION FOR VICTIMS OF DOMESTIC VIOLENCE/SEXUAL ASSAULT**

**Victim's name:** \_\_\_\_\_ **Case #:** \_\_\_\_\_

**PENAL CODE 13701: PRIVILEGES AND RELIEF ADVISAL**

If you have become the victim of domestic violence or sexual assault you have certain rights and privileges under the law. This information is provided to you by the Law Enforcement Agencies of Marin County.

**This is a supplement to the Marin Abused Women's Services *Domestic Violence Help and Information* pamphlet. For more information call 415-457-2464.**

Be aware that despite official restraint of a person alleged to have committed domestic violence the restrained person may be released at any time.

For information about the *California victims' compensation program*, you may contact 1-800-777-9229.

You may ask the District Attorney to file a criminal complaint.

You have the right to go to the Superior Court and file a petition requesting any of the following orders for relief:

- An order restraining the attacker from abusing you and other family members.
- An order directing the attacker to leave the household.
- An order preventing the attacker from entering your residence, school, business, or place of employment.
- An order awarding you, or the other parent, custody of/or visitation with a minor child or children
- An order restraining the attacker from molesting or interfering with minor children in your custody.
- An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- An order directing the defendant to make specified debt payments.
- An order directing that either or both parties participate in counseling.

You have 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 and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

Sexual assault victims should notify the local law enforcement agency immediately. A law enforcement officer will respond and take a report and collect evidence. Victims should retain any clothing worn during the assault and other evidence, such as bed sheeting. Officers will transport victims to the hospital for a medical examination. Victims should not shower or douche before the exam.

A sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

Domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

**PENAL CODE 679.04: VICTIM ADVOCATE ADVISAL**

As a victim of a sexual assault, you have the right to have a victim advocate and at least one other support person of your choosing present at any interview with law enforcement authorities, district attorneys or defense attorneys. This includes an advocate for any court procedure; however, this right does not apply to the initial interview by first responding officers. The support person may be excluded if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the interview.

DECLARATION AND ORDER RE BAIL PER CAL. CONST. ART. 1 SECTION 12  
AND/OR SECTION 1269c OF THE PENAL CODE

Re: People v. \*; Booking No. \*  
Defendant/Arrestee

Police Agency: \* Police Department; Case #\*

Charges: \* Code Section \*

DECLARATION

I, \*, a peace officer employed by \*, declare the following to be true:

On \*, 200\*, the above-named Defendant/Arrestee was arrested by officers of this Department for the above-listed charges and was booked at the Marin County Jail on \*, 200\*, at \*:00 \*.m. Bail as set forth in the Marin County Felony Bail Schedule adopted per Penal Code Section 1269b for the above offense(s) is \$\*.

I HAVE REASONABLE CAUSE TO BELIEVE AND I DO BELIEVE:

(initial applicable reasons)

\_\_\_\_\_ that the defendant/arrestee has committed a felony offense involving acts of violence on another person where the facts are evident and the presumption great and there is a substantial likelihood the defendant/arrestee's release would result in great bodily harm to others.

\_\_\_\_\_ that the defendant/arrestee has committed a felony offense wherein the facts are evident and the presumption great and the defendant/arrestee has threatened another person with great bodily harm and there is a substantial likelihood that the defendant/arrestee would carry out the threat if released.

\_\_\_\_\_ that the amount of bail as set forth in the bail schedule is insufficient to assure the defendant/arrestee's appearance.

THE REASONS FOR MY BELIEF ARE AS FOLLOWS:

\*

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\*, at  
San Rafael, California.

\_\_\_\_\_  
OFFICER \*

\* POLICE DEPARTMENT

O R D E R

GOOD CAUSE APPEARING THEREFORE, and based upon the Declaration above, it is hereby ordered the Defendant/Arrestee \* be held:

\_\_\_\_\_ without bail

\_\_\_\_\_ with bail in the amount of \$ \_\_\_\_\_

Dated: \_\_\_\_\_, 200\*.

\_\_\_\_\_  
Judge of the  
Superior Court of California  
County of Marin

(EXAMPLE)

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

I hereby authorize \_\_\_\_\_ to release my medical records  
file to: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Patient's Name (please print): \_\_\_\_\_

Patient's Date of Birth: \_\_\_\_\_

Approximate Dates of Admission and/or Discharge: \_\_\_\_\_

☐ Inpatient

☐ Outpatient

☐ Emergency Room Patient

Date: \_\_\_\_\_ Patient's Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Officer's Signature: \_\_\_\_\_

Agency Number: \_\_\_\_\_

(EXAMPLE)  
**VICTIM ADVISEMENT AND NOTIFICATION FORM**

CASE # \_\_\_\_\_

Advice to victims of Penal Code Sections 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.7, 422.75, 646.9, and sexually motivated 647.6 crimes.

**ADVISEMENT TO VICTIM**

The victim or parent/guardian of the victim referred to in the report has been advised that the victim's name, address, and age, will become a matter of public record and subject to release, pursuant to Section 6254 of the Government Code, unless, at this time, the victim or parent/guardian requests that the victim's name, address, and age not become a matter of public record.

Do you, the victim, or the parent/guardian of the victim, want the victim's name, address, and age to become a matter of public record?

[ ] No, I do not want my/the victim's name, address, and age to become a matter of public record.

[ ] Yes, I do want my/the victim's name, address, and age to become a matter of public record, as evidenced by my signature below.

Signed: \_\_\_\_\_ Witness: \_\_\_\_\_  
Victim or Parent/Guardian

Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

---

**VICTIM INFORMATION**

Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Age: \_\_\_\_\_ CDL: \_\_\_\_\_ SSN: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Business Address: \_\_\_\_\_

Residence Phone: \_\_\_\_\_ Business Phone: \_\_\_\_\_

## APPLICATION FOR EMERGENCY PROTECTIVE ORDER (CLETS)

1295.90

(Name): \_\_\_\_\_ has provided the information in items 1-5.

LAW ENFORCEMENT CASE NUMBER:

1. PERSON(S) TO BE PROTECTED (insert names of all persons to be protected by this order): \_\_\_\_\_

2. PERSON TO BE RESTRAINED (name): \_\_\_\_\_

Sex: ☐ M ☐ F Ht.: \_\_\_\_\_ Wt.: \_\_\_\_\_ Hair color: \_\_\_\_\_ Eye color: \_\_\_\_\_ Race: \_\_\_\_\_ Age: \_\_\_\_\_ Date of birth: \_\_\_\_\_

3. The events that cause the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking (including workplace violence or civil harassment) are (give facts and dates; specify weapons): \_\_\_\_\_

4. ☐ The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the address in item 9.5. a. ☐ The person to be protected has minor children in common with the person to be restrained, and a temporary custody order is requested because of the facts alleged in item 3. A custody order ☐ does ☐ does not exist.b. ☐ The person to be protected is a minor child in immediate danger of being abducted by the person to be restrained because of the facts alleged in item 3.6. ☐ A child welfare worker or probation officer has advised the undersigned that a juvenile court petition ☐ will be filed. ☐ will NOT be filed.7. ☐ Adult Protective Services has been notified.

8. Phone call to (name of judicial officer): \_\_\_\_\_ on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

☐ The judicial officer granted the Emergency Protective Order that follows.

By: \_\_\_\_\_

(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Badge No.: \_\_\_\_\_

## EMERGENCY PROTECTIVE ORDER

9. To restrained person (name): \_\_\_\_\_

a. ☐ You must not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy any personal property, or disturb the peace of each person named in item 1.b. ☐ You must ☐ stay away at least \_\_\_\_\_ yards from each person named in item 1.  
☐ stay away at least \_\_\_\_\_ yards from ☐ move out immediately from

(address): \_\_\_\_\_

10. ☐ (Name): \_\_\_\_\_ is given temporary care and control of the following minor children of the parties (names and ages): \_\_\_\_\_

11. Reasonable grounds for the issuance of this order exist and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking (including workplace violence or civil harassment).

12. THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5:00 P.M. ON: \_\_\_\_\_

To protected person: If you need protection for a longer period of time, you must request permanent protective orders at (court name and address): \_\_\_\_\_

INSERT DATE OF FIFTH COURT DAY OR SEVENTH CALENDAR DAY, WHICHEVER IS EARLIER, DO NOT COUNT DAY THE ORDER IS GRANTED

## PROOF OF SERVICE

13. Person served (name): \_\_\_\_\_

14. I personally delivered copies to the person served as follows: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Address: \_\_\_\_\_

15. At the time of service I was at least 18 years of age and not a party to this cause.

16. My name, address, and telephone number are (this does not have to be server's home telephone number or address): \_\_\_\_\_

☐ California sheriff or marshal

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

(TYPE OR PRINT NAME OF SERVER)

(See reverse for important notices)

(SIGNATURE OF SERVER)

Form Adopted for Mandatory Use  
Judicial Council of California  
1295.90 [Rev. January 1, 2000]  
Approved by DOJEMERGENCY PROTECTIVE ORDER (CLETS)  
(Domestic Violence, Child Abuse, Elder or Dependent  
Adult Abuse, Workplace Violence, Civil Harassment)WEST GROUP  
Official PublisherFamily Code, § 6240 et seq.  
Penal Code, § 646.91

ONE copy to court, ONE copy to restrained person, ONE copy to protected person, ONE copy to issuing agency

**CHILD PROTECTIVE SERVICES (CPS) RESPONSE PROTOCOL  
FOR REPORTED INCIDENTS OF DOMESTIC VIOLENCE**

In the event law enforcement determines a child cannot remain safely in the home, exhibits signs of abuse, or if there is no parent/guardian at the scene capable of protecting the child, law enforcement will call the 24-hour Emergency Response Hotline (415) 499-7153. A duty worker will respond to the scene thereby providing an emergency response.

In the event children are present and law enforcement determines the children are not in immediate danger, do not exhibit signs of abuse, or if children reside in the home but were not present during the incident, law enforcement will forward a written copy of the Domestic Violence Incident Report with Child Protective Services (CPS) information filled in to CPS. This written report will be forwarded to CPS within 24 hours of the domestic violence incident.

The Domestic Violence Incident Report forwarded to CPS by law enforcement will contain sufficient information to permit CPS to locate the child/family, identify all persons residing in the home, and identify and accurately assess the incident itself.

The Intake Unit of CPS will receive and complete an initial assessment of each written domestic violence report. This assessment will consider the incident being reported, as well as any other history the child/family may have with the department. The Intake Unit worker will recommend a response. The unit supervisor will make the final decision as to the response.

The three levels of CPS response to reports of domestic violence are the same as applies to any reports of abuse, neglect or exploitation. The defined levels of CPS response are:

**IN-PERSON IMMEDIATE INVESTIGATION**

The social worker shall conduct an in person immediate investigation when:

1. The emergency response protocol indicates the existence of a situation in which imminent danger to a child, such as physical pain, injury, disability, severe emotional harm or death, is likely.
2. The law enforcement agency making the referral states that the child is at immediate risk of abuse, neglect or exploitation.
3. The social worker determines that the child referred by a law enforcement agency is at immediate risk of abuse, neglect, or exploitation.

NOTE: Authority Cited: Sections 10553 and d10554, Welfare and Institutions Code.  
Reference: Sections 16208, 16501(f), and 16504, Welfare and Institutions Code.



### **IN-PERSON INVESTIGATION WITHIN 10 CALENDAR DAYS**

**The social worker shall conduct an in-person investigation of the allegation of abuse, neglect, or exploitation within 10 calendar days after receipt of a referral when:**

- 1. The emergency response protocol indicates that an in-person investigation is appropriate and the social worker has determined that an in-person immediate investigation is not appropriate.**
- 2. The law enforcement agency making the referral does not state that the child is at immediate risk of abuse, neglect, or exploitation and the social worker determines that an in-person immediate investigation is not appropriate.**

**NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 16208, 16501(f), and 16504, Welfare and Institutions Code.**

### **DOCUMENTATION WITH NO IN-PERSON INVESTIGATION**

- 1. If the social worker determines that an in-person investigation is not necessary, the social worker shall document that determination.**
- 2. If the social worker determines that an in-person investigation is not necessary, but that the services of another community agency are appropriate, the social worker shall refer the report to that agency.**
- 3. When a referral alleges non-familial child abuse, the social worker shall report the referral to the appropriate law enforcement agency as specified in Section 31-501.1.**

**When the decision is to evaluate out, either with or without a referral to another community agency, the following information will be documented:**

- 1. Rationale for the decision; and**
- 2. Supervisor approval.**

**It should be duly noted that whether the department response is Documentation Only with No In-Person Investigation, or In-Person Investigation Within 10 Calendar Days, or In-Person Immediate Investigation, all referrals of domestic violence will be documented in our state-wide Child Welfare Services/Case Management (CWS/CMS) computerized system. This is the standard that applies to all referrals of allegations of abuse, neglect or exploitation.**