

**DOMESTIC VIOLENCE PROTOCOL
FOR
LAW ENFORCEMENT
2019**

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

ADOPTED JUNE 2019

POLICY STATEMENT

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

Santa Clara County Law Enforcement Agencies, in conjunction with the Santa Clara County District Attorney's Office, agree to respond to acts of domestic violence as crimes. Victims of domestic violence will be treated with respect and dignity and will be given all available assistance by law enforcement personnel responding to an incident of domestic violence.

The Domestic Violence Protocol for Law Enforcement provides guidelines and establishes standards for public safety call-takers, dispatchers, first responders and investigators in handling domestic violence incidents. The Protocol seeks to interpret and apply statutory and case law relating to domestic violence incident response and investigation. Particular attention is given to protecting victims of domestic violence, including children, other members of the household and pets, through enforcement of restraining orders, medical care, and working with support agencies to provide alternate shelter, relocation services, counseling and legal services. Local agency training programs and materials will supplement information provided in the Protocol.

All Law Enforcement Agencies must have written policies and standards for officers' responses to domestic violence calls (PC 13701).

This protocol will be updated annually as new legislation, research and best practices are reviewed periodically by the Domestic Violence Council Protocol sub-committee in order to maintain an effective and sensitive response by the law enforcement community to this serious problem. The College and University Police Chiefs also support this protocol. Significant changes in the protocol for **2019** are highlighted in **bold** text.



Chief Max Bose
Chair, Police Chiefs' Assoc. of Santa Clara County

7-11-19
Date

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ACKNOWLEDGMENT

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DEFINITIONS

- A. Abuse means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or another (13700(a) PC).
- B. Cohabitant means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship (includes same gender relationships). Factors that may determine whether persons are cohabiting include, but are not limited to: (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as spouse/partner, (5) the continuity of the relationship, and (6) the length of the relationship (13700(b) PC).
- C. Cross-Reporting refers to mandated reporting of suspected child abuse as required under 11165, 11166 and 11172(a) PC and mandated reporting of suspected abuse of elders and dependent adults as required under 15610, 15630 and 15640 WI.
- D. Dating Relationship means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.
- E. Deadly Weapon means any weapon, the possession or concealed carrying of which is prohibited by Penal Code 16590.
- F. Domestic Violence is abuse committed against an adult or any minor who is a spouse, former spouse, cohabitant, former cohabitant, a person with whom the suspect has had a child or is having or has had a dating or engagement relationship (13700(b) PC). Same gender relationships are included.
- G. Dominant Aggressor means the person determined to be the most significant, rather than the first aggressor. In identifying the dominant aggressor, the officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense (PC 13701(b)).
- H. Firearm is any device designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.
- I. Officer is defined as any law enforcement officer as defined by Penal Code Sections 830.1 - 830.3 and 830.6.

- J. Pro-Arrest Policy refers to a philosophical position in which physical arrest shall be made in every situation where an arrest is legally permissible; absent exigent circumstances.
- K. Restraining Order is an order which requires a person to refrain from doing a particular act or acts. It is issued by the Court, with or without notice, to the person who is to be restrained.
1. Restraining order in a domestic violence case can be a Criminal Protective Order (CPO), Emergency Protective Order (EPRO), civil Domestic Violence Restraining Order (DVRO), or Juvenile Restraining Order (JRO).

(a) Criminal Protective Order (CPO) refers to a restraining order issued in a criminal case. CPOs are issued pursuant to Penal Code section 136.2 while a case is pending and they are re-issued at the time of sentencing. A violation of a CPO is prosecuted under PC 166(c)(1). A CPO may require "No Contact" or it may allow "Peaceful Contact".

"No Contact" Order requires a restrained person to have no contact, either direct or indirect, with the protected person(s). It may also require the restrained person to stay away from a particular location.

"Peaceful Contact" Order allows for contact but it must be peaceful. The restrained person is prohibited from molesting, attacking, striking, threatening, stalking, sexually assaulting, battering, harassing, or disturbing the peace of the protected person(s).

(b) Emergency Protective Order (EPRO) is a type of restraining order issued by a Judge or Commissioner at any time, whether or not Court is in session, under urgent circumstance when either an officer or a victim feels the victim is in immediate and present danger of domestic violence. An EPRO remains in effect for 5 business days. A violation of an EPRO is prosecuted under PC 273.6.

(c) Domestic Violence Restraining Order (DVRO) is a restraining order issued by a Family Court Judge. DVROs may be temporary (TRO) or permanent (Restraining Order after Hearing). A violation of a DVRO is prosecuted under PC 273.6.

Temporary Restraining Order (TRO) is good for up to 21 days unless there is good cause and then 25 days.

Restraining Order after Hearing is issued after a noticed hearing in Family Court. The duration of a permanent order can vary and is listed on the first page of the order.

Permanent orders can issue for up to 5 years. Permanent orders may also be renewed. If a DVRO is renewed, the duration of the renewed order is either 5 years or permanently, meaning non-expiring. FC 6345(a).

(d) Juvenile Restraining Order (JRO) is an order issued by either a Juvenile Justice or Dependency Judge that protects against domestic violence or civil harassment. The JRO may be temporary or permanent. A violation of a JRO is prosecuted under Penal Code section 273.65.

2. Restraining Order to Preclude Gun and Ammunition Ownership:

Gun Violence Restraining Order (GVRO) (PC 18100-18205): An immediate family member or a law enforcement officer can petition a judge to temporarily remove a person's firearms and ammunition if they fear the person is violent and likely to commit a violent act with a gun. The order is valid for 21 days and can be extended up to a year, after notice and a hearing. (See EPO-002 Firearms Emergency Protective Order, attached to this Protocol at page 67.) The order prohibits a named person from having in his custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. A violation of a GVRO is prosecuted under PC 18205.

Temporary emergency GVRO – Can be obtained by a law enforcement officer. (Daytime orders are handled by judges at the FJCC just like EPROs. (408) 534-5601. After hours, contact the on-duty Magistrate by calling County Communications at (408) 299-2501.) Valid for 21 days. (PC 18125-18145.)

Ex Parte GVRO – Can be obtained by a law enforcement officer or by an immediate family member. (Applications can be filed at the clerk's office on the first floor of the FJCC.) Court shall hold a hearing within 21 days. (PC 18150-18165.)

GVRO after notice and hearing – Can be requested by a law enforcement officer or immediate family member. (Applications can be filed at the clerk's office on the first floor of the FJCC.) Valid for one year. (PC 18170-18197.)

- L. Stalking means willfully, maliciously, and repeatedly following or willfully, maliciously, and repeatedly harassing another person and making a credible threat with the intent to place that person in fear for his or her own safety, or the safety of his or her immediate family. "Repeatedly" means two or more acts. (646.9 PC).
- M. Trafficking is depriving or violating the personal liberty of another person with the intent to effect or maintain a felony violation of PC 266 (procurement for prostitution), PC 266h (pimping), PC 266i (pandering), PC 267 (abduction for

prostitution), PC 311.4 (using a minor to create obscene matter), or P.C. 518 (extortion), or to obtain forced labor or services (PC Section 236.1)

- N. U-Visa - Created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000. It is available to noncitizens who: 1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and 2) have been helpful, are being helpful or are likely to be helpful with the investigation or prosecution of the crime. The U-visa provides eligible immigrants with authorized stay in the United States and employment authorization. In Santa Clara County, police agencies process requests in cases that were never sent to the District Attorney's Office for review. Requests in cases that were submitted to the DA's office for review should be forwarded to the District Attorney's Office for processing. They should be sent to the attention of : "U-Visa Clerk". PC 679.10 establishes a rebuttable presumption of helpfulness and requires that the certification be processed within 90 days, or within 14 days if the applicant is in deportation proceedings.
- O. Victim means a person who is a victim of domestic violence.

COMMON CHARGES

A situation involving domestic violence may result in a violation of one or more of the following sections of the Penal Code: (This list is not exhaustive.)

1. 136.1 - Intimidating or dissuading a witness. Felony offense (and a strike) if effected by force or threat of force.
2. 148 - Resisting arrest.
3. 166(a)(4) - Violation of a court order.
4. 166(c)(1) - Violation of a CPO.
5. 187 - Murder.
6. 207 - Kidnapping.
7. 236/237 - False imprisonment. Felony offense if effected by violence, menace, fraud or deceit.
8. 236.1 - Human Trafficking.
9. 240 - Assault.
10. 243(a) - Battery.
11. 243(d) - Battery with serious bodily injury.
12. 243(e) - Battery of a spouse, former spouse, cohabitant, parent of suspect's child, or person with whom the suspect has/had a current or previous dating or engagement relationship.
13. 243.25 - Battery of an elder or dependent adult, who knew or should have known that the victim is an elder or dependent adult.
14. 245(a)(1) - Assault with a deadly weapon.
15. 245(a)(4) - Assault by means of force likely to produce great bodily injury. Consider using in cases involving strangulation and blows to the head even absent visible injury.
16. 246(a) - Shooting at an inhabited dwelling.
17. 261.5 - Unlawful sexual intercourse. Possible felony with 3 year age difference.
18. 262 - Spousal rape.
19. 270.6 - Leaving California with the intent to avoid paying spousal support, after having notice that a court has made a temporary or permanent order.
20. 273.5 - Inflicting corporal injury resulting in traumatic condition on a spouse, former spouse, cohabitant, former cohabitant, parent of suspect's child, or person with whom the suspect has/had a current or previous dating or engagement relationship.
21. 273.6 - Violation of an EPRO or of a DVRO.
22. 273a - Child abuse/endangerment.
23. 278 et al. - Child abduction
24. 368 - Crimes against elder or dependent adults.
25. 417 - Brandishing a weapon.
26. 422 - Criminal threats.
27. 459/460(a) - Entering a dwelling with intent to commit a felony (or theft).
28. 528.5m - Knowingly and without consent, credibly impersonating another actual person through or on an Internet Web site or by other electronic means, for purposes of harming, intimidating, threatening, or defrauding another person.
29. 591 - Malicious destruction of a telephone line.

30. 591.5 - Unlawful removal, damage of wireless communication device, or obstructing use of such device to summon law enforcement.
- Note: When PC 591 or 591.5 conduct is intended to keep someone from reporting a crime, consider PC 136.1.
31. 594 - Vandalism.
32. 597a - Cruelty to Animals.
33. 602.5 - Entering a dwelling without the consent of the owner. If an authorized person is present, it is an aggravated trespass and the suspect faces up to one year in jail.
34. 603 - Forcible entry with damage to property.
35. 646.9 - Stalking.
36. 647(j)(4) - Recording image of intimate body part under circumstances where both parties understand the image is to remain private and then distributing image with the intent to cause serious emotional distress (revenge porn).
37. 653m(a) - Obscene or threatening calls or electronic contacts.
38. 653m(b) - Making repeated, annoying telephone calls or electronic contacts.
39. 653m(e) - 653m (a) and (b) are violated when a person knowingly permits any telephone or electronic communication under the person's control to be used for the purposes prohibited by these subdivisions.
40. 653.2 - Electronically distributing, publishing, e-mailing, or making available for download, personal identifying information of an electronic message of a harassing nature, about another person, with the intent to place the person in reasonable fear for their safety, or their immediate family's safety, and for the purpose of imminently causing the person unwanted physical contact, injury or harassment by a third party.
41. 664 - Attempt of any of the crimes listed.
42. 18205 - Person restrained by GVRO owns/possesses firearm or ammunition.
43. 18250 - Confiscation of firearms (Authority for seizure).
44. 25400 - Possession of a concealed firearm.
45. 25850(a) - Possession of a loaded firearm.
46. 29825 - Person restrained by CPO or DVRO owns/possesses or attempts to own/possess firearm or ammunition.

FREQUENTLY USED TELEPHONE NUMBERS

Adult Protective Services https://www.sccgov.org/sites/ssa/daas/aps/Pages/aps.aspx	408-975-4900 or 1-800-414-2002
American Sign Language Interpreter Services	1-866-742-9080 x4442 (Voiance contact person for County agencies)¹
Asian Americans for Community Involvement http://aaci.org/	408-975-2739
Bay Area Legal Aid https://www.baylegal.org/	1-888-330-1940
California Victim Compensation Program (CalVCP) http://vcgcb.ca.gov/victims/counties/santaclara.aspx	1-800-777-9229 or 408-295-2656
Child Protective Services (child abuse hotline) https://www.sccgov.org/sites/ssa/Pages/ssa.aspx	408-299-2071 (ofc) 408-975-5851 (fax)
Community Solutions http://www.communitysolutions.org/	877-363-7238
County Communications (for duty judge after hours) https://www.sccgov.org/sites/911/Pages/9-1-1-Site-Home-Page.aspx	408-299-2501
DFCS Joint Response (Access through individual department dispatch centers) https://www.sccgov.org/sites/ssa/dfcs/Pages/dfcs.aspx	
Family Justice Center Courthouse (FJCC) (M-F, 8 AM to 5 PM) http://www.sccourt.org/court_divisions/family/family_home.shtml	408-534-5702
Family Violence Center http://www.sjpd.org/BOI/fvc/	408-277-3700
Maitri, Santa Clara County, South Asian Hotline http://maitri.org/	1-888-862-4874

¹ Non-County Law Enforcement agencies should check with their Dispatcher to determine if their agency uses Voiance or a different service for ASL interpretation.

Next Door Solutions to DV

408-279-2962

<http://www.nextdoor.org/>

YWCA Silicon Valley Support Services

24-hour Domestic Violence and Sexual Assault Support Line 1-800-572-2782

<http://ywca-sv.org/our-services/support-services/>

Victim Notification Service

1-800-464-3568

<https://vinelink.com/>

(website with the hotline number)

http://www.sjpd.org/ReportingCrime/Domestic_Violence.html

Victim Services Unit – District Attorney’s Office

408-295-2656

<https://www.sccgov.org/sites/da/VictimServices/VSU/Pages/default.aspx>

WomenSV

<http://womensv.org>

650-996-2200

911 CALL-TAKER/DISPATCHER RESPONSE

- A. A 911 recording is often the key piece of evidence in a domestic violence trial and will be played in front of the judge or jury in open court. The 911 recording may end up serving as the only account of what happened if a victim later recants or refuses to testify. Accordingly, extra time and attention should be given to bringing out as many details about the reported incident as possible. Given the nature of these types of incidents the caller may be recanting, minimizing, traumatized or confused. Extra care and patience in handling these calls may be required.
- B. The dispatcher who receives a domestic violence incident call shall dispatch officers to every reported incident. The dispatcher should, when warranted, give a domestic violence incident call the same priority as any other life threatening call and should, whenever possible, dispatch at least two officers to the scene.
- C. No dispatcher or 911 call-taker, in speaking with a victim of domestic violence, should inquire as to the victim's desire to "prosecute," or "press charges". Any comment or statement which seeks to place the responsibility for enforcement action with the victim is inappropriate.
- D. During the initial call for assistance, the call-taker should ask:
1. Do you need an interpreter? What language?
 2. Where is the emergency? What address? What apartment number?
 3. Is this a gated Community? What is the pass code?
 4. To whom am I speaking (spell name)?
 5. Are you the victim? If no, what is your relationship to the victim?
 6. Who hurt you?
 7. What has happened? Is it occurring now?
 8. Has anyone been injured? If yes, is an ambulance needed?
 9. Has anyone been threatened?
 10. Is the suspect present? Are they in the same room? Can they hear you? What is their name? Please describe the suspect and their clothing, and, if not present, where are they?
 11. Does the suspect have current access to weapons? If yes, what kind? Where are they located?
 12. Is the suspect under the influence of drugs, alcohol or prescription medication? If yes, what?
 13. Does the suspect have any mental health issues?
 14. Are children present? How many? Ages?
 15. Are there previous incidents of domestic violence involving the suspect and victim? Have the police been to this address before? If yes, how many times?
 16. Does the victim have a current restraining order?
 17. If victim is not the RP: Does the victim need an interpreter?

18. Is the suspect on probation or parole?
19. Is the suspect a minor? Is the victim a minor?

Additional questions may be appropriate, and the call-taker should always prioritize questions based on training and experience to adapt to the current emergency.

- E. The safety of domestic violence victims, whether the threat of violence is immediate or remote, should be the primary concern of 911 call-takers. The 911 call-taker should advise the victim to ensure their safety. For example, suggest that a victim wait for officers at a neighbor's house or remain on the 911 line.
- F. Upon receipt of a medical report or phone contact made by a medical professional where domestic violence per Penal Code Section 13700 is alleged, the agency of jurisdiction shall respond unless circumstances such as distance or lack of personnel do not allow for quick response. If the agency of jurisdiction cannot respond, the agency shall request a courtesy report be taken by the local jurisdiction and submitted as soon as practical to the agency of jurisdiction (where the domestic violence incident occurred).

PATROL OFFICER RESPONSE/INVESTIGATION

A. ENFORCEMENT OF LAWS IN DOMESTIC VIOLENCE INCIDENTS

Felony

1. An arrest shall be made in the event that there is probable cause to believe that a felony has occurred. All suspects arrested should be booked into the County Jail or Juvenile Hall. A pro-arrest policy should be implemented by all agencies.
2. If an officer has probable cause to believe that a felony has occurred, an arrest shall be made irrespective of whether the officer believes the offense may ultimately be prosecuted as a misdemeanor.

Misdemeanor

1. When a misdemeanor 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 their 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 shall arrest the suspect without the need of a private person's arrest.

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

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

Note: There is no requirement under PC 836(d) that the assault or battery resulted in visible injury to the victim.

2. An arrest shall be made if the officer has probable cause to believe that the suspect has violated a CPO, DVRO, EPRO, or a juvenile court-issued restraining order in a domestic violence case (W&I 213.5), even when the crime did not occur in the officer's presence (PC 836).
3. In all other misdemeanor domestic violence cases – e.g. PC 594 (when loss < \$400) or PC 653m - where the victim of the crime is the suspect's spouse, former spouse, cohabitant, former cohabitant, parent of their

child, or a person with whom the suspect has/had an engagement or dating relationship - the officer shall make a good faith effort to inform the victim of their right to make a private person's arrest. (PC 836(b).)

4. Once a suspect is arrested on a misdemeanor, they should be booked into the County Jail or Juvenile Hall. A juvenile suspect must be booked into juvenile hall and shall not be cited and released.

Felony or Misdemeanor

1. In situations where mutual protective orders have been issued under subdivision 10 (commencing with Section 6200) of the Family Code, prior to making an arrest, the officers shall make reasonable efforts to identify, and should only arrest without a warrant, the dominant aggressor involved in the incident (PC 836 (c)(3)).
2. Persons (including juveniles) arrested for crimes specified in PC 1270.1, including the following crimes, cannot be released at the scene:
 - PC 243(e)(1) - misdemeanor domestic violence
 - PC 273.5 - domestic violence with corporal injury
 - PC 262 – spousal rape
 - PC 422 – where the offense is punishable as a felony
 - PC 273.6 or 166 – violation of a protective order if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party
 - PC 646.9 – stalking
 - PC 136.1(c) – felony dissuading a witness

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

3. If a victim only informs a law enforcement officer of a prior unreported incident and has no complaint of pain or physical injury at the time of the current report, the officer shall make a good faith effort to inform the complainant of their right to make a private person's arrest. (The arrest must fall within the statute of limitations). If the complainant chooses not to exercise that right, the officer shall submit a report to the District Attorney or Juvenile Probation Department for review. The arrest must fall within the statute of limitations and meet the requirements listed above in paragraph (3).

4. If officers are unable to locate the suspect, they should continue diligent efforts to do so, and document all such efforts. In the event the suspect cannot be located, all reasonable means have been exhausted and and probable cause to arrest exists, submit the case to the District Attorney's Office for review as a warrant request.

B. HANDLING OF THE INCIDENT

1. The following factors should not influence the officer's decision to investigate or arrest in domestic violence incidents except as they relate to the elements of the crime:
 - a. The relationship or marital status of the suspect and the victim, i.e., not married, separated, or pending divorce;
 - b. The gender identity of either the victim or suspect, the fact that they are gender non-conforming or transgender, or the fact that they share the same gender identity;
 - c. The fact of who is taller, larger or stronger appearing;
 - d. Whether or not the suspect lives on the premises with the victim;
 - e. The existence or lack of a temporary or other restraining order;
 - f. The potential financial consequence of arrest;
 - g. Verbal assurances that violence will cease;
 - h. The victim's emotional state or state of sobriety;
 - i. Injuries are not visible; (Visible injury is NOT required for a warrantless arrest for domestic violence assault and battery.)
 - j. The location of the incident, i.e., public or private;
 - k. Speculation that the victim may not follow through with the criminal justice process or the arrest may not lead to a conviction;
 - l. The suspect is a juvenile. (Officers should be aware that Juvenile Court orders can remain in effect until the offender's 21st birthday. Juvenile restraining orders can remain in effect for up to 3 years from the date of issue, whether or not the juvenile proceedings continue);
 - m. The victim is a minor;
 - n. The victim's or suspect's immigration status;

- o. Whether or not the suspect is present in a restraining order case; and
 - p. Whether or not the victim wants officers to investigate and/or arrest.
2. If the suspect is a law enforcement officer, follow the procedures outlined on page 50.
 3. The officer should interview the victim, suspect, children, roommates, and any available neighbor witnesses. Interviews should be digitally recorded if possible. A warrant check, California Restraining and Protective Order System (CARPOS) check, criminal history check and Juvenile Probation status check should also be conducted.
 4. An officer shall make no statements which would tend to discourage a victim from reporting an act of domestic violence or requesting a private person's arrest. A peace officer who accepts a private person's arrest is immune from civil liability for false arrest or false imprisonment when, 1) at the time of the arrest, the officer had reasonable cause to believe that the arrest was lawful, 2) the arrest was made pursuant to PC 142, i.e., a victim or witness demanded that the officer receive a private person's arrest, or 3) the arrest was made pursuant to a charge, upon reasonable cause, of the commission of a felony by the person to be arrested (PC 847). As noted above, a private person's arrest is not required in cases involving intimate partner assault or battery or in cases involving violations of domestic violence protective or restraining orders where an officer has probable cause to believe that the person to be arrested has committed the offense. (PC 836.)
 5. Pursuant to Penal Code section 13700 et seq., an officer responding to an incident of domestic violence shall prepare a Domestic Violence Incident Report irrespective of the wishes of the victim or the presence or absence of the suspect.

C. INVESTIGATION OF DOMESTIC VIOLENCE CASES

1. Jurisdiction and Courtesy Reports

Officers arriving at a domestic violence scene should conduct a thorough investigation and submit reports of all incidents of violence and all crimes related to domestic violence. If the incident occurred in another jurisdiction, the patrol officer will evaluate the severity and immediacy of the situation and, if appropriate, contact that jurisdiction to determine which agency will take the initial report and/or which agency will investigate. If the other agency (agency of jurisdiction) is not able or willing to respond to the victim's location or meet the victim at an alternate location, the agency that had first contact with the victim will complete a courtesy initial police report. If the initial agency is not doing the follow up investigation, the report will be forwarded to the agency of

jurisdiction for follow up.

2. Arrival at the Scene

- a. Determine location and condition of victim, suspect, children and pets.
- b. Do not let gender appearances affect your determination as to who is the victim and who is the suspect.
- c. Determine if any weapon is involved or in the home. Confiscate and collect as evidence any weapons or firearms used in the incident. If the incident involves any threat to human life or physical assault, officers shall take temporary custody of any firearm or deadly weapon in plain sight or pursuant to a consensual search or other lawful search. If unable to book the weapon (other than firearms) due to size or other extenuating circumstances, photograph the weapon (PC 18250).

Note: There are five instances when a search warrant for weapons can be requested (PC 1524(a)(9)-(11), (15) and PC 1542.5.). (See page 35 under "Follow-up Investigation".)

- d. Provide appropriate level of aid to injured parties.
- e. Separate suspect, victim, and witnesses. (Victim(s) and witness(es) should be out of suspect's immediate presence, hearing and view.)

3. Preliminary Investigation

- a. Interview everyone separately – victim, suspect, children, other witnesses. Officers are strongly encouraged to record these statements. Doing so will increase the chances that the case can still be proven even if a victim does not testify.
- b. If a person being interviewed speaks a language other than English, the interview should be conducted in the individual's primary language by a qualified interpreter. In cases involving a victim or witness with *limited* English language capacity, officers should ask whether they prefer to be interviewed in their primary language.

An investigating officer may need to call for another bilingual officer fluent in that language, a telephone interpreter, a qualified civilian interpreter, or arrange for other certified professional translation services. Avoid using third party individuals (children, family members, neighbors, or bystanders) for interpretation except during exigent circumstances. Once the exigent circumstance has passed, the officer should utilize a qualified interpreter. Document the names and personal information of all witnesses and interpreters.

c. Children present or residing in the home:

- (i) Document names and ages of all children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home. Also document the names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect AND children who may not reside in the home but whose parents are involved in the domestic violence incident. (Children in this context does not include cases in which the victim or suspect are juveniles.)
- (ii) Contact DFCS in appropriate cases where children's safety appears to be at risk, even if they were not physically abused. See page 9 of the 2018 "Santa Clara County Child Abuse Protocol for Law Enforcement" for examples of when DFCS should be notified of domestic violence incidents while officers are still on-scene, and where child abuse charges might be appropriate.
- (iii) When making a referral to a domestic violence advocate, advise the advocate whether children were present and/or residing in the home.

Note: Suspected child abuse or neglect must be cross-reported to DFCS (408-975-5250) and officers must follow the Joint Response Protocol. (PC 11166). Child abuse can include instances where children are endangered or inadvertently struck during an assault on an intimate partner.

- d. Ask victim and suspect if they have pain even if there are no visible injuries. A description of the extent and severity of the pain is also necessary.
 - Does the victim have difficulty breathing?
 - Does the victim have difficulty standing or moving?
 - Is the victim experiencing other restrictions as a result of the injuries?
- e. Determine if there are indications of strangulation. Strangulation attempts shall be explicitly described. It should be noted whether hands or a ligature device was used. The force of the attempt should be detailed. Victims should be strongly encouraged to seek medical attention if there has been strangulation even if there are no visible injuries.
 - **Did their partner hold anything against or wrap anything around their neck?**

- **Did this prevent victim from breathing properly?**
- Did the victim lose consciousness?
- Did the victim vomit, urinate, or defecate?
- Does the victim have difficulty breathing or swallowing?
- Are there any marks visible on the victim's neck?
- Does the victim complain of a sore throat or hoarse/ raspy voice as a result of the injuries?
- Is there indication of petechiae (rupture of the small capillaries, usually in the eyes, head or neck area above the point of constriction)?
- Does the victim notice any changes in vision?
- Photograph injuries.
- **Best practice is to do follow up photos that may be needed as injuries from strangulation often show up in the days following the assault**
- Officers must furnish the victim with a Strangulation Resource Card, informing them that strangulation may cause internal injuries and encouraging them to seek medical attention. (PC 13701(l)). (Copy attached at page 74, cards available through Office of Women's Policy owp@ceo.sccgov.org.)

- f. Determine if there are indications of traumatic brain injury (TBI). Victims should be encouraged to seek medical attention immediately if there has been possible TBI even if there are no visible injuries. Ask every domestic violence victim, regardless of gender, the following:

After anything your partner did to you (tonight, today, etc.) did you black out or lose consciousness?

If yes:

- What happened?
- Do you have trouble remembering anything surrounding the loss of consciousness?
- Have there been any prior instances of strangulation, prior loss of consciousness?

Note: Do *not* ask the victim how long they were unconscious. Their memories are likely to be very unreliable on this point, studies have shown.

After anything your partner did to you (tonight, today, etc.) did you:

- Have any changes in vision e.g. see stars or spots?
- Feel dizzy?

- Feel dazed or confused?
- Feel stunned or disoriented?
- Have memory loss about what happened?

Note: In cases involving strangulation or TBI, consider charging a violation of felony PC 245 (assault with force likely to produce great bodily injury).

- g. Ask the victims if they have been forced to participate in sex acts against their will, including victims in same sex relationships. Encourage the victim to participate in a SART exam in appropriate cases. If there is a question regarding the appropriateness of a SART exam, please call Santa Clara County Valley Medical Center (408) 885-5000, say "operator" and then ask to speak to the adult nurse examiner on call.
- h. Ask the victim if suspect has any guns or ammunition.
- i. Document and photograph the victim's, suspect's, and child's condition and demeanor including:
 - Bruises, cuts, marks, pulled hair or other injuries.
 - Torn clothing.
 - Smearred make-up.
 - If victim is pregnant, a senior or juvenile.
 - If any of the parties are under the influence of alcohol, drugs, or prescription medication.
 - Condition and disarray of the area where the incident occurred.
- j. Inquire about, elicit details about, and document any allegations of previous reported or unreported acts of domestic violence or child abuse. For example asking: When was the first time they hit you? What happened then? How often do they hit you?
- k. Document size relation of victim and suspect.
- l. In cases where it appears that both parties have used force against the other, try to determine who was the "dominant aggressor", that is, the person who is the most significant, rather than the first, aggressor. (See Penal Code 13701(b).) (Dual arrests shall be discouraged, when appropriate, but are not prohibited per Penal Code Section 13701). Please attempt to make the following determinations:
 - Was one party in actual fear of the other?
 - Did one party escalate the level of violence, i.e., did one party react to a slap by beating the other party?

- Was there a history of violence or pattern of control by one of the parties against the other? Against other people?
 - Who has access to and control of resources?
 - Who has injuries that do not appear to be consistent with statements made?
 - Was one party usually the aggressor?
 - Did any injuries appear to be defense wounds?
 - Which party will be in greater danger if nothing is done?
 - Was one party physically larger and stronger than the other? (Remember that size and strength alone should never be a determining factor. A dominant aggressor is not always bigger or stronger.)
- m. Check for the existence of any restraining orders against the suspect. If victim has a restraining order against suspect, obtain a copy of the order and valid proof of service (proof of service is not necessary if the suspect was in court when the order was issued). If no copy is available, contact the Department of Justice California Restraining and Protective Order System (CARPOS/CLETS) to verify the existence of the order (Family Code Section 6383(d)). If there is no order, inform victim how to get an order.
- n. The officer shall advise the victim of the availability of an EPRO and a DVRO in every case even if the suspect is arrested, and also in non-criminal situations where the victim is fearful. The officer is required to request the EPRO if the officer believes the person requesting the order is in immediate and present danger even if the victim does not want the order. The judge should hear your concerns and will make the decision whether or not the EPRO will issue. (Victim should be out of suspect's immediate presence, hearing and view.) If possible, prepare the form before calling the on-duty judge.
- o. If victim has a DVRO which has not yet been served on suspect, verbally inform the suspect of the order and note in the report including case number of the DVRO. If victim has an extra copy of the DVRO, 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 DVRO. This shall constitute service and notice for purposes of PC 273.6 (violation of the DVRO) and PC 29825 (violation of the DVRO weapons restriction.) Within one business day of service, the law enforcement agency serving the DVRO order shall enter the proof of service directly into the DOJ California Restraining and Protective Order System (CARPOS), including the officer's name and employing agency, and shall transmit the original proof of service to the issuing court (FC 6380(d)). If a suspect is given verbal notice of the DVRO, the officer must advise the suspect to go to the local Family Court to obtain a copy of the DVRO containing the full terms and conditions of the DVRO (FC 6383(g)).

- p. When serving any protective order, including but not limited to EPROs and DVROs, law enforcement officers shall request the immediate surrender of firearms and ammunition rather than having to wait 24 hours for the person to self-surrender the firearms and ammunition. The Santa Clara County Protocol for Relinquishment of Firearms and Ammunition Pursuant to Protective/Restraining Orders should be followed. (A copy is attached to this Protocol at page 70.)
- q. Note information concerning the victim's whereabouts for the next few days in the police report. Obtain any emergency/secondary contact information. This should include name, relationship, telephone number(s) and address. If the victim is a juvenile, obtain contact information from the parent(s) or guardian(s).
- r. Request from the victim, information regarding the suspect's media accounts including account identifying information such as user names and passwords.
- s. An officer shall conduct a Lethality Assessment for First Responders and may put the victim in immediate contact with a domestic violence advocate. (See "Lethality Assessment for First Responders" form at page 59 of this Protocol.)

****Lethality factors present should be listed in the felony affidavit.****

- t. If the suspect is taken into custody:
 - i. Document spontaneous statements by the victim and/or suspect.
 - ii. Prevent communication between suspect and victim / witnesses / children.
 - iii. Advise suspect of Miranda rights. The Miranda Admonition should be read to suspects in their primary language by a qualified interpreter.
 - iv. Conduct interviews and document statements of the suspect. If a "violent felony" is alleged, the interview of the suspect will be electronically recorded as outlined in the Santa Clara County Police Chiefs' Association's "Recording of Violent Suspect Statement Protocol". (See PC 667.5(c) for a listing of violent felonies.)
 - v. Evaluate the suspect for danger to self or others under 5150 W&I. If appropriate, complete a 5150 W&I form for jail mental health staff.

u. Photographs

- i. Document and photograph the condition of the crime scene (i.e., disarray of physical surroundings), and the suspect and victim, even if there are no visible injuries.
- ii. Ensure that the victim's and suspect's visible injuries are photographed. Make sure that the photos taken preserve the dignity of the victim as much as possible and photograph their faces for identification purposes.
- iii. Encourage the victim, or parent or guardian if the victim is a juvenile, to contact the investigating agency/follow-up investigator if further bruising appears.

v. Firearms and Ammunition

- i. If necessary for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm/ammunition or other deadly weapon is present at the location and confiscate any firearm/ammunition or deadly weapon discovered. Note this in the report (13730(3) PC). If an EPRO is issued, request the immediate surrender of firearms once the perpetrator is served. (Family Code 6389). A search warrant can also be obtained. (See Pg. 32 under "Follow-Up Investigation".)
- ii. Check in the Consolidated Firearms System (CFS) and Prohibited Armed Persons (PAP) file to determine if firearms are registered to any involved person or if any involved person is prohibited from owning firearms.
- iii. Seize any firearm/ammunition or other deadly weapon located in plain sight, discovered pursuant to a consensual search or other lawful search, as necessary for the protection of officers or other persons present (18250 PC). **Ammunition, although not specifically listed in PC 18250, can be seized as a deadly weapon. (See deadly weapon defined in PC 245, and related definition of ammunition in PC 16590, PC 30305.)**
- iv. Seize any firearms possessed in violation of 29800(a) PC – convicted felons, or 29805 PC – other specified misdemeanor convictions.

(See page 38 of this Protocol for information regarding retention and return of confiscated weapons.)

w. Medical treatment

- i. Document extent of injuries or medical treatment, if known.
- ii. Suggest that the victim seek medical attention. (Encourage medical attention if there is any indication of strangulation, TBI or sexual assault.)
- iii. Obtain authorization for release of medical records from victim, or from parent or guardian if the victim is a minor.
- iv. Transport or call for transport of victim and children to a hospital for treatment when necessary, or stand by until victim or children can safely leave. ("Children" does not include a minor suspect.)
- v. Obtain names, addresses, and phone numbers of fire and emergency medical personnel treating the victim, if possible.

D. COMPLETING CRIME REPORT

1. Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
2. Ensure that the report includes the victim's preferred name and gender identity.
3. Ensure that elements of all involved crimes are included in the report and document:
 - Any injuries victim and suspect have sustained.
 - That victim received the Domestic Violence Resource Card per Penal Code Section 13701(i).
 - That victim has been offered an EPRO.
 - Past history of violence and check for existence of a restraining order.
 - Prior domestic violence incidents at that address involving the alleged abuser or victim.
 - Statements of victim, suspect, and all witnesses including children.
 - Physical evidence obtained.
 - Probation/parole status.
 - Whether alcohol, illegal drugs or prescription drugs were involved by the alleged abuser or the 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 AND children who may not reside in the home but whose parents are involved in the domestic violence incident. (Note: the

word "children" does not include a juvenile suspect or victim who should be dealt with as the suspect or victim and not as a child witness.)

- If any pets were threatened, harmed, or there is evidence of animal abuse.
 - Whether the officer found it necessary, for the protection of the officer or other persons present, to inquire of the victim, abuser, or both, whether a firearm or other deadly weapon was present at the location (13730 PC).
 - Any emergency/secondary contact information. This should include name, relationship, telephone number(s) and address.
 - All e-mail addresses should be obtained.
 - All cellular and text messaging contact information should be obtained.
4. If a valid restraining order prohibits firearms possession or ownership by a person involved in the incident, the officer shall make record in the crime or incident report of:
- Inquiries made to determine if the restrained person possesses any firearms/ammunition.
 - The results of efforts made to locate and seize any unlawfully possessed firearms/ammunition, including requesting a search warrant (See page 32 under "Follow-Up Investigation".)
5. 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 CARPOS.
 - Request of records or communications personnel that information on the reported violation is entered into the California Restraining and Protective Order System (CARPOS). (See the California Department of Justice Information Bulletin #02-05-BCIA, dated April 4, 2002.)
 - If the order that was violated was issued out of Family Court, collect or photograph a copy of the order, including proof of service if any.
- Note: A protected person cannot be in violation of their own protective order
6. 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).

7. EPROs: In any domestic violence incident, the officer shall note on the Probable Cause Affidavit whether an EPRO was granted by a judge or was declined by the victim.
8. When completing a Probable Cause Affidavit or Juvenile Contact Report (JCR), officers will ensure that the following information is provided:
 - a. The officer shall complete all applicable sections of the Affidavit or JCR forms, including non-narrative portions.
 - b. The narrative portion of the Affidavit or JCR shall thoroughly detail the injuries received and how they were inflicted. The officer should not merely check one of the boxes to indicate extent of injuries, as this information is often subjective. If the injury involved is "complaint of pain only," this fact shall be explicitly stated. This is necessary to avoid calling the officer back to clarify the Affidavit. If a felony arrest is made on an injury involving complaint of pain with no visible injuries, the officer shall give a detailed description of the force used, including type of force, number of blows inflicted, etc. (i.e., fist, open hand slap, etc.).
 - c. If the officer feels that a restraining order is required in order to protect the victim, information concerning the need for restraint should be included in the Affidavit or JCR.

E. INFORMATION PROVIDED TO VICTIMS

1. If a victim spontaneously states that prosecution is not desired, the victim should be told that the decision to prosecute is made by the District Attorney. Officers shall not advise victims of domestic violence that the victim has the authority to "press" charges or "drop" charges.
2. Officers shall furnish victims with a "Domestic Violence Resource Card" which includes the phone number for the Victim Services Unit in Santa Clara County (408-295-2656) and the toll free number for the California Victim Compensation Program (1-800-777-9229).
 - The card shall also include the names and phone numbers of shelters or counseling centers and state that domestic violence i.e., assault by a relative or partner of the victim is a crime. The California Victim Compensation Program can authorize a cash payment or reimbursement to an adult victim of domestic violence for specified expenses. Counseling funds for children may also be available for those identified in the police report. Victims should be encouraged to contact a 24-hour domestic violence crisis hotline in order to receive important information about safety issues and services that are available to them. Officers are

encouraged to call the hotline as indicated on the Lethality Assessment form.

- The card shall also include the statement that the victim has a right to have a domestic violence advocate and a support person of the victim's choosing present at any follow-up interview by law enforcement authorities, prosecutors, or defense attorneys (679.05 P.C.). Officers should strongly consider providing additional DV resource cards to support persons, friends and family at the scene.
- Inform the victim of their right to request in writing that the landlord change the locks of their dwelling unit within 24 hours when they are the victim of domestic violence, sexual assault, or stalking. The victim must give the landlord a copy of the police report or restraining order (which was written in the last 180 days). The landlord must also give the victim a key to the new locks. The victim also has the right to change the locks if the landlord fails to do so, regardless of any provision in the lease to the contrary. The victim must then give the landlord a key to the new locks. If the victim and restrained person live together the victim can make the same request of the landlord in writing but needs to provide the landlord with a copy of the restraining order (written within the last 180 days) that excludes the perpetrator from the tenant's dwelling unit (CC 1941.5, CC1941.6).

3. Officers shall furnish victims with the Attorney General's/SCCO card on Marsy's Rights (Prop 9.)

F. HOSTAGE SITUATIONS

If there is a taking of a hostage or the barricading of a location by the perpetrator, the officer is authorized to use an electronic amplifying or recording device to eavesdrop on and/or record, any oral communication within a particular location in response to the taking of the hostage or the barricading of a location if:

- (1) The officer reasonably believes that an emergency situation exists involving the immediate danger of death or serious physical injury to any person; and
- (2) The officer reasonably determines that the emergency situation requires that eavesdropping occur immediately; and
- (3) There are grounds upon which an order could be obtained pursuant to 18 U.S.C. 2516(2) for the offenses specified in it (i.e. murder, kidnapping, or other crimes dangerous to life, limb, or property, and punishable by imprisonment for more than one year). PC 633.8.

G. REQUESTS FOR HIGH BAIL

A police officer may request a higher bail and any special conditions of bail either orally or in writing for the defendant by making a declaration (i.e. probable cause affidavit) under the penalty of perjury setting forth facts and circumstances in support of their belief that the scheduled bail amount is not sufficient to ensure the defendant's appearance in court or to ensure the protection of a domestic violence victim (PC 1270.1). The crimes specified are serious felonies, violent felonies, threatening a witness, domestic violence felonies, domestic violence misdemeanors, criminal threats, stalking and domestic violence restraining order violations if the defendant made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of the protected party. "Facts and Circumstances" should include a listing of lethality factors present. Juvenile suspects are not eligible for bail.

FOLLOW-UP INVESTIGATION

- A. All domestic violence reports prepared by officers pursuant to Penal Code section 13700 et seq. (for adult offenders) or Welfare and Institutions Code section 213.5 (for juvenile offenders), should be reviewed and given follow-up investigation as needed.
- B. Follow-up investigations should be geared to the requirements of the District Attorney's Family Violence Unit.
 - 1. Follow-up investigations should include the following:
 - a. Verify the inclusion of all investigative steps described in the previous section regarding patrol officer response/investigation.
 - b. Obtain medical records and medical release forms, if available.
 - c. Preserve a copy of the 911 recording involving the original call(s) for assistance, as needed.
 - d. Interview/re-interview the victim, witnesses, and suspect as necessary.
 - (1) Follow-up interviews should be recorded. If a "violent felony" is alleged, the interview of the suspect will be electronically recorded as outlined in the Santa Clara County Police Chiefs' Association's "Recording of Violent Suspect Statement Protocol". See PC 667.5(c) for a listing of violent felonies, and all reenactments should be video recorded.
 - (2) If on-scene language interpretation assistance was provided by a family member, neighbor, or other uncertified person, it is necessary to re-interview the victim or witnesses by a qualified interpreter, such as a qualified bilingual officer, telephone/language line interpreter or a qualified civilian interpreter. Avoid using third party individuals (children, family members, bystanders or neighbors) to translate statements.
 - (3) Penal Code section 830.1 and Education Code section 49076 contain authority for law enforcement to interview students at school.
 - e. When a victim has suffered an injury, follow-up photographs should be taken 48 hours after the physical abuse and note changes to injuries. Ensure photographs are taken if injuries were not photographed by the field officer.

- f. Remind victim of their right to have a domestic violence advocate and a support person of their choosing present at the interview. The domestic violence advocate must advise the victim of any limitations on the confidentiality of communications between the victim and the advocate. If the presence of the person would be detrimental to the purpose of the interview, the support person and/or advocate can be excluded.
- g. Contact the victim to inform them of the status of the case and the intended referral to the District Attorney or Juvenile Probation.
- h. Record names, addresses, and phone numbers of two close friends or relatives of the victim who may know the victim's whereabouts 6-12 months from the time of the incident.
- i. Conduct a complete CJIC, CII and NCIC criminal history check of the suspect and victim. Run a records check to see if any law enforcement agency has previously responded to a domestic violence call at the same address involving the same alleged abuser or victim (PC 13730(c)(2)). When appropriate, conduct a Juvenile Probation records check. Also conduct queries on the suspect in the Consolidated Firearms System (CFS), Prohibited Armed Persons (PAP), California Restraining and Protective Order System (CARPOS), and the Violent Crime Information Network (VCIN). Attach results of these checks to the investigator's report.
- j. If children, other than the suspect, are present or living in the home, a copy of the incident or crime report shall be provided to the designated on-site Department of Family and Children Services (DFCS) social worker. Law enforcement agencies without a designated on-site DFCS social worker shall fax a copy of the incident or crime report to DFCS at (408) 975-5851. (Note also that suspected child abuse must be cross-reported as required by 11165, 11166 and 11172(a) PC. DFCS telephone number: 408-299-2071.)
- k. Suspected elder or dependent adult abuse must be cross-reported as required by 15610, 15630 and 15640 W&I. (Adult Protective Services telephone numbers: 408-975-4900 or 800-414-2002.)

APS dedicated law enforcement line: (408) 975-4800

- l. Those agencies working or having an operational agreement with victim advocacy agencies shall provide a copy of the police report to them.
- m. Obtain from the victim a copy of any DVRO including proof of service, if they have it. If the restrained person was present when the order was made, personal service is not needed. (See item 24(a) of form DV-130.) If the restrained person was not present in court when the

order was issued, locate and interview the person who served the order to confirm proper personal service pursuant to item 24(b)(2). Sometimes the DVRO will indicate the order was served by mail, which means additional investigation will be required to prove actual knowledge. Actual knowledge of the order is required in order to criminally prosecute a violation of the order.

- n. Interview all people identified as possible witnesses in the police report (example: a roommate who was home but not interviewed). Also interview the RP and any other witnesses identified in the CAD.
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 Office Family Violence Unit.
 3. Investigative personnel handling domestic violence cases should analyze each domestic violence case by asking the following questions:
 - a. Can the elements of the offense be established without the testimony of the victim?
 - i. If the answer is "yes," the case should be submitted to the District Attorney's Office or Juvenile Probation Department for review, irrespective of the wishes of the victim.
 - ii. If the answer is "no," can further investigation locate additional witnesses or evidence which would allow prosecution without a cooperative victim, such as:
 - witness statements;
 - prior inconsistent statements;
 - physical evidence;
 - content of 911 recording;
 - circumstantial evidence;
 - defendant's statements;
 - spontaneous statements.

Cases where the investigation establishes probable cause to believe a domestic violence occurred should be submitted to the District Attorney's Office or Juvenile Probation Department.

Cases where the investigation does not establish probable cause to believe a domestic violence offense occurred need not be submitted, but should be filed with Records pursuant to Penal Code section 13700 et seq.

4. Under NO CIRCUMSTANCES should a victim be asked if they wish to "press charges" or "drop charges". Investigative personnel should not

ask a victim if he/she wants to "prosecute" his/her partner. The victim should be informed that the decision to proceed is out of their control.

5. Officers arriving at a medical facility in response to a phone call or report made by a medical professional shall prepare a Domestic Violence Incident Report irrespective of the wishes of the victim, or the parents or guardians of the minor victim.
6. If the crime involves the use of a firearm, the reports shall be submitted to the District Attorney's Office or Juvenile Probation Department for review.

C. Stalking cases

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

D. Obtaining Search Warrants

Note: Consider contacting the on-call Deputy District Attorney in charge of search warrants. Call County Communications at (408) 299-2501 and they will connect you with the on-call Deputy District Attorney.

1. There are five specific instances when a search warrant for weapons can be requested. (See PC 1524(a)(9)-(11), (15) and PC 1542.5.)
 - a. At the premises occupied or under the control of the person arrested for a domestic violence incident involving a threat to human life or a physical assault. (PC 18250.)
 - b. When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody of, a person who is detained for examination of their mental condition. (W&I 8102(a).)
 - c. When the property or things to be seized include a firearm/ammunition that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms and/or ammunition pursuant to Family Code 6389, meaning:
 - i. The prohibited firearm and/or ammunition is possessed, owned, or in the custody of, or controlled by a person against whom an EPRO or DVRO has been issued and,

- ii. The person has been lawfully served with the EPRO or DVRO, and
 - iii. The person has failed to relinquish the firearm as required by law.
- d. When the firearm is in the possession of a person who is prohibited from owning it by PC 29800 (felony conviction) or 29805 (specified misdemeanor conviction within 10 years) and the Court has made a finding pursuant to PC 29810(c)(1) that the person has failed to relinquish the firearm as required by law.
- e. When the firearms and/or ammunition to be seized is/are owned, possessed, in the custody of or controlled by a person who is the subject of a gun violence restraining order issued pursuant to PC 18100-18205, and:
- the person has been lawfully served with that order, and
 - the person has failed to relinquish the firearm as required by law, and
 - there exists probable cause to believe that the person does indeed have a firearm or ammunition.

(See Firearms Emergency Protective Order (EPO-002) attached at page 68.)

2. The California Electronic Communications Privacy Act (CalECPA) (PC 1546 et seq.) limits the rights of a governmental entity to access electronic communication information (ECI) from a service provider. ECI includes contents; sender; recipients; format; location of the sender during the communication; time or date communication was created, sent or received; or information pertaining to any individual or device participating in the conversation. The CalECPA also limits the rights of a governmental entity to access electronic device information (EDI) from the device. EDI includes any information stored on or generated through the operation of an electronic device including current and prior locations of the device
- a. The CalECPA provides that a government entity may compel the production of or access to ECI from a service provider only under the following circumstances:
- (1) Pursuant to a search warrant issued pursuant to PC 1523-1542.5 that also complies with PC 1546.1; or
 - (2) Pursuant to a wiretap order issued pursuant to PC 629.50-629.98; or
 - (3) Pursuant to an order for electronic reader records issued

- pursuant to Civil Code 1798.90; or
- (4) Pursuant to a subpoena provided that the information is not sought for the purpose of investigating or prosecuting a criminal offense.
- b. The CalECPA provides that a government entity may access EDI from a device only under the following circumstances (PC 1546.1):
- (1) Pursuant to a wiretap order pursuant to PC 629.50-629.98; or
 - (2) With the specific consent of the authorized possessor of the device; or
 - (3) With the specific consent of the owner of the device, only when the device has been reported lost or stolen; or
 - (4) If the government entity in good faith believes that an emergency involving danger of death or serious physical injury to any person requires access to the EDI; or
 - (5) If the government entity in good faith believes the device to be lost, stolen or abandoned, and the entity accesses EDI only in order to attempt to identify, verify or contact the owner or authorized possessor of the device; or
 - (6) If the device is seized from an inmate's possession or found in an area of a correctional facility where inmates have access and the device is not in the possession of an individual and the device is not known or believed to be in the possession of an authorized visitor.
- c. Requirements for CalECPA search warrants:
- (1) Describe with particularity the information to be seized: time periods covered, target individuals or accounts, applications or services covered, and types of information sought; and
 - (2) Provide that any information obtained that is not related to the warrant's objective be sealed and not subject to further review, use or disclosure without a court order; and
 - (3) Comply with all provisions of California and federal law.
- d. Voluntary disclosures.

A service provider may voluntarily disclose ECI or subscriber information but the government entity must destroy the information within 90 days unless the government entity:

- (1) Obtains specific consent of the sender or recipient of the ECI;
- (2) Obtains a court order authorizing retention;
- (3) Reasonably believes the information relates to child pornography and it is retained as part of a multiagency database use in the investigation of child pornography and related crimes.

e. Emergencies.

If the government obtains electronic information pursuant to an emergency involving death or serious injury, then within 3 days it must file with the court an application for a warrant or order authorizing the obtaining of the electronic information, or a motion seeking approval of the emergency disclosure. The Court may order immediate destruction upon a finding that the facts did not give rise to an emergency or upon rejecting the application on any other ground.

f. Notice to Target.

When a warrant is executed or when electronic information is obtained in an emergency without a warrant, a notice must be served upon the target explaining that information about the target has been compelled or requested and stating with "reasonable specificity" the nature of the governmental investigation. Notice must be provided contemporaneously with execution of the warrant, or within 3 days after an emergency request. If there is no identified target (i.e. the electronic information is needed to identify the target) then the governmental entity must submit to DOJ within 3 days the same information that would have been sent to a target.

(Note: the 3-day period runs from date of receipt of information if target is known, and from date of request if target is not known.) Permits 90-day delay upon Court order, with extensions in 90-day increments.

g. Standing to challenge search

Gives any person standing to move to suppress any electronic information obtained in violation of PC 1546-1546.4 or of the Fourth Amendment to the United States Constitution. Note: this is a wide expansion of the usual rules regarding standing to challenge searches. It appears to give a defendant standing to challenge the search of a victim's phone.

E. Retention and return of weapons seized at scene of domestic violence

1. Retention: If a firearm is confiscated, issue a receipt to the owner describing the firearm and listing the serial number or other known identifier. Explain that the weapon will be returned within five business days after the owner or possessor demonstrates compliance with PC sections 33850 and 33855 (must apply to the State Department of Justice for a determination of whether they are eligible to possess a firearm).

- a. The firearm or other deadly weapon taken into custody shall be held for at least 48 hours per PC 18265. If the weapon is seized as evidence of a crime or the owner of the firearm is subsequently prohibited from possession by a restraining order, the firearm will not be returned (PC 33850, 33855, 34000).
 - b. When a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon seized would likely endanger the victim or person who reported the assault or threat, the agency shall so advise the owner and initiate a petition in superior court within 60 days (90 days if good cause for an extension can be shown) to determine if the firearm or other deadly weapon should be returned. (PC 18400, 18265.)
2. Return: Any weapon not to be used as evidence and not illegally possessed must be made available to the owner / person in lawful possession 48 hours after the seizure or within 5 business days after the person receives a determination from DOJ that they are eligible to possess a firearm. (See PC 33850)

OBTAINING, SERVING AND ENFORCING RESTRAINING ORDERS

Police officers involved in domestic violence investigations may deal with civil or criminal restraining orders. (See pages 7-8 of this Protocol for definitions of various kinds of domestic violence restraining orders, both criminal and civil.)

A. Verification of the existence of a domestic violence restraining order.

If, at the scene of a domestic disturbance, a person shows or informs the officer of the existence of a restraining order, it is crucial to establish the present status and terms of the order. Pursuant to Penal Code section 13710, each Law Enforcement Agency shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents. These records shall include orders which have not yet been served, orders issued pursuant to Penal Code section 136.2, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

B. Service of domestic violence restraining orders.

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

Service of a civil protective order: Upon request, law enforcement agencies shall serve the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody (13710(c) PC). Within one business day of service, the law enforcement agency serving the protective order shall enter the proof of service directly into the DOJ California Restraining and Protective Order System (CARPOS), including the officer's name and employing agency and shall transmit the original proof of service to the issuing court or to the protected party. (FC 6380(d)).

The following is the general procedure that should be followed when serving a protective order:

1. The Family Court, Juvenile Justice Court, or Civil Court will send a copy of the protective order to the Sheriff's Office. The request will include a form indicating if there may be firearms in the possession of the restrained party. These cases should receive top priority by the agency serving the protective order.

2. When the restrained person is a juvenile, both the minor and their parent or guardian need to be served with any court-ordered domestic violence restraining order.
3. Law enforcement officer serving a protective order **MUST** request that all firearms and ammunition immediately be surrendered to the officer (FC 6306).
4. The officer may take temporary custody of any firearm or deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present (PC 18250).
5. If the firearm is not immediately surrendered, a restrained party must provide proof of surrender of a firearm within 48 hours. An investigation for a violation of PC 273.6(g) should be considered if the restrained party does not show proof of surrender of the firearm within 48 hours to the agency serving the order.
6. The investigating agency may consider obtaining a search warrant pursuant to Penal Code section 1524(9) or Penal Code section 1524(11) to seize the firearm.
7. The law enforcement agency should conduct an investigation whenever it receives written findings from a judge (see Attachment FM-1124 included at page 73 of this Protocol) that a restrained person has not surrendered their firearms and there exists reasonable suspicion that the restrained person is still in possession of firearms.

C. Enforcement of domestic violence restraining orders.

A protective order itself is enforceable once the Court issues the order. A *violation* of the protective order is enforceable only after it can be proved that the restrained person had actual knowledge of the order and its terms and thereafter willfully violated those terms.

1. All domestic violence restraining orders, whether civil or criminal, will be enforced by all law enforcement officers, **whether those orders were issued in Santa Clara County or in another jurisdiction in the United States (see section G for information about Canadian orders).**
2. Verbal notice by the officer of the terms of the order is sufficient to prove knowledge in any criminal prosecution for violation of the order. However, in order to successfully prosecute a later violation of the order, the officer who delivered verbal notification must be able to testify that the subject notified was positively identified as the restrained person (FC 6383(e)). The officer should also be able to identify the conditions disclosed to the restrained party. Notification should be memorialized for future reference. No service is required if the restrained person was

present at the hearing when the order was made.

3. Each agency shall ensure the original Proof of Service (see DV-200 Proof of Personal Service attached at page 73 of this Protocol) is filed with the court issuing the order and a copy retained with the police report. Note: The terms and conditions of the restraining order remain valid and enforceable, in spite of the acts of the victim, and may be changed only by order of the court.
4. Once the order is served, an arrest may be made if the suspect refuses to comply with the terms of the order.
5. If the officer cannot verify the order, it may be enforced through a private person's arrest procedure. If it is the officer's opinion that the elements of the crime do not exist, the officer may then consider a release per Penal Code Section 849(b).
6. If a Restraining Order violation has occurred and the suspect is not present, the officer will submit a crime report of the appropriate violation and the officer will attempt to locate the suspect and arrest pursuant to section 836(c) PC.

Officers shall always prepare a crime report on a restraining order violation, even if the suspect is no longer present.

7. If a violation of a restraining order is alleged, the officer shall request of records or communications personnel that information on the reported violation is entered into the California Restraining and Protective Order System (CARPOS).
8. Juvenile Justice Court orders are considered Civil Court orders for this purpose.

D. Conflicting Orders – What to Enforce. (See flow chart on page 62.)

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

a. Emergency Protective Order in Effect:

If one of the orders is an Emergency Protective Order issued pursuant to Penal Code section 136.2, the peace officer must enforce the emergency protective order provided that the provisions are more restrictive than provisions of the other orders. An emergency protective order may be issued pursuant to Family Code sections 6250 – 6257 or Penal Code section 646.91 (stalking).

- b. Multiple Civil or Criminal Protective Orders and at least one “No Contact” Order:

If an Emergency Protective Order does not exist, and there is more than one protective/restraining order, and one of the orders is a “no contact” order as described in Family Code section 6320, the peace officer must enforce the “no contact” order.

- c. Multiple Civil/Family Law Orders without a “No Contact” Order:

If there are multiple civil orders and no Emergency Protective Orders and no “no contact” orders, then the peace officer must enforce the most recent protective order.

- d. Criminal and Civil Protective Orders without a “No Contact” Order:

If there is a civil and a criminal order, and none of the orders is an Emergency Protective Order or a “no contact” order, a peace officer must enforce the criminal protective order.

E. Emergency Protective Orders

When addressing any domestic violence incident, an officer shall advise the victim of the availability of an Emergency Protective Restraining Order (EPRO) or civil restraining order, in every case even if the suspect is arrested and in non-criminal situations where the victim is fearful. The officer is required to request the protective order if the officer believes the person requesting the order is in immediate and present danger.

- 1. In arrest situations, the following procedures should be implemented:

- a. When a person is arrested based upon an allegation of a recent incident of abuse, or threat of abuse, or stalking, and the officer can assert reasonable grounds to believe that a person is in immediate and present danger of domestic violence, or child abuse, or where a child is in immediate and present danger of being abducted by a parent or relative, then the police officer shall explain the EPRO to the victim and ask whether the victim desires one. Where the officer fears for the safety of the victim, but the victim does not desire an EPRO, an investigating officer shall request one on behalf of the victim (Family Code section 6275.) The officer shall advise the victim that an EPRO has been issued. Every effort must be made to provide the victim with a copy of the EPRO at the earliest opportunity.
- b. If an EPRO is appropriate, the application should be completed. Even if the suspect is no longer at the scene, an EPRO request is appropriate. The officer should note on the application whether or not the suspect has been arrested, or will be arrested when located. During normal court hours the police officer should call the Family

Court at (408) 792-4317 and ask to speak to a judge available to process an EPRO. After 5 PM on weekdays, on weekends, and holidays, the police officer should call County Communications at (408) 299-2501 and ask for the Duty Judge to call back. The police officer should leave the phone number where they can be reached. Officers should ensure that the telephone equipment is operational before requesting that the Duty Judge utilize that number. If the Duty Judge is not available, the officer should ask to speak to another Judge.

2. In a non-arrest situation where an EPRO is desired, the officer should complete an application and then contact the Duty Judge or Family Court for evaluation and issuance of the EPRO.
3. Upon obtaining an Emergency Protective Order, a Law Enforcement Officer must take the following FOUR (4) actions (Family Code section 6723):
 - a. Serve the order on the restrained person. An officer is to make a reasonable attempt to serve the restrained party. If they are present or can be readily contacted, serve the order and complete the Proof of Service on the form. Document whether and how the order was served in the police report.
 - b. Give a copy to the Protected Person.
 - c. File a copy with the Court. Once an EPRO is issued, it is the responsibility of the police agency to promptly file the EPRO with the Family Justice Center Courthouse at 201 N. First St., San Jose, California 95113.
 - d. Enter the order into the Department of Justice's computer database.

Note: Copies of the EPRO should be distributed as follows:

Original	–	Court
Yellow	–	Restrained Person
Pink	–	Protected Person
Goldenrod	–	Law Enforcement Agency

4. A judicial officer may also issue an EPRO if a peace officer asserts reasonable grounds to believe that a person is stalking another person as defined in PC 646.9 (authority PC 646.91).
5. Persons subject to restraining orders are required to turn over all firearms/ammunition when requested to do so by law enforcement. Refer to Firearm Removal Protocol (page 69 of this Protocol) if necessary. No minor should have a firearm or ammunition in his/her possession.

F. Out-of-State Protective Orders

Officers shall enforce out-of-state protective or restraining orders that are presented to them if conditions below are met. "Out-of-state" orders include those issued by U.S. Territories, Indian tribes, and military agencies.

1. The order appears valid on its face.
2. The order contains both parties' names.
3. The order has not yet expired. (Full Faith and Credit Provision of the Violence Against Women Act, Family Code sections 6400-6409).

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

G. Canadian domestic violence protective orders (See Family Code section 6452-6457.)

Officers shall enforce Canadian domestic violence protection orders that are presented to them if the conditions below are met. A certified copy of the Canadian order is *not* required.

1. The order identifies a protected person and a respondent;
2. The order is valid and in effect;
3. The issuing (Canadian) court had jurisdiction over the parties and the subject matter under law applicable in the issuing court, and
4. The order was issued after either the respondent had reasonable notice and had an opportunity to be heard or, in the case of an ex parte order, the respondent was given notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with due process. (Family Code section 6453.)

H. Firearm removal after a restraining order has been issued.

1. When an officer verifies that a restraining order has been issued, the officer will make reasonable efforts to:
 - a. Inquire of the restrained person, if present or contacted during the investigation, if they possess firearms.

- b. Inquire through the CLETS and the Consolidated Firearms System (CFS) to determine if any firearms are registered to the restrained person.
 - c. Inquire of the protected person whether the restrained person possesses any firearms.
 - d. Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search.
 - e. Request the immediate surrender of firearms and ammunition when a person is served with a domestic violence protective order, rather than having to wait 24 hours for the person to self-surrender the firearms.
 - f. Request a search warrant in appropriate circumstances. (See Pg.33 under "Follow-Up Investigation".)
2. A restrained party may not own, possess or purchase a firearm or ammunition (FC 6389). An investigating agency may need to:
 - a. Inquire if the restrained person possesses any firearms or ammunition.
 - b. Investigate the results of efforts made to locate and seize any unlawfully possessed firearms or ammunition.
 3. All law enforcement agencies shall have the responsibility of receiving and storing firearms surrendered pursuant to a restraining order for residents in their jurisdiction.
 4. Each county law enforcement agency having responsibility for the investigation of domestic violence shall adopt policies and procedures addressing the receipt, storage and release of firearms surrendered or seized pursuant to a restraining order.
 5. A restrained party should get a "Property Removal" Order signed by a Judge in order to obtain and effectuate a civil standby order to remove personal property. (See Form FM-1102 on page 66 of this Protocol.)

- I. **There may be situations where law enforcement has information that a person is an immediate danger to him or herself or others by having custody or control, owning, possessing, receiving or purchasing a firearm.**

In those situations, a Gun Violence Restraining Order (GVRO) should be considered when less restrictive alternatives are inadequate. Law enforcement can call the on-call prosecutor after business hours through County Communications for assistance with obtaining a GVRO, or call the DA's Office's main number during the day (408-299-3099). See pg. 68 for GVRO form.

Restraining Order Admonition

What should you do if a court order prohibits you from contacting a protected person and the protected person initiates contact with you?

The law (Penal Code Section 13710 (b)) clearly states that the terms and conditions of the protective order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

This means if the protected person calls you, invites you over or contacts you in any manner, you must quickly end all such contact. You must hang up the phone, decline the invitation or leave the immediate area where they are. If you do not do this, you can and will be arrested for violating the protective order.

The protective order prohibits you from having any contact with the protected person. This order does not prohibit them from contacting you, therefore they are not breaking the law; but you are if you continue the contact.

In order for a protective order to be modified to allow contact, the party requesting the order must return to court and make that request. That individual will get a document (piece of paper) showing that the order was modified. If the protected person tells you the order was modified to allow peaceful contact, ask to see the document, make a copy of it and carry it on your person at all times.

VICTIM ASSISTANCE

- A. If a victim has injuries, visible or not, which require medical attention, officers shall administer first aid, as appropriate, and offer to arrange for proper medical treatment. The officer shall transport or call for transport of the victim and children to a hospital for treatment when necessary, or stand by until the victim and children can safely leave.
- B. When a victim in a domestic violence incident requests police assistance in removing a reasonable amount of personal property (e.g., a suitcase) to another location, officers shall stand by a reasonable amount of time until the party has safely done so.
- C. In all domestic violence incidents, an officer shall:
 1. Assist in making arrangements to transport the victim to an alternate shelter if the victim expresses a concern for safety or the officer determines a need exists.
 2. Explain options available to the victim including the private person's arrest process, temporary restraining orders, Emergency Protective Restraining Orders, changing of locks and in cases of arrest, the follow-up procedures in ensuing criminal or juvenile justice proceedings.
 3. Advise the victim about the Victim's Rights Act of 2008, and provide the victim with a DOJ or Santa Clara County "Marsy's Card".
 4. Advise the victim of available community resources and the California Victim Compensation Program. (This includes the victim of an alleged battery or corporal injury to a domestic partner.) Pursuant to Penal Code section 13701, officers shall furnish victims with a "Domestic Violence Resource Card" which includes the phone number for the Victim Services Unit in Santa Clara County (408-295-2656) and the toll free number for the California Victim Compensation Program (1-800-777-9229). The card shall include the names and phone numbers of shelters or counseling centers, and state that domestic violence or assault by a person who is known to the victim or who is the spouse of the victim is a crime. The card will contain an explanation of the Santa Clara County Victim Notification Service (1-800-464-3568). **Victim compensation through the Victim Compensation Program is not contingent on immigration status.**
 5. Inform the victim that the domestic violence resource card states that the victim has the right to have a domestic violence advocate and a support person of the victim's choosing present at any follow-up interview conducted by law enforcement authorities, prosecutors, or

defense attorneys. Officers should also advise that a victim can contact of the advocacy centers immediately.

6. Verify and enforce court issued protective orders pursuant to this protocol.
 7. Exercise reasonable care for the safety of the officers and parties involved. No provision of this instruction shall supersede that responsibility.
 8. Provide a copy of the report relating to domestic violence to the victim at no charge when requested, or to the representative of the victim even if the victim is not deceased (FC 6228). A qualifying representative of a living victim is a parent, guardian, adult child, or adult sibling who presents to law enforcement identification and a signed authorization (if the victim is age 12 or older) by the victim allowing the family member to act on the victim's behalf; an attorney for the victim who presents to law enforcement identification and a written proof that they are the attorney for the victim; and a conservator of the victim who presents identification and a copy of the letters of conservatorship demonstrating that he or she is appointed conservator of the victim.
- D. If the suspect is taken into custody, the victim will be provided the option of having their phone number blocked by the Santa Clara County Department of Corrections to prevent the suspect from contacting the victim while the suspect is in custody.

MILITARY SUSPECTS

- A. All domestic violence incidents involving military suspects shall be handled according to this law enforcement protocol if:
 - 1. The incident occurred outside the boundaries of a military facility; or
 - 2. Local law enforcement agencies are called to assist in handling such an incident.
- B. The intent of this policy is to eliminate all informal referrals, diversions, or report taking omissions in the handling of domestic violence incidents involving military personnel.
- C. No informal agreements with military police or a suspect's commanding officer shall take precedence over a suspect's arrest and prosecution by non-military authorities.
- D. The Field Officer should determine the suspect's military status (active or reserve) and current duty station.

JUVENILE SUSPECTS

All provisions of this protocol, including pro arrest and booking of the perpetrator, whether a felony or misdemeanor, enforcing Protective and Restraining Orders, shall be applied to all juvenile cases of domestic violence. Domestic violence, as defined by the Penal Code, is violence perpetrated against juveniles as well as adults. Domestic violence includes violence perpetrated by or against juveniles.

LAW ENFORCEMENT SUSPECTS

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

Any field officer investigating an alleged incident of domestic violence involving a law enforcement suspect must notify an on-duty supervisor or watch commander as soon as possible. The investigating officer shall not leave the scene of the investigation until the on-duty supervisor or watch commander has been notified. The investigating agency shall notify the employing agency as soon as possible after the incident or initial report. All alleged incidents of domestic violence involving suspects who are employed as peace officers will be reviewed by the District Attorney's Office. All reports and information regarding suspects who are employed as peace officers shall be delivered to the suspect's law enforcement employer as soon as practical at the completion of the investigation.

The investigating agency shall contact their local domestic violence agencies for assistance when referring the victim to an advocate trained in working with victims of domestic violence perpetrated by law enforcement suspects.

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

CAMPUS ASSAULTS

If an officer takes a report of a domestic violence incident on a high school, college or university campus, and the victim is a student, the officer shall: 1) advise the victim of additional resources that are available to them on campus, and 2) if the suspect is also a student at the same institution, advise the victim of their rights under Title IX, including the name and phone number of the Title IX Coordinator at their campus.

TRAINING

- A. Each law enforcement agency shall conduct mandated domestic violence training for members of the agency per 13519(b) PC and 13730 PC. In addition, the Domestic Violence Council and its sub-committees, in partnership with the Santa Clara County Police Chiefs' Association and the District Attorney's office, will conduct a four (4) hour "Train the Trainer" course on the annual changes to this protocol in the spring of each year. In addition, topical and relevant training will supplement the training of the protocol, and can include, but is not limited to:
- victim's rights,
 - understanding victims and batterers,
 - understanding the effects of DV on children,
 - understanding the unique issues affecting LGBTQ victims and batterers,
 - understanding how to determine the dominant aggressor,
 - lethality assessments,
 - death review,
 - proper investigation techniques,
 - cultural and language sensitivity,
 - restraining orders,
 - firearms laws,
 - victim advocacy groups and resources,
 - DA and Court policies and procedures, and
 - Strangulation**
- B. Additional training should include written bulletins, DVD's, videotapes, verbal reminders, and updates during patrol briefings.
- C. The Chief of Police, Sheriff, or their designee, shall ensure the review of their department's training policies annually and make any revisions deemed necessary.

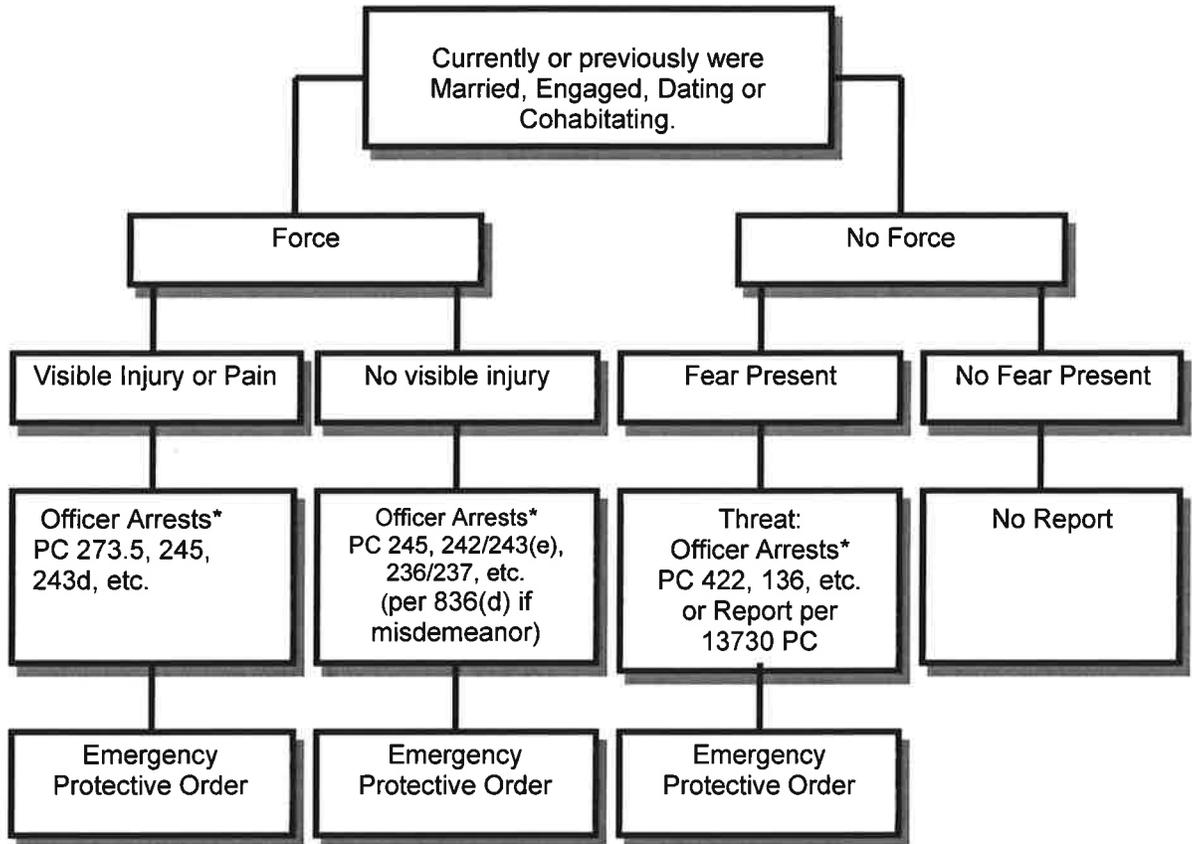
DOMESTIC VIOLENCE STATUTES

All Penal Code statutes listed below apply equally to adults and juveniles.

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

DOMESTIC VIOLENCE FLOW CHART

Processes charted below apply to both adult and juvenile cases.



*All arrests require probable cause to believe that a crime occurred.

**Assistance for Domestic Violence Victims
Santa Clara County District Attorney's Office- Victim Services Unit
(408) 295-2656**

The Santa Clara County District Attorney's Office, Victim Services Unit is designed to assist victims of violent crime by providing emotional support, crisis intervention services, resource and referral assistance, compensation for crime-related expenses, and comprehensive support throughout the criminal justice system. Victim Advocates are available to provide or arrange services to meet the material, emotional and informational needs experienced by victims of crime, thereby allowing for a swifter and more complete recovery from the impact of the crime. Victim Advocates demonstrate an understanding of victims' rights law, the dynamics of victimization, crisis intervention, and adult and juvenile criminal justice procedures. Victim Services Unit's Advocates can assist victims in applying for the California Victim Compensation Program.

Who is eligible for the California Victim Compensation Program?

"Victim" – anyone who suffers physical injury or threat of physical injury as a result of a crime that occurs in California providing the person is reasonably willing to assist law enforcement in the investigation and/or prosecution of the crime. A California resident, victimized elsewhere, may also be eligible for assistance. Children who reside in a home where domestic violence has occurred are also considered victims, regardless of whether they witnessed the crime.

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

What assistance is available through the Victim Compensation Program?

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

Counseling and mental health treatment up to \$10,000 for victims and \$3,000 for derivative victims (a higher limit of \$10,000 is available to some derivative victims). Children who reside in a home where domestic violence has occurred are considered direct victims.

Home security upgrade up to \$1,000.

Medical and dental expenses resulting from the crime.

Moving or relocation expenses up to \$2,000 per household.

Qualifying wage or income loss due to a crime related disability.

Support loss for dependents of deceased or disabled victims, up to \$70,000 combined and shared by all derivative victims.

Job retraining for disabled victims.

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

Funeral and/or burial expenses up to \$7,500.

Crime scene clean-up up to \$1,000 for qualifying crimes that occurred in a residence or a vehicle performed by State certified practitioners.

Important: Victims are encouraged to file a claim with the California Victim Compensation Program to establish eligibility whether or not there is a current need.

Questions & Answers

How can police officers assist a victim in obtaining assistance through the Victim Services Unit?

Police officers should always provide a domestic violence victim with the phone number for the Victim Services Unit and explain benefits available through this program.

During weekday business hours, police officers may call the Victim Services Unit to refer a victim and facilitate the submission of an application by the victim. Victims may also call the Victim Services Unit directly. Completion of a Law Enforcement Relocation Recommendation Form (form attached) by a police officer will help expedite requests for temporary lodging and permanent relocation.

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

Note: A Letter of Recommendation may be made by any law enforcement officer, and can include a probation officer, a parole agent, a district attorney or a judge.

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

No, those ineligible for assistance include:

- Perpetrators or persons who committed the crime.
- Persons under supervision for a violent felony conviction (even if a domestic violence victim) except when the victim is killed, then funeral and burial expenses may be covered but not medical expenses.

How quickly can a victim receive reimbursement for qualifying expenses?

Once an application is submitted, a copy of the crime report has been received, and all other relevant documents are submitted, the Victim Witness Assistance Program may issue a reimbursement check for qualifying expenses on the same day, if there is an immediate need or within 15 days. If there is no immediate need, general processing time is 30 to 90 days for reimbursement.

If a victim receives benefits through the California Victim Compensation program, then refuses or neglects to assist law enforcement in the investigation and/or prosecution of the crime; will the victim be required to repay the State?

If a victim chooses to stop cooperating with law enforcement and/or prosecution, such action may result in the discontinuance of financial reimbursement for crime related expenses. The California Victim Compensation Program has discretion in determining the level of cooperation and may consult with law enforcement to determine a victim's reasonable level of cooperation.

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

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

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

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

For additional information or to apply for assistance, contact:

Victim Services Unit:
70 W. Hedding Street, Suite 116
San Jose, CA 95110
Phone: (408) 295-2656 Fax: (408) 289-5430
victimservices@dao.sccgov.org



Law Enforcement Relocation Verification Form

CaIVCB Application No.: _____

Instructions: This form is for law enforcement to document the threat to the personal safety of the crime victim seeking relocation benefits from the California Victim Compensation Board (CaIVCB). This form may be used with or without a letter from law enforcement. If a letter is submitted without this form, it must be on the law enforcement agency's letterhead and contain all of the information requested in this form including signature, title, and badge number (if applicable).

Victim Information

Name		Phone Number	
Address	City	State	Zip

Crime Information

Crime Date	Crime Code	Crime Report Number
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From the date of the crime to the present, has the victim been in prison, on probation, on parole, or post-release community supervision because of a felony? Yes No

Is the victim required to register as a sex offender? Yes No

Is or was it necessary for the victim to relocate for personal safety? Yes No Not enough information to determine
If Yes, besides the elements of the crime, please describe the threat to the victim's personal safety:

Is the perpetrator incarcerated? Yes No If Yes, what is the expected release date? _____
If Yes, is there still a threat to the victim's safety? Yes No
If Yes, please explain the nature of the threat:

If more than 90 days has passed since the crime, is there still a credible threat to the victim? Yes No
Please explain:

Name of Law Enforcement Official Providing Information (print)

Agency Name	Contact Phone Number
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Signature:	Badge Number (if applicable):	Date:
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FOR STAFF USE: If Form is not fully completed, contact the Law Enforcement agency, add the missing information, complete the section below and have the document scanned in.

Law Enforcement Official Providing Information	Badge Number	Phone Number
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VW Center Name, Number and Advocate/ Staff Completing This Form	Phone Number	Date
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Conducting the Lethality Assessment:

This evidence-based Lethality Assessment tool is a user-friendly, straightforward instrument that predicts danger and lethality in domestic incidents between intimate or former intimate partners to a high degree. Research shows that only 4% of abused victims had used a domestic violence hotline or shelter within the year prior to being killed by an intimate partner. This Assessment encourages victims in high danger to seek domestic violence program services to prevent serious injury or death.

Purpose:

- a. To improve the way law enforcement and the community respond to victims;
- b. To educate and empower victims;
- c. To respond more strategically to high danger or lethal situations; and
- d. To enhance cooperation, communication and collaboration among law enforcement and domestic violence service providers.

Step 1 – Fill out the Lethality Assessment form with the victim.

The officer should advise the victim that they will ask a short series of questions to help the officer determine how much immediate danger the victim is in. The assessment questions should be asked in the order they are listed on the form.

Ask all the questions, even if the victim responds positively to questions 1-3, which triggers a hotline call. The more questions the victim responds to positively, the clearer and more immediate it is that the victim is in danger.

Step 2 – Assess the responses to the lethality assessment.

“Yes” to Questions 1, 2 or 3 = Call Hotline

“No” to Questions 1-3 but “Yes” to four of Questions 4-11 = Call Hotline

“No” responses may still warrant a hotline call if the officer believes it is appropriate. An officer may call the hotline and assess the victim as being in high-danger whenever they believe the victim is in a potentially lethal situation.

Step 3 – Victim is Assessed as High-Danger – Referral Process.

1. Explain assessment to victim.
2. Advise that you need to call hotline and you would like for victim to speak with an advocate. (Remember: You are seeking the victim's permission.)
3. If victim does not want to speak with an advocate, tell victim you need to speak with an advocate to seek guidance and gently ask victim to

reconsider. Let the victim know that the advocate's services are free and confidential. They can assist with safety planning, emergency shelter and legal assistance.

4. Call the hotline and give them the basic facts.
5. If victim still does not want to speak with an advocate, follow procedures under step 4 below.

Step 4 – Victim is assessed as non-high danger, or the victim did not/could not participate in assessment or hotline call:

1. Advise of dangerous situation.
2. Advise to watch for signs of danger.
3. Refer to providers on DV resource card.

Step 5 – Provide the victim with the DV resource card, case number and Marsy's card as per the DV protocol.

Step 6 – As soon as is practical, please fax all Lethality Assessment forms to the appropriate DV organization listed on the bottom of the form regardless of the answers or whether or not the victim answered any of the questions. The goal is to connect every domestic violence victim with a confidential advocate as soon as possible.

Step 7 – As soon as is practical, please fax all Lethality Assessment forms to the Office of Pre-Trial Services at 408-954-8507.

Conflicting Orders: What to Enforce When You Have Multiple Orders?

Penal Code § 136.2, and Family Code §§ 6383 (h), 6405 (b)

(1) Is there an EPRO?

Yes

No

Enforce the EPRO!

as long as it is the more restrictive order

(2) Is one of the orders a no-contact order?

Yes

No

Enforce the no-contact order!

(3) Are there both civil and criminal restraining orders?

4) Are there multiple civil orders? (e.g. Family, Juvenile or other civil court)

Enforce the most recent order!

Enforce the criminal order!
Non-conflicting terms of the civil order remain in effect

EMERGENCY PROTECTIVE ORDER (See reverse for important notices.)

1. PROTECTED PERSONS (insert names of all persons protected by this Order): _____

2. RESTRAINED PERSON (name): _____

Sex: M F Ht: _____ Wt: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

3. TO THE RESTRAINED PERSON:

a. YOU MUST NOT harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy any personal property of, disturb the peace of, keep under surveillance, or block the movements of each person named in item 1.

b. YOU MUST NOT contact, either directly or indirectly, by any means, including but not limited to by telephone, mail, e-mail or other electronic means, any person named in item 1.

c. 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): _____

d. YOU MUST NOT own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition. If you have any firearms, you must turn them in to a law enforcement agency or sell them to, or store them with, a licensed gun dealer.

e. YOU MUST NOT take any action, directly or through others, to obtain the addresses or locations of any person named in item 1.

4. (Name): _____ is given temporary care and control of the following minor children of the parties (names and ages): _____

5. THIS ORDER WILL EXPIRE AT THE CLOSE OF THE COURT BUSINESS DAY ON: _____

6. TO THE PROTECTED PERSON: If you need protection for a longer period of time, you must request restraining orders from the court in the county where you live:
(Name and address of court): _____
INSERT DATE OF FIFTH COURT DAY OR SEVENTH CALENDAR DAY, WHICHEVER IS EARLIER; DO NOT COUNT DAY THE ORDER IS GRANTED

If you go to court to request restraining orders, take your copy of this form with you. If a juvenile petition is pending, file in that court.

7. 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.

8. Judicial officer (name): _____ granted this Order on (date): _____ at (time): _____

APPLICATION

9. The events that caused the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse (except solely financial abuse), or stalking are (give facts and dates; specify weapons): _____

10. Firearms were: observed reported searched for seized

11. 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 3c.

12. 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 9. A custody order does does not exist.

By: _____ (PRINT NAME OF LAW ENFORCEMENT OFFICER) _____ (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____

PROOF OF SERVICE

13. Person served (name): _____

14. I personally delivered copies of this Order 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. I am a California law enforcement officer.

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

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) _____ (SIGNATURE OF SERVER)

**EMERGENCY PROTECTIVE ORDER
WARNINGS AND INFORMATION**

EPO-001

TO THE RESTRAINED PERSON: VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR IT MAY BE PUNISHABLE AS A FELONY. THIS PROTECTIVE ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. THE TERMS AND CONDITIONS OF THIS ORDER REMAIN ENFORCEABLE REGARDLESS OF THE ACTS OF THE PARTIES; IT MAY BE CHANGED ONLY BY ORDER OF THE COURT (PENAL CODE SECTION 13710(b)).

YOU ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM OR AMMUNITION. (PENAL CODE SECTIONS 29825(a), 30305(a).) A VIOLATION IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. WITHIN 24 HOURS OF RECEIPT OF THIS ORDER, YOU MUST TURN IN YOUR FIREARMS TO A LAW ENFORCEMENT AGENCY, SELL THEM TO A LICENSED FIREARMS DEALER, OR STORE THEM WITH A LICENSED FIREARMS DEALER UNTIL THE EXPIRATION OF THIS ORDER. (PENAL CODE SECTION 29830.) PROOF OF SURRENDER, SALE, OR STORAGE MUST BE FILED WITH THE COURT WITHIN 48 HOURS OF RECEIPT OF THIS ORDER.

To the restrained person: This order will last until the date and time in item 5 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney on any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

A la persona bajo restricción judicial: Esta orden durará hasta la fecha y hora indicada en el punto 5 al dorso. La persona protegida puede, sin embargo, obtener una orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado inmediatamente para que él o ella le pueda ayudar a responder a la orden.

To the protected person: This order will last only until the date and time noted in item 5 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address in item 6. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address in item 6, or if there is a juvenile dependency action pending, you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. In the case of a child being abducted, you may apply for a *Child Custody and Visitation Order* from the court. You may seek the advice of an attorney on any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

A la persona protegida: Esta orden durará sólo hasta la fecha y hora indicada en el punto 5 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el punto 6. La solicitud de la orden de protección es gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada en el punto 6, o si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés *Welfare and Institutions Code*. En el caso del secuestro de un niño o una niña, usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody and Visitation Order*). Puede consultar a un abogado en conexión con cualquier asunto relacionado con las solicitudes de órdenes de la corte que usted presente en el futuro. Debe consultar un abogado inmediatamente para que él o ella le pueda ayudar a presentar su solicitud. Para obtener la orden de protección no es necesario que un abogado le represente.

To law enforcement: The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy shall be filed with the court as soon as practicable after issuance. Also, the officer shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order. A law enforcement officer who acts in good faith to enforce an emergency protective order shall not be held civilly or criminally liable.

If a child is in danger of being abducted: This order will last only until the date and time noted in item 5 on the reverse. You may apply for a child custody order from the court.

En el caso de peligro de secuestro de un niño o de una niña: Esta orden será válida sólo hasta la hora y fecha indicada en el punto 5 al dorso. Usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody and Visitation Order*).

This emergency protective order is effective when made. This order shall expire on the date and time specified in item 5 on the reverse. The provisions of this emergency protective order take precedence in enforcement over provisions of other existing protective orders between the same protected and restrained persons to the extent the provisions of this order are more restrictive. In other words, the provisions in this emergency protective order take precedence over the provisions in any other protective order, including a criminal protective order, if (1) the person to be protected is already protected by the other protective order, (2) the person to be restrained is subject to that other order, and (3) the provisions in this emergency order are more restrictive than the provisions in that other order. The provisions in another existing protective order remain in effect and take precedence if they are more restrictive than the provisions in this emergency protective order.

EPO-001 (Rev. January 1, 2014)

EMERGENCY PROTECTIVE ORDER (CLETS-EPO)
(Domestic Violence, Child Abuse, Elder or Dependent Adult Abuse, or Stalking)

Page 2 of 2

CALIFORNIA SECRETARY OF STATE SAFE AT HOME PROGRAM

Safe at Home is California's address confidentiality program administered by the California Secretary of State's office. The program, which provides a free post office box and mail forwarding service, is designed to help victims and survivors of domestic violence, stalking or sexual assault to start new lives in peace and to provide added protections to their overall safety plans.

Safe at Home is not a Witness Protection Program, nor does it provide relocation, counseling or legal services. Safe at Home laws apply to state and local government agencies, but not to private entities or to the federal government. Participants are not automatically qualified for other victim services programs; they must meet specific qualifications in order to be eligible for services administered by the Secretary of State's office, county Registrar of Voters offices, the California Superior Court System, and the California Department of Motor Vehicles.

Available Services

Agent for Service of Process

The Secretary of State acts as your agent for service of process to protect your address information from being disclosed to the other party in your court case. When you enroll, Safe at Home instructs the other party and his or her attorney to serve court-related correspondence on the Secretary of State's office in Sacramento. The service is then forwarded by certified mail to your confidential address. ([per Government Code §6206\(a\)\(5\)](#))

Confidentiality for Children

If your children are enrolled, Safe at Home can provide an additional layer of protection for them, too. You can notify your enrolled child's school of your family's participation in Safe at Home and prevent sharing of information about your child. ([per Government Code §6206\(a\)](#))

Confidential Mail-Forwarding

First-class mail is securely handled and forwarded to your confidential home or mailing address. Residence address information is required to be current at all times and you must be domiciled in California in order to enroll or renew your enrollment in the program. ([per Government Code §6206\(a\)](#))

Confidential Name Change

You may be eligible to petition a California court for a confidential name change. It is important to talk with a legal advisor before proceeding with a confidential name change. Safe at Home is responsible for filing the name change documents with the Secretary of State's office, but does not provide legal advice or assistance with completing the confidential name change process. ([per Government Code §6206.4](#), [Code of Civil Procedure §1277](#))

Confidential Voter Registration

You may be eligible to complete a confidential voter registration card and become a confidential voter. As a confidential voter, you can vote by mail and protect your voter registration information from campaigns, the media, and the general public. ([per Government Code §6207.5](#), [Elections Code §2166.5](#))

Department of Motor Vehicles (DMV) Records Suppression

The California Department of Motor Vehicles can suppress your driver license and vehicle registration records if you have a clean driving record and no criminal history. Suppression of these records protects your address information from being available on various state databases. A specific request to the DMV Confidential Records Unit is required in order to access the records. ([per Government Code §6207\(e\)](#), [Vehicle Code §1808.21\(d\)](#))

Internet Disclosure Prohibition

The California Office of the Attorney General, Privacy Enforcement and Protection offers an online opt-out form Safe at Home participants can use to remove their home address, telephone number or personal identifying information from a website. The law also prohibits a person, business, or association from knowingly and intentionally posting or displaying on the Internet, or soliciting, selling, or trading on the Internet a participant's home address, telephone number or personal identifying information and imposes a fine for violations of this law. ([per Government Code §6208.1 and 6208.2](#))

FM-1102 Other Orders – Property Removal

Case Number: _____

This form is attached to: DV-110/130 CH-110/130 EA-110/130 JV-250/255

1. Protected Person's name: _____

2. Restrained Person's name: _____

3. **Taking personal items of property:** As a **one-time exception** to the "Personal Conduct" and "Stay-Away" orders attached to this form, the **Restrained Person** **Protected Person**:

a. May take agreed upon items of property from the Protected Person's Restrained Person's home. Items that the parties do not agree upon must not be taken unless the Court makes an order allowing the items to be removed. The agreed upon items of property may be taken between (date) _____ and (date) _____ between (times) _____ and _____.

b. May only take items of property that are described in item 7. The items may be taken between (date) _____ and (date) _____ between (times) _____ and _____.

c. Must send a written list of personal property items which are being requested to the other party by mail _____ calendar days in advance of the removal date and items which are agreed upon must be removed as set forth above in section 3a. The mailing of this list by the Restrained Person (if applicable) is an exception to the No Contact Orders.

d. Must place the other party's personal belongings as listed in item 7 in a box or boxes for pick up/delivery to the other party or his/her designated representative. The terms of pick up/delivery must be as follows:

e. Must contact Law Enforcement to request the Civil Standby. The exact date and time must be approved by Law Enforcement in advance of any property removal. Removal must not occur before 7 a.m. or after 10 p.m. If the Civil Standby does not take place due to scheduling issues or if Law Enforcement is unavailable or unwilling to be present for the Civil Standby either party may request a hearing for further orders.

4. **Civil Standby:** A "Civil Standby" is when a Law Enforcement Officer comes to a place to make sure that the situation there is peaceful. The party who is removing his/her personal items must give a copy of these Property Removal Orders to the Law Enforcement Officer. Both parties must obey the instructions of the Law Enforcement Officer present at the Civil Standby. A Civil Standby may last up to thirty minutes but may be stopped at any time by the Law Enforcement Officer.

5. **Peaceful Communication:** The parties may communicate peacefully with each other regarding the property removal while the items of property are being removed as an exception to the attached Personal Conduct orders. Any Law Enforcement Officer present while the items of property are being removed has the authority to stop all communication. Such communication, if peaceful, is an exception to any No Contact Orders.

6. **Others present at property removal:**

a. Minor children shall not be present during property removal.

b. The property removal shall not take place _____ (name of party) or his/her designated representative is not present.

c. Each party may have up to two other people who are not listed as protected people on this Restraining Order present while the items of property are being removed. Any contact between the parties and these people must be peaceful.

d. The parties may not have others present when the items of property are removed.

e. The following people may be may not be present when the items of property are removed:

7. **Other Orders:**

a. The orders herein are for temporary possession and the issue of final ownership of any item may be subject to review by a Court of competent jurisdiction.

b. Items to be removed:

(1) **Necessary Personal Property**, which means clothing, toiletries, prescribed medication, medical records, medical insurance card, driver's license or State identification cards;

(2) **List of items to be removed:**

See Attachment

FIREARMS EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

7. RESTRAINED PERSON (insert name of subject):

Sex: [] M [] F Ht: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of Birth: _____

8. TO THE RESTRAINED PERSON (Also see important Warnings and Information on Page 2): YOU MUST NOT own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition. If you have any firearms or ammunition, you MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST. If not request has been made, you must surrender all firearms and ammunition in a safe manner to your local law enforcement agency or sell them to or store them with a licensed gun dealer within 24 hours of being served with this order. You must then file a receipt proving surrender, sale, or storage with the Court listed below within 48 hours, or if the court is closed, then on the next business day after the firearms are surrendered or sold. FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER. (Name and address of court):

9. THIS ORDER WILL EXPIRE ON: _____ TIME: _____
INSERT DATE OF 21ST CALENDAR DAY
DO NOT COUNT DAY THE ORDER IS GRANTED

10. Reasonable grounds for the issuance of this Order exist, and a Firearms Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.
11. To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

Judicial Officer (name): _____ granted this Order on (date): _____ at (time): _____

APPLICATION

6. Officer has a reasonable cause to believe that the grounds set forth in Item 4, above exist. (State supporting facts and dates; specify weapons—number, type and location):

7. [] Firearms were: [] observed [] reported [] searched for [] seized
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: _____ (PRINT NAME OF LAW ENFORCEMENT OFFICER) (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____

PROOF OF SERVICE

8. Person served (name): _____
9. I personally delivered copies of this Order to the person served as follows: Date: _____ Time: _____
Address: _____

10. At the time of service, I was at least 18 years of age. [] I am a California law enforcement officer.
11. My name, address, and telephone number are (this does not have to be server's home telephone number or address):

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) (SIGNATURE OF SERVER)

**FIREARMS EMERGENCY PROTECTIVE ORDER
WARNINGS AND INFORMATION**

EPO-002

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm or ammunition. (Pen. Code § 18125 et seq.) A violation of this Order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in your firearms to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or the next court business day if the 48 hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms Turned In, Sold, or Stored* for this purpose.

This Firearms Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front.

A law enforcement officer or agency or a family member may seek a more permanent restraining order from the court. However, you can seek to terminate this order or any more permanent order before expiration by filing a request with the court listed on the front.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code § 18205.)

This protective order must be enforced by all law enforcement officers in the State of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A la persona restringida: Tiene prohibido ser dueño de una arma de fuego, poseer o tratar de comprar, recibir o tratar de recibir u obtener una arma de alguna otra manera. (Código Penal §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego a una agencia del orden público o venderlas a o guardarlas con un comerciante de armas autorizado hasta el vencimiento de esta orden. (Código Penal §§ 18125 y siguientes.) Dentro de las 48 horas de recibir esta orden, se tiene que presentar a la corte una prueba de haberlas entregado, vendido, o guardado. Se puede usar la forma GV-800 por este propósito.

Esta orden de protección de emergencia de arma de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 al otro lado.

Un agente o agencia del orden público o un familiar puede pedir que la corte emita una orden de restricción más permanente de la corte. Sin embargo, puede pedir dar fin a esta orden antes de su fecha de vencimiento al presentar una solicitud con la Corte indicada en el punto 3 al otro lado.

Si está en violación de esta orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o intentar comprar o recibir un arma de fuego o municiones por otro período de cinco años más, a comenzar a partir del vencimiento de la orden restricción actual de violencia con armas de fuego. (Código Penal § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Firearms Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. A copy must be filed with the court as soon as practicable after issuance. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this Temporary Firearms Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

**SANTA CLARA COUNTY
PROTOCOL FOR RELINQUISHMENT OF FIREARMS AND
AMMUNITION PURSUANT TO PROTECTIVE/RESTRAINING
ORDERS**

Authority

California and federal laws require that individuals who are the subject of civil restraining orders or criminal protective orders may not own or possess firearms or ammunition for the duration of the orders. Cal. Family Code § 6389(a), Cal. Code of Civil Procedure §§ 527.6, 527.8, Cal. Penal Code §136.2.

A restrained person has two options for surrendering his or her firearms and/or ammunition:

1. The restrained person may surrender his/her firearms and/or ammunition in a safe manner to their local law enforcement agency immediately upon request of any law enforcement officer to the control of the officer after being served with the restraining or protective order. If no request is made, the restrained person may surrender his/her firearms and/or ammunition in a safe manner within 24 hours of being served with the restraining/protective order. Cal. Family Code §6389(c)(2).
2. The restrained person may sell his/her firearms and/or ammunition to a federally licensed gun dealer who is listed with the California Department of Justice Firearm Dealer's Centralized list.

The law enforcement agency or federally licensed gun dealer must issue a receipt to the restrained person. This can be done on the Judicial Council form DV-800, which is available online at www.courtinfo.ca.gov under forms for domestic violence. The receipt must be filed with the Court within 48 hours of the person being served with the restraining or protective order. Cal. Family Code § 6389 (b)(2).

Firearms Relinquishment Procedure:

1. The Court will require that each restrained person subject to a civil restraining order or criminal protective order be served with Instructions for Safely Taking a Firearm and/or Ammunition to Law Enforcement and a list of Frequently Asked Questions concerning Firearm Relinquishment.
2. In the event that a restrained person elects to turn in his/her firearms and/or ammunition to law enforcement, the Receiving Agency will be

the law enforcement agency requesting the relinquishment of the firearms and/or ammunition immediately upon service of the restraining or protective order. In the absence of a request for immediate surrender of firearms and/or ammunition, the Receiving Agency will be the local police department where the person resides or the Santa Clara County Sheriff's Office for those areas where there is no applicable local police department. The restrained person must follow the Instructions for Safely Taking a Firearm and/or Ammunition to a Law Enforcement Agency.

3. The Receiving Agency will schedule an appointment or appointments for the surrender of the firearms and/or ammunition as soon as possible within the 24 hour period from the service of the court order for relinquishment of the firearms and/or ammunition. The agency may require separate appointments for the relinquishment of firearms and ammunition.
4. The firearms and/or ammunition must be transported from the restrained person's residence or other location of the firearms and/or ammunition to the law enforcement facility in a safe and lawful manner. The firearms must be unloaded.
5. If possible, the restrained person shall supply the Receiving Agency with a copy of the restraining or protective order, which shall be kept by the agency. Failure of a party to produce a copy of the court order shall not be grounds for refusing to allow the surrender of the firearms and/or ammunition within the time required by law.
6. Law enforcement agencies may request a copy of the applicable restraining or protective order from the Santa Clara County Superior Court in the event that a party is not able to produce it. This shall not be grounds for delaying the relinquishment of the firearms and/or ammunition or the issuance of the receipt.
7. The department evidence custodian or other applicable staff person will complete an Evidence/Property Receipt form and/or Judicial Council form DV-800 listing each firearm, its serial number, make and model, and noting any outstanding characteristics in the firearm's condition, such as cracked stock, missing parts, or rust, for example. A copy of the Evidence/Property Receipt and/or form DV-800 will be given to the restrained party at the time that the firearms and/or ammunition are relinquished. The department will maintain a copy of the Receipt and/or DV-800 in its records for the duration of the time that the firearms and/or ammunition are retained by the agency.

8. In the event that any of the firearms are antiques or collector's items, the restrained person may provide written special storage requests to the Receiving Agency. The Receiving Agency does not guarantee to the restrained person that it will or may follow the special instructions.
9. The Receiving Agency may charge fees for storing the firearms and/or ammunition and shall provide written notice to the restrained person of such fees.
10. The Receiving Agency may elect not to store the firearms and/or ammunition for the full duration of the restraining or protective order. At the time that the firearms and/or ammunition are relinquished, the Agency shall provide written notice to the Restrained Party of how long they will store the firearms and/or ammunition. In the event that this should change, the Agency shall provide the restrained person with at least 30 days written notice of their intention to destroy or dispose of the firearms and/or ammunition.
11. The restrained person shall have the ability to sell the stored firearms only under the following conditions:
 - a) The owner will be allowed only one sale from storage, which must include all firearms.
 - b) The sale must be to a federally licensed firearms dealer.
 - c) The restrained person must provide the department with a bill of sale indicating that all firearms owned by that person and in possession of the local law enforcement agency have been sold by the restrained person to the licensed firearms dealer, then the licensed firearms dealer shall be given possession of those firearms.
12. A restrained person may also relinquish unloaded firearms and/or ammunition to law enforcement for the purpose of destruction of the firearms and/or ammunition. The restrained person must follow the Instructions for Safely Taking a Firearm and/or Ammunition to a Law Enforcement Agency. The Law Enforcement Agency may use an Evidence/Property Receipt form or Judicial Council form DV-800 with an attached instruction sheet which must be signed by the restrained person stating that the firearms and/or ammunition are to be destroyed.

SANTA CLARA COUNTY PROTOCOL
FOR RELINQUISHMENT OF FIREARMS AND AMMUNITION PURSUANT
TO PROTECTIVE/RESTRAINING ORDERS

Clerk stamps date here when form is filed.

1 Name of Party Asking for Protection: _____

2 Name of Party to Be Restrained: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be listed in items **1** or **3** of form DV-100, *Request for Domestic Violence Restraining Order*.
- Give a copy of all documents checked in **4** to the restrained party in **2** (you cannot send them by mail). Then complete and sign this form, and give or mail it to the party in **1**.



Fill in court name and street address:

Superior Court of California, County of _____

Court clerk fills in case number when form is filed.

Case Number: _____

4 I gave the party in **2** a copy of all the documents checked:

- a. DV-109 with DV-100 and a blank **DV-120** (*Notice of Court Hearing; Request for Domestic Violence Restraining Order; blank Response to Request for Domestic Violence Restraining Order*)
- b. DV-110 (*Temporary Restraining Order*)
- c. DV-105 and DV-140 (*Request for Child Custody and Visitation Orders, Child Custody and Visitation Order*)
- d. FL-150 with a blank **FL-150** (*Income and Expense Declaration*)
- e. FL-155 with a blank **FL-155** (*Financial Statement (Simplified)*)
- f. DV-115 (*Request to Continue Hearing*)
- g. DV-116 (*Order on Request to Continue Hearing*)
- h. DV-130 (*Restraining Order After Hearing*)
- i. Other (*specify*): _____

5 I personally gave copies of the documents checked above to the party in **2** on:

a. Date: _____ b. Time: _____ a.m. p.m.

c. At this address: _____
City: _____ State: _____ Zip: _____

6 Server's Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____

Type or print server's name

Server to sign here

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</p> <p>STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	<p>FOR COURT USE ONLY</p>
<p>PROTECTED PERSON:</p>	
<p>RESTRAINED PERSON:</p>	
<p>FINDINGS RE NONCOMPLIANCE WITH ORDER TO RELINQUISH GUNS, FIREARMS OR AMMUNITION</p>	<p>CASE NUMBER:</p>

This form is attached to: DV-110/130 CH-110/130 EA-110/130 WV-110/130
 JV-250/255 Other: _____

1. The above matter came before the Court on _____ in Department _____ of the Superior Court, the Honorable _____, presiding.
2. The Court makes the following findings by a preponderance of the evidence:
 - a. The Restrained Person received proper notice of the hearing.
 - b. The Restrained Person appeared did not appear for the hearing.
 - c. The Court issued a restraining order against the Restrained Person on (date) _____, which prohibits possession and requires the relinquishment of guns, firearms or ammunition, by surrender to Law Enforcement, or sale to or storage with a licensed gun dealer, as required by law.
 - d. The Restrained Person owns or has access to guns, firearms or ammunition.
 - e. The Restrained Person has failed to offer satisfactory proof that he or she has relinquished the guns, firearms or ammunition as required by law.
3. The Protected Person should give this form to the law enforcement agency where he or she lives, along with a copy of the restraining order, to request help to enforce the order to relinquish guns or other firearms or ammunition.

Date: _____

Judicial Officer

Instructions to Protected Person

You may call the non-emergency telephone number for the law enforcement agency where you live to request help in enforcing the order to relinquish the gun, firearms or ammunition. See list of agencies on Attachment FM-1124A.

If you have been a victim of strangulation, confidential support services are available to you. The following organizations provide a comprehensive range of free and confidential services.

AACI Asian Women's Home
24-Hour Hotline 408-975-2739
www.dv.aaci.org
www.facebook.com/AACIorg

Languages: English, Vietnamese, Chinese and other Asian languages

YWCA SILICON VALLEY
24-Hour Hotline 1-800-572-2782
www.ywca-sv.org
www.facebook.com/ywcasv

Languages: English and Spanish

MAITRI

Helpline 1-888-8MAITRI or
1-888-862-4874

maitri@maitri.org
www.maitri.org

www.facebook.com/maitribayarea

Languages: English and South Asian languages

NEXT DOOR SOLUTIONS TO DOMESTIC VIOLENCE

24-Hour Hotline (408) 279-2962
www.nextdoor.org

www.facebook.com/NextDoorSolutions

Languages: English, Spanish, and Vietnamese

Community Solutions

24-Hour Hotline 1-877-363-7238
or 1-877-END-SADV

www.communitysolutions.org

www.facebook.com/CommunitySolutions

Services provided in Morgan Hill, San Martin and Gilroy

Languages: English and Spanish



Visit www.safechatsv.com for a secure, one-on-one live online chat with a confidential advocate

COUNTY OF SANTA CLARA STRANGULATION RESOURCE CARD

Information for Victims
of Strangulation

Facts About Strangulation

- Strangulation is an extremely dangerous and potentially deadly form of violence. It can take less than 20 seconds for a person to lose consciousness as a result of strangulation, and death can occur in just under 5 minutes.
- You may not experience any visible injuries, and symptoms of internal injuries may take up to 72 hours to appear.
- Internal injuries can be serious or fatal and may cause brain damage due to lack of oxygen. Symptoms can take hours, days or even weeks to develop.
- Seek immediate medical attention or call 911 if you experience difficulty breathing, speaking, swallowing or experience nausea, vomiting, lightheadedness, headache, involuntary urination and/or defecation, especially if you are pregnant.
- A medical evaluation may be crucial in detecting internal injuries and saving your life, and the life of your unborn child if you are pregnant.

- Stay with someone you trust for the first 24 hours and have them monitor your signs and symptoms.
- Strangulation is a significant predictor for future lethal violence in intimate relationships. If your current or former partner has strangled you, your risk of being killed by them is 7 times higher.
- Screening and counseling for domestic violence are covered under the Affordable Care Act as preventive health care.
- The cost of your medical care may be covered by your state's victim compensation fund. For more information about this resource call (408) 295-2656 or email victimservices@dao.sccgov.org.
- Strangulation may not only be a felonious assault, but it may be an attempted homicide.

You always have the right to file a police report, press charges for an assault or seek a restraining order against someone who is choosing to be abusive towards you.

See your doctor as soon as you can, especially if you have:

- a sore throat, hoarseness, difficulty breathing or swallowing
- discoloration on your tongue
- neck pain, bruising on the neck or behind your ears
- ringing in your ears
- bloodshot eyes
- dizziness
- memory loss
- drooling
- nausea or vomiting
- incontinence
- a seizure
- a miscarriage
- changes in mood or personality like agitation or aggression
- changes in sleep patterns
- changes in vision such as blurriness or seeing double
- fainted or lost consciousness
- Shaking (especially of the legs when trying to maintain balance)
- Headaches