

LA MESA POLICE DEPARTMENT INSTRUCTION

LEGAL: HANDLING OF DOMESTIC VIOLENCE CASES

No: 412

Adopted: July 1, 1986 / Revised: July 2011 / Revised 9/2012

Page: 1 of 11

Ray Sweeney, Chief of Police

PURPOSE

To establish a policy regarding the handling of domestic violence cases in accordance with the provisions of the California Penal Code and P.O.S.T. Guidelines.

DEFINITIONS

"Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to him/herself or another (13700(a) PC).

"Domestic Violence" is abuse committed against an adult or a 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).

Note: The 2008 Update of the San Diego County "Domestic Violence and Children Exposed to Domestic Violence Law Enforcement Protocol" provides that "Any crime can be considered a "Domestic Violence Crime", as long as the victim meets the relationship definition in 13700 PC. For instance, if a boyfriend vandalizes his girlfriend's car, this could be considered a "Domestic Violence" incident.

"Cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship (13700(b) PC).

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations (243(f)(10) PC, 6210 FC). Casual, one-time dates or first-time encounters would not be considered "dating" and therefore not "domestic violence."

"Dominant Aggressor" is the person who is the most significant, rather than the first, aggressor.

BACKGROUND

In 1984, the California Legislature passed Senate Bill 1472 (Watson - now Section 13519 and 13700 et.seq. of the Penal Code). This law requires that law enforcement agencies adopt and implement written policies and standards for response to domestic violence calls by January 1, 1986.

POLICY

Officers responding to cases of domestic violence shall stress the policy of the law that domestic violence is criminal conduct, and a request for assistance involving domestic violence is the same as any other request for assistance where violence has occurred. It is not the intent of this policy to remove the officer's individual discretion where that discretion is necessary and not in conflict with State law or the San Diego County Domestic Violence Protocol.

I. CALL TAKER / DISPATCH RESPONSE

- A. Call Takers who receive Domestic Violence calls shall dispatch officers to the scene (13702 PC). Telephone reports are generally prohibited.
- B. The Safety of Domestic Violence victims, whether the threat of violence is immediate or remote, should be the primary concern. Call Takers shall advise the victim to ensure his/her safety including, but not limited to, waiting for officers at a friend's home or simply leaving the residence.
- C. Calls reporting threatened, imminent, or ongoing Domestic Violence and the violation of any Domestic Violence restraining order or protective order shall be ranked among the highest priority calls.

II. ENFORCEMENT OF LAWS

- A. Felony Arrest: The Officer shall make an arrest when there is reasonable cause to believe that a felony has occurred.
- B. Misdemeanor Arrest: The Officer should make an arrest under the provisions of 836 PC when there is reasonable cause to believe that a domestic violence misdemeanor has occurred and the victim chooses not to make a private person's arrest. Officers shall not ask a domestic violence victim whether or not prosecution is desired.
- C. Private Person's Arrest: The Officer shall inform the victim of the right to make a private person's arrest when a crime has been committed. Whenever possible, such discussion shall be held out of the presence of the suspect. Officers shall not dissuade victims from making a lawful arrest.
- D. The following factors should NOT be used to avoid making an arrest:
 - 1. Marital status of the suspect and victim,
 - 2. Whether or not the suspect lives on the premises with the victim,

3. Existence or lack of a protective order,
4. Potential financial consequences of an arrest,
5. Victim's history or prior complaints,
6. Verbal assurances that the violence will cease,
7. Victim's emotional state,
8. Non-visible injuries,
9. Location of incident (public/private),
10. Speculation that the victim may not follow through with the prosecution, or that the case may not result in issuance by the District Attorney or conviction.

III. ARREST DISPOSITIONS

- A. Officers shall make a reasonable effort to identify the dominant aggressor in every suspected domestic violence incident. It is the dominant aggressor who is subject to arrest, based on probable cause. Officers shall make reasonable efforts to take statements from all parties and available witnesses before making a probable cause and/or dominant aggressor determination. Dual arrests are discouraged. Persons arrested for domestic violence crimes should be booked into County Jail.
- B. Misdemeanor arrests not normally accepted at County Jail, such as misdemeanor vandalism, will be accepted if they are committed during a domestic violence incident. Officers should mark "DV related" on the booking form next to the charges.

IV. REPORTING

- A. Officers shall document all incidents of domestic violence. The ARJIS-2 , ARJIS-3, ARJIS-8, ARJIS-12 DV-Supplement, and Narrative report forms will be used to document all crimes or incidents involving domestic violence and shall be identified with "Domestic Violence" in the space designated "Code Section and Description" on the ARJIS-2 and in the space designated "Charges" on the ARJIS-8 forms.

- B. Where there is no crime, such as a 13730 PC, the officer need only complete the following forms:
1. ARJIS-2 (Crime/Incident Report)
 2. ARJIS-3 (Witness List – if necessary)
 3. ARJIS-12 (DV Supplement)
- C. In completing the ARJIS-12 DV-Supplement form, Officers shall minimally document:
1. The emotional state of the victim at the time the report was taken,
 2. Type(s) of relationship,
 3. History of Domestic Violence,
 4. If the Victim was given a Domestic Violence Information sheet,
 5. If the Victim was given the Investigations DV follow-up telephone number,
 6. If the Victim was given a Case Number,
 7. If the Victim was advised how to safely make a citizen's arrest,
 8. If the Victim intends to remain in the residence or take a temporary residence,
 9. If the Victim was asked for an Emergency Contact telephone number,
 10. If weapons were used in the incident.
- D. For cases involving any charge listed in Government Code section 6254(f)(2), (273.5 PC, 646.9 PC, 261 PC, 288a PC, 289 PC et. al.), the officer shall advise the victim of their right to confidentiality regarding their name and memorialize their response on an LMPD 293 PC supplement included with the report. In the case of victims who are minors, either the minor or their parent/guardian may request confidentiality. Officers' legal duty to inform victims of this privilege only extends to sexual related offenses (293 PC) but victims of non-sexual offenses are still entitled to confidentiality under 6254 GC and should be informed of this right.
- E. Statements
1. Victim Statements: Detailed statements by the victim at the scene are crucial to a successful prosecution and must be documented by the reporting officer. All statements made by the victim at the time of the report, even when the result of direct questioning by officers, are admissible in court as domestic violence "spontaneous statements." Cases are prosecuted using these statements even when the victim later recants or refuses to testify. Detailed victim statements regarding any prior acts of domestic violence, documented or not, are likewise often critical to successfully prosecuting domestic violence cases. Special Evidence Code

sections allow “prior acts” evidence to help corroborate a current event.

2. Witness Statements: Reporting officers should locate, identify, and interview potential witnesses to a domestic violence incident, including children, neighbors of the involved parties, and others who may have had contact with the parties immediately before, during, or immediately after the incident. Evidence of what witnesses heard, were told by the parties, or perceived before/after the incident (i.e., victim’s emotional condition, etc.) can be powerful.
- F. Children present during domestic violence crimes should be considered separate victims under 273a(b) PC. Forensic interviews of child victim/witnesses under 12 years of age or with special needs should be considered for serious felony cases. Officers should document on the DV supplement any children under the custody of either party, whether believed to be present or not during the incident.
 - G. Officers should take color digital photos of all parties, including any physical injuries, children present at the scene, the scene layout and condition, and the location of any weapons or other corroboration, etc. Color photos must be submitted with the report when the case is presented to the District Attorney for prosecution.
 - H. Where victims have suffered potential injuries, officers shall seek the victim’s consent to obtain medical records related to any treatment they may seek, using an LMPD medical records release form. If a medical records release is not obtained, the reporting officer should document in the narrative why this is the case (i.e. victim not able to provide consent due to present condition, victim refused consent, etc.)

V. PROTECTIVE ORDERS

A. Agency Requirements

1. Penal Code Section 13710 requires law enforcement agencies to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, restraining orders, and proofs of service in effect.
2. This section also requires that a systematic record 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. In San Diego County, the San Diego Sheriff's Department is the central repository of such information.

3. In California, CLETS also maintains records of Protective Orders within the state. Valid Protective or Restraining Orders issued in California or by other states, tribes or territories outside of California are generally enforceable in San Diego County.

B. Verification of Protective Orders

Whenever a victim advises of the existence of a protective order, the officer should ascertain:

1. Whether a protective order is on file with the San Diego Sheriff's Department or whether the victim has a copy of the protective order in their possession,
2. Whether the protective order is still valid as to duration/time,
3. Whether proof of service or prior notice exists or if the suspect was in court when the order was made, or
4. The valid terms of the protective order.

C. Arrest Criteria

1. A violation of a protective order is a misdemeanor under Penal Code Sections 273.6 or 166, depending upon the type of order. Criminal protective orders (i.e., issued in criminal domestic violence cases) are enforceable under 166(c)(1). Civil orders are enforceable under 273.6 PC.
2. Domestic violence protective orders are enforceable regardless of the victim's actions. Officers shall make an arrest under the provisions of 836 PC when there is reasonable cause to believe the subject of the restraining order has intentionally and knowingly or willfully violated the order and any one of the following conditions is met. This includes out-of-state domestic violence protective orders.
 - a.) The existence of the order and proof of service on the suspect has been verified by the officer,
 - b.) The complainant produces a valid copy of the order bearing a file stamp of a court and a proof of service on the subject,

- c.) The existence of the order has been verified by the officer, and the order reflects that the suspect was personally present in court when the order was made,
 - d.) The existence of the order has been verified, and there is proof that the suspect has previously been admonished by the officer.
- 3. When the officer verifies that a restraining order exists, but cannot verify proof of service or prior knowledge of order by the suspect, the officer should:
 - a.) Inform the subject of the terms of the order.
 - b.) Admonish the subject of the order, that the subject is now on notice and that the violation of the order will result in arrest. If the subject continues to violate the order after being advised of the terms, an arrest shall be made.
 - c.) If the subject complies after admonishment of the terms, the officer shall make a retrievable report pursuant to Penal Code Section 13730(c) showing the suspect was admonished/advised of the terms of the order, the specific terms of the order the suspect was advised about, the name of the admonishing officer, time and date. The department's copy of the restraining order will be updated to reflect the admonishment information listed above and the San Diego Sheriff's Department or out-of-county court of issuance will be notified of the service.
- D. In the event the suspect has left the scene of the incident, an investigation should be made to determine if a crime has been committed. A retrievable report shall be made and the complainant will be advised of the follow-up criminal procedure and case number of the report.
- E. In cases where the order is not verifiable, officers may not be able to confirm the order's validity.
 - 1. An officer shall write a report, give the victim the report number, and advise the victim of the follow-up criminal procedure.
 - 2. Officers should advise the victim of the right to make a private person's arrest for the appropriate violation.
- F. When mutual protective orders have been issued, liability for arrest applies to those persons who are reasonably believed to have been the dominant aggressor (836(c) (3) PC).

VI. STAY-AWAY ORDERS

- A. A stay-away order is issued in a criminal case where the probability of victim intimidation exists and violation of such is a misdemeanor under Penal Code Section 166(c)(1). In domestic violence cases where a person advises an officer that a stay-away order has been issued, the officer should attempt to ascertain the terms and validity of the order.
- B. Verification of Stay-Away Orders
 - 1. Officers should request the victim show a copy of the order, verify through the San Diego Sheriff's Department that the suspect is under court jurisdiction, or
 - 2. Verify through the San Diego Sheriff's Department that a stay-away order has been issued against the suspect, and proper service has been made on the suspect.
- C. Arrest Criteria
 - 1. When the order has been verified, officers shall affect an arrest if the suspect has willfully violated any terms of the order. The report shall note the specific violations of the order, and the victim shall be given the police report number for reference.
 - 2. A willful violation of the order is a violation of the Penal Code Section 166.4. This violation can be added to other charges such as assault and battery.
- D. Order Not Verifiable
 - 1. When a victim is not in possession of the stay-away order, and/or in case of computer unavailability, officers may not be able to confirm the order's validity.
 - 2. Officers shall write a report, give the victim the report number, and advise the victim of the follow-up criminal procedure.
 - 3. Officers should advise the victim of the right to make a private person's arrest for the appropriate violation.

VII. VICTIM / WITNESS INTIMIDATION

- A. An act of victim or witness intimidation relating to the court proceeding is a violation of Penal Code Section 136 et seq. Examples of intimidation include:
 - 1. Attempting to prevent or dissuade a victim from attending or giving testimony at any proceeding is a misdemeanor.
 - 2. Using force, or expressing or implying threat of force or violence related to the court proceeding is a felony.
- B. An act threatening a victim or witness with force, violence, or damage to their property for previous cooperation with law enforcement or the court system in a criminal case is a felony violation of Penal Code Section 140(a).

VIII. STALKING

- A. Stalking is defined in 646.9 PC as “Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.”
 - 1. The credible threat may be constituted overtly, by verbal, written, or electronic means or it may be implied by a course of conduct, or a combination of all of the above.
 - 2. The suspect must have the apparent ability to carry out the threat and the victim must reasonably be placed in fear for their safety or that of their family.
- B. When considering stalking charges, the credible threat is usually the hardest element to prove. Inquiry about changes to the victim’s lifestyle because of the suspect can often be the strongest evidence. Changes may include their address or phone number, purchase of an alarm system, security camera, dog, or weapon, asking family or neighbors to check on them, avoiding routine travel routes or patterns, making arrangements for themselves or family members in the event of the victim’s death, etc.
- C. Officers are encouraged to contact the District Attorney’s Office, Family Protection Division, before or as soon as practical after an arrest for stalking is made. Such efforts dramatically improve the likelihood of a successful prosecution under this section.

IX. VICTIM ASSISTANCE

- A. In addition to their enforcement duties, officers have the following responsibilities:
1. Assist in obtaining appropriate medical attention if a complainant claims injury whether visible or not.
 2. 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.
 3. Stand by for a reasonable amount of time when a complainant requests police assistance while removing essential items of personal property.
 4. Explain legal options available to the victim including a private person's arrest process, protective and stay-away orders, Emergency Protective Orders, and in cases of arrest, the follow-up procedures and ensuing criminal proceedings.
 5. Advise the victim of the available community resources, including the State Victim Assistance Program, by the appropriate written notice and offer the immediate services of an advocate from the DVRT program.

X. CONFISCATION OF WEAPONS

- A. Pursuant to Penal Code Section 12028.5, officers at the scene of a Family violence incident, which has the same meaning as Domestic Violence as defined in 13700 (b) PC and includes family or household members, involving a threat to human life or physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search for the protection of the peace officer or other persons present. Officers shall make every attempt to legally seize weapons from Domestic Violence incidents.
- B. When an officer takes possession of such a firearm or other deadly weapon, the owner will be given a receipt describing the firearm or other deadly weapon, including any identifying serial number. The receipt shall also list where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon.

- C. Firearms or other deadly weapons seized under this section will be kept for no less than 48 hours. If the weapon is not retained for evidence as a result of this family violence incident, it shall be made available to the owner or person who has lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In the case of firearms, they will not be released until current California DOJ firearms release criteria have been satisfied.

- D. As of January 1, 2010, a search warrant may be issued pursuant to 1524(a)(9) PC when the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with a domestic violence incident involving a threat to human life or a physical assault, as provided in 12028.5(b) PC.