

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 22 Mar 13

SUBJECT: Revision of Departmental Information Bulletin III-J,
PRELIMINARY INVESTIGATION OF DOMESTIC VIOLENCE
(Rev. 16Apr86).

The subject order has been revised to update Departmental policy and procedures to comply with Penal Code Sections 13700 through 13702, governing Departmental response to reports of domestic violence.

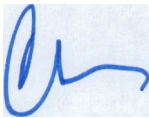
The Evaluation Coordinator for this order shall be the Family Investigation Section Commander, who, without further notice, shall forward the required report to the Chief of Police on or by 22 Sep 13.

The Evaluation Coordinator shall receive, review and document the acceptance or rejection of all comments and/or recommendations received prior to submitting his/her six-month evaluation report.

The Evaluation Coordinator shall forward a copy of the six-month evaluation report, along with the comments/recommendations received, to the Publication Development Unit to be maintained in the appropriate Departmental General Order archive folder.

Personnel shall acknowledge receipt, review, and understanding of this directive in accordance with the provisions of DGO A-I, DEPARTMENTAL PUBLICATIONS.

By order of



Howard A. Jordan
Chief of Police

Date Signed: 22 Mar 13

TRAINING



BULLETIN

Date of Issue
22 Mar 13

Index Number: III-J
Alpha Index: Domestic Violence

Evaluation Coordinator: Family Investigation Section Commander
Automatic Revision Cycle: 3 Years

"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

PRELIMINARY INVESTIGATION OF DOMESTIC VIOLENCE

The purpose of this order is to set forth procedures governing Departmental response to reports of domestic disputes, domestic violence, and the enforcement of domestic violence restraining orders.

I. PRELIMINARY INVESTIGATION PROCEDURES

The primary officer shall:

- A. Use the Domestic Violence Evaluation Checklist (TF-3335) for investigations involving an allegation and/or suspected incident of domestic violence to ensure the following:
 1. Adequate and complete information is obtained from the victim of a domestic dispute/violence incident; and
 2. Supervisory notification is made to address victim and/or public safety concerns, when appropriate.
- B. Interview both parties, if practical, before determining whether a crime has been committed.
- C. Provide medical attention as necessary.
- D. Photograph the complainant and suspect to memorialize the presence or absence of visible injuries. Describe the injuries in detail in the appropriate offense report.
- E. Determine if a valid protective order is in effect and has been properly served. If service is needed, serve the protective order in accordance with the provision of Part V of this order.
- F. Ascertain whether there are children on scene who witnessed the incident and take a written statement when practical. Children who have witnessed or were present during an incident of domestic violence shall also be listed as complainants pursuant to PC 273a(b) PC if they display objective signs of willful harm, emotional distress (i.e., crying, scared, shaking, won't leave mother/parents side because they appear to want to protect mom/parent), or physical injury.
- G. Evaluate the need for an Emergency Protective Order pursuant to Part II below.
- H. Seize and take temporary custody (safekeeping) of any firearm or other deadly weapon in accordance with the provisions of Part VII below.



- I. Document the incident in the appropriate offense report.

II. EMERGENCY PROTECTIVE ORDERS

- A. When an officer believes a person is in immediate danger of domestic violence, the officer shall inform the complainant about the availability of an Emergency Protective Order (EPO).
- B. An officer may request an EPO only if the suspect is present, has been arrested, or can be reasonably served. Regardless of the victim's preference, the officer may request an EPO from the on-call judge or commissioner. Officers shall make this determination based on the complainant's allegations, the likelihood of the suspect returning, or a recent incident of abuse or threat of abuse.
- C. The officer requesting the order shall prepare an Application for Emergency Protective Order (State Form EPO-001 – Jan 07) in accordance with the instructions on the form and do the following:
 1. Use the yellow EPO card or call the Patrol Desk to obtain the number of the designated on-call judge or commissioner.
 2. Contact the on-call judge or commissioner and request that he/she issue an Emergency Protective Order asserting grounds for the belief that the order is appropriate.
 3. Upon oral issuance of the order by the on-call judge or commissioner, complete the EPO with information provided by the on-call judge.
 4. Serve a copy of the EPO on the restrained party, complete the Proof of Service section, and sign on the Signature of Server line.
 5. Provide the protected party a copy of the EPO if the suspect was served.
 6. If the suspect is in custody, attach a copy of the EPO with the offense report and deposit in the In-Custody Report Writing Receptacle.

III. VERIFICATION OF A RESTRAINING ORDER

Whenever a complainant alleges that a restraining order exists or requests enforcement of such an order, the responding officer may detain the suspect pursuant to 836(c) PC. The officer shall verify the existence and status of the order by obtaining the following information from the Warrants Unit or the complainant:

- A. Warrants Unit
 1. Type of restraining order on file (domestic violence or harassment);
 2. Duration of the order and confirmation that the order has not expired or been recalled;
 3. Terms of the order; and



4. Proof of service
 - a. Either the suspect or his/her attorney was present in court when the order was issued (presence in court constitutes proof of service)
 - OR
 - b. The Warrants Unit files contain a proof of service or other evidence of the suspect's prior knowledge or notice of the order (e.g., Crime Report showing prior admonishment of the terms of the order by a police officer).

B. Complainant

If the restraining order and proof of service is not on file with the Warrants Unit, an officer shall ask the complainant if he/she has a copy of the following documents:

1. Proof of service is accomplished if the complainant's copy of the order shows that the suspect or his/her attorney was in court when the order was issued.
NOTE: Advise the complainant to deliver a copy of the proof of service to the Warrants Unit.
OR
2. The complainant has a Domestic Violence Resource Card documenting that an officer has advised the suspect of the terms of the protective order.

IV. ENFORCEMENT ACTION

A. General

Arrest shall be regarded as the most appropriate response to domestic violence that involves an alleged felony or any misdemeanor act of violence, abuse, or threat directed toward the complainant, or a violation of a restraining order, as long as probable cause exists.

Certain statutes allow an officer to make a misdemeanor arrest without a warrant for an offense committed outside of the officer's presence such as:

1. Domestic battery: 243(e)(1) PC; 273.5 PC (misdemeanor)
2. Violation of a restraining order: 273.6 PC; 166(c)(1) PC

B. Violating a Restraining Order

1. When the suspect has prior knowledge of the order and proof of service, the officer shall:
 - a. Arrest the suspect for a misdemeanor 166 (c)(1)PC or 273.6 PC EPO, Temporary or Civil Restraining Order.



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- b. Document the incident and make reasonable efforts to locate and arrest the suspect if he/she has fled or is not on scene.
 - c. Not cite and release the suspect. The existence of the restraining order shall be considered evidence that the offense is likely to continue.
 - d. Investigate and report any additional crimes that the suspect may have committed, including Corporal Injury to a Cohabitant, PC 273.5, and Domestic Battery, PC 243(e)(1).
 2. If the suspect is arrested for an offense other than the violation of the restraining order, the existence of the order shall be documented in the report.
 3. The following examples shall **NOT** be considered in determining whether to make an arrest for a violation of a restraining order:
 - a. The suspect lives on the premises with the victim. Living on the premises can still be a violation of a restraining order.
 - b. The victim has made prior calls to the Department or has otherwise been characterized by the Department as a “chronic caller.”
 - c. The suspect gives verbal assurance that he/she will cease the harmful activity directed towards the victim.
 - d. The arrest may have adverse financial consequences.
 - e. Prosecution and conviction may not occur despite the existence of probable cause to arrest.
 4. When a suspect has never been served with the restraining order, officers shall serve the restraining order and inform the suspect of the restrictions by doing the following:
 - a. Sign the complainant’s copy of the proof of service, if available.
 - b. If a proof of service is not available:
 - 1) Provide the victim with a Resource Card documenting the service;
 - 2) Document the Domestic Dispute on the appropriate offense report (FBR or paper, if FBR is unavailable); and
 - 3) Indicate “Proof of Service” as the secondary offense in the crime field and include the following information regarding the advisement:
 - a) Terms of the order;
 - b) Date and time of admonishment;
 - c) Restraining order number;



- d) Expiration date; and
 - e) Issuing court.
 - c. Hand-carry a copy of the Domestic Dispute/Proof of Service offense report to the Warrants Unit or submit it in the In-Custody Report Writing Receptacle.
 - 5. If the suspect refuses to comply after being served and informed about the restrictions of the restraining order, he/she shall be arrested.
- C. Felony Domestic Violence Acts
- 1. When the suspect is on scene, the responding officer shall arrest the suspect for the applicable offense. If the suspect is no longer on scene, the responding officer shall make a reasonable effort to locate and arrest him/her.
 - 2. Officers shall make a felony arrest for PC Sections 273.5, or any other applicable felony offense, regardless of whether the victim is uncooperative or indecisive.
- D. Misdemeanor Arrest
- 1. An officer shall make a custodial arrest of the offender if probable cause exists for a misdemeanor domestic violence offense or a violation of a domestic violence restraining order.
 - 2. No citation shall be issued to a suspect in violation of domestic violence or a domestic violence restraining order.
 - 3. If a misdemeanor violation of Domestic Battery 243(e)(1)PC has occurred within the past seven days and probable cause exists, an officer **shall** arrest an offender.
 - 4. If an officer responds to a domestic dispute and the victim reports that the offender has committed a violation of 243 (e)(1) PC, the officer shall:
 - a. Conduct a warrants check to see if there is a warrant in the system.
 - b. Ascertain if a report is already on file. If no report is on file, take a domestic battery report 243(e)(1) PC.
 - 1) If the abuse happened within the past seven days, the officer shall make a custodial arrest if the suspect is on the scene. If the suspect is not on scene, request a complaint warrant.
 - 2) If the abuse occurred more than seven, but less than 365 days prior, and the suspect is on scene, positively identify the suspect and request a complaint warrant. Arrest is discouraged, but not prohibited.



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- 3) If the victim demands an arrest and the offense occurred more than seven, but less than 365 days prior, the officer shall accept the citizen's arrest and take the suspect into physical custody. The victim making the citizen's arrest shall sign either:
 - a) A Consolidated Arrest Report (CAR); or
 - b) A statement form (TF-536-200), on the Citizen's Arrest signature line, if using the Electronic Consolidated Arrest Report (ECAR).
- 4) If the offense occurred more than 365 days prior¹, there is no probable cause to arrest. Officers shall not arrest or take physical custody of the suspect. Officers shall document the demand for a citizen's arrest and that there was no probable cause for the arrest.
- 5) Include in the narrative that officers responded to a call of a domestic dispute and that the battery was not previously reported.

NOTE: The suspect shall not be issued a citation for 243(e)(1) PC.

E. Dual Arrests

1. Dual arrests shall be discouraged, but not prohibited. Officers shall make a reasonable effort to identify and arrest only the dominant aggressor.
 - a. In the event the dominant aggressor is arrested and demands the arrest of the other involved person, the officer shall document the demand for the arrest of the other person in the narrative of the offense report.
 - b. If the officer cannot determine the dominant aggressor, he/she shall consult with the field supervisor prior to making dual arrests.

F. Enforcement of Restraining Orders

Officers shall arrest an offender for any violation of the provisions of a confirmed/served restraining order.

VII. SEIZURE OF A FIREARM OR OTHER DEADLY WEAPON

- A. Seize and take temporary custody (safekeeping) of firearms or other deadly weapons in plain sight or obtained pursuant to a consent search when there is a threat of violence or a physical assault at the scene of a domestic violence incident.

¹ Statute of Limitation for a misdemeanor is within 1 year of the commission of the offense- Penal Code Section 802(a).



This authority is spelled out in Penal Code Sections 18250-18500. This provision of law is permissive and allows the officer discretion. No firearm seized pursuant to this section shall be held for less than 48 hours.

- B. Complete a Property Record, Property Receipt and Release form (TF-1084). Provide the pink receipt describing the firearm/weapon and instructions for recovering the firearm/weapon to the person from whom the firearm/weapon is taken.
- C. If the seized firearm/weapon is not to be used as evidence in criminal proceedings resulting from the domestic violence incident, or was not illegally possessed, and the suspect is not subject to a criminal protective order or has no convictions for domestic violence, the firearm shall be made available for return no later than five business days after the seizure or as soon thereafter as possible, pending the receipt of the Department of Justice firearms background check.

EXCEPTION: If the investigator has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or person reporting the assault or threat, he/she shall advise the owner of the weapon to initiate a petition in superior court within 60 days of the date of seizure for the return of the weapon. The Department may make an ex parte application stating good cause for an order extending the time to file a petition (18400 PC). Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

VIII. FOLLOW-UP INVESTIGATOR'S RESPONSIBILITIES

The assigned investigator shall:

- A. Send a Resource Card along with the contact letter to the victim unless the Crime Report states that the victim already has a Resource Card.
- B. Include a copy of the restraining order and proof of service from the Warrants Unit when seeking a complaint regarding a violation of a restraining order.

IX. VICTIM ASSISTANCE

Officers shall:

- A. Give a completed Resource Card to the victims of domestic violence or both parties in a domestic dispute and advise the parties of the Alameda County Family Justice Center.
- B. Assist the victim to obtain appropriate medical attention if he/she claims injury, whether or not it is visible.
- C. Help the victim arrange transportation to alternate shelter if he/she expresses concern for safety.
- D. Stand by for a reasonable amount of time, when a complainant requests police assistance in removing essential items of personal property.
- E. Explain legal options available to the victim (e.g., EPOs and/or Restraining Orders) and, in the event of an arrest, the follow-up procedures and subsequent criminal proceedings.



- F. Advise the victim of available community resources and the State Victim Assistance Program.
- G. Refer the victim to the Alameda County Family Justice Center or proper investigative unit for assistance and provide the offense report number.

X. TRAINING REQUIREMENTS

- A. The Training Section shall confer with Department subject matter experts and consult with local experts on the subject of domestic violence to provide appropriate recruit and in-service training.
- B. Training content and materials shall be kept current and incorporate all the elements of training as required by law.
- C. Domestic violence instructors and any new investigative personnel shall receive training from Departmental and other experts on domestic violence.

XI. DEFINITIONS AND TERMINOLOGY

- A. Abuse

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 [(PC Section 13700(a)].

- B. Cohabitant

For purposes of this subdivision, a “cohabitant” is defined as one of two unrelated adults living together for a period of 30 days or more, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

- 1. Sexual relations between the parties while sharing the same living quarters, whether or not the parties represent themselves as husband and wife (PC Section 13700).
- 2. Frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement while sharing the same living quarters (“dating”). The sexual involvement must be independent of financial considerations.

- C. Domestic Violence

Abuse committed against an adult or a fully emancipated minor, who is a current or former spouse, fiancé, current or former cohabitant, parent of a child in common, or a current or former dating relationship – including same-sex relationships.



D. Dominant Aggressor

A dominant aggressor is the person determined to be the most significant, rather than the first aggressor. In identifying whether a subject is the dominant aggressor, an officer shall consider:

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

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

E. Great Bodily Injury

A serious impairment of physical condition, including, but not limited to: loss of consciousness, concussion, bone fracture, injury requiring sutures, protracted loss or impairment of function of any bodily member or organ, or serious disfigurement.

F. Protective Orders and Restraining Orders

Court orders are issued to stop the batterer from having contact (including beating, threatening, or harassing) with the victim and those living with the victim. The following types of Restraining Orders may be issued by a Superior Court:

1. Emergency Protective Order (EPO):

A restraining order requested by the responding officer to provide immediate, limited protection to the victim and children. EPOs are issued by a magistrate.

2. Criminal Protective Order

An order requested by the District Attorney's Office after the case is charged.

3. Civil Restraining Orders

a. Temporary Restraining Order (TRO)

A court issued temporary injunction prohibiting harassment until the Order to Show Cause (OSC) hearing date.

b. Permanent Restraining Order (RO)

A court issued permanent injunction prohibiting harassment.



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G. Traumatic Condition

Traumatic condition is a wound or other bodily injury whether minor or serious, caused by the direct application of physical force.

H. Victim/Complainant

Any person who is a victim of domestic violence.

XII. STATUTES

- A. Pursuant to Penal Code 273.5, it is a felony or misdemeanor (depending on the seriousness of the injuries) to inflict corporal injury resulting in a traumatic condition upon a current or former spouse; or a current fiancé, current or former cohabitant, or parent of a child in common (including same-sex relationships).
- B. Pursuant to Penal Code 243(e)(1), it is a misdemeanor to commit battery against a spouse; a person with whom the defendant is cohabiting; a person who is the parent of the defendant's child; a former spouse; a fiancé or fiancée; or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.