



## Kern County Sheriff's Office Policies and Procedures

TITLE: DOMESTIC VIOLENCE RESPONSE AND ENFORCEMENT		NO: H-500	
APPROVED: Donny Youngblood, Sheriff-Coroner			
EFFECTIVE: November 1, 1991	REVIEWED: 05/02/2025	REVISED: 05/02/2025	UPDATED: 05/02/2025

### POLICY

It is the policy of the Sheriff's Office that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victims and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated.

### PROCEDURE

**FELONY ARREST** – Officers shall make an arrest when there is probable cause to believe that a felony has occurred.

**MISDEMEANOR ARREST** – Officers shall make an arrest when there is probable cause to believe that a misdemeanor has occurred in the officer's presence (including violations of court orders) *or when there is probable cause to believe a violation of PC 273.6 has occurred outside the officer's presence, in cases where the person to be arrested had knowledge of the court order prior to the violation.*

Officers considering releasing the suspect on a citation shall evaluate the likelihood of that person continuing an offense which is one of the statutory conditions under which a field release is not appropriate (PC 853.6(a)). Any one of the following may support the likelihood of a continuing offense:

- Whether the suspect has a prior history of arrests or citations involving domestic violence.
- Whether the suspect is violating a criminal court-issued stay away order.
- Whether the suspect has previously violated, or is currently violating, valid temporary restraining orders.
- Whether the suspect has a prior history of other assaultive behavior (e.g., arrest/convictions, for battery or aggravated assaults).
- Statements taken from the victim expressing fear or retaliation or further violence should the suspect be released.
- Statements or demeanor of the suspect.

Officers should make every effort to determine the "dominant aggressor" in a domestic violence incident. While although not prohibited, arresting both parties in a domestic violence incident is discouraged (PC 13701(b)).

## **PRIVATE PERSON'S ARREST (CITIZEN'S ARREST)**

Officers shall inform the victim of the right to make a private person's arrest when a crime has been committed outside the officer's presence *for which the officer cannot make an arrest* and does not meet the requirements for a felony arrest (PC 836(b)). Whenever possible, such discussion shall be held out of the presence of the suspect.

Officers will accept a private person's arrest and *shall not* dissuade victims from making a lawful private person's arrest.

## **REPORTING**

A written report will be completed on all incidents involving domestic violence. PC 13730 requires such a report and shall be identified on its face as a domestic violence incident so that the incident can be retrieved under the domestic violence classification.

- Identify, in the report, whether or not the suspect was under the influence of alcohol or a controlled substance (PC 13730(c)(1)).
- Identify in the report whether or not there have been prior incidents of domestic violence (PC 13730(c)(2)).
- Identify in the report whether or not weapons were involved, present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. A firearm or other deadly weapon located shall be confiscated (PC 13730(c)(3)).
- Identify in the report whether or not the incident involved strangulation or suffocation (PC 13730(c)(4)).
- Identify in the report whether a firearm or other deadly weapon was removed (PC 13730(c)(5)).
- Obtain a case number from the Communications Center or the Computer Aided Dispatch (CAD) system prior to leaving the call.
- Provide the victim with the case number of the report.
- Advise the victim to contact the Sheriff's Office Crime Reports Unit to obtain a copy of their case at least 24 hours after the time of reporting.
- If children are present during the domestic violence incident, the report shall be forwarded to Child Protective Services (CPS) by checking the "CPS" box in the report writing system.

Pursuant to PC 273.76, peace officers responding to a domestic violence incident are required to do the following:

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- Inquire whether the suspect possesses any firearms through Automated Firearms System (AFS) through the California Law Enforcement Telecommunications System (CLETS).
- Ask the arrestee, victim, and any other household members, if applicable, about any firearms owned or possessed by the arrestee.
- Ensure any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search is taken into temporary custody, pursuant to PC 18250.
- Document the results of these inquiries and actions in their reports.

### **CONFISCATION OF FIREARMS OR DANGEROUS WEAPONS**

PC 18250 reads in part:

Any peace officer, who is at the scene of a family violence incident involving a threat to human life or a physical assault, is serving a protective order as defined in Section 6218 of the Family Code, or is serving a gun violence restraining order issued pursuant to Division 3.2 (commencing with Section 18100), that person shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt.

PC 18255 reads in part:

The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required, and the date after which the owner or possessor can recover the firearm or other deadly weapon.

Officers who seize any firearm or other dangerous weapon, pursuant to PC 18255 shall:

- Complete form 2210-2025 (Firearm Confiscation Receipt) as instructed in the Report Writing Manual.
- Provide the receipt (pink) copy to the owner of the firearm or to the person from whom the firearm was seized.
- Attach the duplicate (yellow) copy to the property card.
- Attach the original (white) copy to the case report.
- Mark the original case report for investigation by checking the “DETECTIVES” box in the route to function of the report writing system.

Whenever a firearm is seized by a peace officer pursuant to this procedure, PC 33850 must be followed. The firearm must be booked into the Property Room and a C&I incident report

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completed. PC 33850 prohibits the release of any firearm to any person unless the person has received a clearance from DOJ and has obtained the proper documentation. Firearms will only be released through the Property Room per PC 33850 and applicable procedures.

The instructions for obtaining a release are contained on the receipt form 2210-2025 (Firearm Confiscation Receipt).

### **COURT ORDERED FIREARM CONFISCATION PURSUANT TO FC 6389(f)**

Effective January 1, 2007, court orders involving domestic violence under FC 6389 (f) contain firearm relinquishment/confiscation requirements. The order will list the type of firearm(s), the person who is possibly in possession of them, and their location, if available. The court order will also indicate if the relinquishment/confiscation is immediate or falls under the 24-hour or 48-hour conditions. The peace officer serving this type of order will utilize the following procedure:

- Review the order for proper content/authorization as with any court order.
- Inform the respondent of the firearm(s) relinquishment/confiscation order as indicated.
- Seize the firearm(s) as indicated and provide the firearms confiscation receipt (form 2210-2025) to the respondent.
- Complete a C&I incident report and book the firearm(s) into the Property Room.

If the respondent refuses to comply with the order or denies possession of any firearm(s), the peace officer will advise the respondent that any willful violation of the court order is a crime, and the respondent could be subject to arrest under PC 273.6.

Pursuant to PC 273.75(d), the court order provides the necessary authority to seize the listed firearm(s), and peace officers do not require independent probable cause beyond the order itself. Officers may enforce the order without additional probable cause, but if entry to a location is necessary, officers must still comply with legal requirements for search and seizure.

### **COURT PROTECTIVE ORDERS-VERIFY & ENFORCE RESTRAINING ORDERS**

There are several different types of restraining orders issued by a court in domestic violence situations. PC 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 proof of service in effect. This section also requires that the 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.

### **VERIFICATION OF RESTRAINING ORDERS**

Whenever a complainant advises of the existence of a restraining order, the officer shall attempt to ascertain:

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1. Whether a restraining order is on file with the Sheriff's Office Communications Center or whether the complainant has a copy of the restraining order in his/her possession.
2. Whether a restraining order is still valid as to duration/time.
3. Whether the proof of service or prior notice exists or that the suspect was in court when the order was made.
4. The terms of the restraining order.

### **ARREST CRITERIA AND ENFORCEMENT PROCEDURES**

A violation of a restraining order is a misdemeanor under either PC 273.6 or 166.4. Make an arrest when there is probable cause to believe the subject of the restraining order has violated the order *whether or not* in the presence of the officer and any one of the following conditions is met:

- The existence of the order and proof of service on the suspect has been verified by the officer.
- The complainant produces a valid copy of the order bearing a file stamp of a court and a proof of service on the subject.
- The existence of the order has been verified by the officer, no proof of service is required if the order reflects that the suspect was personally present in court when the order was made.
- The existence of the order has been verified, and there is proof that the suspect has previously been admonished by an officer.

When the officer verifies that a restraining order exists, but cannot verify proof of service or prior knowledge of the order by the suspect, the officer shall:

- Obtain a suspect statement as to, if and when service was made.
- Inform the suspect of the terms of the order.
- Admonish the suspect of the order, that the suspect is on notice and that a violation of the order will result in arrest. If the suspect continues to violate the order after being advised of the terms, an arrest *shall* be made.
- If the suspect complies after admonishment of the terms, the officer shall make a retrievable report pursuant to PC 13730(a), showing:
  - The suspect was admonished/advised of the terms of the order.
  - The name of the officer who made the admonishment.
  - The time and date the admonishment was made.

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- The Sheriff's Office copy of the restraining order will be updated to reflect the admonishment information listed above by routing a copy to the Communications Section.

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. PC 13730 and 13701(h) require that a retrievable report shall be made, and complainant shall be advised of the follow-up criminal complaint procedure and case number of the report.

When the victim is not in possession of the Temporary Restraining Order, and/or in case of a computer error, officers may not be able to confirm the order's validity, the following applies:

1. PC 13701(h) requires that an officer shall write a report, give the victim the report number and direct the victim to contact the appropriate Sheriff's Office unit for follow-up information.
2. When an order is not verifiable, officers should advise the victim of the right to make a private person's arrest for the appropriate violation.

## **VERIFICATION AND ENFORCEMENT: CRIMINAL COURT ISSUED STAY-AWAY ORDERS**

### **VERIFICATION OF STAY-AWAY ORDERS**

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 PC 166.4. In domestic violence incidents where a person advises an officer that a stay-away order has been issued, the officer shall attempt to ascertain the terms and validity of the order.

- The officer may accomplish this by requesting the victim show a copy of the order or verify through the Sheriff's Office Communications Center that a stay-away order has been issued against the suspect. In either case, verify through the Sheriff's Office that the suspect is under the court's jurisdiction (i.e., pending court procedures, probation, etc.).

## **ARREST CRITERIA AND ENFORCEMENT PROCEDURES**

The Code of Civil Procedures Section 540 et seq. and 527.6 requires that when the order has been verified, officers shall effect an arrest, the suspect will not be released on a citation prior to booking pursuant to PC 827.1 and PC 853.6(a), if the suspect has violated any terms of the order. The report should note the specific violations of the order, and the victim shall be given the report number for reference pursuant to PC 13701(c).

A violation of the order is a violation of PC 166.4. This violation can be added to other charges such as assault or battery.

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An act of victim intimidation relating to the court proceedings is a violation of PC 136.1 et seq. Examples of intimidation include:

- Attempting to prevent or dissuade a victim from attending or giving testimony at any proceeding is a misdemeanor.
- Using force or threatening the use of force or violence related to the court proceeding is a felony.

### **ORDER NOT VERIFIABLE**

When the victim is not in possession of the stay-away order, and/or in cases where officers may not be able to confirm the order's validity, the following applies:

- PC 13730 requires that the officer shall write a report. PC 13701(c) requires that officers give the victim the report number and direct the victim to contact the appropriate Sheriff's Office unit for follow-up information.
- When an order is not verifiable through the verification procedures, officers should advise the victim of the right to make a private person's arrest for the appropriate violation.

### **TENANCY**

You may request a person who is not in lawful possession of the non-commercial premises to leave the premises when:

1. The complainant is in lawful possession of the premises, and;
2. The complainant has requested that the person leave the premises.

Arrest the suspect under PC 602.5 if the suspect does not leave upon request.

Another appropriate civil remedy would be through the utilization of *an emergency protective order* (refer to H-510) if the complainant requesting removal cannot show proof of lawful possession. Lawful possession of the premises is shown by a rental agreement, canceled rent check, lease, grant deed, verification from landlord, court order, or other document showing person(s) to be removed.

### **VICTIM ASSISTANCE**

Assist in obtaining appropriate medical attention if a complainant claims injury, whether visible or not (PC 13701(c)(7)). Keep in mind an injured victim can be encouraged and helped to get medical attention but cannot be forced to do so. Document any refusal to obtain medical attention in the report.

Assist in making arrangements to transport the victim to an alternate shelter, if one is available, if the victim expresses a concern for safety or the officer determines a need exists.

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Stand by for a reasonable amount of time when a victim requests police assistance while removing essential items such as toiletries, clothing, medication and personal items necessary for 1 to 2 weeks. Officers will not assist in the removal of items that may possibly be community property.

Explain legal options available to the victim including the private person's arrest process, emergency protective, temporary restraining and stay-away orders, and in cases of arrest the follow-up procedures and ensuing criminal proceedings.

Advise the victim of available community resources and the State Victim Assistance Program.

**FURNISH WRITTEN NOTICE TO VICTIM AT SCENE**

Furnish the victim with the "Marsy's Rights" pamphlet which explains the rights of the victim in accordance with PC 13701(c), and advises them where they may obtain counseling, shelter and referrals as well as their rights and services available to them as a victim of a crime.

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