

**MARIN COUNTY SHERIFF'S OFFICE  
GENERAL ORDER MANUAL**

**CHAPTER 5 -OPERATIONS**  
**GO-05-02**  
**Page 1 of 2**

**DATE**  
**1-3-96**  
**Rev: 1/25/02**

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**MARIN COUNTY LAW ENFORCEMENT PROTOCOL  
FOR THE INVESTIGATION OF DOMESTIC VIOLENCE**

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**POLICY**

It shall be the policy of the Sheriff's Office to conform to the Marin County Law Enforcement Protocol for the Investigation of Domestic Violence as prepared by the District Attorney's Office.

This order complies with current California Law as it relates to the establishment of standard protocols for the official response to cases of domestic violence. This includes:

- Establishes procedures for the initial response by the Communications Center.
- Officer safety at domestic violence scenes.
- Emergency medical treatment for victim(s).
- Arresting suspect(s).
- Interviewing victims and witnesses.
- Collection and preservation of evidence.
- Report preparation.
- Obtaining emergency protective orders.
- Enforcing restraining orders.
- Investigative follow-up.
- Victim assistance/confidentiality in certain crimes

**PROCEDURE**

The protocol is incorporated to this general order as an attachment. The Protocol includes procedures for the following personnel as it relates to domestic violence cases.

- 911 Operator/Dispatcher response
- Patrol Officer response/investigation
- Follow-up investigations
- Records or communication personnel notifying DOJ via CLETS of the issuance of domestic violence restraining orders (DV/ROS)
- Maintenance of protection orders by Communications Center

**RELATED STANDARDS**

**AFFECTED DIVISIONS**

ALL

**DATE OF REVISIONS**

Supersedes GN89-19 Emergency Protective Orders

Supersedes GN92-09 Domestic Violence  
1/3/96  
12/7/99

**By order of:**

**ROBERT T. DOYLE  
SHERIFF**

**ATTACHMENT A**

**MARIN COUNTY LAW ENFORCEMENT PROTOCOL  
FOR THE INVESTIGATION OF DOMESTIC VIOLENCE**

**POLICY STATEMENT**

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

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

The overriding goal of law enforcement, through acknowledging limited resources and competing priorities, is to optimize and coordinate available resources for the handling of domestic violence cases.

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

Law enforcement officers should arrest batterers in all situations where an arrest is legally permissible for acts of domestic violence.

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

**DEFINITIONS**

- A. Abuse means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another (Penal Code section 13700(a)).
- B. Domestic Disturbance is an argument or disagreement within the family or between cohabitants, or persons in a dating relationship that does not involve violence, threats of violence, or court order violations. Officers will prepare a brief written report or other retrievable documentation on any domestic dispute reported to Marin County law enforcement agencies.
- C. Domestic Violence is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, cohabitant means two unrelated

adult persons living together for a substantial period of time, resulting in some permanency of relationship.

Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of relationship (Penal code section 13700(b)).

D. Domestic Violence Order is a protective order, which is issued pursuant to the Domestic Violence Protection Act (Family Code Sections 6200 - 6218, 6320-6322), the general provisions of the Family Law Code sections 240, et seq., or the Uniform Parentage Act (Family Code sections 7710, et seq.).

E. Emergency Protective Order (EPO) is obtained by a police officer in the field when an officer believes a victim of domestic violence or a family or household member is in immediate and present danger of domestic violence. It is an ex parte order issued by a judge to restrain certain acts of abuse, and/or to exclude a person from a dwelling and/or other specified acts, and/or to provide for child custody. (Family Law Code sections 6215, 6240 et seq.) A judicial officer may issue an EPO where a law enforcement officer asserts reasonable grounds to believe either or both of the following: (a) that a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought; (b) that a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

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

(a) the close of judicial business on the fifth court day following the day of its issuance; or, (b) the seventh calendar day following the day of its issuance (Family Code section 6256).

F. Officer is defined as any officer or employee of a local police department or Sheriff's Office, and any peace officer of the California Highway Patrol, the California State Police, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in California Penal Code section 830.2, or a housing patrol officer, as defined in subdivision (d) of California Penal Code section 830.31 (Penal Code section 13700(c)).

G. Pro-Arrest Policy refers to a philosophical position which prioritizes arrest over misdemeanor citation, letter notification or warrant in every situation where an arrest on probable cause is legally permissible.

- H. Protective Order is an order which requires a person to restrain from doing a particular act or acts. It is issued by the Superior Court, with or without notice to the person who is to be restrained. A protective order will remain in effect for a set period of time which is stated on the face of the order.
- I. Stay Away Order is an order in a criminal case involving domestic violence where there is a likelihood of harassment of the victim by the defendant. A Stay Away Order may remain in effect as long as the defendant is under a court's jurisdiction, including any sentence or probationary period, or until modified by the court. Stay Away Orders may be issued pursuant to Penal Code section 136.2 while a criminal prosecution is pending. Stay Away orders were previously issued under Penal Code section 13720. Although this section has been repealed, those orders still in effect are valid and enforceable.
- J. Victim means a person who is a victim of domestic violence (Penal code section 13700(d)).
- K. A traumatic condition is defined as a condition of the body, such as a wound or external or internal injury, whether serious or of a minor or serious nature, caused by physical force (Penal Code section 273.5(c)).

#### **REPORTING REQUIREMENTS**

- 1. A report shall be written on all incidents of domestic violence. This is the intent of the California Legislature.
  - A. The report shall document whether a weapon was involved.
  - B. The report shall be identified as a domestic violence incident report.
  - C. The victim of domestic violence shall be provided the incident report case number, when possible, or told how to get it at a later date.
- 2. Records employees who are responsible for the Bureau of Criminal Statistics Report shall complete the Department of Justice form Domestic Violence Related Calls for Assistance (BCS 715). The report data shall be collected from incident reports identified by the ADV and ADV/W classifications. This report shall be sent to the Department of Justice with the monthly BCS report.

#### **COMMON CHARGES**

A situation involving domestic violence may result in a violation of one or more of the following sections of the Penal Code:

- 1. 136.1-Intimidating or dissuading a witness
- 2. 148 -Resisting arrest

3. 166.4-Criminal contempt
4. 187 -Murder
5. 203 -Mayhem
6. 207 -Kidnapping
7. 236 -False Imprisonment
8. 240 -Assault
9. 242 -Battery
10. 243(d)-Battery with serious bodily injury
11. 243(e)-Battery against a noncohabitating former spouse, fiancé, fiancée, or person with whom the defendant currently has, or has previously had a dating relationship
12. 245 -Assault with a deadly weapon or by means of force likely to produce great bodily injury
13. 246 -Shooting at an inhabited dwelling
14. 262 -Spousal rape
15. 273.5-Spousal abuse
16. 273.6-Violation of a restraining order
17. 417(a)-Brandishing a weapon
18. 418 -Forcible entry into the home of another
19. 422 -Terrorist Threats
20. 459 -Residential burglary
21. 591 -Malicious destruction of a telephone
22. 594(b)-Vandalism
23. 597 -Cruelty to animals (implication is that the victim will suffer the same fate)
24. 602.5-Trespassing
25. 603 -Forcible entry with damage to property
26. 646.9-Stalking
27. 647(f)-Public drunkenness
28. 653(m)-Threatening or Harassing phone calls
29. 12020(a)-Possession of a dangerous weapon

- 30. 12025(a)-Possession of a concealed firearm
- 31. 12031-Possession of a loaded firearm

**911 OPERATOR/DISPATCHER RESPONSE**

- A. The dispatcher who receives a call reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order, including orders issued pursuant to Penal Code section 136.2, and restraining orders, shall rank the call among the highest priority calls (Penal Code section 13702). The dispatcher will dispatch officers to every reported incident. The dispatcher, whenever possible, should dispatch two officers to the scene.
- B. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance (Penal Code section 13702).
- C. No dispatcher or 911 operator, in speaking with a victim of domestic violence, will discuss the victim's desire to press charges, drop charges, or prosecute. 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 these questions:
  - 1. Where is the emergency? What address? What apartment number? Call back number? Other phone number where caller might be located?
  - 2. Has anyone been injured? If yes, is an ambulance needed?
  - 3. Who is the suspect and is he/she present? If not, a description of the suspect and his expected whereabouts.
  - 4. Are weapons involved or available? If yes, what kind?
  - 5. Who am I speaking to? Are you the victim? If no, are you a witness?
  - 6. What has happened? What is happening now?
  - 7. How many are children present?
  - 8. How are you related?
  - 9. Is the offender under the influence of drugs or alcohol? If yes, what substance?
  - 10. Does the victim have a current restraining order? Has the suspect been served with the order?
  - 11. If possible, continue to gather additional information such as: Have the police been to the address before? Have they been involved in prior domestics, etc.?

- E. The safety of domestic violence victims, whether the threat of violence is immediate or removed, should be the primary concern of 911 operators. 911 operators shall advise victims to protect themselves as best they can, including but not limited to, waiting for officers at a friend's house or simply leaving the residence if the batterer may return. Advise the caller that if he/she chooses to leave for safety purposes to remember to take keys, money and a credit card if there is time. If the victim chooses to leave, the dispatcher should obtain information where he/she intends to go and how he/she can be contacted.
- F. The 911 operator should be aware that the 911 tapes frequently becomes a valuable piece of evidence in the prosecution of domestic violence cases, and should, therefore, make every effort to have the victim describe what happened in detail, as well as the suspect if he/she is available and it is safe for the victim.

### **PATROL OFFICER RESPONSE/INVESTIGATION**

- A. Enforcement of Laws in Domestic Violence Incidents.
1. An arrest shall be made in the event that there is reasonable cause to believe that a felony has occurred. All suspects arrested will be booked into the county jail. A pro-arrest policy will be implemented by all officers.  
  
If an officer has reasonable 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, or not at all.
  2. The suspect shall be arrested in the event that a misdemeanor domestic violence incident occurs in the other's presence. Such situations include, but are not limited to, an officer who witnesses an act of domestic violence, a violation of a restraining order, or illegal possession of a weapon where the officer believes a domestic violence history exists involving the suspect in possession of the weapon. Note that an officer may arrest a suspect for a misdemeanor violation of Penal Code section 273.6 even if the crime occurred outside of the officer's presence (Penal Code section 836(c)(1)).
  3. When a crime has been committed outside the officer's presence which does not meet the requirements for a felony arrest, the officer must inform the complainant of his/her right to make a citizen's arrest and advise the victim how to safely execute the arrest (836 P.C.). Whenever possible, such discussion shall be held out of the presence of the suspect. An officer shall not dissuade complainants from making a citizen's arrest. An officer shall not ask the complainant if he/she would

be willing to go forward with prosecution.

4. The existence of the elements of a crime and/or the willingness of the victim to make a citizen's arrest shall be the sole factors that determine the proper method of handling the incident. The following factors, for example, are not to influence the officer's course of actions in domestic violence incidents:
  - a. The relationship or marital status of the suspect and the victim, i.e., not married, separated or pending divorce.
  - b. Whether or not the suspect lives on the premises with the complainant.
  - c. The existence or lack of a temporary restraining order.
  - d. The potential financial consequence of arrest.
  - e. The complainant's history or prior complaints.
  - f. Verbal assurances that violence will cease.
  - g. The complaint's emotional state.
  - h. Injuries are not visible.
  - i. The location of the incident (i.e., public or private).
  - j. Speculation that the complainant may not follow through with the criminal justice process or that the arrest may not lead to a conviction.
  - k. Whether the complainant and suspect are the same or opposite sex.
5. Once a suspect is arrested on a misdemeanor offense, he/she should be booked into the county jail.
6. In determining whether prior violence has occurred, the officer should interview the victim, suspect, children, and any available neighbor witnesses. A warrant check, automatic records, and, if possible, criminal history check should also be conducted.
7. The officer should consider the issuance of an emergency protective order as described on Page 20 of this Protocol.
8. In both misdemeanor and felony arrests, the officer should consider preparing a declaration to increase bail above the scheduled amount, or to deny an O.R. release, if it appears that the defendant may not appear in court or if the defendant's release from custody may pose a serious threat to the victim's well-being (Penal Code sections 1269, 1270, 1275). The passage of Proposition 189 in 1994 allows, in part, for no bail in felony offenses involving acts of violence on another person, or felony

sexual assault on another person, when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others. (California Constitution, Article 1, Section 12.)

The on-call judge is available for telephonic requests for bail increases. If the on-call judge does increase bail, an affidavit/order must be submitted to the judge the following morning so that she/he can sign the order, before the suspect is arraigned. The original must be delivered to the jail, with a copy to the District Attorney's Office, Superior Court Desk. The District Attorney's Office is available to assist in the preparation of the affidavit/order to increase bail. (See Appendix 1 for bail enhancement application form.)

9. An officer shall make no statements which would tend to discourage a victim from reporting an act of domestic violence or requesting a citizen's arrest.
10. Pursuant to Penal code section 13730, an officer responding to an incident of domestic violence shall prepare a domestic violence incident report irrespective of the wishes of the victim or the presence or absence of the suspect.

B. Investigation of Domestic Violence Cases.

1. Officers arriving at a domestic violence scene should conduct a thorough and diligent investigation and submit reports of all incidents of domestic violence and all crimes related to domestic violence. Upon arrival at a domestic violence related incident, the officer's first duty should be to provide for the safety of the victim.

The Marin County policy is PRO-ARREST, in order to break the cycle of violence and to deter future abuse. At times there are situations in which both parties have been violent toward one another. It will be necessary to determine who is the primary aggressor. This means the person most likely to inflict injury and the person least likely to be afraid. It will also be necessary to look at the history, both documented and undocumented to make this determination. Avoid mutual arrests if at all possible. Be sure that self-defense is absolutely not an issue.

Do not overlook the welfare of children at the scene. If the children were endangered during a violent confrontation, it will be necessary to document this, make and send a copy of the report to Child Protective Services, and, if necessary, remove the children from the

home.

2. The following steps should be included in an officer's investigation and subsequent report:

a. OFFICER SAFETY

Exercise reasonable care for the safety of officers and parties involved.

b. ARRIVAL AT SCENE

Determine location and condition of victim.

Determine if suspect is still at scene.

Determine if any weapon is involved.

Determine what, if any, crime has occurred.

Summon ambulance if injuries require.

Separate victim, suspect and witnesses.

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

c. PRELIMINARY INVESTIGATION

Note victim's first statements to officer upon arrival.

Interview victim and witnesses separately.

Interview children (were they present when the violence occurred, did they hear it, how often has violence occurred in the home.)

Determine suspect's and victim's activity. (Distinguish aggressor from victim especially if both are injured.)

Note and document victim's condition and demeanor.

Note torn clothing.

Note smeared makeup.

Note evidence of injury (diagram).

Referral to victim services agencies.

If victim has a restraining order against suspect, obtain a copy of the order and valid proof of service. If not, inform victim how to get an order.

Advise victim of right to arrest in misdemeanor cases.

- Advise victim regarding an emergency protective order (EPO). (See Obtaining Emergency Protective Orders.)
  - If victim has a restraining order which has not yet been served on suspect, inform the suspect of the order and note in the report. If victim has an extra copy of the order, serve on the suspect and fill out proof of service.
  - Advise the victim that he/she should develop a safety plan to avoid future danger.
  - Obtain descriptive information regarding the victim: date of birth, height, weight, color of hair and eyes. (This will be useful if necessary to locate victim in future.)
- d. IF SUSPECT TAKEN INTO CUSTODY
- Record spontaneous statements.
  - Prevent communications between suspect and victim/witnesses.
  - Record alibi statements.
  - Advise suspect of rights.
  - Obtain waiver.
  - Get statements.
  - Request that the jail block the suspect's ability to telephone victim.
  - Request the jail to notify the victim if the defendant is to be released.
- e. EVIDENCE
- Tape record statements.
  - Ensure that victim's /suspect's injuries are photographed, on the day of the incident and several days thereafter.
  - Photograph crime scene, if possible.
  - Note condition of crime scene (disarray of physical surroundings).
  - Identify, impound and/or photograph weapons/firearms and other evidence (Penal Code section 12028.5). For example, if victim states the defendant wrapped the phone cord around her neck, seize the cord as evidence. If the victim points out property damaged by the suspect, seize it.
  - Preserve as evidence the 911 dispatch tape(s) regarding this incident.
- f. MEDICAL TREATMENT (MT)
- Transport victim to hospital for M.T., if necessary.
  - Obtain a medical records release signed by the victim at the scene. (See Appendix 2 for sample waiver.)
  - Send waiver signed by victim to medical facility as soon as possible and obtain copy of

records for report including doctor's name, address and phone number.

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

g. CONFIDENTIALITY

Penal Code section 293 regarding sexual assault crimes and Government Code section 6254(f)(2) requires the ADDRESS OF THE VICTIM be deleted from crime reports in the crimes listed below. Further, these sections require DELETING THE NAME OF THE VICTIM from the crime report at the victim's request. If so requested, you should not refer to the victim by name, but rather Jane or John Doe or Victim, and submit a separate document (See Appendix 3) with the private information to the District Attorney when the case is submitted for review. This is applicable to the following crimes:

Sexual Assault Penal Code sections: 261, 261.5, 262, 264, 264.1, 286, 288, 288a, or 289

Violence Penal Code sections: 273a, 273d, 273.5, 422.6, 422.7, or 422.75

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

h. COMPLETING CRIME REPORT

Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.

- Note all statements in report.
- If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them.
- Ensure that elements of all involved crimes are included in the report.
- Document any injuries that victim has sustained. Documentation should include a description in report as well as photographs.
- Was victim advised of citizen's arrest? So note in report.
- Was victim photographed? So note in report.
- Did officers give victim referrals (Penal Code section 13701(i))? So note in report.
- Document past history of violence.
- Order copy of dispatch tape(s) and note in report that this request has been made. Preserve tape as evidence.
- If possible, record name, address, and phone number of two close friends or relatives of the victim who will know of her whereabouts 6-12 months from the time of the investigation. If victim indicates he/she will be leaving the home, document when and where he/she will be.
- When responding to a domestic disturbance where there is no actual violence or other violation of the law, the officer will ensure that the proper dispatch code indicating no domestic violence

or other appropriate record of the incident is made.

- [ ] The officer shall not advise victims of domestic violence that they can press charges or drop charges. The decision to prosecute is made by the District Attorney. The victim and suspect will be advised that once a crime report is taken he/she has no control over the decision to prosecute.
- [ ] When the victim is unwilling or unable to place the suspect under citizen's arrest for a misdemeanor, and the investigating officer feels that the suspect should be removed to prevent further violence, a felony arrest pursuant to Penal code section 273.5 may be made by the officer if the victim has sustained a traumatic condition, which may include even minor injuries (such as bruising, cuts, or abrasions). A traumatic condition is defined as a condition of the body, such as a wound or external or internal injury, whether serious or of a minor or serious nature, caused by physical force. Penal Code section 273.5 requires that the victim and suspect be married to each other, be cohabiting or have one or more mutual children together as a result of their relationship. If they are cohabiting, it is not required that they be of opposite sex.

i. SUBMITTING CRIME REPORT TO DISTRICT ATTORNEY

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

If the suspect is not located or booked, submit the report to the District Attorney's Office within 24 hours of the incident.

Have the records clerk include prior reports of violence or contact cards with the report when submitting it to the District Attorney.

Include the victim's daytime telephone number, work number, or number where he/she will be for the several days after the incident so that the Victim-Witness Advocate from the District Attorney's Office will be able to make contact upon receipt of the report.

OBTAINING EMERGENCY PROTECTIVE ORDERS

Emergency Protective Order (EPO) are intended as a temporary measure of protection until a victim can obtain a more permanent Temporary Restraining Order (TRO). An EPO is available even when no criminal violation has occurred but there is concern for the safety of the victim.

When responding to any domestic violence incident, an officer shall advise the victim of the availability of an EPO. EPO's are available by telephone or otherwise at all times whether or not court is in session (Family Code section 6241). The officer shall use the following procedures:

1. An Emergency Protective Order will be prepared by a Police Officer when a victim of domestic violence requests such protection.
2. Have available the Application for Emergency Protective Order/Emergency Protective Order blank. (See Appendix 4.) Complete lines 1 through 8 on the application.
3. The on-call magistrate will evaluate and determine the suitability of the EPO taking into consideration the following criteria:
  - a. The victim/complaint=s perception of being in imminent jeopardy.
  - b. Whether the domestic-violence related incident was assaultive in nature.

- c. Whether the offense committed was a felony or misdemeanor.
  - d. Whether the perpetrator was taken into custody.
4. It is not necessary that an assaultive crime has actually occurred for the EPO to be initiated.
  5. Recent violent acts or threats of violence coupled with the likelihood of imminent violence is the only criteria required to request the order.
  6. Although it is up to the victim to decide whether a request for an order should be made, the officer shall advise the victim of the existence and availability of the orders.
  7. The EPO covers not only the adult requesting the protection but also can provide temporary custody of minor children to the victim.
  8. The fact that the endangered person has left the household to avoid abuse does not affect the availability of the EPO (Family Code section 6254).
  9. If an EPO concerns an endangered child, the child's parent or guardian who is not a restrained person, or a person having temporary custody of the endangered child, may apply to the court for a restraining order under Section 213.5 of the Welfare and Institutions Code.
  10. A law enforcement officer who requests an EPO shall reduce the order to writing and sign it (Family Code section 6270).
  11. A law enforcement officer who requests an EPO shall do all of the following:
    - a. Serve the order on the restrained person, if the restrained person can reasonably be located.
    - b. Give a copy of the order to the protected person or, if the protected person is a minor child, to a parent or guardian of the endangered child who is not a restrained person, if the parent or guardian can reasonable be located, or to a person having temporary custody of the endangered child.
    - c. File a copy of the order with the court as soon as practicable after issuance (Family Code section 6271).
  12. A law enforcement officer shall use every reasonable means to enforce an EPO, and when acting in good faith to enforce an EPO, an officer is not civilly or criminally liable (Family Code section 6272).
  13. A law enforcement officer who requests an EPO shall carry copies of the order while on duty (Family Code section 6273).
  14. Pursuant to department policy, contact the on-duty magistrate, identify yourself and state your purpose. Record on line 7 of the application who you contacted and when. The magistrate will ask you a series of questions regarding the incident, based on the answers listed on lines 1 through 6. The officer should also be prepared to answer questions relating to the incident, such as past history or whether orders had been previously applied for or issued.
  15. Record whether the application was granted or denied on line 7, and sign the form. If one is approved, the Emergency Protective Order section must be completed.
  16. The approving magistrate will give specific instructions on what is to be recorded on lines 8 through 11 of the Emergency Protective Order section. The remainder of the lines may be completed after the phone call to the magistrate is finished.

17. Call Police Records and obtain an incident or case number for the domestic violence incident. Inform records personnel that the number will also be used on an Emergency Protective Order, so that they may obtain additional information they require. Write this number in the Incident Case Number box in the upper right hand corner of the Application.
18. Give the victim a copy of the paperwork. Admonish the victim to retain these papers until expiration of the order.
19. Emergency Protective Order legislation requires an officer to make a reasonable attempt to serve the restraining order. If the restrained party is present or can be readily contacted, ser the order. Record whether and how the order has been served in the incident or crime report. Give the restrained person a copy of the order.
20. Submit the court and agency copies for routing to Records at the end of the shift in the normal manner. The agency copy will be stapled to the crime or incident report. The court copy shall be submitted separately. If the restrained party was not served, attached the restrained party's copies to the reports upon submission.
21. Let the victim know that the County Clerk's Office maintains application forms for obtaining more permanent orders. There is no charge for these applications. When the form is provided, it includes a resource card for a variety of needs that may arise, such as emergency housing, funding and counseling.

#### **FOLLOW-UP INVESTIGATION**

- A. All domestic violence reports prepared by officers pursuant to Penal Code sections 13700, et seq., shall be referred to investigations personnel for review and follow-up investigation as needed. Investigation personnel refers to a detective, investigative specialist, or other designated personnel.  
  
Investigations personnel receiving domestic violence-related crime and arrest reports shall process them in the same manner as all other criminal violations.  
  
Whenever possible, investigative personnel will be specifically designated to handle domestic violence cases based on an investigator's desire to handle such cases.
- B. Follow-up investigations should be geared to the requirements of the District Attorney's Domestic Violence Unit.
  1. At a minimum, follow-up investigations submitted to the district attorney for consideration should include the following:
    - a. Verify the inclusion of all investigative steps described above regarding patrol officer response/investigations.
    - b. Obtain medical records, if available.
    - c. Obtain a copy of the 911 tape involving the original call for assistance.
    - d. Interview background witnesses who may not have been available to the patrol officer at the time of the incident (e.g., neighbors).
    - e. Re-interview witnesses as necessary.
    - f. Contact the victim and witnesses to inform them of the status of the case and the intended referral to district attorney.
    - g. Obtain subsequent photographs of injuries to the victim (particularly where there were no initial

photos taken or the initial photos did not show injuries to the victim).

2. Follow-up investigation shall not consider the desire of the victim to drop charges in assessing whether the case should be submitted to the District Attorney's Domestic Violence Unit.
3. Investigative personnel handling domestic violence cases should analyze each domestic violence case by asking the following questions:
  - a. Can the elements of the offense be established without the testimony of the victim: i.e., did the victim make a spontaneous statement? Are there any eye witnesses to the offense? Did the victim make a detailed statement of the offense to an officer (preferably tape-recorded) or to another person who can impeach the victim if they appear in court and testify falsely?
  - b. The case should be evaluated for referral to the District Attorney's Office for review regardless of the victim's wishes.
4. Under no circumstances should a victim be asked if he/she wishes to press charges or drop charges. Investigative personnel shall not ask a victim if they want to prosecute their partner. The focus of the investigative follow-up should be on the questions contained above in section 3, and the victim should be informed that the decision to proceed is out of his/her control.

#### **ENFORCEMENT OF RESTRAINING ORDERS**

- A. Domestic violence restraining orders will be enforced by all law enforcement officers. Under Penal Code section 273.6(a), it is a misdemeanor to intentionally and knowingly violate a protective order, as defined in section 6218 of the Family Code, or of an order issued pursuant to section 527.6 or 527.8 of the Code of Civil Procedure.

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

Penal Code section 273.6 shall apply to the following orders:

- (1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.
  - (2) An order excluding a party from the family dwelling or from the dwelling of the other.
  - (3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a) of Penal Code section 273.6.
- B. Orders issued in criminal cases under Penal Code section 136.2, which pertains to domestic violence and harassment orders punishable under Penal Code section 166.4, will be enforced by all law enforcement officers.

- C. Officers will make arrests for any violations under the above sections that they observe. If the officer did not observe the offense, or if the existence and status of the order cannot be verified, the victim should make a citizen's arrest.

If the officer arrives at the scene and observes the defendant in violation of the terms of the order, the officer shall make an arrest for a misdemeanor occurring in his/her presence.

Note that an officer may arrest a suspect for a misdemeanor violation of Penal Code section 273.6 even if the crime occurred outside of the officer's presence (Penal Code section 836(c)(1)).

- D. Law enforcement officers receiving copies of Protective Orders will forward them to the Records Division, who will enter appropriate information in the statewide computer system.

- E. If, at the scene of a domestic disturbance, a person shows or informs the officer of the existence of a Protective Order, it is crucial to establish the present status and terms of the order. Officers shall ask the following questions to determine the current status:

1. Is there a Protective Order on file? It will be filed under the name of the person restrained. If the officer cannot verify the order, it must be enforced through a citizen's arrest procedure.
2. What is the date of the order? Has it been signed by a Superior Court judge and filed by the court (a filed document has the court clerk's filed stamp and the date filed on the upper portion of the first page of the document - usually in the upper right hand corner)?
3. What is the expiration date? If there is no expiration date stated on the face of the domestic violence restraining order, it is valid for three years (Family Code section 6345).
4. What are the terms of the order?
5. Is there a Declaration of Service on file, proof of notice in court, or has another officer given the needed notice to the person to be restrained?

- F. The existence of this information shows that the suspect has the needed knowledge to be in violation of the Order.

1. The elements of the crime require willful disobedience of the terms of the order.
2. If this information is not established, the suspect cannot be arrested at the time of the disturbance.
3. If the Declaration of Service is not on file and notice by another officer has not been established, proceed to give a copy of the order, if available, to the suspect.
  - a. If the victim has an extra copy of the order; show and then serve the order on the suspect to keep.
4. Advise the suspect that they are now subject to the terms of the order and can be arrested for any further violations.

5. Report through your department procedure that you have served a copy of the order on the defendant.
  6. Release a copy of the Proof of Service to the victim, and file the Proof of Service as part of the report and the department will ensure that the original Proof of Service is filed with the appropriate court.
- G. If the victim does not have a copy, advise him/her to carry one in the future, and to have an extra copy for service on the suspect if he has not been served.
1. Advise the suspect that there is an order in effect.
  2. The officer can have the terms of the order read over the phone by the records staff and can then inform the suspect.
  3. An arrest may be made at this time if the suspect refuses to comply with the terms of the order.
- H. It is the policy of Law Enforcement agencies within the County of Marin that anyone arrested for a misdemeanor violation of a protective order for domestic violence will be booked at the Marin County Jail and not released on a promise to appear citation. It is further the policy that anyone booked into the Marin County Jail by any agency for a misdemeanor violation of a protective court order will not be released except upon a court order or required posting of bail. (Ref. 853.6 P.C. and MCSO ADM OP 94-01.) A copy is to be submitted with the work copies of the case and arrest reports.
- I. If a Protective Order violation has occurred and the suspect is not present, the officer will submit a crime report of the appropriate misdemeanor violation.

Under no circumstances shall an officer fail to prepare a crime report on a restraining order violation simply because the suspect is no longer present.

#### **NOTIFICATION OF DEPARTMENT OF JUSTICE REGARDING DOMESTIC VIOLENCE**

#### **RESTRAINING ORDERS**

Family Code Section 6385 requires that law enforcement immediately notify the Department of Justice (DOJ) upon receipt of a copy of a domestic violence restraining order and the subsequent proof of service. Notifying DOJ is accomplished via the California Law Enforcement Telecommunications System (CLETS) when the information regarding domestic violence restraining orders is entered into the Domestic Violence Restraining Order System (DV/ROS). (See Appendix 4 for example form.)

### **MAINTAINING RECORDS OF SERVING OF PROTECTION ORDERS**

1. Law enforcement agencies are required to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, including orders which have not yet been served, issued pursuant to 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 (Penal Code section 13710(a)).
2. The terms and conditions of the protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court (Penal Code section 13710(b)).
3. 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. (Penal Code section 13710(c))

### **VICTIM ASSISTANCE**

- A. When a party in a domestic violence incident requests police assistance in removing a reasonable amount of personal property (e.g., a suitcase) to another location, officers shall stand by a reasonable amount of time until the party has safely done so.
- B. If a victim has injuries, whether visible or not, which require medical attention, officers shall administer first aid as appropriate and offer to arrange for proper medical treatment.
- C. In all domestic violence incidents, an officer should:
  1. Exercise reasonable care for the safety of the officers and parties involved.
  2. Assist in making arrangements to transport the victim to an alternative shelter if the victim expresses a concern for safety or the officer determines a need exists.
  3. Explain options available to the victim including the citizen=s arrest process, temporary restraining orders, and in cases of arrest, the follow-up procedures and ensuing criminal proceedings.
  4. Advise the victim in written form of available community resources and the state victim assistance program.
  5. Verify and enforce court-issued protective orders pursuant to page \_\_\_\_ of this Protocol.

### **MILITARY SUSPECTS**

- A. All domestic violence incidents involving military suspects shall be handled according to this law enforcement protocol.
- B. The intent of this policy is to eliminate all informal referrals, diversions, or report taking omissions in the handling of domestic violence incidents involving military personnel.

- C. No informal agreements with base patrol or a suspect's commanding officer shall take precedence over a suspect's arrest and prosecution by the non-military authorities.

### **TRAINING**

- A. Each law enforcement agency shall establish a written schedule for annual or semi-annual training for members of the agency on domestic violence.
- B. The goals of the training are to inform officers of:
  - 1. The domestic violence laws.
  - 2. The department's domestic violence policy and procedures.
  - 3. The dynamics of family violence.
  - 4. Police officer safety techniques.
  - 5. District Attorney Domestic Violence Unit policies.
- C. Training should include written bulletins, videotapes, verbal reminders, updates during daily briefings and presentations given periodically by the District Attorney's Domestic Violence Unit personnel.
- D. The Chief of Police, Sheriff or his/her designee, shall ensure the review of the department's training policies annually and make any revisions deemed necessary.

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

Re: \_\_\_\_\_ Booking No.  
Defendant/Arrestee

Police Agency: \_\_\_\_\_ Case #

Charges:

DECLARATION

I, \_\_\_\_\_, a peace officer employed by \_\_\_\_\_, declare the following to be true: On \_\_\_\_\_, the above named Defendant/Arrestee was arrested by officer(s) of this department for the above listed charges and was booked at the Marin County Jail on \_\_\_\_\_ at \_\_\_\_\_M. Bail, as set forth in the Marin County Felony Bail Schedule adopted per Penal Code '1269b for the above offense(s), is \$\_\_\_\_\_.

I HAVE REASONABLE CAUSE TO BELIEVE AND I DO BELIEVE:

(Initial applicable reasons)

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

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

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

(Over)

I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, at San Rafael, California.

Peace Officer

ORDER

GOOD CAUSE APPEARING THEREFORE, and based upon the Declaration above, it is hereby ordered the defendant be held:

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

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

Judge of the \_\_\_\_\_ Court

**AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS**

I hereby authorize \_\_\_\_\_ To release my medical record file to:

Patient=s Name (please print): \_\_\_\_\_.

Patient=s Date of Birth: \_\_\_\_\_.

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

Inpatient

Outpatient

Emergency Room Patient

DATE: \_\_\_\_\_ PATIENT=S SIGNATURE:

DATE: \_\_\_\_\_ OFFICER=S SIGNATURE:

AGENCY NUMBER:

\_\_\_\_\_ POLICE DEPARTMENT

ADVISE TO VICTIMS OF PENAL CODE SECTIONS 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, and sexually motivated 647.6.

ADVISEMENT TO ADULT VICTIM

Your name and address will become a matter of public record and subject to release, pursuant to Section 6254 of the Government Cod, unless you at this time request that your name and address not become a matter of public record.

At this time, do you want your name and address to become a matter of public record?

- G No, I do not want my name and address to become a matter of public record.
- G Yes, I do want my name and address to become a matter of public record and I will sign a statement to that effect.

Statement of victim: I have been advised that my name and address will become a matter of public record unless I request that it not. At this time, I am requesting that my name and address become a matter of public record.

Signed: \_\_\_\_\_ Witness:

Print name: \_\_\_\_\_ Print name:

ADVISEMENT TO PARENT OR GUARDIAN OF JUVENILE VICTIM

Your child=s name and address will become a matter of public record and subject to release, pursuant to Section 6254 of the Government code, unless you at this time request that your child’s name and address not become a matter of public record.

At this time, do you want you child’s name and address to become a matter of public record?

- G No, I do not want my child’s/ward’s name and address to become a matter of public record.
- G Yes, I do want my child’s/ward’s name and address to become a matter of public record and I will sign a statement to that effect.

Statement of victim’s parent or guardian: I have been advised that my name and address will become a matter of public record unless I request that it not. At this time, I am requesting that my name and address become a matter of public record.

Signed: \_\_\_\_\_ Witness:

Print name: \_\_\_\_\_ Print name: