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# DOMESTIC VIOLENCE MISDEMEANOR PROSECUTION PROTOCOL

Developed By:  
FAMILY VIOLENCE PROJECT  
of the San Francisco District Attorney's Office  
in cooperation with  
THE COALITION FOR JUSTICE  
FOR BATTERED WOMEN OF SAN FRANCISCO

113169

U.S. Department of Justice  
National Institute of Justice

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ACQUISITIONS

DISTRICT ATTORNEY'S OFFICE  
SAN FRANCISCO

March, 1985

MISDEMEANOR PROTOCOL FOR  
DOMESTIC VIOLENCE CASES

INTRODUCTION: (See Introduction to Domestic Violence Felony  
Protocol January, 1983 - attached)

I.  
DEFINITION:

"Domestic Violence", as defined in Penal Code Section 13700, 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 has or has had a dating engagement relationship.

"Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or another.

For purposes of this office, our policy is to include all relatives in the category of "former cohabitant" and to treat "abuse" as any misdemeanor criminal act (e.g. malicious mischief, trespassing, violation of a temporary restraining order or stay away order) against the individual.

II.  
MISDEMEANOR PROSECUTION:

(A). CHARGING:

1). CRITERIA: In determining whether to charge or issue a warrant, the deputy will consider the facts of the case, in light of the following:

- (a). extent or seriousness of injuries (P.C. §242 may apply where injuries are not serious);
- (b). use of a deadly weapon;
- (c). defendant's prior criminal history;
- (d). past history of violence, paying particular attention to extent of previous harassment, threats, or violence against the same victim.

Where a factual basis exists, the case will be filed.

2). CONTACT WITH THE VICTIM:

- (a). The case should be filed when a factual basis exists, regardless of whether the victim has been contacted;
- (b). At the time of charging, or immediately following the arraignment, a domestic violence victim letter, (attached Form #508) will be sent to the victim in all cases. (The procedure is as follows:
  - (1) indicate the court number and hearing date on the front monitoring sheet (copy attached); detach and leave in Family Violence Project mailbox;
  - (11) mail letter to victim and note on District Attorney's file that victim letter was sent.
- (c). Victims who come to the District Attorney's Office front desk will be referred to the Misdemeanor Intake investigators whenever possible. The front desk will have a copy of the information letter for distribution to the victims. The Misdemeanor Intake investigators will notify the charging deputies of the victim's visit and purpose.

3). DECLENSIONS:

- (a). Do not decline to prosecute simply because contact has not been made with the victim, or the victim has not followed through in the past;
- (b). Refer the case for further investigation (discharge Code 27) by Intake investigators where appropriate.

(B). EVIDENCE COLLECTION:

1). WRITTEN STATEMENTS: If the victim appears at arraignment, or prior to arraignment he/she will be referred to Misdemeanor Intake investigators for a statement by a police officer. If the victim appears on a subsequent occasion, he/she shall speak to the District Attorney handling the case. Contact should always be made with the witnesses, prior to settlement or jury trial.

2). DROP STATEMENTS: Due to the probability of coercion, no written or notarized "drop statements" are to be accepted by the District Attorney's front desk staff. Reluctant victims are to be asked to come to the next scheduled hearing, at which time they may be referred to the Family Violence Project for options counseling. Victims still wishing to drop at that point must testify under oath to that effect, if the assigned District Attorney approves. Serious cases with reluctant victims should be set for trial, and efforts made to obtain the victim's cooperation that way.

In these types of cases, especially where the injuries are serious and/or there is a history of abuse or danger of escalating violence, consult with the Domestic Violence District Attorneys with respect to possible contempt or immunity proceedings. Be advised that if a victim is found to be in contempt remedies may be fashioned other than County jail time, such as participation in a battered women's support group or Sheriff's Work Alternative Program (S.W.A.P.).

(B). EVIDENCE COLLECTION: (continued)

3). PHOTOS: Refer victim to a General Works inspector for photos, or arrange for the District Attorney investigators to have the photos taken.

(C). ARRAIGNMENT:

1). STAY AWAY ORDERS: - Form #509 (attached). Verbal Stay Away Orders are unenforceable. All Stay Away orders should be secured at the earliest possible hearing and in writing. In all cases, mail a conformed (signed and stamped) copy to the victim so that he/she may pursue an arrest or complaint or any violation.

2). STAY AWAY INFORMATION SHEET: - Form #510 (attached). This information sheet is to accompany all conformed Stay Away Orders sent to victims, to ensure enforcement of any violations.

3). After arraignment, set case for PTC and try to contact the victim. Explain to the victim that he/she does not have the power to "drop charges", and they must discuss the case with you. (See Introduction - Fears of the Victim). Never encourage the victim to drop charges, in order to "patch-up" his/her marriage or relationship.

**(D). DISPOSITION RECOMMENDATIONS:**

Due to the likelihood of a continuing offense, the following are strongly advised:

1). Whenever possible, a guilty plea to the most specific charge is preferable, (Penal Code Sections 242, 245(a)(1), etc.) rather than to a lesser charge which may not adequately represent the nature of the offense (Penal Code Sections 647(F), 594, 415, etc.);

2). On serious misdemeanors, particularly felonies reduced to misdemeanors, probation with jail time or county jail suspended, should be recommended. Court probation should never be considered, as this does not provide any supervision of the defendant. The recommended county jail time should be commensurate with sentences for other violent crimes;

3). Domestic violence counseling, and where appropriate alcohol or drug treatment should be a condition of probation. The victim's interest in having the defendant participate in counseling should be considered, but not in lieu of county jail time, where the District Attorney recommends jail time;

4). Pretrial Diversion, Community Dispute Services or Informal Diversion should never be recommended in these cases, which require the specific type of program and supervision that Domestic Violence Diversion offers.

**(E). DOMESTIC VIOLENCE DIVERSION:**

Pursuant to the Diversion Guidelines developed by the Mayor's Criminal Justice Council and Penal Code Section 1000.6, et seq., Domestic Violence Diversion shall apply (upon determination of the judge presiding) in cases where:

(a). an act of domestic violence is charged as or reduced to a misdemeanor, but not involving a child. P.C. §1000.6 defines "family or household member" as a spouse, former spouse, parent, relative, or any person who regularly resides, or who within the previous six months regularly resided, in the household;

(b). the defendant has no convictions for any offense involving violence within the past seven (7) years, (P.C. §1000.6);

(c). the defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed;

(d). the defendant has not been diverted for domestic violence within the last five (5) years. [P.C. §1000.6(a)(3)];

(e). the crime charged was not a corporal injury resulting in a traumatic condition, (P.C. §273.5) or an assault with a deadly [P.C. §1000.6(a)]. For purposes of P.C. §273.5, a traumatic condition is a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force. (Note: Penal Code Section 243(d), assault with serious bodily injury, as a wobbler, is not listed as a non-divertible offense, and therefore should only be charged in the alternative with a 245(a)(1) P.C., to prevent diversion where serious bodily injury occurs).

P.C. §1000.6 diversion is not mandatory even if the defendant qualifies. Oppose referral where the defendant does not appear to be a suitable candidate. If a defendant is referred over a D.A. objection, contact the probation officer and present the pertinent aggravating factors. (Refer to P.C. §1000.6(b)). Argue against diversion at the eligibility hearing.

Suitability for diversion should be evaluated in light of:

- a). Repeated history of violent conduct (reported or unreported) within the past year but especially where medical attention was sought);
- b). the victim's lack of reasonable objections;
- c). the defendant's demonstrable motivation and agreement to comply with the terms and conditions of diversion, (contact with the probation department is urged when you have additional background information on this).

#### (F). DISMISSALS:

(a). Dismissals are appropriate in cases where evidentiary problems preclude the possibility of proving all elements of the crime. Reluctance of the victim should not be the operative factor in making a determination to dismiss the case;

(b). Any deputy handling a domestic violence case should confer with his/her section supervisor, prior to moving to dismiss the case. The domestic violence team or the section supervisor must give prior approval of the dismissal.

#### REFERRING CASES TO THE FAMILY VIOLENCE PROJECT:

While concentrating its efforts on the implementation of the felony domestic violence protocol, the Family Violence Project

will provide investigative and support services on the following categories of misdemeanors:

(a). misdemeanor cases which are repeat assaults on a victim whose previous case(s) have been handled as a felony;

(b). misdemeanor cases which were originally booked as felonies;

(c). cases referred by the Court on the date when the victim appears in court and wants "charges dropped". (This does not include victims who come to the District Attorney's Office to drop charges at some point after the incident);

(d). all prior clients - among misdemeanors, these are usually those cases with an extensive history of violence or other complications; and

(e). non-English-speaking domestic violence victims.

SERVICE PROVIDED:

1). evidence collection;

2). victim/witness preparation for court;

3). investigative workup of cases (history of priors, coordination with probation or parole, etc.);

4). options counseling to victim re: dissolution/custody, shelter and Social Service resources;

5). preparation of Stay Away Orders.

BF:tdb



# DISTRICT ATTORNEY

ARLO SMITH  
DISTRICT ATTORNEY



ROBERT M. PODESTA  
~~DIRECTOR~~  
CHIEF ASSISTANT  
DISTRICT ATTORNEY

## SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

PLEASE USE THIS INFORMATION TO IDENTIFY  
YOUR CASE WHEN CONTACTING THIS OFFICE:

Court Number: \_\_\_\_\_

Department Number: \_\_\_\_\_

NEXT COURT DATE: \_\_\_\_\_

Date: \_\_\_\_\_

District Attorney: \_\_\_\_\_

Telephone: \_\_\_\_\_

Times D.A. can be reached: \_\_\_\_\_

Dear \_\_\_\_\_:

A complaint against \_\_\_\_\_, who will be referred to as the defendant, has been referred to this office. The matter will next appear in court in Department \_\_\_\_\_ on \_\_\_\_\_.

We hope that this letter may answer the questions you may have about your case. We will attempt to contact you, but we urge you to contact the D.A. at the number listed above before the next court date. We must discuss the case with you before the next court date in order to adequately represent your interests in court.

### WHEN YOU SHOULD COME TO OUR OFFICE OR TO COURT

- If you have visible injuries or bruises from the incident, you should come to the D.A.'s Office immediately and have photographs taken of the injuries. Our office is located on the third floor of the Hall of Justice, 850 Bryant, between 6th and 7th Streets. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.
- You do not have to come to court unless you are notified to appear. The statement you made to the police or to this office will serve as your testimony unless the case were to go to trial. Although most cases are resolved without a trial, the D.A. will notify you ahead of time if you need to appear.

INSTRUCTIONS TO DA: Please fill out this monitoring sheet,  
detach, and leave in Family Violence Project mailbox.

Send the attached letter to the victim.

To: Family Violence Project

From: DA Department \_\_\_\_\_

Re: Ct. No. \_\_\_\_\_

Date \_\_\_\_\_

Circle . AN PC

PTC . TR

Other \_\_\_\_\_

The domestic violence letter was sent to the victim  
on this case.

## WHAT WE NEED TO DISCUSS WITH YOU

When you contact your D.A., she or he will want to know the following:

- what happened during the incident, and whether there were any other witnesses;
- whether the defendant has ever assaulted you before;
- the injuries or damage to your personal property which resulted from the incident;
- what you would like to see happen on the case.

We realize that it is difficult to go over the details of the assault again so soon after it has occurred, but it is very important that you let the D.A. know this information -- and perhaps writing it all down first would help prepare you for discussing the incident with the D.A. when he or she calls.

## WHAT OUTCOME YOU COULD EXPECT

Every case is different -- and that is why we would like the opportunity to talk with you about yours. Some cases do involve a history of assaults severe enough to merit jail time, but the majority -- including possibly yours -- involve someone who has a problem and needs help. Such violence will reoccur unless the defendant is stopped and gets help.

We encourage you to see this case as an opportunity to let us help stop the defendant's violent behavior and, possibly, get the defendant into counseling for violence and for any alcohol or drug problems which may be related to the incident. There are two ways we can make such counseling available:

- DOMESTIC VIOLENCE DIVERSION: If the defendant is eligible, the court can place him or her in Domestic Violence Diversion -- which means that the criminal case is suspended while the defendant goes to counseling once a week, for a period of 6 months to a year. If the defendant completes the counseling successfully, the charges are dismissed; or
- PROBATION: If the defendant is not eligible for diversion, the court can place the defendant on probation, and make counseling and alcohol/drug treatment, if appropriate, conditions of his or her probation.

## IF YOU WANT THE ABUSER TO STAY AWAY FROM YOU

Unfortunately, the experience we've had from handling thousands of domestic violence cases tells us that someone who is violent often continues to be violent or harasses the victim after the first assault. Defendants may promise to leave you alone and to no longer hurt you, but then may not follow through on those promises. You may be assaulted again.

Accordingly, we would advise you to do the following:

- follow through with this case: the defendant must learn that assaulting someone is a crime, and will not be allowed. Your cooperation will allow us to monitor and help stop the violence.
- find shelter: if you are in danger, stay with a friend or relative, or contact the local shelter for battered women:

LA CASA DE LAS MADRES - 469-7637

- ask that the D.A. request a Stay-Away Order from the court: this is an order issued by the judge, ordering the defendant to stay away from you. It is in effect while the case is in court, and while the defendant is on diversion or probation.
- contact one of the following agencies about a Temporary Restraining Order: OUR OFFICE DOES NOT ISSUE THESE ORDERS. A restraining order is a civil court order which orders the defendant to stay away from you. It can also make temporary child custody arrangements. IF YOU AND THE DEFENDANT HAVE A CHILD, AND THERE ARE NO LEGAL CUSTODY ARRANGEMENTS, YOU PROBABLY NEED A RESTRAINING ORDER AND SHOULD CONTACT THE AGENCIES LISTED BELOW FOR ADVICE:

WOMAN, INC. - 864-4722  
LEGAL ASSISTANCE - 433-8741  
ABUSED WOMEN'S ASSISTANCE - 861-5819

#### DECIDING ON YOUR OPTIONS

We realize this may all be very sudden and frightening: taking steps to protect yourself can always be difficult at first, and sometimes it's best to talk with someone who can help explore your options with you. The following agencies have trained counselors to help you:

LA CASA DE LAS MADRES -

- 24-hour crisis line: 469-7637

WOMAN, INC. - 864-4722

CENTER FOR SPECIAL PROBLEMS

- counseling: Mary Tam: 558-4801

This office treats domestic violence cases very seriously. We are here to help stop the violence. Please consider your options carefully and contact us by telephone and return the enclosed form to us today. Thank you.

THE OFFICE OF THE DISTRICT ATTORNEY

PLEASE MAIL THIS FORM TO OUR OFFICE TODAY IF ANY OF THESE QUESTIONS APPLY

Please  
Check

☐ My address has changed since the incident.

☐ New mailing address: \_\_\_\_\_

☐ New residence address: \_\_\_\_\_

☐ My telephone number has changed since the incident.

☐ New home telephone number: \_\_\_\_\_

I can be reached at that number: ☐ days ☐ evenings

☐ New work telephone number: \_\_\_\_\_

I can be reached at this number: ☐ days ☐ evenings

☐ I have a handicap that would make coming in for photos or coming into court difficult:

Please describe: \_\_\_\_\_

☐ Please keep all of the above information confidential.

\* \* \* \* \*

Please mail form to:

\_\_\_\_\_  
Name of District Attorney

Office of the District Attorney  
850 Bryant Street, 3rd Floor  
San Francisco, CA 94103

RE: COURT NO. \_\_\_\_\_

DEPT. \_\_\_\_\_

NEXT HEARING: \_\_\_\_\_

INFORMATION ON THE STAY AWAY ORDER

Today's Date : \_\_\_\_\_

Defendant's Name: \_\_\_\_\_

Date Order Was Issued: \_\_\_\_\_

District Attorney: \_\_\_\_\_

Dept. # \_\_\_\_\_ Phone #: \_\_\_\_\_

At today's hearing, a Stay Away Order was issued to the defendant. The Stay Away, which was requested for your protection, orders the defendant not to harass, threaten or assault you. It also forbids him/her from calling, writing or visiting you, or having someone else contact you for him/her. If the defendant disobeys the Order, s/he is violating the law and could be charged with contempt of court.

The Order is valid for the pendency of the court's hearings plus any sentence or probationary period.

Please keep this Order in a safe and handy place. Should the defendant violate the Order, be sure to do the following:

- Call the police immediately
- Show the officers your Stay Away Order and let them know that there are charges pending against the defendant for a prior assault on you.
- Insist that the officers write an Incident Report and be sure to get the number of the report (8 \_\_\_\_\_).

Additionally, you can --

- Have the defendant arrested at the scene; or
- If s/he is not arrested at the scene for what-

- Victim will have this order in their possession.
- To verify order, run a court summary query such as:

QCX/COURTNO: -----

OR

QCX/NAME: (suspect's name)

ARLO SMITH  
District Attorney  
850 Bryant Street  
San Francisco, Ca. 94103

Telephone: 553-1752

May be Municipal Court order also.

SUPERIOR COURT OF THE CITY AND COUNTY OF  
SAN FRANCISCO, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA )

PLAINTIFF )

VS. )

DEFENDANT )

NO. 000000

STAY AWAY

← Court No.

GOOD CAUSE APPEARING, it is hereby ordered:

1. \_\_\_\_\_ (or through third parties) shall not molest, or harass and shall have no personal, telephonic, or written contact with: \_\_\_\_\_.

2. \_\_\_\_\_ shall not come within 150 yards of the victim or indicated family members: \_\_\_\_\_.

3. \_\_\_\_\_ shall stay away from the following premises: \_\_\_\_\_.

\_\_\_\_\_, or any place where victim/ parties may currently reside or work.

4. Other: \_\_\_\_\_

ever reason, file a complaint against the defendant. You will need to go to General Works Detail (Hall of Justice, 850 Bryant Street, 4th floor) either that day or the next day.

If you have any questions about the Stay Away Order, please feel free to call the District Attorney listed at the top of this sheet. Thank you



5. This order is directed to \_\_\_\_\_  
who is personally present in court and is verbally admonished  
by the court and personally served with a written copy of this  
order.
6. This order is effective upon service of this copy on \_\_\_\_\_  
\_\_\_\_\_ and continues in effect during the time  
the defendant is under the jurisdiction of the court (this in-  
cludes any probationary period).
7. Violation of this order is punishable both as contempt of court  
( Penal Code Section 166) and as violation of Penal Code Section  
136.1 ( see subsection a of 136.2 PC).
8. For enforcement, refer to S.F.P.D. General Order No. 1-6,  
Section III "STAY AWAY ORDERS".

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
Department \_\_\_\_\_