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**GUIDELINES AND CURRICULUM
FOR LAW ENFORCEMENT RESPONSE TO
DOMESTIC VIOLENCE**

NCJRS

1994

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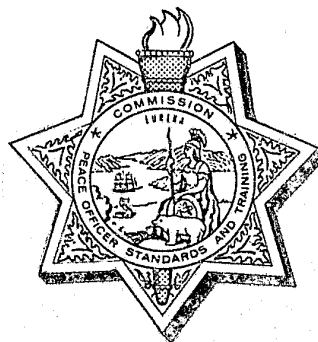
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**THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING**

STATE OF CALIFORNIA

1747

**GUIDELINES AND CURRICULUM
FOR LAW ENFORCEMENT RESPONSE TO
DOMESTIC VIOLENCE**

1994

CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

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FOREWORD

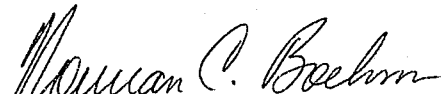
Penal Code Section 13519 requires the Commission on Peace Officer Standards and Training to establish guidelines and training for law enforcement's response to domestic violence. This publication prescribes those guidelines and the training curriculum required for recruit and in-service officers.

The guidelines for law enforcement agencies are deliberately brief and intended to be elaborated upon by law enforcement administrators and complemented by the training course curricula. All pertinent requirements of the Penal Code, Title 5, Chapter I, commencing with Section 13700, are provided for in the guidelines.

These guidelines and curriculum are updated to reflect recent law changes and contemporary thinking concerning domestic violence. These changes (highlighted by underlining) are generally related to restraining/protective orders.

The committee is appreciative of the POST Domestic Violence Advisory Committee, whose members labored tirelessly in updating these guidelines and curriculum. Thanks are also extended to all the others who assisted POST with this update.

Questions concerning these guidelines and curriculum should be directed to the Training Program Services Bureau at (916) 227-4885.


NORMAN C. BOEHM
Executive Director

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Introduction

Domestic violence is a growing problem in both California and the United States. Statistics from the California Department of Justice reveal that in 1992 there were 240,826 "Domestic Violence-Related Calls for Assistance" reported by over 600 law enforcement agencies throughout the state. Of these incidents of domestic violence, 175,353 (72.8 percent) involved the use of weapons. In 1992 there were 3,920 willful homicides reported to the Department of Justice. Of these willful homicides, seven out of ten victims knew the offender. Proportionately, female victims were eleven times more likely than male victims to be the spouse of the offender. Hundreds of thousands of Americans are harmed, not by strangers, but by those they trust and love. They are victimized not on the street nor in the workplace but in their own homes. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood. A great proportion of those who assault both strangers and loved ones were themselves raised in violent households. Most authorities agree that violence is learned behavior. Accordingly, to tolerate family violence is to allow the seeds of violence to be sown into the next generation.

When the President's Task Force on Victims of Crime studied the experience of victims in this country, it recognized that family violence is often much more complex in causes and solutions than crimes committed by unknown attackers. To be abused by a spouse, a parent, a trusted adult, or by one's own child or to witness such abuse carries with it a particular agony. Victims wrestle with feelings of fear, loyalty, love, guilt, and shame. In this they often face conflicts not experienced by those attacked by strangers. Adults will be torn between the desire to shield and help a loved one and their responsibility toward their own safety or others in the household. Children often face alone the terrible truth that those who should protect them are in fact a source of harm. Anyone who lives in a violent home experiences an essential loss. The one place on earth where they should feel safe and secure has become instead a place of danger. A victim of domestic violence is no less a victim than one set upon by strangers.

In 1984, the California Legislature passed Senate Bill 1472 (Watson) (now Section 13519, and 13700 et seq. of the Penal Code). This law requires:

- o POST, by January 1, 1986, to develop guidelines for law enforcement response to domestic violence cases. (Penal Code Section 13519(d))

- o POST, by January 1, 1986, to implement into the Basic Course instruction in the handling of domestic violence complaints for law enforcement officers. (Penal Code Section 13519)
- o All local police and sheriffs' officers who have received their basic training prior to January 1, 1986, to attend a supplementary training course on domestic violence by January 1, 1989. (Penal Code Section 13519(c))
- o POST to develop the necessary course(s) and guidelines to implement the mandate listed above, in consultation with appropriate groups and individuals, to include specific organizations mentioned in the bill. (Penal Code Section 13519(d))
- o POST, in consultation with these groups and individuals, to review existing training programs to determine how domestic violence topics might be included. (Penal Code Section 13519(d))
- o Law enforcement agencies to adopt and implement written policies and standards for response to domestic violence calls, and make them available upon request. (Penal Code Section 13701)
- o This law requires law enforcement agencies to maintain a record of protection orders issued in domestic violence incidents and proofs of service in effect (Penal Code Section 13710)
- o Law enforcement agencies are to develop a system for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. The total number of incidents of domestic violence, and the number of cases involving weapons are to be submitted monthly to the Attorney General, Department of Justice. (Penal Code Section 13730(a)).
- o Each law enforcement agency to develop an incident report form that includes a domestic violence identification code. In all incidents of domestic violence, a report shall be written. (Penal Code Section 13730(c)).

The purpose of this law is to address domestic violence as a serious crime against society and to assure victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the legislature 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. It is not the intent of the legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the legislature to hold individual peace officers liable for exercising such discretion.

In 1987, the California Legislature passed Assembly Bill 1599 (Speier) and enacted Section 546 of the Code of Civil Procedure, creating a new resource for peace officers responding to domestic violence situations. This law, operative July 1, 1988, and amended in 1991, requires the designation by the Presiding Judge of the Superior Court of at least one Judge, Commissioner, or referee in each county to be available, as specified, to orally issue, by telephone or otherwise, Emergency Protective Orders against domestic violence which would be issued at all times when the court is not in session upon the request of a peace officer. As a result of this law, Guideline #9 was added to these guidelines for the 1988 edition. In 1994 the Family Code was enacted and incorporated the changes made in the law in 1987, 1988, and 1991 so that Family Code Sections 6320, 6241, and 6250 authorized the obtaining and issuance of Emergency Protective Orders.

Another 1987 law change (Penal Code 12028.5) authorizes peace officers to seize and take temporary custody of firearms under specified circumstances at domestic violence scenes. As a result, Guideline #19 was added for the 1988 edition.

The 1993 Legislative session amended the definition of domestic violence and expanded the definition of "officer". For the first time in California history officers may make a probable cause arrest pursuant to Penal Code Section 836 for a misdemeanor violation of Penal Code Section 273.6 not committed in the officers' presence.

The following are guidelines for law enforcement response to domestic violence. These guidelines do not address child abuse cases nor cases of domestic disputes where there is no domestic violence or criminal violation. Whenever the word "shall" is used, the appropriate legal citation is referenced. Whenever the word "should" is used, law enforcement agencies should consider the substitution of the word with "shall." Departmental policies and procedures may be more specific and may supersede these guidelines. Relevant training on these guidelines should be provided to appropriate employees. For clarification, guidelines are presented in full capitalization and explanatory information in lower case. Penal Code Section 13700 specifies the following definitions which are included for clear understanding of these guidelines:

"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.

"DOMESTIC VIOLENCE" MEANS ABUSE COMMITTED AGAINST AN ADULT OR A 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 the relationship. (Amended by Stats. 1993, c. 1230 (A.B. 2250))

"OFFICER" MEANS 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 SECTION 830.2 OR A HOUSING AUTHORITY PATROL OFFICER AS DEFINED IN SUBDIVISION (d) OF SECTION 830.31.

"VICTIM" MEANS A PERSON WHO IS A VICTIM OF DOMESTIC VIOLENCE.

This document specifies POST's general guidelines for law enforcement response to domestic violence and curriculum mandated by Penal Code Section 13519.

GUIDELINES FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

I. ENFORCEMENT OF LAWS

Guideline 1 - ENFORCE LAWS RELATING TO DOMESTIC VIOLENCE.

Historically, law enforcement agencies have utilized a variety of dispute resolution methods as alternatives to arrest in domestic violence incidents. Based on public attitudes, lack of prosecution of domestic violence cases, and departmental priorities, a number of factors influenced law enforcement officers to make no arrest in a majority of cases. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. The following factors, for example, should not be used to avoid making an arrest:

1. Marital status or domestic relationship of suspect and victim.
2. Whether or not the suspect lives on the premises with the victim.
3. Existence or lack of restraining/protective orders.
4. Complainant's preference that an arrest be made, or not.
5. Potential financial consequences of arrest.
6. Complainant's history or prior complaints.
7. Verbal assurances that violence will cease.
8. Complainant's emotional state.
9. Non-visible injuries.
10. Location of the incident (Public/Private).
11. Speculation that complainant may not follow through with the prosecution, or
12. That the case may not result in a conviction.
13. Assumptions that violence is more acceptable in certain cultures.
14. Language abilities or barriers (lack of English language abilities on the part of the victim).
15. Sexual preference or orientation of the parties.

II. FELONY ARREST

Guideline 2 - MAKE AN ARREST WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT A FELONY HAS OCCURRED.

III. MISDEMEANOR ARREST

Guideline 3 - MAKE AN ARREST WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT A MISDEMEANOR HAS OCCURRED IN THE OFFICER'S PRESENCE OR THERE IS PROBABLE CAUSE TO BELIEVE THAT A MISDEMEANOR VIOLATION OF PENAL CODE SECTION 273.6 HAS OCCURRED.

- A. New legislation effective January 1, 1994 allows peace officers, in their discretion, and within the policy of their department, to make a probable cause arrest for a misdemeanor (Penal Code Section 273.6) violation occurring outside the presence of an officer.
- B. In situations where mutual protective orders have been issued, make reasonable efforts to identify and arrest only the primary aggressor. (P.C. 836(c)(3). The primary aggressor is the person determined to be the most significant, rather than the first aggressor. In identifying the primary aggressor, the officer shall consider:
 - 1. The intent of the law to protect victims of domestic violence from continuing abuse.
 - 2. The threats creating fear of physical injury.
 - 3. The history of domestic violence between the persons involved.
 - 4. Whether either person involved acted in self-defense.
- C. In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, the person shall not be released on a citation unless the arresting officer determines there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. (P.C. 853.6)
- D. Officers considering releasing the suspect on a citation shall evaluate the likelihood of a continuing offense which is one of the statutory conditions under which a field release is not appropriate. Any of the following may support the likelihood of a continuing offense:
 - 1. The suspect has a prior history of arrests or citations involving domestic violence.
 - 2. The suspect is violating a criminal court issued stay-away order.

3. The suspect has previously violated, or is currently violating, valid restraining/protective orders.
4. The suspect has a prior history of other assaultive behavior (e.g., arrest/convictions for battery or aggravated assaults).
5. Statements of the victim or witnesses that the suspect has a history of physical abuse.
6. Statements of the victim or witnesses expressing fear of retaliation or further violence should the suspect be released.
7. Information about the suspects alcohol or drug abuse, access to weapons, suicide threats or attempts, threats of kidnapping family members, or history of mental illness.

IV. PRIVATE PERSON'S ARREST (CITIZEN'S)

Guideline 4 - SHALL INFORM THE VICTIM OF THE RIGHT AS WELL AS HOW TO SAFELY EXECUTE THE MAKING OF A PRIVATE PERSON'S ARREST WHEN A CRIME HAS BEEN COMMITTED OUTSIDE THE OFFICER'S PRESENCE WHICH DOES NOT MEET THE REQUIREMENTS FOR A FELONY ARREST. WHENEVER POSSIBLE, SUCH DISCUSSION SHALL BE HELD OUT OF THE PRESENCE OF THE SUSPECT.

Guideline 5 - SHALL ACCEPT A PRIVATE PERSON'S ARREST. OFFICERS SHOULD NOT DISSUADE VICTIMS FROM MAKING A LAWFUL PRIVATE PERSON'S ARREST.

V. REPORTING

Guideline 6 - SHALL WRITE A REPORT IN ALL INCIDENTS OF DOMESTIC VIOLENCE. the report shall be identified ON ITS FACE AS A DOMESTIC VIOLENCE INCIDENT AND BE RETRIEVABLE. (THIS DATA must be REPORTED monthly TO THE DEPARTMENT OF JUSTICE, 13730(a) OF THE PENAL CODE.)

Guideline 7 - SHALL IDENTIFY, IN THE REPORT, IF WEAPONS WERE INVOLVED. (PENAL CODE SECTION 13730(a)). (THIS INFORMATION INCLUDING NUMBER AND TYPE OF WEAPONS MUST BE REPORTED TO THE DEPARTMENT OF JUSTICE AND IS PUBLISHED ANNUALLY).

Guideline 8 - SHALL PROVIDE THE VICTIM WITH THE CASE NUMBER OF THE REPORT, OR IF NOT IMMEDIATELY AVAILABLE, EXPLAIN TO THE VICTIM HOW THE NUMBER MAY BE OBTAINED. (PENAL CODE SECTION 13701 (h)).

VI.

RESTRAINING/PROTECTIVE ORDERS

There are different types of restraining/protective orders issued by courts in domestic violence situations. Penal Code Section 13710 requires law enforcement agencies to maintain a complete and systematic record of protection orders with respect to domestic violence incidents, restraining/protective orders, and proofs 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.

The following are three types of restraining/protective orders:

1. Emergency Protective Order is obtained by a peace officer from superior court by phone
2. Civil Court Restraining Orders are obtained by the victim from the civil court
3. Criminal stay-away Orders, pursuant to PC 136.2 are issued by the criminal court

All three of these protective orders are enforceable in any county, regardless of where issued. These orders remain valid regardless of the actions of the protected person. For example: if the protected person allows the restrained party back into a residence, the order still remains valid.

Guideline 9 - REQUEST EMERGENCY PROTECTIVE ORDERS WHEN APPROPRIATE.

Family Code Section 6241 requires that at least one judge, commissioner, or referee be reasonably available to orally issue, by phone or otherwise, an ex parte Emergency Protective Order when a law enforcement officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence and when a child is in immediate or present danger of abuse from a household member. as defined by the Family Code. Such an order may also exclude the suspect from the premises and determine temporary custody of minor children.

A. Ascertain Need for Emergency Protective Order

1. When the officer has reasonable grounds to believe a person is in immediate and present danger of domestic violence, or a child is in immediate and present danger of abuse by a family or household member, the officer should inform the complainant

as to the availability of Emergency Protective Orders. Regardless of the victims preference, the officer may request an ex parte Emergency Protective Order from the on-call judge.

2. Officers should make this determination based on the complainant's allegations of a recent incident of abuse or threat of abuse.
3. The officer may request an Emergency Protective Order whether or not the suspect is present or has been arrested.
4. The following situations are examples of those which may provide grounds for requesting an Emergency Protective Order:
 - a. The suspect is being arrested for a charge related to a domestic violence incident.
 - b. The suspect has a history of domestic violence.
 - c. The victim expresses fear of retaliation or further violence.
 - d. Threats of serious danger have been made to the victim or to the victim's family.

B. Request Emergency Protective Order

1. Officer shall contact the judge, commissioner, or referee designated to be on-call to issue Emergency Protective Orders by telephone or otherwise and assert grounds for the belief that the order is appropriate.
2. Upon oral issuance of the order by the on-call judge, the officer requesting the order shall reduce it to writing, using the Judicial Council form provided, and sign the order.

C. Issued Orders

1. The officer shall serve a copy of the emergency order on the restrained party, if the party can be reasonably located.
2. The officer shall give a copy of the emergency order to the protected party.

3. The officer who requested the emergency order, while on duty, shall carry a copy of the order.
4. A copy of the emergency order shall be filed with the court as soon as practical after issuance.
5. An Emergency Protective Order is valid for five court days after the day of issuance, but never longer than seven calendar days following the day of issuance.

D. Enforcement Procedures

1. Where a violation of an emergency order has occurred, arrest in accordance with Guideline 10, Section B.

E. Officer Immunity

1. A law enforcement officer who acts in good faith to enforce an Emergency Protective Order is not civilly or criminally liable. (Family Code Section 6272 (b)).

Guideline 10 - VERIFY AND ENFORCE RESTRAINING/PROTECTIVE ORDERS.

Penal Code Section 13710 requires law enforcement agencies to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, restraining/protective orders, and proofs 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 protective orders in effect.

A. Verification of Restraining/Protective Orders

Whenever a complainant advises an officer of the existence of a restraining/protective order, the officer should ascertain:

1. Whether a restraining/protective order is on file with the department or whether complainant has copy of restraining/protective order in possession.

2. Whether a restraining/protective order is still valid as to duration/time.
 - a. If there is no expiration date on the order, the order is valid three years from the date of issuance, with the exception of permanent orders issued pursuant to a divorce.
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/protective order.

B. Arrest Criteria and Enforcement Procedures

1. A violation of a restraining/protective order is a misdemeanor under Penal Code Sections 166 and 273.6(a) and may be a felony, under Penal Code Sections 273.6(d), 646.9 or 136. Make an arrest when there is reasonable cause to believe the subject of the restraining/protective order has violated the order. and any of the following conditions is met:
 - a. The existence of the order and proof of service on the suspect has been verified by the officer.
 - b. The complainant produces a valid copy of the order bearing a file stamp of a court and a proof of service on the subject.
 - c. The existence of the order has been verified by the officer; no proof of service is required if the order reflects that the suspect was personally present in court when the order was made.
 - d. The existence of the order has been verified, and there is proof that the suspect has previously been admonished or served a copy of the order.
2. When the officer verifies that a restraining/protective order exists, but cannot verify proof of service or prior knowledge of order by suspect, the officer should:
 - a. Inform the subject of the terms of the order.

- b. Admonish the subject of the order, that the subject is now on notice and that the violation of the order will result in arrest. If the subject continues to violate the order after being advised of the terms, an arrest should be made.
 - c. If the subject complies after admonishment of the terms, the officer shall make a retrievable report pursuant to Penal Code Section 13730(c) showing the subject was admonished/advised of the terms of the order, the specific terms of the order subject was advised about, the name of the admonishing officer, time and date. The department's copy of the restraining/protective order will be updated to reflect the admonishment information listed above.
 - d. At the request of the protected party, the officer shall comply with all of the above.
3. In the event the subject has left the scene of the incident, an investigation should be made to determine if a crime has been committed. Penal Code Sections 13730(c) and 13701(i) require that a retrievable report shall be made and complainant shall be advised of the follow-up criminal procedure and case number of the report.

C. Order Not Verifiable

- 1. When the victim is not in possession of the restraining/protective order, and/or in case of computer error, officers may not be able to confirm the order's validity.
 - a. Penal Code Section 13730(c) requires that an officer shall write a report, give the victim the police report number and direct the victim to contact the appropriate department unit for follow-up information.
 - b. When an order is not verifiable through the verification procedures, officers shall advise the victim of the right to make a private person's arrest for the violation of the restraining/protective order.

Guideline 11 - VERIFY AND ENFORCE CRIMINAL STAY-AWAY ORDERS

A. Verification of Stay-Away Orders

1. A stay-away order is issued in a criminal case where the probability of victim intimidation exists and violation of such is a misdemeanor under Penal Code Section 166. In domestic violence incidents where a person advises an officer that a criminal stay-away order has been issued, the officer should attempt to ascertain the terms and validity of the order.
 - a. Request the victim show a copy of the order. Verify, through the department, that the subject is under the court's jurisdiction, or
 - b. Verify, through the department, that a criminal stay-away order has been issued against the subject.

B. Arrest Criteria and Enforcement Procedures

1. When the order has been verified, officers shall effect an arrest if the subject has violated any terms of the order. The report should note the specific violations of the order, and the victim shall be given the police report number for reference pursuant to Penal Code Section 13701(i).
2. A violation of the order is a violation of Penal Code Section 166. This violation can be added to other charges such as assault or battery.
3. An act of victim intimidation relating to the court proceedings is a violation of Penal Code Section 136 et seq. Examples of intimidation include:
 - a. Attempting to prevent or dissuade a victim from attending or giving testimony at any proceeding is a misdemeanor.
 - b. Attempting to prevent or dissuade a victim from attending or giving testimony by using force or by expressing or implying threat of force or violence related to the court proceeding is a felony.

C. Order Not Verifiable

1. When the victim is not in possession of the criminal stay-away order, and/or in cases of computer error, officers may not be able to confirm the order's validity.
 - a. Penal Code Section 13730(c) requires that officers shall write a report, give the victim the police report number and direct the victim to contact the appropriate department unit for follow-up information.
 - b. 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 violation of the restraining/protective order.

VII. TENANCY

Guideline 12 - REQUEST A PERSON WHO IS NOT IN LAWFUL POSSESSION OF THE 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.

VIII. VICTIM ASSISTANCE

Guideline 13 - ASSIST IN OBTAINING APPROPRIATE MEDICAL ATTENTION IF A COMPLAINANT CLAIMS INJURY WHETHER VISIBLE OR NOT.

Guideline 14 - ASSIST IN MAKING ARRANGEMENTS TO TRANSPORT THE VICTIM TO AN ALTERNATE SHELTER IF THE VICTIM EXPRESSES A CONCERN FOR SAFETY OR THE OFFICER DETERMINES A NEED EXISTS.

Guideline 15 - STAND BY FOR A REASONABLE AMOUNT OF TIME WHEN A COMPLAINANT OR A SUSPECT REQUESTS law enforcement ASSISTANCE WHILE REMOVING ESSENTIAL ITEMS OF PERSONAL PROPERTY.

Guideline 16 - SHALL PROVIDE THE FOLLOWING TO THE VICTIM IN WRITING:

- A. For further information about a shelter, you may contact _____.
- B. For information about other services in the community, you may contact _____.

- C. You have the right to ask the District Attorney or City Attorney to file a Criminal Complaint.
- D. You have the right to go to the Superior Court and file a petition requesting any of the following orders for relief at no cost:
1. An order restraining the attacker from abusing the victim and other family members.
 2. An order directing the attacker to leave the household.
 3. An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
 4. An order awarding the victim or the other parent custody of or visitation with a minor child or children.
 5. An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
 6. An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
 7. An order directing the defendant to make specific debit payments coming due while the order is in effect. (If the parties are not married, the court can issue orders as to liens and encumbrances that come due while the order is in effect. This is not meant to include unsecured consumer debt.)
 8. An order directing that either or both parties participate in counseling.
 9. An order directing the suspect to batterers' counseling.
 10. An order for restitution.
- E. You have the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property and any other related expenses incurred by the victim or any agency that shelters the victim.

IX. SEIZURE OF FIREARMS

GUIDELINE 17 - SEIZE AND TAKE TEMPORARY CUSTODY 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. (PENAL CODE 12028.5)

- A. This provision of law is permissive and allows the officer discretion.
- B. No firearm seized pursuant to this section shall be held less than 48 hours.
- C. Provide person from whom the firearm is taken a receipt describing the firearm and stating where and when the firearm can be recovered.
- D. If the seized firearm is not to be used as evidence in a criminal proceeding resulting from the domestic violence incident, or was not illegally possessed, it shall be made available for return no later than 72 hours after the seizure.
- E. Check on court order requesting removal of weapon.

X. OFFICER SAFETY

Guideline 18 - EXERCISE REASONABLE CARE FOR THE SAFETY OF OFFICERS AND PARTIES INVOLVED AND NO PROVISION OF THIS GUIDELINE SHALL SUPERSEDE THAT RESPONSIBILITY.

CURRICULUM
LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE
COURSE OUTLINE

POST ADMINISTRATIVE MANUAL REFERENCE

Law

Commission Procedure D-7

LEGAL REFERENCE

Penal Code Section 13519, effective January 1, 1985, required the Commission to implement a course of instruction in the handling of domestic violence complaints by January 1, 1986. The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction on specified procedures and techniques. All law enforcement officers who have received their basic training before January 1, 1986 shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the Commission. This training shall be completed no later than January 1, 1989. Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. Where appropriate, training presenters should include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women, in the presentation of training.

BACKGROUND

This curriculum was developed with the input of an advisory committee, as specified in the law. The curriculum is based upon POST guidelines for law enforcement response to domestic violence which was also developed with the input of the advisory committee.

CERTIFICATION INFORMATION

The following curriculum is applicable in its entirety to the Basic Course and to in-service officers who have received their basic training before January 1, 1986. This curriculum is in addition to the existing Basic Course curriculum on Law, Disputes, and Family Disputes. This supplementary training for in-service officers may be included as part of Advanced Officer Courses or certified as a Technical Course. To assist presenters and instructors, the POST Basic Course Unit Guides are available upon request and contain more detailed information on this curriculum.

TOPICAL OUTLINE

Recommended Hours for Supplementary Training

A.	Overview of Domestic Violence	1.5
B.	Legislative Intent/POST Guidelines	1.0
C.	Enforcement of Laws	1.5
D.	Court Orders	1.0
E.	Tenancy	.5
F.	Documenting Domestic Violence Incidents	.5
G.	Victim Assistance and Referral	.5
H.	Practical Application/Student Evaluation	<u>1.5</u>

TOTAL MINIMUM HOURS 8.0

LEARNING GOAL AND PERFORMANCE OBJECTIVES

Learning Goal: The student will gain the ability to handle domestic violence incidents. (Learning Goal 8.47.0)

A. Overview of Domestic Violence

- 80% 1. The student will identify the difference between domestic violence and a domestic dispute. (P.O. 8.47.1)
- 80% 2. The student will identify the extent, nature and impact of domestic violence including: (P.O. 8.47.2)
- A. Frequency of occurrence/escalating nature and lethality
 - B. Impact on victims, children, and batterers
 - C. Cycle of violence
 - D. Dynamics of the victim and the batterer
 - E. Learned behavior
 - F. Family structure and culture
 - G. Effectiveness and impact of law enforcement intervention
 - H. Specific Interviewing Skills

B. Legislative Intent/POST Guidelines

- 80% 1. The student will identify essential elements of Penal Code Sections 13700 et seq. and 13519 and legislative intent for law enforcement response to domestic violence incidents including: (P.O. 8.47.3)
- A. Domestic violence as a serious crime against society
 - B. Enforcement of laws to provide maximum protection to the victim from abuse
 - C. Violent behavior in the home is criminal behavior
 - D. Not to remove a peace officer's individual discretion
 - E. Not to hold individual peace officers liable for exercising such discretion
 - F. POST Guidelines

C. Enforcement of Laws

- 80% 1. The student will identify the officer's responsibility and authority in taking enforcement action related to domestic violence incidents including: (P.O. 8.47.4)
- A. Felonies
 - B. Misdemeanors
 - C. Private person's arrest
 - D. Cite and release
 - E. Seizure of firearms

D. Court Orders

- 80% 1. The student will identify the officer's responsibilities and authority regarding court orders including: (P.O. 8.47.5)
- A. Restraining orders/Emergency Protective Orders
 - B. Stay-away orders

E. Tenancy

- 80% 1. The student will identify the officer's responsibility and authority with tenancy issues related to domestic violence and domestic disputes (Penal Code 602.5). (P.O. 8.47.6)

F. Documenting Domestic Violence Incidents

- 80% 1. The student will identify the officer's responsibility in documenting incidents of domestic violence including: (P.O. 8.47.7)

- A. Written report
- B. Legal requirements upon law enforcement agencies
- C. Providing victim with case number of the report

G. Victim Assistance and Referral

- 80% 1. The student will identify the officer's responsibility to provide assistance to victims of domestic violence including: (P.O. 8.47.8)
 - A. Medical attention
 - B. Transportation to alternate shelter
 - C. Stand by for removal of personal property
 - D. Personal safety options
- 80% 2. The student will identify the officer's responsibility in referring victims of domestic violence for legal options and criminal follow up. (P.O. 8.47.9)
- 80% 3. The student will identify the services most commonly provided by social services agencies for victims of domestic violence. (P.O. 8.47.10)

H. Practical Application/Student Evaluation

- 80% 1. Given an exercise, the student will handle a domestic violence situation meeting all criteria of legislative intent, safety, effectiveness, legality, and reasonableness. (P.O. 8.47.11)

BIBLIOGRAPHY

Bakersfield, Calif. Police Department. Information Bulletin. Domestic Violence Policy 1984.

Banks, Hermon. The Police Role In Domestic Violence v. Family Dispute." Law and Order 32 (April 1984): 55-58.

Bell, Daniel J. "The Police Response to Domestic Violence: A Replication Study." Police Studies 7 (Fall 1984): 136-144.

Bell, Daniel J. "The Police Response to Domestic Violence. An Exploratory Study." Police Studies 7 (Spring 1984): 23-30.

Blevins, Lee (Lieutenant, El Cerrito Police Dept). "Domestic Violence and Restraining Orders." California Police Recorder 2 (April 1984): 25-30.

Bowker, Lee H. "Battered Wives and the Police: A National Study of Usage and Effectiveness." Police Studies 7 (Summer 1984): 84-93.

Brown, Stephen E. 1984. "Police Responses to Wife Beating: Neglect of a Crime of Violence." Journal of Criminal Justice 12(3): 277-288.

California. Attorney General. Domestic Violence Prevention Handbook. Sacramento, Calif.: Crime Prevention Center, 1983.

Ellis, Jane W. "Prosecutorial Discretion to Charge in Cases of Spousal Assault: A Dialogue." The Journal of Criminal Law & Criminology 75(Spring 1984): 56-102.

Family Violence Project, San Francisco County District Attorney. Domestic Violence. A Training Curriculum on Law Enforcement Intervention 1984.

Gilroy, Calif. Police Department. Domestic Violence Policy Temporary Restraining Orders. (General Order #81-1) 1981.

Hanewicz, Wayne B., et al. 1982. "Improving the Linkages Between Domestic Violence Referral Agencies and the Police: A Research Note." Journal of Criminal Justice 10(6): 493-503.

Jolin, Annette. "Domestic Violence Legislation: An Impact Assessment." Journal of Police Science and Administration 11 (December 1983): 451-456.

Loving, Nancy, and Quirk, Michael. "Spouse Abuse: The Need for New Law Enforcement Responses." FBI Law Enforcement Bulletin 51 (December 1982): 10-16.

McLennan, Bill. "Handling the Disturbance Call." Police Product News 8 (January 1984): 38-41.

San Francisco, Calif. Police Department. Domestic Violence. (General Order #I-6) 1983.

Sherman, Lawrence W., and Berk, Richard A. The Minneapolis Domestic Violence Experiment. Washington: Police Foundation Reports, 1984.

Sunnyvale, Calif. Public Safety Department. Police Services. Temporary Restraining Orders Re. Domestic Violence. (General Order, chapter 3, part 5) 1983.

U.S. Attorney General. Task Force on Family Violence. Final Report. Washington: Dept. of Justice, 1984.

Walnut Creek, Calif. Police Department. Domestic Violence. (Directive #83D-29) 1984.

Walter, James D. "Police in the Middle. A Study of Small City Police Intervention in Domestic Disputes." Journal of Police Science and Administration 9 (September 1981): 243-260.

Senate Bill No. 1472

CHAPTER 1609

An act to add Section 13519 to, and to add and repeal Title 5 (commencing with Section 13700) to Part 4 of, the Penal Code, relating to training of peace officers, and making an appropriation therefor.

[Approved by Governor September 29, 1984. Filed with
Secretary of State September 30, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1472, Watson. Domestic violence: law enforcement training.

Existing law provides for the issuance of protective court orders in cases involving domestic violence. Existing law also requires that peace officers receive training in first aid, child abuse, and sexual assault cases in order to obtain the basic certificate issued by the Commission on Peace Officer Standards and Training.

This bill would require peace officers to receive specified training in responding to domestic violence calls. The bill would require that the course of instruction, the learning and performance objectives, and the standards for the training be developed by the Commission on Peace Officer Standards and Training, in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence, as specified. The bill would appropriate \$40,000 from the Peace Officers Training Fund for support of the commission for expenses of convening the necessary experts and \$25,000 to the Department of Justice for compilation of information relating to domestic violence. Additionally, the bill would provide procedures for law enforcement officers in responding to domestic violence-related calls and make other provisions relating to domestic violence.

This bill would impose a state-mandated local program by requiring local law enforcement agencies to adopt and comply with specified procedures with respect to domestic violence incidents, to maintain records of protection orders issued in domestic violence incidents, and to compile and record by categories all domestic violence-related calls received.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the

constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill, in compliance with Section 2231.5 of the Revenue and Taxation Code, would also repeal, as of January 1, 1991, the provisions contained in the bill for which state reimbursement is required.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that:

(a) A significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Research shows that 35 to 40 percent of all assaults are related to domestic violence.

(b) The reported incidence of domestic violence represents only a portion of the total number of incidents of domestic violence.

(c) Twenty-three percent of the deaths of law enforcement officers in the line of duty results from intervention by law enforcement officers in incidents of domestic violence.

(d) Domestic violence is a complex problem affecting families from all social and economic backgrounds.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the Legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the Legislature to hold individual peace officers liable.

SEC. 2. Section 13519 is added to the Penal Code, to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, report writing, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 5 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission. This training shall be completed no later than January 1, 1989.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but

shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars (\$40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Title 5 (commencing with Section 13700) is added to Part 4 of the Penal Code, to read:

TITLE 5. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

CHAPTER 1. GENERAL PROVISIONS

13700. As used in this title:

(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 another.

(b) "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 has or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

13701. Every law enforcement agency in the this state shall develop, adopt, and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as

any other request for assistance where violence has occurred. These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (a) Felony arrests.
- (b) Misdemeanor arrests.
- (c) Use of citizen arrests.
- (d) Verification and enforcement of temporary restraining orders when (1) the suspect is present and (2) when the suspect has fled.
- (e) Verification and enforcement of stay-away orders.
- (f) Cite and release policies.
- (g) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (h) Writing of reports.
- (i) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

In the development of these policies, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

CHAPTER 2. RESTRAINING ORDERS

13710. Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, 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.

CHAPTER 3. STAY-AWAY ORDERS

13720. A stay-away order may be issued by the court in a criminal case involving domestic violence where, with notice to the defendant and upon an affidavit, a likelihood of harassment of the victim by the defendant has been demonstrated to the satisfaction of the court. Such an order may remain in effect as long as the suspect is under the court's jurisdiction, including any sentence or probationary period.

CHAPTER 4. DATA COLLECTION

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are

involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

CHAPTER 5. TERMINATION

13731. This title shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 4. The sum of twenty-five thousand dollars (\$25,000) is hereby appropriated from the General Fund to the Department of Justice for the purposes of Section 13730 of the Penal Code.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

Assembly Bill No. 1599

CHAPTER 758

An act to amend Section 546 of the Code of Civil Procedure, relating to court orders.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1599, Speier. Restraining orders: domestic violence.

Existing law authorizes the issuance of restraining orders against domestic violence, as specified.

This bill, operative July 1, 1988, would require the designation by the presiding judge of the superior court of at least one judge, commissioner, or referee in each county to be available, as specified, to orally issue, by telephone or otherwise, emergency protective orders against domestic violence, as specified, which would be authorized to be issued at all times when the court is not in session. Because it would impose new duties on police and sheriffs' officers, including reducing the orders to writing, it would establish a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. In the case in which a temporary restraining order is granted without notice, the matter shall be made

returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered person resides.

(4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the

date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the next day of judicial business following the day of its issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 3. This act shall become operative on July 1, 1988.

O

Assembly Bill No. 416

CHAPTER 1362

An act to amend Section 12028.5 of the Penal Code, relating to weapons.

[Approved by Governor September 29, 1987. Filed with Secretary of State September 29, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AB 416, Mojonnier. Domestic violence: seizure of firearms.

Existing law provides that a sheriff, undersheriff, deputy sheriff, police officer of a city, or police officer member of a University of California Police Department, or member of a California State University Police Department, who is at the scene of an incident of domestic violence, as defined, involving a threat to human life or a physical assault, may temporarily take custody of any firearm, as defined, in plain sight or discovered pursuant to a consensual search and is required to give the owner or possessor a receipt therefor. Existing law also provides for the return of firearms to their owners and for the sale and destruction of firearms under specified circumstances and in accordance with specified procedures.

This bill would add marshals and deputy marshals to the list of peace officers authorized to take custody of firearms at the scene of an incident of domestic violence and make a related, conforming, change as to the sale and destruction of those firearms.

The bill would also provide for attorney's fees in civil actions and proceedings for the return of firearms or ammunition seized by a state or local law enforcement agency and not returned within 72 hours.

This bill would impose upon a state-mandated local program by imposing new duties on local officials with respect to the seizure of weapons in domestic violence cases.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

This bill would incorporate additional changes in Section 12028.5 of the Penal Code, proposed by AB 798, to be operative only if both

bills are chaptered and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "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, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (d) of Section 830.2, and a member of a California State University Police Department, as defined in subdivision (e) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm described in Section 12001 in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars (\$1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use

for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department, or by a marshal's office, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 2. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "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, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (d) of Section 830.2, and a member of a California State University Police Department, as defined in subdivision (e) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars (\$1,000), to the prevailing party.

Assembly Bill No. 2250

CHAPTER 1230

An act to amend Sections 13700 and 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2250, Speier. Domestic violence.

Existing law requires every law enforcement agency to develop, adopt, and implement written policies and standards for officers' response to domestic violence calls, as specified, maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, as specified, and develop a system for recording all domestic violence-related calls for assistance made to the Department of Justice. Existing law also requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code, as specified.

This bill would require that domestic violence-related calls for assistance, for the purposes of these provisions, be supported with the written incident report form developed under the above provisions, identifying the domestic violence incident.

Existing law defines "domestic violence" for this purpose as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

This bill would redefine "domestic violence" for this purpose, as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, specified cohabitant, or former cohabitant in the case of adults, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, thereby imposing a state-mandated local program by expanding the scope of the duties of local law enforcement with regard to recording and providing written incident reports on domestic violence-related calls.

This bill would incorporate additional changes in Section 13700 of the Penal Code proposed by AB 224, to be operative only if AB 224 and this bill are both chaptered and become effective January 1, 1994, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000

statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 13700 of the Penal Code is amended to read:
13700. As used in this title:

(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.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or 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 the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, or any peace officer of the California State University Police Department, as defined in subdivision (d) of Section 830.2.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 1.5. Section 13700 of the Penal Code is amended to read:
13700. As used in this title:

(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.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or 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 the relationship.

(c) "Officer" means 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 Section 830.2, or a housing authority patrol officer, as defined in subdivision (d) of Section 830.31.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 2. Section 13730 of the Penal Code is amended to read:

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 13700 of the Penal Code proposed by both this bill and AB 224. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 13700 of the Penal Code, and (3) this bill is enacted after AB 224, in which case Section 1 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Assembly Bill No. 224

CHAPTER 1229

An act to amend Sections 6240 and 6256 of the Family Code, and to amend Section 13700 of the Penal Code, relating to domestic violence.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

AB 224, Speier. Domestic violence: protective orders.

Existing law authorizes a judge, commissioner, or referee designated to issue emergency protective orders to issue an ex parte emergency protective order when a police or sheriff's officer or a peace officer of the Department of Parks and Recreation asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence, as specified, and prescribes the duties of the requesting officer in this regard. Existing law also authorizes a designated judge, commissioner, or referee to issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, as specified, and prescribes the duties of the requesting officer in this regard. Under existing law, these orders expire within 2 court days.

This bill would authorize police and sheriff's officers, peace officers of the California Highway Patrol, the California State Police, the University of California Police Department, the California State University and College Police Departments, and the Department of Parks and Recreation, and specified housing authority patrol officers to request these orders. It would provide that these orders expire within 5 court days, but no later than 7 calendar days.

Existing law requires every law enforcement agency to develop, adopt, and implement written policies and standards for officers' response to domestic violence calls, as specified, to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, as specified, and to develop a system for recording all domestic violence-related calls for assistance made to the Department of Justice. Existing law defines "officer" for these purposes.

This bill would revise the definition of "officer" for these purposes, for consistency with the officers authorized to request emergency protective orders, as described above.

This bill would incorporate additional changes in Section 13700 of the Penal Code proposed by AB 2250, to be operative only if AB 2250 and this bill are both chaptered and become effective January 1, 1994,

and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 6240 of the Family Code, as added by Section 154 of Chapter 219 of the Statutes of 1993, is amended to read:

6240. As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the California Highway Patrol.

(4) A peace officer of the California State Police.

(5) A peace officer of the University of California Police Department.

(6) A peace officer of the California State University and College Police Departments.

(7) A peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code.

(8) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

SEC. 2. Section 6256 of the Family Code, as added by Section 154 of Chapter 219 of the Statutes of 1993, is amended to read:

6256. An emergency protective order expires at the earlier of the following times:

(a) The close of judicial business on the fifth court day following the day of its issuance.

(b) The seventh calendar day following the day of its issuance.

SEC. 3. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(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.

(b) "Domestic violence" is abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

(c) "Officer" means 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 Section 830.2, or a housing authority patrol officer, as

defined in subdivision (d) of Section 830.31.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 4. Section 13700 of the Penal Code is amended to read:
13700. As used in this title:

(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.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, person with whom the suspect is having or has had a consensual sexual relationship, person with whom the suspect lives or has lived, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

(c) "Officer" means 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 Section 830.2, or a housing authority patrol officer, as defined in subdivision (d) of Section 830.31.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 5. Section 4 of this bill incorporates amendments to Section 13700 of the Penal Code proposed by both this bill and AB 2250. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 13700 of the Penal Code, and (3) this bill is enacted after AB 2250, in which case Section 3 of this bill shall not become operative.

AMENDED IN ASSEMBLY MAY 3, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 1850

Introduced by Assembly Member Nolan

March 5, 1993

An act to amend ~~Section 5530 of the Family Code, relating to domestic violence~~ Sections 836 and 853.6 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Nolan. ~~Domestic violence~~
Protective orders.

(1) *Existing law provides for protective orders regarding family law matters, including the prevention of domestic violence, and for protective orders relating to the intimidation or dissuasion of a witness or victim in a criminal matter. Existing law specifies the circumstances under which a peace officer is authorized to arrest a person with or without a warrant, and requires a peace officer who is called out on a domestic call to make a good faith effort to inform the victim of the right to make a citizen's arrest.*

This bill would require a peace officer to arrest, without a warrant, and take into custody a person against whom a protective order as described above has been issued if the officer has reasonable cause to believe that the person has notice of the order and has violated the order, whether or not the violation occurred in the officer's presence, as specified. By requiring increased duties of peace officers, the bill would impose a state-mandated local program.

(2) *Existing law provides that a person arrested for an offense declared to be a misdemeanor must be taken before a magistrate, upon demand, or released according to specified*

procedures. Persons arrested for a misdemeanor violation of a protective court order involving domestic violence, however, must be taken before a magistrate and may not be released, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume, or that the safety of persons or property would not be immediately endangered.

This bill would remove the discretion accorded the arresting officer to determine that a person arrested for a violation of a protective court order involving domestic violence may be released.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Under existing law, a temporary restraining order may be granted with or without notice to restrain any person upon an affidavit which shows reasonable proof of a past act or acts of abuse, as specified.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no yes. State-mandated local program: no yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5530 of the Family Code is
- 2 amended to read:
- 3 5530. A temporary restraining order may be granted
- 4 pursuant to this division, with or without notice, to
- 5 restrain any person upon an affidavit which, to the

1 satisfaction of the court, shows reasonable proof of a past
2 act or acts of abuse for the purpose of preventing a
3 recurrence of domestic violence and securing a period of
4 separation of the persons involved. The order may be
5 granted in the manner provided in Part 4 (commencing
6 with Section 240) of Division 2. Section 836 of the Penal
7 Code is amended to read:

8 836. (a) A peace officer may arrest a person in
9 obedience to a warrant, or, pursuant to the authority
10 granted to him or her by Chapter 4.5 (commencing with
11 Section 830) of Title 3 of Part 2, without a warrant, may
12 arrest a person whenever any of the following
13 circumstances occur:

14 (1) The officer has reasonable cause to believe that the
15 person to be arrested has committed a public offense in
16 the officer's presence.

17 (2) The person arrested has committed a felony,
18 although not in the officer's presence.

19 (3) The officer has reasonable cause to believe that the
20 person to be arrested has committed a felony, whether or
21 not a felony, in fact, has been committed.

22 (b) Any time a peace officer is called out on a domestic
23 call, it shall be mandatory that the officer make a good
24 faith effort to inform the victim of his or her right to make
25 a citizen's arrest. This information shall include advising
26 the victim how to safely execute the arrest.

27 (c) (1) *When a peace officer has reasonable cause to*
28 *believe that a person against whom a protective order has*
29 *been issued under Section 2035, 2045, 5530, 5550, 5650,*
30 *7710, 7720, or 7750 of the Family Code or Section 136.2 of*
31 *this code has notice of the order and has committed any*
32 *act in violation of the order, the officer shall arrest the*
33 *person without a warrant and take that person into*
34 *custody whether or not the violation occurred in the*
35 *presence of the arresting officer. The officer shall, as soon*
36 *as possible after the arrest, confirm with the appropriate*
37 *authorities that a true copy of the protective order has*
38 *been filed, unless the victim provides the officer with a*
39 *copy of the protective order.*

40 (2) *The person against whom a protective order has*

1 *been issued shall be deemed to have notice of the order*
2 *if either the victim presents to the officer proof of service*
3 *of the order, the officer confirms with the appropriate*
4 *authorities that a true copy of the proof of service is on*
5 *file, or the person against whom the protective order was*
6 *issued was present at the protective order hearing or was*
7 *informed by a peace officer of the contents of the*
8 *protective order.*

9 (3) *In situations where mutual protective orders have*
10 *been issued under Section 2035, 2045, 5530, 5550, 5650,*
11 *7710, 7720, or 7750 of the Family Code, the duty to arrest*
12 *extends only to those persons who are reasonably*
13 *believed to have committed an assault. The peace officer*
14 *shall make reasonable efforts to identify, and shall arrest,*
15 *the primary physical aggressor involved in the incident.*
16 *The primary physical aggressor is the person determined*
17 *to be the most significant, rather than the first, aggressor.*
18 *In identifying the primary physical aggressor, an officer*
19 *shall consider (A) the intent of the law to protect victims*
20 *of domestic violence from continuing abuse, (B) the*
21 *comparative extent of injuries inflicted or serious threats*
22 *creating fear of physical injury, and (C) the history of*
23 *domestic violence between the persons involved.*

24 SEC. 2. *Section 853.6 of the Penal Code is amended to*
25 *read:*

26 853.6. (a) *In any case in which a person is arrested for*
27 *an offense declared to be a misdemeanor, including a*
28 *violation of any city or county ordinance, and does not*
29 *demand to be taken before a magistrate, that person*
30 *shall, instead of being taken before a magistrate, be*
31 *released according to the procedures set forth by this*
32 *chapter. If the person is released, the officer or superior*
33 *shall prepare in duplicate a written notice to appear in*
34 *court, containing the name and address of the person, the*
35 *offense charged, and the time when, and place where,*
36 *the person shall appear in court. If, pursuant to*
37 *subdivision (i), the person is not released prior to being*
38 *booked and the officer in charge of the booking or his or*
39 *her superior determines that the person should be*
40 *released, the officer or superior shall prepare a written*

1 notice to appear in a court.

2 In any case in which a person is arrested for a
3 misdemeanor violation of a protective court order
4 involving domestic violence, as defined in subdivision (b)
5 of Section 13700, the person shall be taken before a
6 magistrate instead of being released according to the
7 procedures set forth in this chapter ; ~~unless the arresting~~
8 ~~officer determines that there is not a reasonable~~
9 ~~likelihood that the offense will continue or resume or that~~
10 ~~the safety of persons or property would be imminently~~
11 ~~endangered by release of the person arrested.~~

12 Nothing in this subdivision shall be construed to affect
13 a defendant's ability to be released on bail or on his or her
14 own recognizance.

15 (b) Unless waived by the person, the time specified in
16 the notice to appear shall be at least 10 days after arrest
17 if the duplicate notice is to be filed by the officer with the
18 magistrate.

19 (c) The place specified in the notice shall be the court
20 of the magistrate before whom the person would be
21 taken if the requirement of taking an arrested person
22 before a magistrate were complied with, or shall be an
23 officer authorized by that court to receive a deposit of
24 bail.

25 (d) The officer shall deliver one copy of the notice to
26 appear to the arrested person, and the arrested person,
27 in order to secure release, shall give his or her written
28 promise to appear in court as specified in the notice by
29 signing the duplicate notice which shall be retained by
30 the officer. Upon the signing of the duplicate notice, the
31 arresting officer shall immediately release the person
32 arrested from custody.

33 (e) The officer shall, as soon as practicable, file the
34 duplicate notice, as follows:

35 (1) It shall be filed with the magistrate if the offense
36 charged is an infraction.

37 (2) It shall be filed with the magistrate if the
38 prosecuting attorney has previously directed the officer
39 to do so.

40 (3) The duplicate notice and underlying police

1 reports in support of the charge or charges shall be filed
2 with the prosecuting attorney in cases other than those
3 specified in paragraphs (1) and (2).

4 If the duplicate notice is filed with the prosecuting
5 attorney, he or she, within his or her discretion, may
6 initiate prosecution by filing the notice or a formal
7 complaint with the magistrate specified in the duplicate
8 notice within 25 days from the time of arrest. If the
9 prosecution is not to be initiated, the prosecutor shall
10 send notice to the person arrested at the address on the
11 notice to appear. The failure by the prosecutor to file the
12 notice or formal complaint within 25 days of the time of
13 the arrest shall not bar further prosecution of the
14 misdemeanor charged in the notice to appear. However,
15 any further prosecution shall be preceded by a new and
16 separate citation or an arrest warrant.

17 Upon the filing of the notice with the magistrate by the
18 officer, or the filing of the notice or formal complaint by
19 the prosecutor, the magistrate may fix the amount of bail
20 which in his or her judgment, in accordance with Section
21 1275, is reasonable and sufficient for the appearance of
22 the defendant and shall indorse upon the notice a
23 statement signed by him or her in the form set forth in
24 Section 815a. The defendant may, prior to the date upon
25 which he or she promised to appear in court, deposit with
26 the magistrate the amount of bail set by the magistrate.
27 At the time the case is called for arraignment before the
28 magistrate, if the defendant does not appear, either in
29 person or by counsel, the magistrate may declare the bail
30 forfeited, and may, in his or her discretion, order that no
31 further proceedings shall be had in the case, unless the
32 defendant has been charged with violation of Section
33 374.3 or 374.7 of this code or of Section 11357, 11360, or
34 13002 of the Health and Safety Code, or a violation
35 punishable under Section 5008.7 of the Public Resources
36 Code, and he or she has previously been convicted of a
37 violation of that section or a violation which is punishable
38 under that section, except in cases where the magistrate
39 finds that undue hardship will be imposed upon the
40 defendant by requiring him or her to appear, the

1 magistrate may declare the bail forfeited and order that
2 no further proceedings be had in the case.

3 Upon the making of the order that no further
4 proceedings be had, all sums deposited as bail shall
5 immediately be paid into the county treasury for
6 distribution pursuant to Section 1463.

7 (f) No warrant shall be issued for the arrest of a person
8 who has given a written promise to appear in court,
9 unless and until he or she has violated that promise or has
10 failed to deposit bail, to appear for arraignment, trial, or
11 judgment or to comply with the terms and provisions of
12 the judgment, as required by law.

13 (g) The officer may book the arrested person prior to
14 release or indicate on the citation that the arrested
15 person shall appear at the arresting agency to be booked
16 or indicate on the citation that the arrested person shall
17 appear at the arresting agency to be fingerprinted prior
18 to the date the arrested person appears in court. If it is
19 indicated on the citation that the arrested person shall be
20 booked or fingerprinted prior to the date of the person's
21 court appearance, the arresting agency at the time of
22 booking or fingerprinting shall provide the arrested
23 person with verification of the booking or fingerprinting
24 by either making an entry on the citation or providing
25 the arrested person a verification form established by the
26 arresting agency. If it is indicated on the citation that the
27 arrested person is to be booked or fingerprinted, the
28 magistrate, judge, or court shall, before the proceedings
29 begin, order the defendant to provide verification that he
30 or she was booked or fingerprinted by the arresting
31 agency. If the defendant cannot produce the verification,
32 the magistrate, judge, or court shall require that the
33 defendant be booked or fingerprinted by the arresting
34 agency before the next court appearance, and that the
35 defendant provide the verification at the next court
36 appearance unless both parties stipulate that booking or
37 fingerprinting is not necessary.

38 (h) A peace officer shall use the written notice to
39 appear procedure set forth in this section for any
40 misdemeanor offense in which the officer has arrested a

1 person without a warrant pursuant to Section 836 or in
2 which he or she has taken custody of a person pursuant
3 to Section 847.

4 (i) Whenever any person is arrested by a peace officer
5 for a misdemeanor, that person shall be released
6 according to the procedures set forth by this chapter
7 unless one of the following is a reason for nonrelease, in
8 which case the arresting officer may release the person,
9 or the arresting officer shall indicate, on a form to be
10 established by his or her employing law enforcement
11 agency, which of the following was a reason for the
12 nonrelease:

13 (1) The person arrested was so intoxicated that he or
14 she could have been a danger to himself or herself or to
15 others.

16 (2) The person arrested required medical
17 examination or medical care or was otherwise unable to
18 care for his or her own safety.

19 (3) The person was arrested under one or more of the
20 circumstances listed in Sections 40302 and 40303 of the
21 Vehicle Code.

22 (4) There were one or more outstanding arrest
23 warrants for the person.

24 (5) The person could not provide satisfactory
25 evidence of personal identification.

26 (6) The prosecution of the offense or offenses for
27 which the person was arrested, or the prosecution of any
28 other offense or offenses, would be jeopardized by
29 immediate release of the person arrested.

30 (7) There was a reasonable likelihood that the offense
31 or offenses would continue or resume, or that the safety
32 of persons or property would be imminently endangered
33 by release of the person arrested.

34 (8) The person arrested demanded to be taken before
35 a magistrate or refused to sign the notice to appear.

36 (9) There is reason to believe that the person would
37 not appear at the time and place specified in the notice.
38 The basis for this determination shall be specifically
39 stated.

40 The form shall be filed with the arresting agency as

1 soon as practicable and shall be made available to any
2 party having custody of the arrested person, subsequent
3 to the arresting officer, and to any person authorized by
4 law to release him or her for custody before trial.

5 (j) Once the arresting officer has prepared the written
6 notice to appear and has delivered a copy to the person
7 arrested, the officer shall deliver the remaining original
8 and all copies as provided by subdivision (e).

9 Any person, including the arresting officer and any
10 member of the officer's department or agency, or any
11 peace officer, who alters, conceals, modifies, nullifies, or
12 destroys, or causes to be altered, concealed, modified,
13 nullified, or destroyed, the face side of the remaining
14 original or any copy of a citation that was retained by the
15 officer, for any reason, before it is filed with the
16 magistrate or with a person authorized by the magistrate
17 to receive deposit of bail, is guilty of a misdemeanor.

18 If, after an arrested person has signed and received a
19 copy of a notice to appear, the arresting officer
20 determines that, in the interest of justice, the citation or
21 notice should be dismissed, the arresting agency may
22 recommend, in writing, to the magistrate that the
23 charges be dismissed. The recommendation shall cite the
24 reasons for the recommendation and shall be filed with
25 the court.

26 If the magistrate makes a finding that there are
27 grounds for dismissal, the finding shall be entered in the
28 record and the charges dismissed.

29 Under no circumstances shall a personal relationship
30 with any officer, public official, or law enforcement
31 agency be grounds for dismissal.

32 (k) For purposes of this section, the term "arresting
33 agency" includes any other agency designated by the
34 arresting agency to provide booking or fingerprinting
35 services.

36 *SEC. 3. Notwithstanding Section 17610 of the*
37 *Government Code, if the Commission on State Mandates*
38 *determines that this act contains costs mandated by the*
39 *state, reimbursement to local agencies and school*
40 *districts for those costs shall be made pursuant to Part 7*

1 (commencing with Section 17500) of Division 4 of Title
2 2 of the Government Code. If the statewide cost of the
3 claim for reimbursement does not exceed one million
4 dollars (\$1,000,000), reimbursement shall be made from
5 the State Mandates Claims Fund. Notwithstanding
6 Section 17580 of the Government Code, unless otherwise
7 specified in this act, the provisions of this act shall become
8 operative on the same date that the act takes effect
9 pursuant to the California Constitution.

APPLICATION FOR EMERGENCY PROTECTIVE ORDER (CLETS)

Attachment G

LAW ENFORCEMENT CASE NUMBER:

(Name): _____ has provided the information in items 1-5.

1. PERSON TO BE PROTECTED (name): _____
(Insert in item 1 names of all persons to be protected by this order.) _____

2. PERSON TO BE RESTRAINED (name): _____

Sex: ☐ M ☐ F Ht.: _____ Wt.: _____ Hair Color: _____ Eye Color: _____ Race: _____ Age: _____ Date of birth: _____

3. The events that cause the protected person to fear immediate and present danger of domestic violence or child abuse are:
(Give facts and dates. Specify weapons.): _____

4. ☐ The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the following address: _____
5. ☐ The person to be protected has minor children in common with the person to be restrained, *no custody order exists*, and a temporary custody order is requested because of the facts alleged in item 3.
6. ☐ A child welfare worker or probation officer has advised the undersigned that a juvenile court petition ☐ will be filed ☐ will NOT be filed.
7. Phone call to (name of judicial officer): _____ on (date): _____ at (time): _____
☐ The judicial officer granted the Emergency Protective Order that follows.

By _____
(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____

EMERGENCY PROTECTIVE ORDER

8. THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5 P.M. ON: _____

To protected person: If you need protection for a longer period of time, you must request permanent protective orders at (court name and address): _____

INSERT DATE OF FIFTH FULL COURT DAY
DO NOT COUNT DAY THE ORDER IS GRANTED

9. Reasonable grounds appear that an immediate danger of domestic violence or child abuse exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence or child abuse.
10. To restrained person (name): _____
- a. ☐ You must not contact, molest, attack, strike, threaten, sexually assault, batter, telephone, or otherwise harass or disturb the peace of each person named in item 1.
- b. ☐ You must ☐ stay away at least _____ yards from ☐ move out immediately from (address): _____
- c. ☐ You must stay away at least _____ yards from each person named in item 1.
11. ☐ (Name): _____ is given temporary custody of the following minor children (names and ages): _____

PROOF OF SERVICE

1. Person served (name): _____
2. By personally delivering copies to the person served, as follows: Date: _____ Time: _____
Address: _____
3. At the time of service I was at least 18 years of age and not a party to this cause.
4. Name, address, and telephone number of server (this does not have to be home telephone number or address): _____

☐ California sheriff, marshal, or constable

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF SERVER)

(SIGNATURE OF SERVER)

(See reverse for important notices)

EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. PENAL CODE SECTION 12021g PROHIBITS ANY PERSON SUBJECT TO A RESTRAINING ORDER FROM PURCHASING OR ATTEMPTING TO PURCHASE OR OTHERWISE OBTAIN A FIREARM. SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. UNDER PENAL CODE SECTION 1710(b), "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."

To the Restrained Person: This order will last until the date and time in item 8 on the reverse. The protected person may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

A la bajo Persona Restricción: Esta orden durará hasta la fecha y hora indicadas en el punto 8 al reverso. La persona protegida puede, sin embargo, obtener una orden de restricción (interdicto) más permanente cuando la corte abra. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. El abogado debe ser consultado sin pérdida de tiempo para que él o ella le pueda ayudar a responder a la orden.

To the Protected Person: This order will last only until the date and time noted in item 8 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address on the reverse, when it opens, or you should apply to the court in the county where you live if it is a different county and the violence is likely to occur there. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address on the reverse, or if there is a juvenile dependency action pending you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

A la Persona bajo Protección: Esta orden durará sólo hasta la fecha y hora indicadas en el punto 8 al reverso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada al reverso cuando la corte abra, o deberá hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. Usted puede solicitar la orden de protección gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada al reverso o, si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés Welfare and Institutions Code. Usted puede consultar a un abogado en conexión con su solicitud para cualesquiera órdenes futuras de la corte. El abogado debe ser consultado sin pérdida de tiempo para que él o ella le pueda ayudar a hacer su solicitud. No es necesario que un abogado le represente para obtener la orden protectora.

To Law Enforcement: Penal Code section 13710(c) provides that, upon request, law enforcement shall serve the party to be restrained at the scene of a domestic violence incident or at any time the restrained party is in custody. The officer who requested the emergency protective order, while on duty, shall carry copies of the order. The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A law enforcement officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

This emergency protective order is effective when made. This order shall expire not later than the close of judicial business on the fifth day of judicial business following the day of its issue. An emergency protective order is also available to prevent the occurrence of child abuse.