

## SAN DIEGO POLICE DEPARTMENT PROCEDURE

**DATE:** 08/29/2014

**NUMBER:** 4.04 – LEGAL

**SUBJECT:** DOMESTIC VIOLENCE

**RELATED POLICY:** [4.05](#)

**ORIGINATING DIVISION:** INVESTIGATIONS I

**NEW PROCEDURE:**

**PROCEDURAL CHANGE:**

**SUPERSEDES:** DP 4.04 – 01/10/2014

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### **I. PURPOSE**

This Department procedure establishes guidelines for investigating domestic violence incidents and the enforcement of laws related to them.

### **II. SCOPE**

This procedure applies to all sworn members of the Department.

### **III. BACKGROUND**

- A. PC 13701(b) mandates that all police departments shall develop, adopt, and implement written policies that "shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed."
- B. Domestic violence is alleged criminal conduct, and a request for assistance involving domestic violence is the same as any other request for assistance where violence has occurred. As described in PC 13701(a), generally, domestic violence is violence that occurs between, spouses, co-parents or partners. The victims are those with whom an intimate relationship has been formed. (See the Definitions section for further explanation.)

- C. In 2008, California voters passed Proposition 9, a Constitutional Amendment known as “Marsy’s Law,” codified in Penal Code section 679.026. Marsy’s Law creates a number of personally-held Constitutional rights for victims of crime and expands the definition of victim. (See Definitions)
- D. A domestic violence incident may result in a violation of one or more of the following sections of the Penal Code (PC):
  - 1. 273.5 PC - Willfully inflicting corporal injury upon the suspect's current or former spouse, current or former cohabitant, current fiancé or fiancée, mother or father of the offender's child, or a person with whom the suspect currently has, or previously had, a dating or engagement relationship. (Requires visible injury)
  - 2. 243(e)(1) PC - Domestic Violence - Misdemeanor Battery. Battery committed against a spouse or former spouse; a person with whom the suspect is cohabitating; a person who is the parent of the suspect's child; a fiancé or fiancée; or a person with whom the suspect currently has, or previously had, a dating or engagement relationship. No visible injury is required.
  - 3. 240 PC - Assault - An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.
  - 4. 166 (c)(1) PC - Violation of Criminal Protective Order (CPO)
  - 5. 29825(a) PC - Owning or possessing a firearm while subject to a Domestic Violence Protective Order
  - 6. 594(b) PC - Vandalism (even if community property)
  - 7. 591 PC - Malicious destruction of a telephone line
  - 8. 591.5 PC - Obstructing use of a cell phone to call for help
  - 9. 418 PC - Forceful entry into the home of another
  - 10. 417(a) PC - Brandishing a deadly weapon or firearm
  - 11. 136.1 PC - Preventing or dissuading, or attempting to prevent or dissuade, a victim or witness from testifying or reporting a crime
  - 12. 245(a)(1) PC - An assault upon the person of another with a deadly weapon or instrument other than a firearm

13. 245(a)(4) PC- An assault upon the person of another by any means of force likely to produce great bodily injury
14. 422 PC - Criminal threats. (Can be made via phone, fax, computer, pager, or other electronic device)
15. 646.9 PC - Stalking
16. 597 PC - Cruelty to animals
17. 203 PC - Mayhem
18. 207 PC - Kidnapping
19. 236/237 PC - False imprisonment
20. 262 PC - Spousal rape
21. 653m PC - Threatening or harassing phone calls
22. 273.6 PC - Violation of any domestic violence protective or restraining

#### **IV. DEFINITIONS**

- A. Abuse – defined in Penal Code section 13700(a) as 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.
- B. Cohabitant – defined in Penal Code section 13700(b) as two unrelated adult persons living together for a substantial period, resulting in some permanency of relationship. Factors to consider include, but are not limited to, sexual relations between the parties while sharing the same living quarters; sharing of income or expenses; joint use or ownership of property; whether the parties hold themselves out as husband and wife; the continuity of the relationship; and, the length of the relationship.
- C. Dating Relationship – defined in Family Code section 6210 (and in Penal Code section 243(f)(10)) as frequent, intimate association primarily characterized by the expectation of affection or sexual involvement independent of financial considerations. A one time or first date is not considered a dating relationship.
- D. Domestic Violence (DV) – defined in Penal Code section 13700(b) as abuse perpetrated against an adult or a minor who is a spouse or former spouse; a cohabitант or former cohabitант; a person with whom the person has had a child; a

person with whom the person is having or has had a dating or engagement relationship. These relationships include those between same sex partners.

E. Victim – with passage of Marsy’s Law, “victim” is defined under the California Constitution, Article I, Section 28(e). A “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term “victim” *also includes* the person’s spouse, parents, children, siblings or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term “victim” *does not include* a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

## **V. PROCEDURES**

A. The Domestic Violence Unit will handle all DV follow-up investigations, except:

1. Property Crimes

The area stations will handle all domestic violence property crimes such as 594 PC, vandalism; 459 PC, burglary; 487(a) PC, grand theft; and 10851 VC, auto theft, except for the following, which will be handled by the DV Unit:

- (a) The victim or a witness observed the suspect commit the property crime and there is a documented history of domestic violence involving the suspect and victim.
- (b) Property crimes committed in conjunction with a domestic violence incident that included violence or threats of violence toward the victim or family.

2. Juvenile Suspect(s)

Area stations will handle all DV crimes involving juvenile suspects.

B. Physical Arrests for Domestic Violence Incidents

- 1. The San Diego Police Department encourages that a physical arrest be made when there is probable cause and legal authority to make an arrest. Dual arrests, however, are discouraged.
- 2. A physical arrest shall be made when there is probable cause to believe that a felony has occurred.

3. A physical arrest of a suspect shall be made if a misdemeanor has occurred in the officer's presence.

C. Arrests for Crimes Not Occurring in the Officer's Presence

1. PC 836(c) provides that officers *shall* make an arrest and take a suspect into custody, without a warrant, for a misdemeanor DV Protective or Restraining Order violation, whether or not the violation occurred in the officer's presence, when probable cause exists that the suspect has notice of the order and has violated the order.
2. PC 836(d) says "officers *may* make an arrest" for an assault or battery when certain criteria are satisfied.
  - a. Pursuant to this procedure Department policy is that officers relying on PC 836(d) *shall* arrest a suspect when a suspect commits a misdemeanor assault or battery against a current or former spouse; fiancé or fiancée; current or former cohabitant; a person with whom the suspect currently is having or has previously had an engagement or dating relationship; a person with whom suspect has parented a child; a child of the suspect; a child of a person in any of the above categories; any other person related to the suspect by consanguinity or affinity within the second degree; or any person who is 65 years or older and who is related to the suspect by blood or legal guardianship.
  - b. Officers *may* make an arrest without a warrant where *both* of the following circumstances apply:
    - (1) The officer has probable cause to believe that the suspect committed the assault or battery, whether or not it has in fact been committed; and,
    - (2) The peace officer makes the arrest as soon as probable cause arises to believe that the suspect has committed the assault or battery, whether or not it has in fact been committed.
    - (3) PC 836 explicitly states that the officer must arrest as soon as "probable cause arises," however, there is a prohibition against warrantless arrests for stale misdemeanors.

D. Citizen's Arrests

1. PC 836(b) provides that, "Any time a peace officer is called out on a domestic violence call it shall be mandatory that the officer make a good

faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest." Such discussion shall be held out of the presence of the suspect. An officer shall not dissuade complainants from making a private person's arrest.

2. The following is the advisement drafted for use by all San Diego County law enforcement agencies:

**CITIZEN ARREST ADVICE**

"You are a victim of a Domestic Violence crime. You have a right to make a citizen's arrest within a reasonable time and as soon as circumstances permit. I (the Peace Officer) have a duty to advise you of this right. You can elect to make a citizen's arrest, or if the person is not here at this time, please call the Police Department (or Sheriff's Department) when the person returns and we will assist you in safely placing the person under citizen's arrest. You need to understand, even if the person returns, that does not guarantee the person will be taken into custody if the arrest would be in violation of the law."

E. Factors to consider in handling DV incidents

1. The existence of the elements of a crime and/or the willingness of the victim to make a private person's arrest shall be the sole factors that determine the proper method of handling the incident.
2. The following factors, for example, should **NOT** influence the officer's course of action in domestic violence incidents:
  - a. The relationship or marital status of the suspect and the victim (i.e., not married, separated, or pending divorce).
  - b. Whether or not the suspect lives on the premises with the complainant.
  - c. The existence or lack of a temporary restraining order.
  - d. The potential financial consequence of the arrest.
  - e. The complainant's history of prior complaints.
  - f. Verbal assurances that violence will cease.
  - g. The complainant's emotional state.

- h. No visible injuries.
- i. The location of the incident (i.e., public or private).
- j. Speculation that the complainant may not follow through with the criminal justice process or that the arrest may not lead to a conviction.

3. Once a suspect is arrested, officers **WILL NOT issue misdemeanor citations** due to the volatile nature of domestic violence. Suspects should be booked unless extenuating circumstances exist. If a situation arises where it becomes necessary to release a suspect with a misdemeanor citation, a field supervisor must be contacted and must approve the issuance. An example would be a suspect admitted to a hospital for a serious injury.

#### F. Investigating Domestic Violence Cases

- 1. Officers arriving at a domestic violence scene should conduct a thorough investigation and submit reports of all incidents of domestic violence and all crimes related to domestic violence.
- 2. The following steps should be included in an officer's investigation and subsequent report:
  - a. Arrival at Scene
    - (1) Determine the location and condition of victim;
    - (2) Determine if the suspect is still at the scene;
    - (3) Determine if a weapon was involved;
    - (4) Determine what, if any, crime has occurred;
    - (5) Summon an ambulance if the injuries warrant it; and,
    - (6) Separate the suspect and the witnesses (this includes removing the victim from suspect's line of sight).
  - b. Preliminary Investigation
    - (1) Interview the victim and witnesses separately, including all children at the scene;

- (2) Document all spontaneous statements of victim, witnesses, children, and suspect;
- (3) Determine victim's relationship to the suspect;
- (4) Determine the actions of the suspect and victim;
- (5) Distinguish the dominant aggressor from the victim, especially if both are injured (the dominant aggressor is the most significant rather than the first aggressor);
- (6) Note, document, and photograph the condition of the victim and suspect:
  - (a) Torn clothing
  - (b) Smeared makeup
  - (c) Evidence of injury to all parties (diagram and photograph);
- (7) Give the victim a domestic violence referral sheet;
- (8) Document any evidence of substance/chemical abuse by both parties (based either on one party's statement or by your own observations);
- (9) If the victim has a Restraining Order against the suspect, obtain a copy of the order and verify proof of service. If not, inform the victim of how to get an order;
- (10) Obtain emergency contacts, telephone numbers, email addresses, and pager numbers for the victim;
- (11) Determine if there was strangulation involved. If so, recommend follow-up medical treatment;
- (12) Conduct a lethality assessment by considering the following factors:
  - (a) Is there a history of abuse?
  - (b) Does the suspect have obsessive or possessive thoughts?
  - (c) Has the suspect threatened to kill the victim?

- (d) Does the suspect feel the victim has betrayed him/her?
- (e) Have there been prior calls to the police?
- (f) Is there increasing drug or alcohol use by the suspect?
- (g) What is the prior criminal history of the suspect?
- (h) Is the suspect depressed?
- (i) Does the suspect have specific fantasies of homicide or suicide?
- (j) Does the suspect have access to, or a fascination with, weapons?
- (k) Has the suspect abused animals or pets?
- (l) Has the suspect demonstrated rage or hostile behavior toward police or others?
- (m) Has there been an increase in the frequency or severity of the abuse (documented or not)?
- (n) Has the suspect been violent toward children?

(13) Refer the victim to the San Diego Family Justice Center;

(14) Provide the victim(s) with a Marsy's Law card.

c. Suspect Taken Into Custody

- (1) Record all spontaneous statements.
- (2) Prevent communications between the suspect and the victim/witnesses.
- (3) Record all alibi statements made by the suspect.
- (4) Advise the suspect of his/her rights.
- (5) Obtain a waiver.

- (6) Obtain statements including the history of violence in the relationship.

d. Evidence

- (1) Note the condition of the crime scene (physical surroundings in disarray).
- (2) Photograph the crime scene, if pertinent to the case.
- (3) Identify weapons/firearms.
- (4) Ensure that the victim's/suspect's injuries are photographed.
- (5) Impound and/or photograph weapons and other evidence.
- (6) Issue receipts for weapons taken into custody.

e. Medical Treatment

- (1) Transport the victim to the hospital for medical treatment, if necessary.
- (2) Obtain a copy of the medical treatment for the report.
- (3) Document all complaint of injuries.
- (4) Photograph all injuries (no matter how minor).

f. Completing Crime Reports

- (1) Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
- (2) Ensure that elements of all involved crimes are included in the report.
- (3) When reporting a domestic violence related crime, the officer will list the domestic violence crime and must circle or check the "Yes" box labeled "DV" on the face sheet of the crime report.
- (4) Document all statements from the victim, suspect, and all witnesses, including statements of child witnesses and their condition/demeanor.

- (5) Document any injuries that the victim has sustained.
- (7) Determine whether the victim was advised of a private person's arrest.
- (8) Determine whether the victim was photographed.
- (9) Determine if the officers gave the victim written information (PD-964) (13701 PC), including Marsy's Law card.
- (10) Document any history of violence.
- (11) Ensure the (two-page) DV Supplemental is attached to the crime report of all DV cases.
- (12) Advise the victim to call the DV Unit the day after the incident is reported to speak to the assigned detective. Victims should be advised to call (619) 533-3500 after 1000 hours.

3. When reporting a domestic violence incident where there is no other violation of law, the officer will prepare an incident report, labeling it "DOMESTIC VIOLENCE INCIDENT" 13730PC in the code section box and circling "Yes" in the "DV" box. These reports (13730PC) are not used to document criminal acts. Domestic violence incident reports shall be filed in the same manner as crime reports in Records Division. Officers shall complete the (one-page) Domestic Violence Supplemental and submit one with every domestic violence-related incident report.

4. Firearms and other Deadly Weapons

- a. Documenting - Officers at domestic violence scenes must document in their report if they found it necessary, for the protection of the officer, or other persons present, to inquire of the victim or alleged abuser, or both, whether a firearm or other deadly weapon was present at the location. If the officer did inquire if a firearm was present, whether that inquiry disclosed the presence of a firearm or other deadly weapon must be documented.
- b. Seizing - PC 18250 authorizes seizure of firearms and other deadly weapons from the scene of a domestic violence incident, even if they were not used in the underlying DV incident
  - (1) Peace officers at the scene of a domestic violence/family violence incident involving a threat to human life or a

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physical assault shall take temporary custody of any firearm or other deadly weapon in plain sight, or discovered pursuant to a consensual or other lawful search, as necessary for the protection of the peace officer or other persons present. Officers are reminded to exercise their authority to permit maximum protection of persons at the scene of a domestic violence incident.

- (2) Per PC 16430, “deadly weapon” means any weapon, the possession or concealed carrying of which is prohibited by any provision listed in PC 16590.
- (3) A receipt shall be given to the owner when the weapon is taken into custody.
- (4) The weapon shall be held at least 48 hours.
- (5) The weapon shall be made available for return pursuant to Penal Code section 18265 after 48 hours and not later than five business days after initial seizure, unless the weapon is retained as evidence, is held because it was illegally possessed, or is held for another reason.
- (6) If a suspect is being arrested for 422 PC, any weapon found shall be impounded as evidence.
- (7) Any firearm taken into custody and not recovered by the owner within 12 months shall be treated as a nuisance unless there is an extended hearing process.

c. Firearms Petitions - PC 18400 authorizes court petitions to retain and destroy firearms, and other deadly weapons seized from the scene of a DV incident, when a law enforcement agency has reasonable cause to believe that return of the weapon would likely result in endangering the victim or the person reporting the domestic violence., The City Attorney’s Office will file a petition in Superior Court on behalf of the agency (Domestic Violence Unit) and will send notice to the owner. The Property Room Gun Desk has the necessary documents to initiate the petition, including a declaration that must be completed by the arresting officer or detective assigned to the case.

d. The Property Room Gun Desk has the responsibility on behalf of the Department for holding and releasing impounded firearms. Domestic Violence detectives should advise the Property Room Gun Desk when they have reasonable cause to believe that return

of the weapon would likely result in endangering persons at a domestic violence scene. If such endangerment can be shown by a preponderance of the evidence, a petition can then be filed in Superior Court to determine if the weapon should be returned. In domestic violence cases, the Property Room Gun Desk should also consult Domestic Violence detectives when the return of any weapon is questionable.

- e. In some domestic violence related matters, officers may encounter a firearms case where the owner has a permit to carry one firearm concealed.
  - (1) The weapon and permit are both subject to the same impound procedures, and appropriate seizures should take place.
  - (2) A special note should be made in these cases for notification of the San Diego County Sheriff's Office or other issuing office that administers the Carry Concealed Weapon permit program.

#### G. Submitting Domestic Violence Cases

- 1. Area station personnel will submit all domestic violence reports **BEFORE THE COMPLETION OF THEIR SHIFT**. If the officer has problems submitting reports through CRMS, or the reports are handwritten, fax a copy to the Domestic Violence Unit at (619) 533-3502 and forward two copies of all domestic violence reports to the Domestic Violence Unit, MS 759.
- 2. All copies of photo CDs and/or photographs, interoffice reports, etc. should be forwarded to the Domestic Violence Unit, MS 759, at the completion of the shift. When possible, CDs should be placed in the secured box located in the sally port computer room at Headquarters, rather than sent through inter-office mail. CDs from cases for which a suspect is in custody **SHALL** be placed in the secured box prior to the end of shift
- 3. Original reports will continue to be sent to Records Division, and other physical evidence shall be impounded per Department Procedure 3.02, Impounds, Release and Disposal of Property and Evidence.

## **VI. DOMESTIC VIOLENCE UNIT**

A. The Domestic Violence Unit is staffed five days a week, Monday through Friday, 0800 to 1700 hours and is located at the San Diego Family Justice Center, 1122 Broadway, Suite 200.

1. During normal business hours, field units should contact detectives at (619) 533-3500 for assistance.
2. During business hours, a Domestic Violence Unit Sergeant SHALL be called as soon as possible at (619) 533-3500. Outside of normal business hours, the on-call Domestic Violence Sergeant SHALL be called from the scene under the following conditions to determine if a detective will be dispatched to the crime scene to assist:
  - a. There were serious injuries to the victim or suspect.
  - b. Strangulations with loss of consciousness, loss of bodily functions or other significant medical complications.
  - c. Incidents involving attempt homicides.
  - d. The victim was admitted to a hospital due to injuries caused by the suspect.
  - e. A firearm was used during the DV incident.
  - f. Deadly weapons were used resulting in visible injuries.
  - g. The victim was raped or sexually assaulted.
  - h. The case involved kidnapping or extortion.
  - i. Child abduction occurred resulting from a DV incident.
  - j. Victims or suspects employed by a law enforcement agency.
  - k. Victims or suspects employed by the City of San Diego.
  - l. The case has the potential for media attention.
  - m. **In any other situation, the officer at the scene WILL FIRST consult with a field supervisor to determine if the on-call DV sergeant should be contacted during non-business hours.** The on-call sergeant's phone number can be obtained through the Watch Commander's Office.

## **VII. VICTIM ASSISTANCE**

- A. When a party in a domestic violence incident requests police assistance in removing a reasonable amount of personal property (e.g., a suitcase) to another location, officers shall stand by for a reasonable amount of time until the party has safely done so. If there is a Protective or Restraining Order in place, officers shall not take the restrained party to the residence in violation of the order to allow that person to get property. Officers would be assisting in a violation of the order. Release of property in this situation is a function of the court.
- B. If a person claims injuries requiring medical attention, whether visible or not, officers shall administer first aid as appropriate and offer to arrange for proper medical treatment.
- C. Officers shall assist in arranging to transport the victim to an alternate shelter if the victim expresses a concern for his/her safety or the officer determines a need exists.
- D. Officers shall explain options available to the victim, including the private person's arrest process, temporary restraining orders, emergency protective orders, and in cases of arrest, the follow-up procedures and ensuing criminal proceedings.
- E. Officers shall advise the victim of available community resources and the state Victim Assistance Program, along with providing them the Marsy's Law card.
- F. Officers shall be familiar with the types of court-ordered protective orders and enforcement procedures described in Department Procedure 4.05, Protective Orders. Emergency Protective Orders can be a valuable resource for domestic violence victims.
- G. Officers shall exercise reasonable care for the safety of the officers and parties involved. No provision of this procedure shall supersede that responsibility.