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Last Revised: 09/15/2019

**CSU FULLERTON POLICE DEPARTMENT
GENERAL ORDER NUMBER 3-6**

RESPONSE TO DOMESTIC VIOLENCE

- SUBJECT:** Response to domestic violence.
- PURPOSE:** To provide direction to members of CSU Police Department in order to prevent and intervene in incidents of domestic violence.
- POLICY:** It is the policy of this Department to protect victims of domestic violence and to stress enforcement of criminal laws related to domestic violence and the protection of the victim.

I. Definitions

- A. “Domestic Violence” is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, related by blood, or a person with whom the suspect has had a child or has had a dating or engagement relationship.
- B. “Abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension or imminent serious bodily injury to himself or herself or another.
- C. “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 of ownership or 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.

II. Policy

- A. It shall be the policy of the CSU Police Department to treat all alleged incidents of domestic violence as criminal conduct and to make arrests whenever appropriate pursuant to the Penal Code including but not limited to Sections 273.5, 242, 243(e)(1) and 245.

- B. Dispute mediation shall not be used as a substitute for arrest response in domestic violence cases where physical violence has occurred.
 - C. The following factors should not influence the officer's course of action in domestic violence incidents:
 - 1. Marital status or domestic relationship of suspect and victim;
 - 2. Sexual preference or orientation of the parties;
 - 3. Non visible injuries;
 - 4. Complainant's emotional state;
 - 5. Verbal assurances that violence will cease;
 - 6. Occupation, community status and or potential financial consequences of the arrest;
 - 7. Complainant's history of prior complaints;
 - 8. Location of the incident (public or private);
 - 9. Speculation that complainant may not follow through with the prosecution; or
 - 10. Speculation that the case may not result in prosecution;
 - 11. Assumptions that violence is more acceptable in certain cultures;
 - 12. Language abilities or barriers and/or immigration status.
- III. Felony Arrests--An arrest shall be made when there is reasonable cause to believe a felony has occurred.
- IV. Misdemeanor Arrests
- A. An arrest shall be made when there is reasonable cause to believe that a misdemeanor (including violations and court orders) 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.
 - B. Arrests shall be made when there is probable cause to believe that a protective order has been violated.
 - 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 be taken before a magistrate instead of being 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 the persons or property would be imminently endangered by the release of the person arrested (Penal Code Section 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 one 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 temporary restraining orders.
4. The suspect has a prior history of other assaultive behavior (e.g., arrest convictions for battery or aggravated assaults)
5. The victim expresses fear of retaliation or further violence should the suspect be released.
6. Information about the suspect's alcohol or drug abuse, access to weapons, suicide threats or attempts, threats of kidnapping family members, or history of mental illness.

V. Dual Arrests

- A. Dual arrests are discouraged. Officers shall make reasonable efforts to identify and arrest only the dominant aggressor. The dominant aggressor is the person determined to be the most significant, rather than the first aggressor. (Penal Code Section 13701(b))
- B. In identifying the dominant or primary aggressor, the officer shall consider:
 1. The intent of the law to protect victims of domestic violence from continuing abuse.
 2. The source and nature of the threats creating fear of physical injury.
 3. The history of domestic violence between the persons involved.
 4. Whether the person involved acted in self-defense.
- C. The same considerations shall apply in situations where mutual protective orders have been issued. (Penal Code Section 836(c) (3))

VI. Private Person's Arrest

- A. Officers shall inform the victim of the right to make a private person's arrest, as well as how to safely execute the making of the arrest.
 1. Officers shall discuss the right to make 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, or a misdemeanor arrest for a violation of a protective order. Whenever possible, such discussion will be held out of the presence of the suspect.
 2. However, officers shall arrest where there is probable cause that a protective order has been violated even though it occurred out of their presence.
- B. Officers shall accept a private person's arrest and not dissuade victims from making lawful citizen arrests.

VII. Restraining/Protective Orders

- A. Emergency protective orders are obtained by the victim from various departments within the civil court.
- B. Restraining orders are obtained by the victim from various departments within the civil court.
- C. Criminal Protective/Stay Away Orders are issued by the criminal court.
- D. Maintaining restraining orders
 - 1. All restraining orders shall be maintained in a systematic fashion with documentation of proof of service that is readily available to officers in the field.
 - 2. The orders shall be maintained so that all law enforcement officers can readily ascertain the terms and effective dates.
 - 3. All three orders are enforceable statewide regardless of where issued. (Family Code Section_6381).
 - 4. These orders remain valid regardless of the actions of the protective person. For example; even if the protected person lets the restrained person back in the residence. (Penal Code Section 13711(c)).

VIII. Request Emergency Protective Orders When Appropriate--When a law enforcement officer believes that a person is in immediate danger of abuse from a household member, the officer shall attempt to obtain an emergency protective order. Family Code Section 6241 requires that at least one judge, commissioner or referee be available to issue an ex-parte emergency protective order.

- A. Ascertain Need for Emergency Protective Order
 - 1. An officer may request an *ex parte* emergency protective order when the officer has reasonable grounds to believe:
 - a. That a person is in immediate and present danger of domestic violence based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.
 - b. That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.
 - c. That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.
 - d. That an elder or dependant adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based

solely on an allegation of financial abuse. (Family Code Section 6250)

2. The officer may request an emergency protective order whether or not the suspect is present or has been arrested.
3. The following are examples of situations in which requesting an emergency protective order may be appropriate:
 - 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, refer to General Order 3-5.

1. The 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. (Family Code Section 6270)

C. Issued Orders

1. The officer shall serve a copy of the emergency protective order on the restrained party, if the restrained person can reasonably be located. (Family Code Section 6271(a))
2. The officer shall give a copy of the emergency order to the protected person, or if the protected person is a minor, to a parent or guardian of the endangered minor who is not a restrained person, if the parent or guardian can reasonably be located, or to a person having temporary custody of the endangered child. (Family Code Section 6271(b))
3. The officer, who requested the emergency order, shall carry a copy of the order. (Family Code Section 6273).
4. A copy of the emergency order shall be filed with the court as soon as practical, after issuance. (Family Code Section 6271(c))
5. An emergency protective order is valid for five court days after the day of issuance, but never longer than seven calendar days after the day of issuance. (Family Code Section 6256)

D. Officer Immunity - 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)).

IX. Verify and Enforce Restraining Orders and Criminal Court Issued Stay-Away Orders

- A. Verification of Restraining Orders--Whenever a complainant advises of the existence of a restraining order/protective order, the officer should ascertain:
1. Whether a restraining order is on file with the Department or whether complainant has a certified copy of restraining order in possession, or whether the order can be verified through the Department of Justice Domestic Violence Restraining Order System (DVROS). Family Code Sections 6380, 6381, 6383.
 2. Whether a restraining order is still valid as to duration/time.
 - a. If there is no expiration date on a civil protective order, the order is valid three years from the date of issuance, with the exception of permanent orders issued pursuant to a divorce, which never expire. (Family Code Section 6345(c))
 - b. An emergency protective order is valid for five court days after the date of issuance, but never longer than seven calendar days following the day of issuance. (Family Code Section 6256)
 - c. The duration of Criminal Protective/Stay Away varies with each order.
 3. Whether the proof of service or prior notice exists or whether the suspect was in court when the order was made.
 4. The terms of the restraining order.
- B. Arrest Criteria and Enforcement Procedures
1. A violation of a restraining order is a misdemeanor under Penal Code Section 273.6. An officer may make an arrest when there is reasonable cause to believe the subject of the restraining order has violated the order in the presence of the officer and any one 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 by an officer.
 2. When the officer verifies that a restraining order exists, but cannot verify proof of service or prior knowledge of the order by the suspect, the officer should:
 - a. Inform the subject of the terms of the order.
 - b. Admonish the subject of the order, and that the subject is now on notice and that 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. Oral notification to the respondent of the terms of the order shall be sufficient notice for enforcement of Penal Code Sections 136.2, and 273.6.

- c. If the suspect complies after admonishment of the terms, the officer shall make a retrievable report pursuant to Penal Code Section 13730(c) showing the suspect was admonished/advised of the order, the specific terms of the order suspect was advised about, the name of the admonishing officer, time and date. The Department's copy of the restraining order will be updated to reflect the admonishment information listed above. The notice of service shall immediately be transmitted to the California Department of Justice Domestic Violence Restraining Order System.
3. In the event the suspect has left the scene of the incident, an investigation should be made to determine if a crime has been committed. Penal Code Sections 13730(c) and 13701 require that a retrievable report shall be made and the victim shall be advised of the follow-up criminal procedure and case number of the report.
- C. Orders Not Verifiable -When the victim is not in possession of the Temporary Restraining Order, Stay Away Order, and/or in cases of computer error, officers may not be able to confirm the order's validity.
1. Penal Code Section 13730(c) and 13701 (c) (8) require 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.
 2. When an order is not verifiable through the verification of procedures, officers should advise the victim of the right to make a private person's arrest for the appropriate violation.
- D. 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 (c)(1).
 2. In domestic violence incidents where a person advises an officer that a criminal protective/stay-away order has been issued, the officer should attempt to ascertain the terms and validity of the order.
 - a. Request that the victim show a copy of the order.
 - b. Verify, through the Department, that the suspect is under the court's jurisdiction, or
 - c. Verify, through the Department, that a criminal protective/ stay-away order has been issued against the suspect.
 - d. Verify through the California Department of Justice Domestic Violence Restraining Order System.

X. Reporting--In all cases of domestic violence, officers shall write a crime report and:

- A. Identify it as a domestic violence incident.
- B. Indicate whether weapons were involved.
- C. Provide the victim with a case number of the report. If not readily available, explain how the number may be obtained.

XI. Tenancy

- A. When a victim requests an officer to remove a person from the premises when no arrest is to be made and it can be shown the victim is in lawful possession of the premises and the person to be removed is not in lawful possession of the premises, the officer shall:
 - 1. Request that the person leave the premises and stand by for a reasonable amount of time while the person removes minimal personal belongings.
 - 2. If the suspect refuses to leave upon request, arrest the suspect under Penal Code Section 602.5a.
 - 3. When appropriate, the officer may refer the complainant for a temporary restraining order or other appropriate civil remedy if the complainant requesting removal cannot show proof of lawful possession. "Lawful possession" of the premises is shown by a rental agreement, cancelled rent check, lease, grant deed, verification from landlord, court order, or other documents showing person(s) to be removed.
- B. When a victim in a domestic violence incident requests police assistance in removing a reasonable amount of personal property to another location, officers shall stand by a reasonable amount of time until the victim has removed the personal property.

XII. Notification of Release

In any case where a suspect is arrested and booked as a result of domestic violence, and the victim requests to be notified when the suspect is released from custody, officers shall adhere to the following:

- A. Notify the booking facility of the victim's request to be notified prior to the suspect's release and request they either notify the university police Department or the victim of the pending release.
- B. Notify the Watch Commander or on-duty supervisor of the Department where the victim resides.
- C. The Police Department where the victim resides will be requested to contact the victim upon notification of release of the suspect.

- D. A copy of the written instructions on how to contact the victim will be filed with the crime report for the purpose of permanent documentation.

XIII. Victim Assistance

- A. Assist in obtaining appropriate medical attention if a complainant sustains injury whether visible or not.
- B. 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.
- C. Assist victims in pursuing criminal options such as, giving the victim the report number and directing the victim to the proper investigation unit (Penal Code Section 13701 (c) (8)).

XIV. Seizure of Firearms

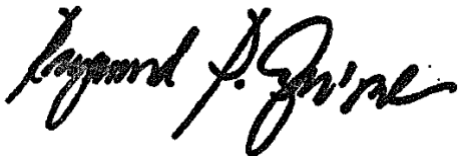
- A. Per Cal. Penal Code 18250(a)(5) Police Officer who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of a firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present.
- B. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon.
- C. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in Penal Code Section 12028.5(b), if a firearm or other deadly weapon is not retained for use as evidence as related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon 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.
- D. In those cases where the Department has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the Department shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The Department must comply with the provision of Penal Code Section 12028.5(f) in making this petition to the superior court.

- E. Check on the existence of a court order requiring removal of weapon or of conviction of any crime prohibiting possession and/or ownership of a firearm prior to release.
- XV. Officer Safety--Officers should exercise reasonable care for the safety of officers and parties involved. No provision of this policy shall supersede that responsibility.

REVIEWED BY:

P. Launi.

APPROVED:

A handwritten signature in black ink, appearing to read "Raymund J. Aguirre". The signature is written in a cursive, flowing style.

Raymund Aguirre
Chief of Police