

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: March 03, 2017
NUMBER: 4.05 – LEGAL
SUBJECT: PROTECTIVE ORDERS
RELATED POLICY: 4.05
ORIGINATING DIVISION: INVESTIGATIONS I
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 4.05 – APRIL 26, 2013

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I. PURPOSE

This Department procedure establishes guidelines for requesting and/or enforcing protective orders.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

- A. Penal Code section 273.6(a) makes it a misdemeanor to intentionally and knowingly violate any protective order as defined in Family Code section 6218, or issued pursuant to Welfare and Institutions Code section 15657.03 or Code of Civil Procedure sections 527.6, 527.8, or 527.85.
- B. Penal Code section 166(c)(1) makes it a misdemeanor (contempt of court) to willfully and knowingly violate any protective order or stay away order issued pursuant to Penal Code section 136.2 in a pending criminal case involving

domestic violence (as defined in Penal Code section 13700), issued as a condition of probation after a criminal conviction in a domestic violence case (as defined in Penal Code section 13700) or elder or dependent adult abuse case (as defined in Section 368), or issued pursuant to Family Code sections 6320 (ex parte order enjoining battery, harassment, any contact, and/or destruction or property).

- C. Penal Code section 180205 makes it a misdemeanor to own or possess a firearm or ammunition with knowledge that he or she is prohibited from doing so by a temporary emergency gun violence restraining order issued pursuant to Section 18135, an ex parte gun violence restraining order issued pursuant to Section 18160, or a gun violence restraining order issued after notice and a hearing issued pursuant to Section 18180.

IV. DEFINITIONS

- A. Criminal Protective Order – issued pursuant to Penal Code section 1203.097 and imposed as a term of probation for all criminal convictions involving domestic violence. A criminal protective order may or may not include “stay away” terms as part of the order. When a court orders a defendant to have no contact at all with a protected person, the court refers to the order as a “Stay Away Order.” In contrast, when a court makes an order without the stay away, it is referred to as a “No Negative Contact Order” and prohibits a defendant from annoying, harassing, molesting, or disturbing the peace of a protected person. Thus, a No Negative Contact Order is more limited than a Stay Away Order. When law enforcement confirms a Criminal Protective Order with the Sheriff’s Office, it is important to confirm whether it is a No Negative Contact Order or a Stay Away Order.
 - 1. Stay Away Order – an order by a court for a defendant to have no contact at all with a protected person, and is issued in a criminal case where there is good cause to believe that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Pursuant to Penal Code section 136.2, stay away orders are issued by courts with jurisdiction over criminal matters, and are not limited to domestic violence cases. A stay away order may remain in effect as long as the person is under the court’s jurisdiction, including any sentence or probationary period. Protective or stay away orders issued in a criminal case take priority in enforcement over any civil court order against a person.
 - 2. No Negative Contact Order – an order by a court for a defendant to have no negative contact with a protected person, and is issued in a criminal case. The order prohibits annoying, harassing, molesting, or disturbing the peace of a protected person.
- B. Domestic Violence Restraining Order – a protective order that is issued pursuant to the Domestic Violence Prevention Act (Family Code section 6200 et seq.).

These orders may be called an “Order to Show Cause” or an “Order After Hearing.” An Order to Show Cause is valid generally from ten to 21 days, pending a formal hearing. The Order After Hearing is the permanent restraining order issued after the formal hearing. The Order After Hearing will state on its face the expiration date of the order, typically three years from the date of issuance. However, a court may order a permanent restraining order remain in effect for up to five years. These orders are issued through Family Court or through the Domestic Violence Court.

- C. Emergency Protective Order (EPO) – a protective order obtained by a police officer in the field, when an officer believes a person is in immediate and present danger of domestic violence, elder abuse, child abuse, or child abduction (pursuant to Family Code section 6250) or stalking (pursuant to Penal Code section 646.91). An EPO may be obtained 24-hours a day, seven days a week, and is intended to provide short-term protection to victims while giving them a reasonable period to apply to the Superior Court for a longer-term civil protective order. An EPO expires within five judicial working days or seven calendar days following its issuance, whichever comes first. An EPO has priority in enforcement over any other restraining order or protective order.
- D. Protective Order – a restraining order, as defined in Family Code section 6218, which describes the three orders that most directly protect a victim of domestic violence from abuse: (1) an order prohibiting specific acts of abuse (see Family Code section 6320); (2) excluding a person from a dwelling (see Family Code section 6321); or, (3) prohibiting other specified behavior, as determined by a court (see Family Code section 6322). A protective order may be issued ex parte, after notice and a hearing, or in a judgment. A protective order remains in effect for a specified period of time. The expiration date will be stated on the face of the order, but is typically effective no more than three years after issuance of the order.
- E. Gun Violence Restraining Order – is a restraining order, as defined in Penal Code 18100, as an order prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. The expiration date will be stated on the face of the order.

V. GENERAL PROCEDURES

- A. The San Diego County Sheriff’s Office is this county’s central repository for all restraining and protective orders, which are enforceable under Penal Code section 273.6, or Penal Code section 166, subsections (a)(4) or (c)(1). The Sheriff’s Office also accepts orders issued in other states if they have been filed with a California court. Restraining or protective orders on file with the Sheriff’s Office are entered into the California Law Enforcement Telecommunications System (CLETS).

- B. When an officer responds to a domestic violence call, if a person shows the officer a copy of a protective order or informs the officer that one exists, it is crucial that the officer confirm the present status and terms of the order. The officer should telephone the Sheriff's Office 24-hour (law enforcement only) line at **(858) 974-2457** and ask the following questions:
1. Is there a restraining/protective order on file? (If so, it will be filed under the name of the restrained party.)
 2. What is the date of the order? (When did/does the order become effective?)
 3. What is the expiration date? (Has the order expired?)
 4. What are the terms of the order? (The terms are written on the order to assist in determining whether there has been a violation of the order.)
 5. Was the restrained person served with the order? (Is there a Declaration of Service on file with the Sheriff, or has another officer given the needed notice to the person to be restrained?)
 6. Was the violation intentional? (The violation has to be knowing and intentional. Make sure questions "2" through "5" are covered to prove the knowing/intentional violation.)

Important: If the Sheriff's Office cannot verify the order, it may still be enforceable. If the responding officer believes in good faith that an order presented to him or her at the scene is valid and the suspect was on notice (referring to questions "2" through "6"), a private person's arrest may be made even though the Sheriff's Office was not provided a copy to enter into CLETS.

- C. If no record of service exists:
1. Advise the restrained person that there is an order in effect;
 2. Give a copy of the order to the restrained person or, if no copy is available, have the terms of the order read over the phone and then verbally inform him/her of those terms;
 3. Advise him/her that he/she is now subject to the terms of the order and can be arrested for any future violations;
 4. Notify the Sheriff's Office and report that you have served a copy of the order on the defendant. (The Sheriff's Office will record your name, ID number, date, time, and location that the suspect received notice);

5. Prepare and sign a Proof of Service; and,
6. File the Proof of Service as part of the report. Investigative personnel shall ensure the original Proof of Service is filed with the court issuing the order and a copy retained with the police report.

VI. MAKING ARRESTS [see PC 836(c) (1)]

- A. When a peace officer responds to a call alleging a violation of a domestic violence protective or restraining order (issued pursuant to the Family Code, Code of Civil Procedure section 527.6, Penal Code sections 136.2, 646.91, or 1203.097(a)(2), Welfare and Institutions Code sections 213.5 or 15657.03, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory) and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall arrest the person without a warrant and take the person into custody whether or not the violation occurred in the officer's presence.
- B. Peace officers shall make arrests for any violations under the above sections that:
 1. They observe; or,
 2. Where probable cause exists that a violation has occurred and the existence and status of the order is verified. If the existence and status of the order cannot be verified, the victim may make a private person's arrest. Upon arrest, the suspect should be processed into County Jail.

Important: Per Penal Code section 13710(b), the terms and conditions of a restraining or protective order remain enforceable and may be changed only by order of the court, regardless of the acts of the parties. Consequently, even if a protected person consents or allows the restrained party to come to his or her location, the restrained person would still be in violation of the order.

- C. If a physical arrest is made, and the suspect is going to be transported to jail, the officer will pick up a copy of the order at the Sheriff's Office prior to booking approval by the Watch Commander. Officers will submit the copy obtained to the Domestic Violence Unit through interoffice mail, MS759.

The reports should include the name and ID number of the Sheriff's deputy who provided information over the telephone.

VII. CRIME REPORT

Officers will prepare and submit a crime report of the appropriate violation regardless of whether the suspect is still present when police arrive.

VIII. EMERGENCY PROTECTIVE ORDERS (EPO) UNDER THE FAMILY CODE (Family Code section 6250)

- A. Emergency Protective Orders may be issued by telephone 24-hours a day, seven days a week. A judge may issue an “ex parte” Emergency Protective Order when a police officer asserts reasonable grounds to believe any of the following:
1. 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;
 2. 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;
 3. That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief or recent threat that a person has an intent to abduct the child or flee with the child from the jurisdiction; and,
 4. That an elder or dependent adult is in immediate and present danger of abuse, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought. “Abuse of an elder or a dependent adult” is defined in Welfare and Institutions section 15610.07 as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.
- B. No EPO shall be issued based solely on an allegation of financial abuse of an elder or dependent adult.
- C. When an officer responds to an incident of domestic violence and reasonable grounds exist to believe the person is in immediate and present danger, the officer shall advise the person of the availability of an EPO. Additionally, the officer shall request an EPO if immediate and present danger exists.
- D. The fact that the endangered person has left the household to avoid abuse does not affect the availability of an emergency protective order. The determination of

recent violent acts or a threat of violence, coupled with the likelihood of imminent violence, is the only criterion required to request an emergency order.

- E. The officer does not need the permission or request of the victim to seek an emergency protective order. If a protective order is obtained, a crime report shall be prepared to document the incident.
- F. EPO enforcement procedures (seven days a week, 24-hours a day):
1. If a protective order is being sought, the officer will complete items 1, 2, 9, 10, 11 and 12 on the Application for Emergency Protective Order (CLETS), Judicial Council Form, EPO-001 (Rev. January 1, 2013). Officers will complete items 1, 2, 9, 10, 11 and 12 using information provided by the victim or reporting party. The victim/reporting party's name shall be noted at the top of the form, where requested.
 2. **After regular court hours or during weekends and holidays, the officer will telephone the duty judge through the duty telephone at the Sheriff's Office at (858) 974-2493. This is a non-public number.**
 3. **During regular court hours, the officer will contact a judge through the Family Court at (619) 450-7823. This is a non-public number. The officer will record on line 8 of the application the name of the magistrate or judge, and when the judge was contacted. The judge will ask questions based on information contained in lines 1 through 7 of the EPO application.**
 4. Upon approval by the judge, the officer will complete the sections directly below item 12 where it asks for name, signature, agency, phone number, and ID number.
 5. Officers will document the judge's order by completing items 3, 4, 5, 6, and 8 of the Emergency Protective Order. Officers should pay close attention to item 5, where they must insert the date of expiration of the EPO. The order is effective when made, and expires at 5:00 p.m. on the fifth day of judicial business (five full court days) or on the seventh calendar day following the day of its issue, whichever comes first. Do not count the day the order is granted.
 6. Officers must obtain an incident number and a case number for the domestic violence incident via the MCT or by calling Records Division. Officers must complete the box in the upper right corner of the application where it asks for a Law Enforcement Case Number.
 7. The officer will provide one copy of the application and the order to the protected party and one copy to the restrained party, if present. Family Code section 6271 requires an officer to make a reasonable effort to serve

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the restrained party. The officer will submit the original copy of the application (court copy) to the Domestic Violence Unit. The Domestic Violence Unit will forward this copy to the appropriate destination (e.g., Family Court at the Madge Bradley Courthouse, 1409 Fourth Avenue, San Diego, CA 92101). Another copy of the application will be attached to the Crime Report.

8. The officer requesting the EPO shall carry copies of the order while on duty until the end of their shift (mandated by Family Code, section 6273).
9. The officer will encourage the protected party to carry a copy of the EPO with them.
10. **A copy of the approved Emergency Protective Order (front and back) and proof of service will be faxed by the officer to the Sheriff's Records Office at (858) 974-2492.**
11. In order to obtain a more permanent order, officers should refer the protected person to the San Diego Family Justice Center. Officers shall write the address (1122 Broadway, 2nd floor, San Diego, CA 92101) on the face of the EPO.

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IX. GUN VIOLENCE RESTRAINING ORDER TO PROHIBIT FIREARM POSSESSION

- A. A gun violence restraining order is a court order prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition.
- B. A person, an immediate family member of a person, or a law enforcement officer may file a petition and request that a court, after notice and a hearing, issue a gun violence restraining order for a period of one year. (PC 18170)
- C. After a hearing is conducted, a court will issue a gun violence restraining order if it finds that there is clear and convincing evidence to support the issuance of the order. The order will include the date and time the order expires.
- D. At the time a petition is filed with the court, an ex parte order can be issued by the court to require all firearms and ammunition be surrendered within 24 hours of service of the ex parte order. (PC 18160, 18120). Within 21 days after the date on the ex parte order, the court shall hold a hearing to determine if a gun violence restraining order should be issued.

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E. Temporary Order:

1. In emergency situations a *temporary* gun violence restraining order may be issued on an ex parte basis if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:
 - a) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm, and
 - b) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried or found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition.
2. A temporary emergency gun violence restraining order shall be obtained by a law enforcement officer submitting a written petition to the court:
 - a) During regular court hours officers must submit a Firearms Emergency Protective Order form (EPO-002) to the court for judicial review and approval.
 - b) After regular court hours or during weekends and holidays, the officer must call the search warrant desk and ask to speak to the duty judge and that the call be recorded. It is not necessary to contact the duty DDA.
 - c) The petition for a gun violence restraining order shall describe the number, types, and locations of any firearms and ammunition presently believed to be possessed or controlled by the subject of the petition.
 - d) If time and circumstances do not permit the submission of a written petition, a temporary emergency gun violence restraining order may be issued in accordance with the procedures for obtaining an oral search warrant described in Penal Code section 1526. (PC 18145.)
3. A temporary emergency gun violence restraining order shall expire 21 days from the date the order was issued.

D. Service of the Order and Surrender of Firearms.

1. A law enforcement officer serving a gun violence restraining order shall request that all firearms and ammunition be immediately surrendered. (PC 18120)
2. If a person refuses to turn over firearms, a search warrant can be obtained to enter the premises and collect the firearms.
3. A receipt must be issued to the person surrendering the firearms and ammunition.
4. Within one business day of service, a law enforcement officer who served a gun violence restraining order shall submit the proof of service directly into the California Restraining and Protective Order System, including his or her name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.

E. Violation of an Order.

Every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a temporary emergency gun violence restraining order, an ex parte gun violence restraining order, or a gun violence restraining order is guilty of a misdemeanor and shall be prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.