

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: APRIL 26, 2013
NUMBER: 4.05 – LEGAL
SUBJECT: PROTECTIVE ORDERS
RELATED POLICY: 4.05
ORIGINATING DIVISION: INVESTIGATIONS I
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 4.05 – 12-23-2011

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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

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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).

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.

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 **Deleted-Records of Security** 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, a protected person is not in violation of the protective order if he or she consents or allows the restrained party to come to his or her location. The protected person would not be in violation and, therefore, shall not be arrested for a 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 or not the suspect is still present when police arrive.

VIII. EMERGENCY PROTECTIVE ORDERS (EPO) (see FC 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 through 7 on the Application for Emergency Protective Order (CLETS), Judicial Council Form, EPO-001 (Rev. January 1, 2006). Officers will complete items 1 through 5 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.
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 4. Upon approval by the judge, the officer will complete the sections directly below item 8 where it asks for name, signature, agency, phone number, and ID number.
 5. Officers will document the judge's order by completing items 9 through 13 of the Emergency Protective Order. Officers should pay close attention to item 12, 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 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. **Deleted – Records of Security**
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.