

## Domestic Violence

### 309.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. The policy specifically addresses the commitment of this Department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic violence.

### 309.2 POLICY

The Redding Police Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this Department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

### 309.3 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic violence cases:

- (a) Calls of reported, threatened, imminent or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
- (b) When practicable, officers should obtain and document statements from the victim, the suspect and any witnesses, including children, in or around the household or location of occurrence.
- (c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.
- (d) When practicable and legally permitted, video or audio record all significant statements and observations.
- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Investigative Bureau in the event that the injuries later become visible.
- (f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement and make an arrest or seek an arrest warrant if appropriate.

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

- (h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence. If the domestic violence involved threats of bodily harm, any firearm discovered in plain view or pursuant to consent or other lawful search must be taken into temporary custody (Penal Code § 18250).
- (i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- (j) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:
  - 1. Marital status of suspect and victim.
  - 2. Whether the suspect lives on the premises with the victim.
  - 3. Claims by the suspect that the victim provoked or perpetuated the violence.
  - 4. The potential financial or child custody consequences of arrest.
  - 5. The physical or emotional state of either party.
  - 6. Use of drugs or alcohol by either party.
  - 7. Denial that the abuse occurred where evidence indicates otherwise.
  - 8. A request by the victim not to arrest the suspect.
  - 9. Location of the incident (public/private).
  - 10. Speculation that the complainant may not follow through with the prosecution.
  - 11. The racial, cultural, social, professional position or sexual orientation of the victim or suspect.

#### 309.3.1 TENANCY

When a complainant is in lawful possession of the premises and has requested the person leave the premises the responding officer shall:

- (a) Request the person to leave the premises and stand by a reasonable amount of time until the person removes his/her belongings.
- (b) Should the person refuse to leave upon request, the person shall be arrested for the appropriate criminal offense, and thereupon cited and released unless one of the exceptions to PC 853.6 (i) exists.

#### 309.3.2 IF A SUSPECT IS ARRESTED

If a suspect is arrested, officers should:

- (a) Advise the victim that there is no guarantee the suspect will remain in custody.

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

- (b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- (c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

#### **309.3.3 IF NO ARREST IS MADE**

If no arrest is made, the officer should:

- (a) Advise the parties of any options, including but not limited to:
  1. Voluntary separation of the parties.
  2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).
- (b) Document the resolution in a report.

#### **309.4 VICTIM ASSISTANCE**

Victims may be traumatized or confused. Officers should:

- (a) Recognize that a victim's behavior and actions may be affected.
- (b) Provide the victim with the Department's domestic violence information handout, even if the incident may not rise to the level of a crime.
- (c) Alert the victim to any available victim advocates, shelters and community resources.
- (d) Stand by for a reasonable amount of time when an involved person requests law enforcement assistance while removing essential items of personal property.
- (e) Explain the options available to the victim, including the private person's arrest process, temporary restraining and stay-away orders, and in cases of arrest, the follow-up procedures and ensuing criminal proceedings.
- (f) Advise the victim to call One Safe Place and offer to make the call for the victim. If the officer feels it is in the best interest of the victim, an officer should call and arrange for an Advocate to respond and assist.
- (g) Advise the victim of the availability to be notified before the arrested party is released from jail offered through Women's Refuge.
- (h) Acknowledge the right of a victim of Domestic Violence to have an advocate and an additional support person present for follow up investigation by law enforcement.
- (i) Seek medical assistance as soon as practicable for the victim if he/she has sustained injury or complains of pain.
- (j) Ask the victim whether he/she has a safe place to stay. Assist in arranging to transport the victim to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists.
- (k) Make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (l) Seek or assist the victim in obtaining an emergency order if appropriate.

## *Domestic Violence*

---

An officer shall advise an individual protected by a Canadian domestic violence protection order of available local victim services (Family Code § 6452).

### **309.5 PROTECTIVE ORDERS**

There are different types of protective orders issued by a court in domestic violence situations. 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 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.

If there are multiple, inconsistent orders, criminal restraining orders take precedence over civil restraining orders. If both orders are of the same type, the most recently issued order takes precedence.

These orders remain valid regardless of the actions of the protected person. For example, if the protected person allows the restrained party back into the residence, the order remains valid, PC 13711 (c).

An officer shall make an arrest for the violation of a domestic violence protective or restraining order if the officer has probable cause to believe the violation occurred and the restrained party has notice of the order, even if the offense did not occur in the officer's presence, PC 836 (c) (1).

#### **309.5.1 COURT ORDERS**

- (a) An officer who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located, and shall provide the person protected or the person's parent/guardian with a copy of the order. The officer shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).
- (b) At the request of the petitioner, an officer at the scene of a reported domestic violence incident shall serve a court order on a restrained person (Family Code § 6383; Penal Code § 13710).
- (c) Any officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)(2)).
- (d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).
- (e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the officer shall notify the protected individual that reasonable efforts shall be made to contact the person subject to the order. The officer shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide him/her with a record of the

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

#### 309.5.2 EMERGENCY PROTECTIVE ORDER

Section 6241 of the Family Code provides that the presiding Superior Court Judge shall designate a Judge, Commissioner or Referee to be reasonably available to orally issue, by telephone, emergency protective orders at all times when Superior Court is not in session.

- (a) Officers will seek an Emergency Protective Order (EPO) when there are reasonable grounds to believe: a person is in immediate and present danger of domestic violence; a child is in immediate and present danger of domestic violence; a child is in immediate and present danger of being abducted by a parent or relative or an elder or dependent adult is in immediate and present danger of abuse (other than financial abuse).
- (b) Officers will consider issuing an EPO even if the suspect is being arrested and booked into jail.
- (c) An EPO may be issued by a person designated by the presiding judge of the Superior Court at any time, whether or not the Superior Court is in session.
- (d) An EPO shall expire at the earliest of the following times:
  - 1. Within 5 court days from the date of issuance.
  - 2. Within 7 calendar days from the date of issuance.
  - 3. When an officer believes that an EPO is needed they shall:
  - 4. Complete the "Application for Emergency Protective Order."
  - 5. The officer shall radio or telephone Records and advise that they need to contact the "on call Judge." The officer shall provide Records with a telephone number so the Judge can call them.
  - 6. The officer shall advise the Judge of the circumstances and complete the EPO as directed.
  - 7. If the person to be restrained is still present or can be located, the officer shall serve a copy of the order and the application and advise the person it is a crime to violate the order.
- (e) The officer shall give a copy of the order and application to the protected party and explain that the order is only in effect for five (5) court days and no later than seven (7) calendar days.
- (f) Upon completion of the investigation, and as soon as practical, the officer shall make a copy of the EPO and give it to the Records Supervisor. If the restrained person is not located, the copy for him/her shall also be given to the Records Supervisor so that it will be available for service. The on-duty Field Operations shift supervisor shall be advised of the need for service.
- (g) The officer shall complete a report and attach the remaining copies of the EPO and application.

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

- (h) The Sergeant reviewing the report shall route a copy to Court, as well as standard routing.

#### 309.5.3 RESTRAINING ORDER

Restraining orders are filed in the Services Division of the Redding Police Department. Officers shall contact the records clerk for information.

Whenever a complainant advises of the existence of a restraining order, the officers shall ascertain:

- (a) Whether a restraining order is on file with the Department or whether the complainant has a copy of the restraining order in his/her possession.
- (b) Whether a restraining order is still valid as to duration/time.
- (c) Whether the proof of service or prior notice exists or that the suspect was in court when the order was made.
- (d) The terms of the restraining order.

#### 309.5.4 STAY AWAY ORDER

A stay-away order is issued, by the court at the time of the Defendant's arraignment, 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 stay-away order has been issued, the officer shall attempt to ascertain the terms and validity of the order.

#### 309.5.5 FOREIGN PROTECTIVE ORDER

(Full Faith and Credit Provision of the Violence Against Women Act).

Family Code sections 6400-6409 states officers shall enforce a Foreign Protection Order which is presented to them for enforcement. A Foreign Protection Order is valid, FC 6402 (d) if it meets all of the following criteria:

- (a) Identifies the protected individual and respondent.
- (b) Is currently in effect.
- (c) Was issued by a tribunal that had jurisdiction over the parties under the laws of the issuing state.
- (d) Was issued after the respondent was given reasonable notice.

Officers should investigate and check CLETS to determine if the order is the most current order issued. If it can not be confirmed, officers can contact the Duty Judge for an EPO. However, the out-of-state protective or restraining order must still be enforced if it meets the above criteria. Presentation of a certified copy of a protection order is not required for enforcement, FC 6403 (a).

If the out-of-state protective or restraining order is not registered in California, the parties should be advised to immediately register the order through the Family Court.

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

#### 309.5.6 FOREIGN COURT ORDERS

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state.

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).

#### **309.6 PROTECTIVE ORDER ARREST AND ENFORCEMENT PROCEDURE**

A violation of a restraining order is a misdemeanor under either Penal Code Section 166 or 273.6(A). An arrest shall be made when there is reasonable cause to believe the subject of the restraining order has violated the order 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 or the provisions of the Full Faith and Credit Act have been met.
- (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 subject has previously been admonished by an officer.

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 shall:

- (a) Inform the subject of the terms of the order.
- (b) Admonish the subject of the order, that he/she is now on notice and that a violation of the order will result in his/her arrest. If the subject continues to violate the order after being advised of the terms, an arrest shall be made. (P.C. Section 273.6)

If the suspect complies after admonishment of the terms, the officer shall make a retrievable report pursuant to Penal Code Section 13730(c) showing:

- (a) The suspect was admonished/advised of the terms of the order.
- (b) The specific terms of the order the suspect was advised about.
- (c) The name of the admonishing officer.
- (d) Time and date of the admonishment.

The Department's copy of the restraining order will be updated to reflect the admonishment information listed above.

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

In the event the suspect has left the scene of the incident, an investigation shall 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 the complainant shall be advised of the follow-up criminal procedure and the case number of the report.

When the victim is not in possession of the temporary restraining order, officers may not be able to confirm the order's validity. In such cases officers should attempt to confirm the existence of a restraining order and the order's validity.

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.

If the victim is not in possession of the order, officers shall advise the victim of the right to make a private person's arrest for the appropriate violation.

#### 309.6.1 FIREARMS

A person subject to a protective order, as defined in Family Code Section 6218, shall not own, possess, purchase, or receive a firearm while that protective order is in effect. In the event the court finds by a preponderance of the evidence that the restrained person is likely to use, display or threaten to use a firearm in any further act of violence, the court may order the restrained person to relinquish any firearm in that person's possession or control within 24 hours to the local law enforcement agency for that jurisdiction.

- (a) The relinquishment is for the duration of the restraining order unless a shorter period is specified by the court.
- (b) Firearms may be returned to the person from whom they were ordered seized after the expiration date of the protective order provided (a) the firearm is not stolen, (b) person is not within a prohibited class as specified in 12021 or 12021.1 PC or (c) another protective order is issued and (d) an application for a determination by the Department of Justice as to whether he or she is eligible to possess a firearm pursuant to Penal Code Section 12021.3(a)(1) and the application for return of the seized weapons is approved by the Department of Justice.
- (c) Officers receiving any firearms pursuant to Family Code 6389 will file a 6389 Family Code face sheet offense report listing the weapon(s) as held for safekeeping. The report must be completed at the time the firearm(s) are relinquished. A copy of the report shall be given to the person relinquishing the firearm(s), which will serve as a receipt showing the firearm(s) was surrendered. The condition of relinquished weapon shall be noted in the report. The weapons shall be entered in the CLETS AFS system as held for safekeeping.
- (d) During the period of the relinquishing order, the person surrendering the firearm(s) is entitled to make one sale of their firearm(s) in our possession. The sale must be made to a licensed gun dealer. The licensed gun dealer shall be given the possession of the firearm(s) after presenting a bill of sale at the Redding Police Department, 6389(i) Family Code, within five days.

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

- (e) The disposition of any unclaimed property under this section shall be made pursuant to Section 1413 PC and 12028(c) PC.

#### 309.6.2 CLETS ENTRIES

Penal Code Section 12021 prohibits any person subject to a restraining order from purchasing or receiving, or attempting to purchase or receive a firearm. If the subject of a restraining order applies to purchase a firearm, they will be prevented from doing so by the CLETS restraining order or protective entry.

- (a) Enforcement of 12021(g) requires that persons subject to a restraining order must be given actual knowledge they are prohibited from purchasing a firearm.
- (b) Services personnel shall be responsible for making CLETS entries of Temporary Restraining Orders and Orders After Hearing for Domestic Violence.

#### **309.7 LEGAL MANDATES AND RELEVANT LAWS**

California law provides for the following:

##### 309.7.1 STANDARDS FOR ARRESTS

Officers investigating a domestic violence report should consider the following:

- (a) An arrest should be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). Any decision to not arrest an adult when there is probable cause to do so requires supervisor approval.
  1. Officers are only authorized to make an arrest without a warrant for a misdemeanor domestic violence offense if the officer makes the arrest as soon as probable cause arises (Penal Code § 836).
- (b) An officer responding to a domestic violence call who cannot make an arrest will advise the victim of his/her right to make a private person's arrest. The advisement should be made out of the presence of the suspect and shall include advising the victim how to safely execute the arrest. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions in the Private Persons Arrests Policy for options regarding the disposition of private person's arrests (Penal Code § 836(b)).
- (c) Officers shall not cite and release a person for the following offenses (Penal Code § 853.6(a)(3)):
  1. Penal Code § 243(e)(1) (battery against spouse, cohabitant)
  2. Penal Code § 273.5 (corporal injury on spouse, cohabitant, fiancé/fiancée, person of a previous dating or engagement relationship, mother/father of the offender's child)
  3. Penal Code § 273.6 (violation of protective order) if violence or threats of violence have occurred or the suspect has gone to the workplace or residence of the protected party
  4. Penal Code § 646.9 (stalking)

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

5. Other serious or violent felonies specified in Penal Code § 1270.1
- (d) In responding to domestic violence incidents, including mutual protective order violations, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant, rather than the first, aggressor (Penal Code § 13701). In identifying the dominant aggressor, an 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 acted in self-defense.
  - (e) An arrest shall be made when there is probable cause to believe that a violation of a domestic violence court order has been committed (Penal Code § 13701; Penal Code § 836), regardless of whether the offense was committed in the officer's presence. After arrest, the officer shall confirm that a copy of the order has been registered, unless the victim provides a copy (Penal Code § 836).

#### 309.7.2 PUBLIC ACCESS TO POLICY

A copy of this domestic violence policy will be provided to members of the public upon request (Penal Code § 13701).

#### 309.7.3 REPORTS AND RECORDS

- (a) A written report shall be completed on all incidents of domestic violence. All such reports should be documented on the appropriate form, which includes information and notations specific to domestic violence incidents as required by Penal Code § 13730.
- (b) Reporting officers should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence victim information handout provided to the victim. If the case number is not immediately available, an explanation should be given regarding how the victim can obtain the information at a later time.
- (c) Officers who seize any firearm or other deadly weapon in a domestic violence incident shall issue the individual possessing such weapon a receipt that includes the name and residential mailing address of the owner or person who possessed the weapon and notice of where the weapon may be recovered, along with the applicable time limit for recovery (Penal Code § 18250; Penal Code § 18255; Penal Code § 33800; Family Code § 6389(c)(2)).

#### 309.7.4 RECORD-KEEPING AND DATA COLLECTION

This Department shall maintain records of court orders related to domestic violence and the service status of each (Penal Code § 13710), as well as records on the number of domestic

# Redding Police Department

## RPD Policy Manual

### *Domestic Violence*

---

violence related calls reported to the Department, including whether weapons were used in the incident or whether the incident involved strangulation or suffocation (Penal Code § 13730). This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Records Supervisor to maintain and report this information as required.

#### **309.7.5 DECLARATION IN SUPPORT OF BAIL INCREASE**

Any officer who makes a warrantless arrest for a felony or misdemeanor violation of a domestic violence restraining order shall evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. If there is reasonable cause to believe that the scheduled bail amount is insufficient to assure the arrestee's appearance or to protect the victim or family member of a victim, the officer shall prepare a declaration in support of increased bail (Penal Code § 1269c).

#### **309.7.6 COURT ORDERS**

- (a) An officer who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located, and shall provide the person protected or the person's parent/guardian with a copy of the order. The officer shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).
- (b) At the request of the petitioner, an officer at the scene of a reported domestic violence incident shall serve a court order on a restrained person (Family Code § 6383; Penal Code § 13710).
- (c) Any officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)(2)).
- (d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).
- (e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the officer shall notify the protected individual that reasonable efforts shall be made to contact the person subject to the order. The officer shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide him/her with a record of the order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

#### **309.8 FOREIGN COURT ORDERS**

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe, or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC

# Redding Police Department

RPD Policy Manual

## *Domestic Violence*

---

§ 2265). An otherwise valid out-of-state court or foreign order shall be enforced, regardless of whether the order has been properly registered with this state (Family Code § 6403).

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).