

Domestic Violence

320.1 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 to take enforcement action when appropriate, to provide assistance to victims and to guide officer in the investigation of domestic violence.

320.1.1 DEFINITIONS

The Fontana Police Department "Domestic Violence" policy is drafted in compliance with guidelines established and approved by the Commission on Peace Officer Standards and Training. The following definitions are provided by Penal Code § 13700:

Abuse - means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury.

Domestic Violence - is abuse committed against an adult or minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

Cohabitant - means two unrelated adult persons living together for a substantial period of time, resulting in some permanence of relationship. Factors that may determine whether persons are cohabiting 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
- The length of the relationship

The above definition of cohabitant is used for the application of enforcing Penal Code § 273.5. Family Code § 6209 expands the definition of cohabitant to include a person who regularly resides in the household for the application of enforcing Penal Code § 836(d).

Officer/Deputy - means any law enforcement officer employed by a local police department or sheriff's department, consistent with Penal Code § 830.1.

Victim - means a person who is a victim of domestic violence.

320.2 OFFICER SAFETY

The investigation of domestic violence cases places officers in emotionally charged and sometimes highly dangerous environments. No provisions of this guideline are intended to

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

supersede the responsibility of all officers to exercise reasonable care for the safety of any officers and parties involved.

320.3 OFFICER SAFETY

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

320.3.1 FIELD RELEASE

A field release may not be used and a physical arrest should be made when there is a reasonable likelihood that the offense may continue or resume, or that the safety of persons or property would be imminently endangered by releasing the arrested person in the field (Penal Code § 853.6).

- (a) Any of the following may support the likelihood of a continuing offense:
 1. Whether the suspect has a prior history of arrests or citations involving domestic violence.
 2. Whether the suspect is violating a Stay Away Order issued by a criminal court.
 3. Whether the suspect has previously violated, or is currently violating, a valid temporary restraining order.
 4. Whether the suspect has a prior history of other assaultive behavior (e.g., arrests or convictions for assault and battery or aggravated assaults).
 5. Statements from the victim that the suspect has a history of physical abuse toward the victim.
 6. Statements from the victim expressing fear of retaliation or further violence should the suspect be released.
- (b) Officers shall not cite and release for the following offenses (Penal Code § 853.6(a)(3)):
 1. Penal Code § 243(e)(1)
 2. Penal Code § 273.5
 3. Penal Code § 273.6 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.
 5. Other offenses specified in Penal Code § 1270.1, such as serious or violent felonies.

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

320.3.2 PRIVATE PERSON'S ARREST

Officers will advise the victim of his/her 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 an officer initiated arrest either because it is not a felony or a qualifying misdemeanor offense under Penal Code § 836(d). Advisements regarding private person's arrests should be held out of the presence of the suspect. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions of Policy Manual § 364 for further options regarding the disposition of private person's arrests.

320.3.3 PROTECTIVE ORDER VIOLATIONS

Absent exigent circumstances, if probable cause exists to believe an offender has violated a protective order as defined in Penal Code § 13701(b), an arrest shall be made. These court orders involve the following:

- (a) Prohibit threats, harassment or violence
- (b) Excludes a party from a dwelling
- (c) Prohibit other behaviors specified by the court

These protective orders pertain to parties labeled as petitioner and respondent who are married, formerly married, dating, formerly dated, engaged, formerly engaged, cohabiting, formerly cohabited or have had a child together.

The court orders under Penal Code § 13701(b) may be captioned as follows:

- Domestic Violence Protective Order
- Criminal Court Protective Order
- Emergency Protective Order (EPO)
- Order to Show Cause and Temporary Restraining Order (TRO)
- Order After Hearing
- Restraining Order - Juvenile
- Judgment of Dissolution and Order

Any officer determining that there is probable cause to believe that a protective order issued by a tribunal of another state is valid shall enforce such order as if issued in this state.

320.3.4 TENANCY ISSUES

- (a) Officers may request a person who is not in lawful possession of the premises to leave when:
 1. The complainant is in lawful possession of the premise (as exhibited by rent receipts, lease, deed, verification by apartment manager, etc.)
 2. The complainant has requested that the person leave the premises

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

- (b) The officer will stand by until the suspect removes essential belongings
- (c) If the suspect does not leave upon request, an arrest should be made under Penal Code § 602.5
- (d) If the complainant requesting removal of the suspect cannot show proof of lawful possession, the officer should refer the complainant for a Temporary Restraining Order or other appropriate civil remedy
- (e) If appropriate, a domestic violence situation involving a tenancy issue may be resolved through the proper application for an Emergency Protective Order

320.4 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 return 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.
- (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

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

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.

320.4.1 VERIFICATION OF RESTRAINING ORDERS

Whenever a complainant advises of the existence of a restraining order, the officer shall immediately attempt to determine the following (Code of Civil Procedure § 527.8(i)(3)):

- (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 there is a valid restraining order on file with the Department of Justice California Restraining and Protective Order System (Family Code § 6383(d)).
- (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.

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and where appropriate and practicable:

Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.

If a determination is made that a valid foreign order cannot be enforced because the subject has not been notified or served the order, the officer shall inform the subject of the order, make a reasonable effort to serve the order upon the subject, and allow the subject a reasonable

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice (Family Code § 6403).

Check available records or databases that may show the status or conditions of the order.

Registration or filing of an order in California is not required for the enforcement of a valid foreign order (Family Code § 6403).

Contact the issuing court to verify the validity of the order.

Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

In the event the suspect is no longer at the scene, officers shall document the incident for follow up investigation.

In the event the suspect is at a restricted location and has not been served, officers shall serve a copy of the order to the suspect (320.4.3). If an order has been served and the suspect requests to remove belongings from a restricted location, they shall be advised to obtain a civil standby order from the court. This court order allows an individual to remove personal belongings from a restricted location while law enforcement is present.

320.4.2 ENFORCEMENT PROCEDURES

An arrest shall be made when probable cause exists to believe that the subject of a qualifying restraining order has violated the order, regardless of whether the violation occurred in the presence of the officer when evidence of proof of service of the order exists (Penal Code § 836(c)).

Proof of service may be established by any one of the following:

- (a) The existence of the order and proof of service to the subject has been verified by the officer.
- (b) The complainant produces a valid copy of the order bearing a file stamp of a court and proof of service to the subject.
- (c) The officer has verified the existence of the order and the order reflects that the subject was present in court when the order was made which removes the proof of service requirement.
- (d) The existence of the order has been verified and there is proof that an officer has previously informed the subject of its terms.

Any officer making a warrantless arrest for violation of a felony or misdemeanor domestic violence restraining order should evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. Any officer seeking to increase the amount of bail in such circumstances shall prepare a declaration in support of increased bail when there is reasonable cause to believe that the scheduled bail amount is insufficient to ensure an

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

arrestee's appearance or to ensure the protection of the victim or family member of a victim of domestic violence (Penal Code § 1269c).

320.4.3 PROOF OF SERVICE NOT VERIFIED

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 perform the following:

- (a) At the request of the complainant and upon presentation of an endorsed copy of the restraining order and a proof of service form, serve a copy of the order on the suspect. Submit the completed proof of service form to the court, regardless of whether or not the suspect is taken into custody (Code of Civil Procedure § 527.8(i)(2)).
- (b) Immediately inform the suspect of the terms of the order and place the suspect on notice that violation of the order will result in arrest.
- (c) Obtain the suspect's address.
- (d) Enforce the order but do not make an arrest for any violation of the order occurring prior to verified proof of service or before an officer's admonition of the terms of the order. If the suspect continues to violate the order after being advised of the terms, an arrest should be made (Code of Civil Procedure § 527.8(i)(4)).

If the suspect complies with the order the officer shall complete a report detailing the specific terms of the order and advisement, the name of the advising officer, and the date and time of the advisement (Penal Code § 13730(c)). The Department copy of the restraining order shall be updated to reflect the information listed above.

320.4.4 WHEN ORDERS ARE NOT VERIFIABLE

If the victim is not in possession of the restraining order and/or for any reason the officer cannot verify the validity of the order the following action shall be taken:

- (a) Write a report, or complete a cad incident number, give the police report number or incident number to the victim.
- (b) Inform the victim of how to contact the appropriate detective or investigation unit for further action (Penal Code § 13730(c)).
- (c) Inform the victim of the right to make a private person's arrest for the appropriate violation.

In domestic violence cases where the suspect has left the scene, an investigation should be conducted to determine if a crime has been committed. In such circumstances a written report shall be completed and the victim shall be informed of the case number and the follow-up criminal procedure (Penal Code §§ 13730(c) and 13701(c)).

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

320.4.5 EMERGENCY PROTECTIVE ORDERS

- (a) Family Code § 6241 mandates the Superior Court to provide a judge, commissioner, or referee to hear applications and issue Emergency Protective Orders based on criteria outlined in Family Code § 6250(c). A judicial officer may issue an Emergency Protective Order whenever a law enforcement officer asserts reasonable grounds that:
 1. A person is in immediate and present danger of domestic violence based upon the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.
 2. 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. 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 intent to abduct a child or flee with the child from the jurisdiction or based on an allegation of a reasonable threat to abduct the child or flee with the child from the jurisdiction.
 4. An elder or dependent adult is in immediate and present danger of abuse as defined in Welfare and Institutions Code § 15610.7 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.
- (b) Under Penal Code § 646.91, a peace officer may also obtain an Emergency Protective Order when the officer has reasonable grounds to believe that a person or the person's immediate family is in immediate and present danger of being stalked.
 1. Any such Emergency Protective Order shall be reduced to writing, signed by the officer and include all of the information required by Penal Code § 646.91(c).
 2. Any officer seeking such an order shall serve the order on the restrained person if such person can be reasonably located and shall provide the person protected with a copy of the order. A copy of the order shall also be filed with the court as soon as practicable after issuance.
 3. Any officer requesting such an order shall carry copies of the order while on duty and shall use every reasonable means to enforce the order.
- (c) Emergency Protective Orders may be obtained by telephone to prohibit a suspect who resides with a complainant, regardless of their marital status or relationship from:
 1. Physically or verbally contacting the victim or disturbing his/her peace
 2. Remaining or returning to the victim's residence, regardless of who holds legal title to, or leases the residence

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

3. Continuing a specified behavior as described in the order

(d) Officers investigating the scene of current or recent situations of domestic violence should remain cognizant of the potential for continued and escalated violence. An Emergency Protective Order should be sought if there is reason to believe, based on factual evidence such as a recent history of violence that the victim may still be in danger.

(e) Officers should consider requesting an EPO if any of the following conditions exist:

1. The victim requests an EPO, based upon the circumstances the officers believes it is necessary and with watch commander approval.
2. The investigating officer has grounds to believe that there is an immediate danger of continuing violence against the victim
3. The investigating officer or victim believes that the suspect may be able to make bail and the potential for further violence exists

(f) Issuance of Emergency Protective Orders

1. In all instances where an emergency protective order is desired, such orders shall receive the approval of the on-call judge, commissioner, or referee of the Superior Court of San Bernardino County.
2. The on-call judges are contacted by faxing a completed "On call warrant fax coversheet" available on the PD Intenet under the Forms heading, to (909) 484-7261. The coveersheet must be filled out completely and the EPO must be included.
3. Prior to such approval, the officer shall:
 - (a) Describe the circumstances involved in the incident to the on-duty watch commander or a supervisor;
 - (b) Upon approval of the watch commander or supervisor, the officer shall complete the two required forms (Applicant for Emergency Protective Order and the Emergency Protective Order itself), listing the grounds for issuance of the order;
 - (c) Contact shall be made with the on-call judge, commissioner or referee of the Superior Court, via SBSO Communications (see F below). The circumstances of the incident and reasons for request of the order shall be explained to the judge;
 - (d) If approval of the order is received, the officer shall sign the order as prescribed by the document;
 - (e) If approval is denied, the officer shall list the name of the judge, commissioner, or referee and note on the order that approval was denied

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

and the reason for denial, if given and attach to the on-call warrant fax coversheet , completed EPO and the response to their report.

- (f) Phone calls to judges should be made so that the judge's phone number will not appear on a citizen's phone bill (i.e. use a mobile phone or have the call billed to the station).

320.4.6 COURT ORDERS

Stay-away orders are issued in criminal cases when the probability of victim intimidation exists. Violation of a stay-away order is a misdemeanor under Penal Code § 166(c)(1). Witness intimidation is also a violation of Penal Code § 136.1 and potentially a violation of Penal Code § 422. Examples of witness intimidation include attempting to prevent or dissuade a victim from attending or giving testimony at any proceeding, or using force or expressing or implying a threat of force or violence related to the court proceeding.

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 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).

320.4.7 EXPIRATION OF EMERGENCY PROTECTIVE ORDERS

Family Code § 6256 states that Emergency Protective Orders expire at the earlier of the following times:

- (a) the close of judicial business on the fifth court day following the day of its issuance, or
- (b) the seventh calendar day following the day of its issuance.

320.5 EVIDENCE

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

320.5.1 RECORDING INJURIES AND STATEMENTS

All visible injuries should be photographed regardless of severity, and all victims should receive proper medical care prior to being photographed, if needed or desired. If feasible, officers may make a video recording of the injuries and victim statements.

Victims whose injuries are not visible at the time of the incident should be advised to contact the Investigation Unit in the event the injuries later become visible. An investigator may be assigned to ensure the injuries are photographed during the course of preparing the case for court.

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

320.6 DISPATCH ASSISTANCE

All calls of domestic violence, including incomplete 9-1-1 calls, should be dispatched as soon as practicable.

Dispatchers are not required to verify the validity of a court order before responding to a request for assistance. Officers should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

320.6.1 WRITTEN NOTICE TO VICTIMS

Penal Code § 13701 requires that victims of domestic violence be furnished written notice including the following information:

- (a) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time
- (b) A statement that provides information about a shelter they may contact in the area
- (c) A statement that provides information about other community services they may contact in the area
- (d) A statement informing the victim of domestic violence that he or she can ask the District Attorney to file a criminal complaint
- (e) A statement that "For further information about the California Victim's Compensation Program, you may contact 1-800-777-9229."
- (f) A statement informing the victim of the right to go to the Superior Court and file a petition requesting any of the following orders for relief:
 - 1. An order restraining the attacker from abusing the victim and other family members
 - 2. An order directing the attacker to leave the household
 - 3. An order preventing the attacker from entering the residence, school, business, or place of employment of the victim
 - 4. An order awarding the victim or the other parent custody of or visitation with a minor child or children
 - 5. An order restraining the attacker from molesting or interfering with minor children in the custody of the victim
 - 6. An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so
 - 7. An order directing the defendant to make specified debt payments coming due while the order is in effect
 - 8. An order directing that either or both parties participate in counseling

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

- (g) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse. This includes medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim
- (h) In the case of an alleged violation of Penal Code §§ 243(e), 261, 261.5, 262, 273.5, 286, 288a, or 289, a Domestic Violence Information Pamphlet which shall include, but is not limited to, the following information:
 1. The names and locations of rape victim counseling centers within the county, including those centers specified in Penal Code § 13837, and their 24-hour counseling service telephone numbers.
 2. A simple statement on the proper procedures for a victim to follow after a sexual assault.
 3. A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.
 4. A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.
- (i) The card should also provide information relating to the rights and duties of tenants and landlords regarding lock changes, evictions and related matters that may assist victims with housing and safety concerns (Code of Civil Procedure § 1161.3, Civil Code § 1941.5 and Civil Code § 1941.6).

320.6.2 DOMESTIC VIOLENCE SUPPORT

Victims of domestic violence or abuse have the right to have a domestic violence counselor (as defined in Evidence Code § 1037.1) and a support person of the victim's choosing present at any interview by law enforcement authorities (Penal Code § 679.05). Officers should inquire whether the victim would like a follow-up visit to provide needed support or resources.

The investigating officer must advise the victim of his/her right to have an advocate and support person present at any subsequent interview(s), including additional interviews by the reporting and/or detectives handling the case. The victim should be advised that any advocate working for the agencies listed on the Domestic Violence resource card would qualify.

- (a) For the purposes of this section, an initial investigation by law enforcement to determine whether a crime has been committed and to determine the identity of the suspect(s) shall not constitute a law enforcement interview.
- (b) The support person may be excluded from an interview if the law enforcement authority or the District Attorney determines the presence of that person would be detrimental to the purpose of the interview.

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

- (c) The investigating officer should articulate in the report that the victim was advised of their right to a counselor and/or support person. The officer should also provide information on obtaining a gun violence restraining order and a protective order.

320.7 REPORTING OF DOMESTIC VIOLENCE

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 required by Penal Code § 13730(s).

Victims of P.C. 273.5, spousal abuse, shall be advised of their right to confidentiality in domestic violence reports, per California Government Code 6254(f)2.

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 pamphlet provided to the victim. If the case number is not immediately available, an explanation should be given about how the victim can obtain the information at a later time.

320.7.1 RECORD-KEEPING RESPONSIBILITIES

Penal Code § 13730 also requires that all law enforcement agencies maintain records on the number of domestic violence related calls reported to their agency and to include whether or not weapons were used in the incident. 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.

320.8 FIREARMS

Officers shall check AFS on any DV incident where a case number is issued. The outcome of that check shall be documented in the ensuing case.

Officers shall take into temporary custody any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search or other lawful search in a domestic violence incident and process it for safekeeping as authorized in Penal Code § 12028.5. In no event shall such a firearm or weapon be returned within less than 48 hours. If necessary, officers may also obtain a search warrant for firearms or other deadly weapons that are subject to seizure under Penal Code § 18250 (Penal Code § 1524(a)).

The officer taking custody of any firearm or other deadly weapon shall issue the individual possessing such weapon a receipt fully describing the weapon (including any serial number) and indicate the location where the weapon may be recovered along with any applicable time limit for recovery (Penal Code § 18255).

No person who is the subject of an Emergency Protective Order issued pursuant to Penal Code § 646.91 may own, possess, receive, purchase or attempt to purchase a firearm while such order is in effect.

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

320.8.1 RETURN OF FIREARMS

- (a) If, within five days after the seizure, a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident and the officer has no reason to believe that such firearm or weapon would further endanger the victim or person reporting the domestic violence, the Department shall notify the lawful owner or other person who was in lawful possession of the firearm or weapon of its availability (Penal Code § 12028.5(b)).
- (b) If, however, any officer has reasonable cause to believe that a firearm or other deadly weapon seized in a domestic violence incident would likely result in further danger to the victim or person reporting such incident or that further investigation of such firearm or weapon is required through the Department of Justice or other sources, the Department shall within five days of the seizure, notify the owner or other person who was in lawful possession of the firearm or weapon that such firearm or weapon will be retained for up to 60 days of the seizure.
- (c) If, after 45 days, the Department has been unable to clear the firearm or other deadly weapon for release, the Department shall commence the process of preparing a petition to the Superior Court to determine if the firearm or other weapon should be returned. Such petition shall be filed within 60 days of the initial seizure or upon timely application to the court for an extension within no more than 90 days (Penal Code § 12028.5(f)).
- (d) Under no circumstances shall any firearm be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice which conforms to the provisions of Penal Code § 12021.3(e).
- (e) The Department is not required to retain any firearm or other deadly weapon longer than 180 days after notice has been provided to the owner that such firearm or other deadly weapon is available for return. At the expiration of such period, the firearm or other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 12021.3(g)).

320.9 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).
 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 the victim's 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 should not dissuade victims from making a lawful

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

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 should 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)
 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 should 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).

320.10 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.

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

- (c) Officers who seize any firearm, ammunition, 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)).

320.11 SERVICE OF 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) A temporary restraining order, emergency protective order, or an order issued after a hearing shall, at the request of the petitioner, be served on the restrained person by an officer who is present at the scene of a reported domestic violence incident or when the officer receives a request from the petitioner to provide service of the order (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)).
- (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).
 1. An officer should ensure that the Records Bureau is notified of any firearm obtained for entry into the Automated Firearms System (Family Code § 6383) (see the Records Bureau Policy for additional guidance).
- (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 the person 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).

320.12 DISPATCHER'S RESPONSIBILITIES

This department considers calls of reported, threatened, imminent, or ongoing domestic violence, and the violation of any protection order, including orders issued pursuant to Penal Code § 136.2, and restraining orders of extreme importance and shall be ranked among the highest priorities. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance. All calls of domestic violence should be dispatched as soon as practical. A dispatcher shall not cancel police response to a domestic violence complaint based solely on

Fontana Police Department

Fontana PD Policy Manual

Domestic Violence

a follow-up call from the residence requesting such cancellation. However, the dispatcher shall advise the officer(s) of the complaint's request.