

Basic Course Workbook Series



Learning Domain 25

Domestic Violence

Version 8.0

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

**Basic Course Workbook Series
Student Materials
Learning Domain 25
Becoming an Exemplary Peace Officer
Version 8.0**

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The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.
Executive Director

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Student Workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course Training Requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student Workbook Elements

The following elements are included in each workbook:

- Chapter contents, including a synopsis of key points,
- Supplementary material, and
- A glossary of terms used in this workbook.

HOW TO USE THE WORKBOOK

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning, for test preparation, and for remedial training.

Workbook Format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Introduction and How to Use the Workbook, which provides an overview of how the workbook fits into the POST Basic Course Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. When first referenced these terms will be bolded and underlined (e.g., <u>term</u>).

Chapter 1

Identifying and Classifying Crimes Related to Domestic Violence

OVERVIEW

Learning Need

To effectively carry out their responsibilities, peace officers need a basic knowledge of legal definitions, terminology and applicable penal code sections as well as an understanding of how to classify the crimes that may lead to arrests.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recall the definition of domestic violence (<i>Penal Code Section 13700</i>).	25.01.1
<ul style="list-style-type: none">Recognize the crime elements required to arrest for the following crimes as applied to domestic violence incidents:<ul style="list-style-type: none">Willful infliction of corporal injuryBatteryStalkingMalicious destruction of telephone, telegraph, cable television, or electrical linesPreventing or dissuading a witness or a victim from testifyingCriminal threatsSpousal rape	<div>25.01.4</div> <div>25.01.8</div> <div>25.01.6</div> <div>25.01.7</div> <div>25.01.11</div> <div>25.01.5</div> <div>25.01.12</div>
<ul style="list-style-type: none">Recognize the crime classification for each crime that may result from a domestic violence incident as a misdemeanor or felony.	25.01.10

In This Chapter

This chapter focuses on identifying and classifying criminal behavior associated with domestic violence abuse. Refer to the chart below for specific topics.

Topic	See Page
Defining Domestic Violence	1-3
Willful Infliction of Corporal Injury	1-7
Criminal Threats	1-9
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DEFINING DOMESTIC VIOLENCE

Introduction

Since 1984, the Legislature has systematically increased law enforcement's responsibility to intervene, resolve, and document incidents of domestic violence (*Penal Code Section 13700*). To effectively perform these tasks, the peace officer needs to be able to recognize domestic violence and apply the appropriate laws.

Leadership

In a domestic violence incident, the immediate safety of the victim and children is our primary concern. After safety is ensured, it is the responsibility of the peace officer to provide referrals for a long-term solution. Effective communication demonstrates trust and respect for all individuals involved. Thorough investigation and documentation greatly increase the chances for successful prosecution. Victims of domestic violence need outside support if they are to get out of the relationship and end the abuse. Peace officers can provide some of this support through intervention and referral.

Definition Domestic Violence

Domestic violence means abuse committed against an adult or a minor (*Penal Code Section 13700(b)*). This includes one or more of the following **relationships**:

- Spouse/former spouse
- Cohabitant/former cohabitant
- Dating relationship/former dating relationship
- Engagement relationship/former engagement relationship
- Person with whom the respondent has had a child

NOTE: There is no time limit on how long ago the relationship existed.

Examples

1. A male suspect who hit his wife committed an act of domestic violence.
2. A male suspect who kicked his daughter's mother committed an act of domestic violence.
3. Two women, in a dating relationship, were on a date in a bar. The first woman caught her date flirting with another woman. The first woman then used a handgun to threaten her date. The first woman committed an act of domestic violence.

Abuse

Abuse means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another. (*Penal Code Section 13700(a)*)

NOTE: *Penal Code Section 16120* defines abuse as:

- Intentionally or recklessly cause or attempt to cause bodily injury
- Sexual assault
- To place a person in reasonable apprehension of imminent serious bodily injury to that person or another
- To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued under the Domestic Violence Prevention Act. (*Commencing with Family Code Section 6300 et seq.*)

Examples

1. A man who hit his girlfriend across the face and gave her a black eye committed abuse.
2. A woman was afraid to go into her apartment because her boyfriend, who had been drinking, slapped her and threatened to kill her. This is abuse.

Cohabitants

Cohabitants means two unrelated adults living together for a substantial period of time, resulting in some permanency of relationship (*Penal Code Section 13700(b)*). In the context of domestic violence, parties who are simply co-tenants, not involved in intimate relationships, are not considered co-habitants.

Factors that may be considered when determining whether individuals are cohabitating include, but are not limited to:

- Sexual relations between the parties while sharing the same living quarters
- Sharing income or expenses
- Joint use or ownership of property
- Whether the parties hold themselves out as spouses
- The continuity of the relationship
- The length of the relationship

Examples

1. A man and woman who bought their condo and began living together in the spring, even though they didn't plan to get married until the fall, would be considered cohabitants.
2. An engaged couple who have lived in their apartment for three years, have shared all expenses, and plan to continue living together would be considered cohabitants.

Domestic Disputes Vs Domestic Violence

Domestic disputes are not the same as domestic violence. Domestic disputes are disagreements between family or household members that do NOT involve violence, threats of violence, or court order violations.

Peace officers need to be aware of this distinction because a different response is generally required. In domestic dispute situations where both parties are legally entitled to occupy the residence, the peace officer's role is generally to keep the peace and assist in conflict resolution.

Examples

1. A man and woman were engaged for over six months and had frequent arguments, but they didn't hit or threaten each other.
2. A man's ex-wife was angry because their son ruined his good clothes while with his father and the father refused to pay for new ones. Since his court-ordered child support did not require him to replace clothing, he was not in violation of the court order.

Ethics

Rationalization by a peace officer that a victim deserved to be abused is unacceptable in an investigation of a domestic violence incident.

WILLFUL INFLICTION OF CORPORAL INJURY

Definition

Willful infliction of corporal injury occurs when any person willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, or on any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition.

This means that a person willfully uses physical force on his or her current or former spouse, current or former cohabitant, or parent of their child that results in internal or external injury to the body of the victim, regardless of whether the injury is minor or serious.

Penal Code Section

Willful infliction of corporal injury is covered by *Penal Code Section 273.5*.

Crime Elements

To arrest a person for the crime of willful infliction of corporal injury, the necessary crime elements must include:

- The person willfully inflicts corporal injury upon another person.
- The other person is a spouse, former spouse, cohabitant, former cohabitant, current or former dating relationship partner, current or former engagement partner, or they have a child in common.
- The injury is considered a traumatic condition upon the victim

NOTE: A complaint of minor pain by itself does not satisfy this element. However, a complaint of pain may be indicative of an actual physical injury, which would qualify.

NOTE: The child in common must be born.

Classification

The crime of willful infliction of corporal injury is a felony.

Related Terms

To understand the crime of willful infliction of corporal injury, peace officers need to become familiar with the following terms.

Corporal injury is an injury to a person's body.

Traumatic condition means a condition of the body, such as a wound or external or internal injury including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

Spouse is a relationship defined as being an individual partner in marriage.

Examples

1. A woman kicked her live-in boyfriend in the ribs; he was writhing on the floor when the peace officer arrived. This is willful infliction of corporal injury.
2. A man slapped his wife, causing bruises, and yelled at her to clean up the house. This is willful infliction of corporal injury.
3. A husband placed both hands around his wife's throat and began to apply pressure during an argument. While applying pressure to the wife's throat, the wife began to experience vision changes and became light-headed. This is willful infliction of corporal injury.

Definition

Criminal threats occur when a person willfully makes a threat to commit a crime which will result in death or great bodily injury to the intended victim or a member of his or her immediate family with the specific intent that the statement is to be taken as a threat, even if there is no intent to actually carry it out.

This means that a person makes a definite threat of death or great bodily injury against another person or his or her family, regardless of whether that person intends to carry it out.

Penal Code Section

Criminal threats are covered by *Penal Code Section 422*.

Crime Elements

To arrest a person for making criminal threats, the necessary crime elements must include:

- A threat to commit a crime resulting in death or great bodily injury to a person or his or her immediate family.
- The threat must be such as to cause a person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety.

NOTE: The threat can be made to the victim or to a third party.

NOTE: The threat can be made verbally, in writing, or by means of **electronic communication devices** such as computers, cellphones, facsimile machines, and pagers, and can be explicit or implicit.

Crime Elements (Continued)

- The threat must be made with specific intent that the statement be taken as a threat, whether or not the person intends to carry it out.
- The threat must on its face and under the circumstances made, be so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and immediate prospect of execution.
- The victim must be placed in **sustained fear**; a fear that is not transitory, fleeting, or momentary.

NOTE: There is no minimum time requirement for sustained fear. Fifteen minutes is definitely sufficient.

NOTE: Unequivocal, unconditional, immediate, and specific refer to:

- A condition that must be performed immediately; the condition is one the abuser has no right to impose, and the abuser appears to intend to force performance by using violence (e.g., “If you testify, I will kill you.”).
- A threat that could reasonably induce fear in the victim (e.g., an abuser has beaten his wife many times before. Last time he strangled her to unconsciousness and broke three of her ribs. During an argument today, he told his wife, “Remember last time. I think it’s time to finish what I began.” The victim is in fear).
- Officers should ask the victim what the threat means to him or her.

NOTE: To prove that the victim is reasonably in fear and to show that the abuser is capable of inflicting injury on the victim, prior history of domestic violence is relevant.

Classification

The crime of making criminal threats is a felony.

Related Terms

To understand the crime of criminal threats, peace officers need to become familiar with the following term:

Immediate family means spouse, parent, child, or any person related by **consanguinity** or **affinity** within the second degree, or a person who regularly resides or has resided in the household within the last six months (these six months apply only to the crime of criminal threats).

Definition

Stalking occurs when any person willfully, maliciously, and repeatedly follows or harasses another person and makes a credible threat with the intent of placing that person in reasonable fear for his or her safety, or that of his or her immediate family.

Penal Code Section

Stalking is covered by *Penal Code Section 646.9*.

Crime Elements

To arrest a person for the crime of stalking, the necessary crime elements must include:

- Willfully, maliciously and repeatedly follows another person, or
- Willfully and maliciously harasses another person,
- Makes a credible threat,
- With intent to place the person in reasonable fear for his or her safety or the safety of his or her immediate family

NOTE: The victim must be aware of, and distressed by, the stalkers conduct. However, the awareness can come later.

Classification

The crime of stalking is a felony.

Related Terms

To understand the crime of stalking, peace officers need to become familiar with the following terms:

A **credible threat** means a verbal, written, and/or electronically communicated statement, and/or a threat implied by a pattern of conduct made with the intent of placing the targeted person in reasonable fear for his or her safety or that of his or her immediate family.

NOTE: A credible threat can be established through 9-1-1 calls, restraining order violations, victim's actions to avoid contact (e.g., leaving residence), taped conversations, evidence left by abuser (e.g., bullet taped on the victim's windshield), or prior acts of domestic violence.

Harass means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person and serves no legitimate purposes.

Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. The course of conduct must be such as to cause a reasonable person to suffer substantial emotional distress, and the victim must actually suffer substantial emotional distress.

NOTE: When documenting the stalking incident the peace officer should ask about changes in victim's daily patterns. Substantial emotional distress can be established through changes in victim's daily patterns, seeking medical or psychological help, contacting services for victims of domestic violence, moving, etc.

Collecting Information About the Stalker

The peace officer needs to research the pattern of stalking before proceeding with an arrest. The following chart explains the process for collecting evidence.

The peace officer should:	In order to establish:
Interview the victim	<ul style="list-style-type: none">• The pattern of stalking
Document the abuser's activities	<ul style="list-style-type: none">• If there are closed or pending cases• If there are noncriminal acts of harassment• If there have been any annoying/threatening phone calls or letters• If there have been any annoying/threatening text messages or social media posts• Access to home or work surveillance footage• Search warrant for cell phone data• Use of the Lethality Risk Assessment Checklist (pg. S-9)
Determine if restraining orders exist	<ul style="list-style-type: none">• The number and date obtained• The date they expire• If they have been served
Determine past history	<ul style="list-style-type: none">• Patterns or conduct that precede acts of violence

Examples

1. A woman received another letter from her ex-husband threatening to follow her home from work and give her "what is coming to her."
2. A woman answered the door to find her husband drunk, cursing, and threatening to abduct their children. This is the second time he has come over this week in violation of a valid Domestic Violence Restraining Order.

Telephone Calls with Intent To Annoy

Many harassing phone calls may not contain all of the elements required for stalking. *Penal Code Section 653m* does, however, cover phone calls made with the intent to annoy. This section covers phone calls in which:

- A person, with intent to annoy, telephones or makes contact by means of an electronic communication device and uses obscene language or makes a threat of injury to the person, that person's property, or a member of that person's family.
- A person makes repeated telephone calls or makes repeated contact by means of an electronic communication device with intent to annoy another person at that person's residence, whether or not a conversation ensues.
- A person makes repeated telephone calls or makes repeated contact by means of an electronic communication device with the intent to annoy another person when there is a court order in effect prohibiting the contact.

Classification

Violation of *Penal Code Section 653m* is a misdemeanor.

MALICIOUS DESTRUCTION OF TELEPHONE, TELEGRAPH, CABLE TELEVISION, OR ELECTRIC LINES

Definition

Malicious destruction of telephone, telegraph, cable television, or electrical lines

occurs when a person unlawfully and maliciously takes down, removes, injures, severs a wire of, obstructs, or makes an unauthorized connection with a telegraph, telephone, or cable television, or any other line that conducts electricity, including connected equipment.

Penal Code Section

Malicious destruction of telephone, telegraph, cable television, or electric lines is covered by *Penal Code Section 591*.

Examples

1. A woman turned on her TV and received nothing but static. She checked to make sure it was plugged in. She then checked the cable lines and determined that her estranged husband had cut them.
2. A man tried to make a phone call but did not hear a dial tone. He noticed the box attached to the wall was ripped out and the wires were cut.

Crime Elements

To arrest a person for the crime of malicious destruction of telephone lines, the necessary crime elements must include:

- The obstruction, removal, taking down, severing, or making an unauthorized connection,
- Of phone, cable, electric lines, or their wires,
- That conduct electricity

NOTE: Before peace officers can make an arrest, they need to establish if the instrument and/or lines were operational.

NOTE: Cellular telephones do not fall within this section.

Classification

The crime of malicious destruction of telephone, telegraph, cable television, or electric lines is a misdemeanor or felony.

Related Offenses *Penal Code Section 591.5 (Wireless Devices)*

Any person who unlawfully and maliciously:

- Removes, injures, destroys, damages or obstructs,
- Any wireless communication device with the intent,
- To prevent the use of the device to summon assistance or notify law enforcement

Examples

1. A woman was attempting to contact the authorities using her mobile computer device to make a report. She discovered her ex-husband had submerged her device in water making it inoperable.
2. A man tried to call 9-1-1 using his cell phone when his girlfriend grabbed it from his hand and threw it against the wall making it inoperable.

Classification

The crime of maliciously or unlawfully interfering with an individual summoning law enforcement from a cellular device is guilty of a misdemeanor.

PREVENTING OR DISSUADING A WITNESS/VICTIM FROM TESTIFYING

Definition

Preventing or dissuading a witness or victim from testifying occurs when someone knowingly and maliciously attempts, prevents or dissuades a witness or victim from reporting criminal conduct or participating in legal proceedings resulting from the criminal conduct.

Penal Code Section

Preventing or dissuading a witness or victim from testifying is covered by *Penal Code Section 136.1*.

Crime Elements

To arrest a person for the crime of preventing or dissuading a witness or victim from testifying, the necessary crime elements must include:

- Knowingly and maliciously preventing or dissuading, or attempting to prevent or dissuade, a witness or victim from (one or more of the following):
 - Attending or giving testimony at a trial or other inquiry authorized by law
 - Reporting a crime to a law enforcement, parole, probation, or correctional officer, judge, or prosecutor
 - Causing a complaint or other charging document to be sought, issued, or assisting in the prosecution
 - Arresting or seeking the arrest of a subject

Classification

The crime of preventing or dissuading a witness or victim is a misdemeanor or felony.

Examples

Following a domestic violence incident, a victim began to dial “9-1-1.” The suspect took the phone out of the victim’s hand and said, “You’re not calling anybody.”

A neighbor heard the victim scream, “Don’t hit me - help!” The neighbor pounded on the wall saying, “Stop or I’ll call the cops.” The suspect calls out, “If you do, I’ll take care of you next.”

Definition

Battery as related to domestic violence occurs when unlawful force or violence is used against a person who is a spouse or former spouse, cohabitant, party with whom the perpetrator has a child in common, a current or former engaged partner, or current or former dating partner.

Penal Code Section

Battery is covered by *Penal Code Section 243(e)(1)*.

Crime Elements

To arrest a person for the crime of battery in a domestic violence incident, the necessary crime elements must include:

- Force or violence
- Against a:
 - Spouse/former spouse
 - Current dating relationship/former dating relationship
 - Current engagement relationship/former engagement relationship
 - Person with whom respondent has had a child
 - Cohabitant

NOTE: Peace officers should be aware that battery can be committed against any person. However, it is only considered to be domestic violence when it occurs in the relationships mentioned above.

NOTE: Former cohabitant is not included in *Penal Code Section 243(e)(1)*. Peace officers need to determine if a former cohabitant had a dating or engagement relationship in order to arrest for *Penal Code Section 243(e)(1)*.

NOTE: Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations. (*Penal Code Section 243(f)(10)*)

Classification

The crime of battery as applied to domestic violence is a misdemeanor.

Examples

The following examples illustrate the crime of battery in a domestic violence incident.
(*Penal Code Section 243(e)(1)*)

A man came home and found his wife on the phone. He told her to hang up. When she didn't hang up immediately, he got mad and grabbed her arm but did not leave a mark. The husband admitted grabbing her because he wanted to use the phone.

A man who was living with his intimate partner hit him with an open hand.

Crime Elements

The following chart may be helpful in distinguishing between Willful Infliction of Corporal Injury (*Penal Code Section 273.5*) and Battery (*Penal Code Section 243(e)(1)*).

Relationship	Injury-traumatic condition	No Injury	Warrantless Arrest for Misdemeanors (<i>Penal Code Section 836(d)</i>)
Spouse	273.5	243(e)(1)	Yes
Former Spouse	273.5	243(e)(1)	Yes
Cohabitant	273.5	243(e)(1)	Yes
Co-Parent (child in common)	273.5	243(e)(1)	Yes
Former Cohabitant	273.5	See note below	Yes
Current Dating	273.5	243(e)(1)	Yes
Former Dating	273.5	243(e)(1)	Yes
Current Engagement	273.5	243(e)(1)	Yes
Former Engagement	273.5	243(e)(1)	Yes

NOTE: Former cohabitant is not included in *Penal Code Section 243(e)(1)*. Peace officers need to determine if a former cohabitant had a dating or engagement relationship in order to arrest for *Penal Code Section 243(e)(1)*.

Warrantless Arrests

A warrantless arrest (*Penal Code Section 836(d)*) can be made if the batterer commits assault or battery upon a person who is:

- Spouse/former spouse
- Cohabitant/former cohabitant
- Parent with a child in common
- Current dating relationship/former dating relationship
- Current engagement relationship/former engagement relationship
- Person with whom respondent has had a child
- Child of a party
- Child who is the subject of a parentage action
- People related by consanguinity or affinity within the second degree
- 65 years of age or older and who is related to the suspect by blood or legal guardianship

NOTE: *Cohabitant* as defined in *Family Code Section 6209*

The peace officer may arrest the batterer without a warrant - even when the act is not committed in his or her presence - when **both** of the following circumstances apply:

- There is reasonable cause to believe that the batterer has committed an assault or battery, whether or not it has been committed.
- The arrest is made as soon as probable cause arises to believe that the batterer has committed the assault or battery, whether or not it has been committed.

Consanguinity Vs Affinity

The following chart defines and illustrates the difference between relationships of consanguinity and affinity.

Definition	Relationships
<u>Consanguinity</u>	The relationship between blood relatives. It includes half brothers and sisters, mother or father, sister or brother.
<u>Affinity</u>	The relationship by marriage to the blood relatives of a person's spouse and that spouse's relatives by marriage. It includes in-laws, grandparents and grandchildren.

Examples

1. Two brothers reside within the same residence and one brother commits a battery against the other. Based on these factors the offender can be arrested for this battery per the misdemeanor exception delineated in *Penal Code Section 836 (d)*. Additionally, the victimized brother can be protected through an Emergency Protective Order (EPO) as this relationship is covered under *Penal Code 6209*. Lastly, if a firearm or other deadly weapon is found during a lawful search within the home it can be seized per *Penal Code 18250*.
2. An offender is stalking his former cohabitant and while doing so he also directs the same unlawful behavior towards her sister.

Definition

Spousal rape is nonconsensual penile/vaginal intercourse with a person who is the spouse of the perpetrator.

Penal Code Section

Spousal rape is covered under *Penal Code Section 261*.

Crime Elements

To arrest a person for spousal rape, the necessary crime elements include:

- An act of penile/vaginal intercourse, which
- Is against the will of the spouse (i.e., without consent),
- And is accomplished through force, fear, menace, incapacitation, or threats.

Classification

The crime of spousal rape is a felony.

Examples

A husband who had penile/vaginal intercourse with his wife against her will, by means of force, committed the crime of spousal rape.

An estranged husband who had penile/vaginal intercourse with his wife who consented only because he threatened to injure their children, committed the crime of spousal rape.

Penal Code Sections

The table below shows code sections which deal with particular instances of the crime.

Circumstances of the Crime	Penal Code Section
Accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.	261(a)(2)
Victim is prevented from resisting by any intoxicating or anesthetic substance or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.	261(a)(3)
Victim is at the time unconscious of the nature of the act, and this is known to the accused.	261(a)(4)
Act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat.	261(a)(6)
Act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another family member, and the victim has a reasonable belief that the perpetrator is a public official.	261(a)(7)

OTHER CRIMES THAT MAY RELATE TO DOMESTIC VIOLENCE

Related Felony Crimes

Other crimes may be identified during a domestic violence situation. The following chart lists felony crimes and their corresponding penal code sections.

Crime	Description	Penal Code Section
Rape	An act of sexual intercourse (penile/vaginal penetration) without victim's consent.	261(a)
False imprisonment	Unlawful violation of the personal liberty of another. Felony occurs when this is accomplished through violence, menace, fraud, or deceit.	236/237
Kidnapping	Perpetrator forcibly, or by any other means of instilling fear, takes, holds, detains, or arrests and moves any person.	207
Child abduction with or without custodial rights	A person maliciously takes, entices away, keeps, withholds, or conceals a child with the intent to keep the child from the lawful custodian.	278, 278.5
Corporal injury of a child	Willfully inflicting on a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.	273d
Shooting at an inhabited dwelling house	Discharging a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited house car, or inhabited camper.	246

Related Felony Crimes (Continued)

Crime	Description	Penal Code Section
Assault with a deadly weapon	Committing an assault on another with a deadly weapon or instrument or with force likely to produce great bodily injury.	<i>245a(1)</i> <i>245a(4)</i>
Burglary	Entering any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, etc., with intent to commit grand or petty larceny or any felony.	<i>459/461</i>
Elder or dependent adult abuse and neglect, false imprisonment	Abuse, neglect, financial exploitation, false imprisonment of an elder or dependent adult.	<i>368</i>
Extortion	Obtaining of property or other consideration from another, with his or her consent, ...induced by a wrongful use of force or fear, or under color of official right.	<i>518</i> <i>519</i>
Identity theft	Every person who willfully obtains personal identifying information of another person and uses that information for any unlawful purpose, including to or attempt to obtain credit, goods, services, real property, or medical information without the consent of that person.	<i>530.5</i> <i>528.5</i> <i>530</i>
Cruelty to animals	Maliciously and intentionally maiming, mutilating, torturing, wounding, or killing an animal.	<i>597(a)</i>

Related Felony Crimes (Continued)

Crime	Description	Penal Code Section
Nonconsensual pornography	Intentionally distributing the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in [sexual acts] or an image of masturbation by the person depicted or in which the person depicted participates, under circumstance in which the persons agree or understand that the image shall remain private.	647(j)(4)
Firearm purchase or receipt while subject to domestic violence restraining order	Purchase or receive, or attempting to purchase or receive a firearm knowing one is subject to a domestic violence, stalking, or workplace violence protective order or injunction.	29825(a)

Related Misdemeanor Crimes

Crime	Description	Penal Code Section
Assault	An unlawful attempt to commit a violent injury on another person with present ability to carry it out.	240, 241
Unauthorized entry of a noncommercial dwelling	Enters or remains in a noncommercial dwelling house, apartment, or other such place without consent of the owner, agent, or person in lawful possession. It is aggravated trespass if the resident or other authorized person is present.	602.5

Crime	Description	Penal Code Section
Vandalism	Maliciously defaces, damages, or destroys property of another person. While generally a misdemeanor in domestic violence related cases, vandalism can be a felony if the dollar value of the damage exceeds \$400.00. Vandalism of community property is a crime.	594
Owning or possessing a firearm while subject to protective order	Owns or possesses a firearm while being the restrained party in a protective order or injunction related to domestic violence, stalking, or workplace violence.	29825(b)
Disorderly conduct (public intoxication)	Under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of these, and is unable to care for his or her own safety or the safety of others or obstructs or prevents free use of any street, sidewalk, or other public way.	647(f)
Under the influence of a controlled substance	Under the influence of any controlled substance except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.	Health and Safety Code 11550(a)

Related Crime That May Be a Felony or Misdemeanor

The following chart lists the crime that may be classified as a felony or a misdemeanor depending upon the circumstances. It also provides the corresponding penal code sections.

Crime	Description	Penal Code Section
Endangering person or health of a child	If circumstances or conditions are likely to produce great bodily harm or death, the crime is a felony.	273a(a)
	Any person, who willfully causes or permits any child to suffer or inflicts unjustifiable physical pain or mental suffering, or having custody of a child, willfully causes or permits that child to be placed in a situation where his or her person or health is endangered is guilty of a misdemeanor	273a(b)

Learning Need

To effectively carry out their responsibilities, peace officers need a basic knowledge of legal definitions, terminology, and applicable Penal Code sections as well as an understanding of how to classify the crimes that may lead to arrests.

Domestic Violence [25.01.1]

Domestic violence means abuse committed against an adult or a minor (*Penal Code Section 13700*) involved in a relationship.

Willful Infliction of Corporal Injury [25.01.4]

Willful infliction of corporal injury is covered by *Penal Code Section 273.5* and is classified as a felony.

Criminal Threats [25.01.5]

Criminal threats are covered by *Penal Code Section 422* and are classified as felonies.

Stalking [25.01.6]

Stalking is covered by *Penal Code Section 646.9* and is classified as a felony.

Malicious Destruction of Telephone Telegraph, Cable Television, Or Electrical Lines [25.01.7]

Malicious destruction of a telephone, telegraph, cable television, or electric lines is covered under *Penal Code Section 591* and is classified as a felony.

Preventing Or Dissuading a Witness or Victim from Testifying [25.01.11]

Preventing or dissuading a witness or victim from testifying is covered by *Penal Code Section 136.1* and is classified as a misdemeanor or felony.

Battery [25.01.8]

Battery as applied to domestic violence is covered under *Penal Code Section 243(e)(1)* and is classified as a misdemeanor.

Spousal Rape [25.01.12]

Nonconsensual penile/vaginal intercourse with a person who is the spouse of the perpetrator and is classified as a felony.

Crime classification [25.01.10]

Crime classifications vary based on the severity and type of crime.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. As a peace officer, you have been called to a residence by neighbors complaining of a loud argument taking place in an apartment. Once the scene is secured, you determine that the screaming was coming from a same sex couple living in the apartment. What evidence might you use to distinguish whether this is an incident of domestic violence or a domestic dispute?
2. Can a child be a victim of domestic violence under *Penal Code Section 13700*? Explain your answer.

Activity Questions (Continued)

3. A woman's angry former boyfriend follows her home from work three days in a row. When she asks him what he is doing, he replies, "You can never leave me. You'll never know when I'm right beside you." When she runs into her home and locks the door, he leaves. Later that night, he returns to her home, cuts her phone line, and fires three shots into the house, hitting no one. What, if any, crimes related to domestic violence has the boyfriend committed?

4. As you arrest a subject for spousal battery and lead him to the patrol vehicle he says, "Just wait, honey." His wife, the victim of the crime, begins to shake and cry. What questions can you ask to determine if the suspect violated *Penal Code Section 422* with this statement?

Activity Questions (Continued)

5. Jerry came home after midnight, obviously drunk. He was also hungry and got mad when he realized that his wife was asleep instead of preparing dinner for him. He went into the bedroom and started hitting her, telling her she had better get into the kitchen or he was going to hit her until she turned black and blue. What crime has Jerry committed?

Chapter 2

Impact of Domestic Violence

OVERVIEW

Learning Need

Domestic violence causes tremendous harm to victims and society as a whole. Each member in an abusive or violent household suffers physically and/or emotionally, and often violence is spread from one generation to the next. Current law affords peace officers greater opportunity to assist victims and provides protection and education to help stop the cycle of violence.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
• Identify common characteristics of a victim and a batterer	25.02.1
• Identify a peace officer's role in reducing domestic violence	25.02.2

In This Chapter

This chapter focuses on the impact of domestic violence and the positive contributions peace officers can make in these dangerous situations. Refer to the following chart for specific topics.

Topic	See Page
Batterer and Victim Characteristics	2-3
Peace Officer's Role	2-10
Chapter Synopsis	2-12
Workbook Learning Activities	2-14

BATTERER AND VICTIM CHARACTERISTICS

Introduction

Domestic violence usually involves a pattern of increasingly frequent and severe assaultive and abusive behavior that is used against intimate partners; however, it can be isolated as a one-time occurrence. Its purpose is to control the victim and other members of the household. The pattern may include physical, sexual, and psychological attacks as well as economic coercion. The pattern is usually purposeful behavior and includes both criminal and non-criminal acts. The goal is to gain power and control.

Domestic violence is not a private family matter; it is serious, often criminal conduct and should be treated as such. Peace officers play a critical role in erasing myths about domestic violence, increasing victim safety, stopping the violence, and holding abusers accountable.

Peace officers should remember that batterers or abusers can be either men or women, but the crime disproportionately affects women.

Batterers use a variety of tactics to gain power and control over intimate partners. Some, like physical and sexual violence, are only used occasionally. Some are used one or more times every day. These include:

- Using intimidation
- Using emotional abuse
- Using isolation
- Minimizing, denying, and blaming
- Using children
- Using male privilege
- Using economic abuse
- Using coercion and threats

The following “Power and Control Wheel” was developed to describe these tactics. It was developed in Duluth, Minnesota, by the Domestic Abuse Intervention Project and draws on the experiences of many victims of domestic violence.



Abusive Relationship

Power And Control (Continued)

The chart below presents generalized characteristics of batterers and those affected by the battering to help peace officers understand some of the situational dynamics that may be at work in a domestic violence call.

NOTE: These dynamics are complex, and not all victims and batterers act the same or demonstrate the same emotional behaviors; however, many do exhibit these characteristics. Peace officers can use this information to assist in their understanding of the involved parties.

Characteristics of a Batterer	Characteristics of a Victim	Characteristics of Children
<ul style="list-style-type: none">• Uses violence as a tool to feel powerful• May have low self-esteem• As a child, often witnessed or experienced violence• Avoids responsibility for violent behavior by blaming:<ul style="list-style-type: none">- Children- Work- Victim or others- Drugs or alcohol	<ul style="list-style-type: none">• May have physical injuries including injuries from sexual assault• May have low self-esteem• Suffers emotional trauma• As a child, often witnessed or experienced violence• Fears further violence to self or family members• Has damaged self-image, ego, and self-respect	<ul style="list-style-type: none">• Often learn that violence is an acceptable and expected part of relationships• May have low self-esteem• Often learn to use violence to express frustration, anger, or needs• Often suffer delayed development and/or psychological damage

Power And Control (Continued)

Characteristics of a Batterer	Characteristics of a Victim	Characteristics of Children
<ul style="list-style-type: none"> • Often afraid, jealous, and/or obsessed with controlling a partner's activities • May be desperately afraid of living without a partner • Choosing to use violence or aggression against an intimate partner in response to conflict • May not be violent outside the home • May believe the use of violence is appropriate • Reluctant to admit extent of violence • May express remorse and say or even believe he or she will not repeat the violence • Often uses intimidation and threats of reprisal • May be cruel to animals 	<ul style="list-style-type: none"> • May feel shame or guilt • May believe that he or she is to blame for the violence • May suffer Post-Traumatic Stress Disorder, which may include Battered Woman Syndrome • May use alcohol or drugs as a coping mechanism • Is often met by disbelief from friends, relatives, and service agencies • May give up hope if no one believes him or her or helps • May ultimately resort to homicide and/or suicide 	<ul style="list-style-type: none"> • Develop a high tolerance for inappropriate behavior • May blame themselves for the violence • May suffer Post-Traumatic Stress Disorder • May believe the use of violence is appropriate • May be emotionally or physically neglected • May be injured accidentally, intentionally, or while trying to intervene

Children As Affected Parties

Children are affected by domestic violence, even if they are not the direct target of the abuse. Peace officers should be aware that domestic violence is never effectively hidden from children; they are always affected by it.

Even though children are not directly abused, the effects of witnessing violence, especially by one parent against the other parent, is traumatic and may lead to the development of **Post-Traumatic Stress Disorder** (PTSD), a recurrent emotional reaction to a terrifying, uncontrollable, or life-threatening event that may include nightmares, overwhelming fear and anxiety, flashbacks, difficulty concentrating, and increased stress in relationships.

NOTE: This abuse may also constitute child endangerment under *Penal Code Section 273a*.

Children can act out learned behavior, resulting in new problems. They may take on the role of protecting the victim and other siblings. The need to provide protection may lead the child to mimic destructive or violent behavior.

When children see a perpetrator of domestic violence suffer no consequences, they begin to see violence as an accepted mode of behavior. This shapes how they deal with situations themselves and perpetuates the violence into the next generation. This is known as the **intergenerational chain of violence**.

NOTE: Domestic violence, like other forms of violence, profoundly affects children, whether they are witnesses or direct victims.

Peace officers play a critical role in reassuring, protecting, and meeting other needs of children at every contact.

For more information, please refer to the Supplementary Materials section of this workbook.

Victim Reasoning

The thought process of domestic violence victims may be difficult for a peace officer to understand. Though they may be emotionally, physically, and/or sexually abused, victims often remain in the home with the perpetrator or return if they have initially left.

The following chart lists some common myths - and the facts - regarding batterers and victims.

Myth	Reality
Battering only happens in poor, uneducated families.	Battering occurs in families at all economic and social levels.
If a woman stays, then she deserves it.	Many women attempt to leave, but are physically stopped, stalked, or otherwise located by their abusive partner.
If she wanted to leave, she would.	Response to a learned behavior.
It's natural that husbands and wives fight.	Battering is violence that is intentional, severe, and criminal. Children growing up in these homes are at great risk of becoming batterers or victims themselves.
Battered women make up only a small part of the population.	According to the Center for Disease Control, one in four women report having experienced domestic violence in their lifetime.
Wives don't batter husbands.	While men are certainly battered, their rate of reporting is very low. Men are reluctant to report domestic violence for fear of ridicule or embarrassment.
A slap never hurt anyone.	A slap can lead to black eyes, broken bones and teeth, burns and scalds, knife and gunshot wounds, and murder.

Victim Reasoning (Continued)

Myth	Reality
Battered women are masochistic and enjoy it, otherwise they would not stay.	Women may be reluctant to leave for a variety of complex reasons, including shame, economics, fear, or love for the abuser.
Batterer is not a loving person.	Batterers often appear loving after a violent episode and beg for forgiveness; they promise it will not happen again. Batterers often have good qualities.

Remaining In an Abusive Setting

The following chart presents reasons why victims often remain in the abusive setting

<i>For practical reasons victims remain because they:</i>	<i>For emotional reasons victims stay because they:</i>
<ul style="list-style-type: none">• Are economically dependent• Lack resources/options• Receive threats of suicide and/or homicide• Believe the criminal justice system does not work• Believe the family should be kept together at all costs• Think the children will be better off• Lack support from family or friends• Have religious or cultural beliefs that direct the victim to remain in the relationship• Minimize the extent of violence and injuries	<ul style="list-style-type: none">• Are fearful• Have a legitimate fear of retaliation• Fear the unknown• Feel guilty• Have low self-esteem• May be emotionally dependent• May suffer from <u>learned helplessness</u>• Love the batterer• Suffer from trauma which may cause them not to recognize or recall facts accurately• Have accepted the limitations and controls set by the batterer

PEACE OFFICER'S ROLE

Peace Officer Impact

Repeated responses to domestic violence calls at a household where the victim will not leave can be frustrating for peace officers.

However, it is critical for peace officers to recognize that simply responding to these calls has an impact on all the individuals in the household. Generally, the arrest of the batterer is one of the most effective deterrents in preventing continued violence.

Early consistent response along with proper documentation can have a positive impact on the peace officers involved by:

- Increasing the chance of successful prosecution
- Decreasing possible repeat calls
- Providing potential resolution and closure which decreases peace officer frustration and stress

Positive Consequences of Response to Domestic Violence Calls

The table below shows positive consequences that occur when a peace officer responds to a domestic violence call.

Positive Impact on Victim	Positive Impact on Batterer	Positive Impact on Children
<ul style="list-style-type: none">• May begin to believe that something can be done• Lessens guilt and shame	<ul style="list-style-type: none">• Learns that domestic violence is not acceptable and is criminal behavior, regardless of the motivation	<ul style="list-style-type: none">• May prevent further violence, abuse, or emotional trauma

Positive Impact on Victim	Positive Impact on Batterer	Positive Impact on Children
<ul style="list-style-type: none"> • Realizes someone is willing to help • Realizes that he or she has legal rights • May prevent continuing violence • Regains a measure of control • May give access to advocacy, professional counseling, etc. 	<ul style="list-style-type: none"> • Learns there are negative consequences to violent behavior such as: <ul style="list-style-type: none"> - Arrest - Jail - Fine - Mandatory counseling - Criminal record - Probation - Civil litigation • Learns that domestic violence is not a private, family, or civil matter • May deter continuing violence 	<ul style="list-style-type: none"> • Relays the message that violence is wrong • May break the chain of intergenerational violence • Establishes the violent parent as the responsible party (rather than the victim or child) • May give access to social services, professional counseling, etc.

Learning Need

Domestic violence causes tremendous harm to victims and society as a whole. Each member in an abusive or violent household suffers physically and/or emotionally, and often violence is spread from one generation to the next. Current law affords peace officers greater opportunities to assist victims, provide protection and education to help stop the cycle of violence.

Batterer And Victim Characteristics [25.02.1]

Peace officers should remember that batterers or abusers can be either men or women. Children are affected by domestic violence, even if they are not the direct target of the abuse. Recognizing the dynamics of power and control may help the peace officer recognize and predict how the batterer will tend to behave.

The Role of The Peace Officer [25.02.2]

Generally, the arrest of the batterer is one of the most effective deterrents in preventing continued violence.

Introduction

Activity Questions

1. Describe the “intergenerational chain of violence.” What role can a peace officer have in breaking this chain?
2. What do you think is the greatest myth about domestic violence? Why do you think so many people continue to believe this?

Activity Questions (Continued)

3. As a peace officer responding to a domestic violence call, what positive effects do you reasonably think you might have?

4. At the scene of a domestic violence call, you take a statement from a young mother who is the victim of long-term abuse that has become increasingly violent. In spite of this, she says she doesn't want to leave and even tries to downplay what her husband has done. What reasons might she have for this behavior?

Activity Questions (Continued)

5. How can an understanding of the power and control wheel be useful when interviewing a victim to determine if a battering relationship exists? Select several segments of the power and control wheel and develop sample questions to ask a victim.
6. Working with a blank Power and Control Wheel, fill in at least two examples for each section of the Power and Control Wheel. Try to identify criminal and non-criminal examples.

Activity Questions (Continued)

7. Describe the effects on children growing up in a household where domestic violence is present.

Chapter 3

Responding to a Call

OVERVIEW

Learning Need

When peace officers respond to a domestic violence call, it is essential that they proceed cautiously to ensure the protection of all people involved.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
• Recognize the initial process for responding to a domestic violence call	• 25.03.1
• Recognize under what circumstances an arrest should be made	• 25.03.2
• Identify physical evidence to be collected	• 25.03.3
• Recognize the procedures for seizing firearms or other deadly weapons	• 25.03.4
• Discuss resources available for victim protection	• 25.03.5

In This Chapter

This chapter focuses on responding to a domestic violence call. Refer to the following chart for specific topics.

Topic	See Page
Response Procedures	3-3
Arrest of a Batterer	3-12
Identifying Evidence	3-19
Victim Protection	3-21
Chapter Synopsis	3-22
Workbook Learning Activities	3-24

Introduction

Domestic violence calls create a dangerous situation that must be handled with great caution and attention to safety. Historically, domestic violence calls result in more injuries and death to peace officers than any other calls for service. Because of the potential for danger, officers must protect the safety of all parties at the scene, including themselves.

Prior To Contact

The following are guidelines that peace officers should follow as a precaution *before* entering the premises. In all cases, when responding to a call, peace officers should proceed to the scene in a *safe* and *expeditious* manner.

Before entering, peace officers should consider the following guidelines:

- Coordinate units and plan of approach
- Request additional (backup) officers if necessary, and
- Confirm the address
- Attempt to obtain a history of calls to the location
- Attempt to obtain a history of the parties, including mental health flags
- Make a tactical and undetected approach to the scene
- Observe the surroundings
- Stand to the *side of the door* and listen
- Attempt to determine how many people are involved
- Try to determine the nature of the dispute
- Try to determine the level of aggression
- Knock and identify themselves as peace officers

Upon Entry

Upon entering the premises, peace officers should:

- Locate and identify all parties in the residence
- Make a **protective sweep** of the location, if warranted
- Scan and take control of any weapons
- Take control of the scene
- Determine who else is at the location
- Determine if medical assistance is required
- Request additional (backup) officers, if necessary

Establish Control

It is essential that peace officers maintain control over the situation at all times. The following chart provides guidelines to help peace officers establish control.

Before questioning...	In order to...
Separate all parties	Prevent responses from one party influencing statements of the other party(s)
Keep a watch on all parties	Ensure officer safety
Prevent eye contact between all parties	Prevent victim intimidation
Position yourself within eye contact of your partner	Maintain officer safety

NOTE: Peace officers should interview everyone involved in the domestic violence incident and all additional witnesses before deciding who the dominant aggressor is.

Making Contact with The Parties At The Scene

Once peace officers have entered the premises, they need to determine who is present, their condition, and if a crime has occurred. If any party is injured, peace officers should call for medical help. The peace officers need to:

- Separate the parties
- Control the suspect; remove from premises if necessary
- Determine the relationship between the involved parties
- Note and document the physical and emotional conditions of all parties and other witnesses
- Record all spontaneous statements
- Obtain statements from all witnesses and parties (subject to Miranda requirements as to the suspect)

Making Contact with Members of The LGBTQ Community

Law enforcement officers will be called to domestic violence incidents involving members of the LGBTQ community. Rates of domestic violence involving sexual orientation and gender identity minorities are consistent with those of opposite sex couples. In order to effectively and safely respond to these incidents, law enforcement officers should consider the potential challenges that may arise with involved parties including:

- fear of being “**outed**” by a partner/witnesses
- fear of law enforcement/legal process
- fear of further abuse while incarcerated
- fear of losing child custody
- fear of rejection by LGBTQ community
- lack of LGBTQ knowledgeable and supportive shelters
- lack of resources to get out of the abusive relationship

Upon initial contact, the relationship between parties may not be readily apparent to the officer. With that in mind, officers should be observant of factors such as living conditions (single bedroom apartment and pictures on wall), wedding rings, LGBTQ symbols, etc. Be cautious of applying stereotypes based on physical appearance (i.e., two masculine men).

- As a reminder, speak with each party privately in order to determine the nature of the relationship; the person being interviewed may not want their sexual orientation or gender identity revealed

Determine Who the Dominant Aggressor Is

Peace officers shall make a reasonable effort to identify who is the **dominant aggressor**, (i.e., the batterer). The dominant aggressor is defined as the most significant aggressor, rather than simply the first aggressor. (*Penal Code Section 13701(b)*)

When determining the dominant aggressor, peace officers should consider:

- The intent of the law to protect victims of domestic violence from continuing abuse
- The threats creating fear of physical injury
- The history of domestic violence between the persons involved
- Whether either party acted in self-defense (*Penal Code Section 13701(b)*)

Determine Who the Dominant Aggressor Is (Continued)

Factors that may assist in determining the dominant aggressor include:

- Age, weight, and height of the parties
- Domestic violence history, criminal history including convictions and probation/parole
- Strength, special skills (e.g., martial arts, boxing)
- Use of weapons
- Offensive and defensive injuries
- Seriousness of injuries
- Use of alcohol and drugs
- Who called law enforcement
- Presence of power and control in the relationship (refer to the Power and Control Wheel)
- Detail of statement
- Demeanor of the parties
- Existence of corroborating evidence

NOTE: Peace officers should be aware that no single factor will identify the dominant aggressor. With a careful and complete preliminary investigation, peace officers usually will be able to identify the dominant aggressor.

The peace officer should consider the following questions to assist in establishing the identity of the dominant aggressor:

- Who is in fear? From whom?
- Who poses the most danger to the other?
- Is there a history of domestic violence?
- Did anyone act in self-defense?
- Are there defensive wounds to or on either party?
- Do statements and evidence support either party's account?

NOTE: Developing questions using the tactics described on the Power and Control Wheel may be especially helpful in evaluating an incident.

Injuries

When attempting to identify the dominant aggressor, peace officers may need to distinguish between defensive and offensive injuries. Peace officers need to ask about all injuries, including those concealed by clothing, make-up, hair, and glasses, as well as areas which are painful as a result of a domestic violence incident.

The areas most commonly injured during domestic violence incidents are the head, face, neck, chest, breasts, and abdomen. Peace officers should check for injuries on the scalp and behind the ears.

Aggressors may be injured by victims trying to protect themselves. These injuries may include:

- Scratch marks on the aggressor's face, back, and chest
- Bite marks on the aggressor's face, chest, and arms
- Scratch marks on aggressor's hands and arms, particularly when the victim is being strangled
- Injuries to the groin or tops of feet from being kicked or stomped by a victim being strangled or held against a wall or floor

Defensive injuries are found on the victim attempting self-defense and may include:

- Injuries on inner forearms
- Injuries on the backs of hands and arms from deflecting blows or covering face and upper body
- Injuries to the back, legs, buttocks, and top and back of head from curling into the fetal position
- Injuries to bottoms of feet from kicking at the aggressor

NOTE: Peace officers should note, fully describe, and photograph all injuries and areas of complaints of pain. Peace officers should look for, document, and photograph any injuries and/or blood on the aggressor's knuckles and under fingernails. Evidence under the fingernails of either party should be collected for possible later DNA testing.

Self-Defense

People have a legal right to defend themselves, their property, and a third person such as a child. The force must be reasonable (*Penal Code Section 692, 693*). The use of reasonable force to protect oneself is not criminal conduct.

The elements of self-defense are the:

- Person must reasonably believe that he or she is about to be assaulted (Prior history of domestic violence is relevant in determining the reasonableness of the belief.)
- Assault must be imminent
- Amount of force used must be reasonable (i.e., sufficient to prevent the injury but not excessive)
- Victim is not required to retreat or leave to avoid the assault

Self-Defense Example

A husband has beaten his wife for years, most often after he has been out drinking. The husband comes home late and when his wife expresses anger at what her husband has done, he backs her against a kitchen cabinet and begins to strangle her. She is able to reach a knife on the counter which she plunges into his chest. This is an example of self-defense. The wife was facing lethal violence and strangulation. She is entitled to use sufficient force to protect herself, including potential lethal force.

Mutual Aggressors

There are times when both parties are equally assaultive and batter one another. At other times, even after a careful and thorough investigation, it is impossible to identify the dominant aggressor. In domestic violence situations such instances should be rare. In such rare cases it may be appropriate to arrest both, as long as self-defense has been ruled out and there is probable cause to believe each party has committed an offense. Dual arrests are discouraged but not prohibited in California. (*Penal Code Section 13701(b)*)

Dual Arrests

Occasionally, peace officers will determine that one party is the dominant aggressor and make an arrest. The arrested party may then claim that the victim struck first and insist on making a private person's (citizen's) arrest. Peace officers do not need to accept the arrest (*Penal Code Section 142(c)*). Peace officers can arrest under *Penal Code Section 836(d)*.

Peace officers should then evaluate the situation to determine the most appropriate course of action, including release under *Penal Code Section 849(b)* and cite and release under *Penal Code Section 853.6*.

NOTE: Dual arrests do not prevent either party from being arrested for other offenses or unrelated crimes (e.g., *Health and Safety Code 11550*).

NOTE: Peace officers may also consider the welfare of children when deciding to release one party on citation.

NOTE: One acceptable use of cite-and-release in a domestic violence situation would be to release one party during a dual arrest.

NOTE: Peace officers may need to consult their agency policies when deciding how to handle an arrest in such instances.

Summary Of Action

The following outlines peace officer responses:

- If only one person is assaultive or threatening, arrest that person if there is probable cause.
- If both parties appear to be assaultive or threatening, assess for self-defense and arrest the aggressor.
- If both parties appear to be assaultive or threatening and neither acted in self-defense, assess for dominant aggressor and only arrest the dominant aggressor.
- If both parties are equally assaultive or threatening and neither acted in self-defense, arrest both as mutual (or dual) aggressors.

Examples

1. A boyfriend with a history of domestic violence was arguing with his girlfriend at home. The boyfriend threatened to assault his girlfriend again. He grabbed her by the neck and smashed her head against the wall twice. She grabbed a lamp and struck him in the head, causing injury. This is an example of self-defense on behalf of the woman.
2. A husband and wife appeared calm when the peace officers arrived. The wife had a bloody nose, and the husband had scratches on his arm. The wife told the officers that when she tried to leave for work, she pushed past her husband with her purse, scratching him. The husband became enraged and punched her several times in the nose. Although the husband was struck first, he is the dominant aggressor because his use of force on the wife was much greater, and his action was deliberate and unreasonable. This is an example of dominant aggressor.

Report Information

Take careful notes on all violations. Peace officers will have to file a detailed report on the situation. In addition, the report will have to include any related crime(s) that may have occurred during the incident.

ARREST OF A BATTERER

Introduction

The peace officer is responsible for arresting the batterer in a domestic violence situation if there is probable cause to believe a crime has occurred.

Arrest Law

Each law enforcement agency is mandated by the state to develop, adopt, and implement written policies that encourage the arrest of a domestic violence offender if there is probable cause that an offense has been committed. (*Penal Code Section 13701(b)*)

Types of Arrest

Two types of arrests can be made during a domestic violence incident. The following chart details the characteristics of each one.

Type of Arrest	Characteristic of Arrest
<p><i>A peace officer may arrest a person when...</i></p> <p>(under the authority of <i>Penal Code Section 836</i>)</p>	<ul style="list-style-type: none">• A felony or misdemeanor has been committed in the officer's presence• A felony has been committed outside of the officer's presence• A person has been arrested under a private person's arrest• A person has been arrested under the authority of <i>Penal Code Section 836(c)(1)</i> and <i>836(d)</i> <p>These codes refer to a warrantless arrest for violation of a domestic violence protective order or restraining order and warrantless arrest for assault or battery in a domestic violence situation.</p>

Types of Arrest (Continued)

Type of Arrest	Characteristic of Arrest
<i>A private person may arrest another person (also called citizen's arrest per Penal Code Section 837) when...</i>	<ul style="list-style-type: none">• A public offense committed or attempted in their presence, or• A felony committed outside their presence when• A felony has been, in fact, committed and they have reasonable cause for believing the person to be arrested committed the felony• An arrest is made by a person <i>other than</i> a peace officer

NOTE: Any time a peace officer responds to a domestic violence call and is unable to make a warrantless arrest, it is mandatory that the peace officer make a good faith effort to inform the victim of his or her right to make a private person's (citizen's) arrest, unless the peace officer makes an arrest for a violation of *Penal Code Section 243(e)(1) or 273.5*. This should include information on how to safely execute the arrest. (*Penal Code Section 836(b)*)

Related Terms

To understand the terms associated with arresting a batterer, peace officers must understand the following terms:

Booking is the administrative steps taken after an arrested person is brought to a law enforcement station or detention facility, which involves entry of the person's name, the crime for which the arrest was made, and other relevant facts, which may also include photographing, fingerprinting, etc.

NOTE: *Penal Code Section 1269c* allows peace officers to petition the court to raise bail to enhance the protection of a victim or family member of a victim of domestic violence.

Cite-and-release is the practice of issuing a citation for minor violations.

NOTE: Citations are often issued for misdemeanors unless one of the reasons listed in *Penal Code Section 853.6(i)* exists.

Protection Of Victims

The California Legislature and resulting laws have clearly indicated that the duty of law enforcement is to protect victims from continued domestic violence. This is the primary consideration for NOT releasing domestic violence suspects on citation. Supporting penal code sections are noted in the chart below.

Application to the Protection of the Victim	Penal Code Section
Encourages the arrest of the dominant aggressor.	<i>13701</i>
Requires peace officers to make warrantless arrests in cases involving violations of protective orders (absent exigent circumstances) whether committed in the officer's presence or not.	<i>836(c)(1)</i>
Allows peace officers to make warrantless arrests for misdemeanor domestic violence assault and battery crimes not committed in the peace officer's presence when the arrest is made as soon as probable cause arises.	<i>836(d)(1) & (2)</i>

Continued Domestic Violence

The conditions shown in the table below support the likelihood of continuing violence.

Violence is likely to continue if the batterer has:	Violence is likely to continue if the victim:
<ul style="list-style-type: none">• A prior history of arrests or citations involving domestic violence• Violated a criminal court-issued stay-away order• Previously violated, or is currently violating, valid temporary or permanent court orders• An alcohol or substance abuse problem• A history of mental illness• Access to weapons• Threatened to kidnap family members• Stalked or harassed the victim or other family members• Made suicide threats or attempts	<ul style="list-style-type: none">• Expresses fear of retaliation or further violence should the batterer be released• Makes statements indicating that there is a history of physical abuse towards the victim• Describes a prior history of other assaultive behavior

Summary of Responses

In domestic violence-related incidents, it is important for peace officers to understand when arrest is the appropriate response, what type of arrest is appropriate, and alternative actions available when arrest is not the correct response. The table below discusses the various types of arrests and actions and provides examples of when they should be used.

Action	Description	Example
Peace Officer Arrests and Books	The peace officer arrests and books suspect into jail.	A man's cohabitant enters his home, at the man's invitation, in violation of a restraining order. The protected party then becomes fearful and calls for help. The peace officers should arrest and book the restrained party for violation of the restraining order (<i>Penal Code Section 836(c)(1)</i>).
Cite-and-Release	The peace officer cites suspect for a crime without taking the suspect into physical custody and releases that suspect in the field. This may be used for misdemeanors unless one of the conditions mentioned in <i>Penal Code Section 853.6(i)</i> exists.	Cite-and-release is rarely possible in crimes related to domestic violence situations.

Summary of Responses (Continued)

Action	Description	Example
Private Person's Arrest	<p>A private person can arrest another person for a felony or misdemeanor committed in his or her presence, or for felonies committed outside his or her presence.</p> <p>This may be useful when domestic violence misdemeanors are committed outside of a peace officer's presence, since an officer may not arrest in such cases unless it meets the criteria for <i>Penal Code Sections 836(c)(1) and 836(d)</i>, warrantless arrests.</p>	<p>A woman calls police after an argument with her ex-boyfriend in front of her house. Before leaving, the ex-boyfriend spray painted obscene comments on her car. Since this misdemeanor vandalism occurred outside of the presence of a peace officer, the officer cannot make an arrest. The peace officer should advise the woman about a private person's arrest.</p>
Keeping the peace/Assisting in Conflict Resolution	<p>The peace officer provides assistance to disputing parties when no crime has been committed.</p>	<p>Peace officers are called to the scene of a domestic dispute. Loud arguing has taken place, but no threats were made, no violence has occurred, and neither party wishes to leave. Because this may be a potentially volatile situation, the officers should talk to the parties and attempt to resolve the conflict. Taking no action is inappropriate.</p>

Summary of Responses (Continued)

Action	Description	Example
<u>Civil (police)</u> <u>Stand-by</u>	Peace officer stands by to ensure a person's ability to exercise a legal right in what might be a charged or uncomfortable situation; most commonly to allow a person to retrieve clothing, necessities, and other private property from a residence.	When a woman's husband comes home drunk, as he does frequently, she decides to pack a few clothes and leave for a while. Because he is yelling at her not to go, she calls for help. Since both parties are entitled to be in the home, and there is no evidence of threats or other crimes, the peace officer should stand by to ensure that the woman can pack and leave peacefully. Taking no action would be inappropriate.

IDENTIFYING EVIDENCE

Introduction

An important component of a domestic violence investigation is the identification and collection of evidence. This process shall be documented in the investigative report.

Evidence To Be Collected

Several factors are considered vital and need to be included when completing an investigation and writing the mandated report. Be sure to collect information and/or identify the items that are pertinent to the crime, and document findings as fully as possible.

Specific attention should be paid to the following:

- Any physical injury and the scene itself (take photos)
- The crime scene location (draw maps, diagrams, etc.)
- Blood samples
- Torn clothing
- Hair and fibers
- Firearms and/or weapons (*Penal Code Section 18250*)
- Overturned or damaged items
- Drugs, drug paraphernalia, or presence of alcoholic beverages

Seizure Of Firearms Or Other Deadly Weapons

The peace officer at the scene of a domestic violence incident shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search, or other lawful means, for the protection of the peace officer and others present. *Penal Code Section 18250* authorizes the temporary seizure of firearms or other deadly weapons.

Penal Code Section 1524(a)(9) authorizes a peace officer to obtain a search warrant in the event there is probable cause to believe firearms or other deadly weapons are present that cannot be seized by other legal means.

Seizing Firearms or Other Deadly Weapons Procedures

At the scene of a domestic violence incident involving a threat to human life or physical assault, peace officers must:

- Take temporary custody of any firearm or other deadly weapon
 - In plain sight,
 - Discovered during a consensual or other lawful search,
 - Or discovered by other lawful means.
- Give the owner or person who possessed the firearm a receipt

NOTE: No firearm or other deadly weapon shall be held less than 48 hours, if not retained for evidence or illegal to possess. (*Penal Code Section 18265(a)*)

NOTE: *Penal Code Section 33850*, states peace officers shall not return until owner/claimant establishes authority to possess through Department of Justice.

Examples

Peace officers were called to the scene of a domestic violence incident. When they entered the living room to talk to the battered victim, they noticed a handgun on the mantle. The gun must be seized under *Penal Code Section 18250* for the protection of all parties in the home because a domestic violence incident has taken place, and the gun was in plain sight.

Peace officers at the scene of a domestic violence incident where the wife had strangulation marks on her neck heard a child crying in another room. When they asked if they could look around and check on the child, the victim agreed. The peace officers found the child in the parents' room. They also noticed a rifle in an open closet. The gun must be seized under *Penal Code Section 18250* because it was discovered during a consensual search.

VICTIM PROTECTION

Introduction

One of the most critical times for a victim is immediately after the batterer has been arrested. The victim may be fearful that the batterer will return and cause even more harm.

Resources For Victim Assistance/Protection

Several resources are available to help protect victims (including children) and assist them in regaining control over their lives. The chart below explains who obtains the resource and its benefit.

Available Resources	The...	and the victim is provided...
Report identified as domestic violence	Peace officer completes report as part of the investigation	With the report id number
Resource literature (<i>Penal Code Section 13701(c)</i>)	Peace officer provides resource information	Information about shelters, counseling, etc.
Shelter information/advocacy services	Peace officer provides information of availability	With shelter, counseling, advocacy, and resource information
Protective orders	Victim/peace officer obtains through the court	Certain types of protection depending on the type of order

Disclosure Of Shelter Location

It is a misdemeanor to disclose the location of a domestic violence shelter. (*Penal Code Section 273.7*)

Learning Need

When peace officers respond to a domestic violence call, it is essential that they proceed cautiously to ensure the protection of all people involved.

Responding To Domestic Violence Calls [25.03.1]

Domestic violence is a dangerous situation that must be handled with great caution and attention to safety. Historically, domestic violence calls result in more injuries and death to peace officers than any other call for service. Because of the potential for danger, officers must protect the safety of all parties at the scene, including themselves.

Circumstances For Arrest [25.03.2]

The peace officer is responsible for arresting the batterer in a domestic violence situation if there is probable cause to believe a crime has occurred.

Physical Evidence to Be Collected [25.03.3]

Several factors are considered vital and need to be included when completing an investigation and writing the mandated report. Be sure to collect information and/or identify the items that are pertinent to the crime and document findings as fully as possible.

Seizing Firearms or Other Deadly Weapons [25.03.4]

The peace officer at the scene of a domestic violence incident shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search, or by other lawful means for the protection of the peace officer and others present.

Resources Available for Victim Protection [25.03.5]

Several resources are available to victims:

- A report identified as domestic violence
- Protective orders
- Resource literature
- Shelter information/advocacy services

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. When a peace officer arrives on the scene of a domestic violence call, it is essential that the peace officer follow certain procedures to ensure not only the safety of the victim, but of others in and around the scene, including the peace officer.
 - a. What are the ways to take control of the situation?

 - b. Under what circumstances can weapons be seized?

2. Under what circumstances can a private person arrest another person for a felony?

Activity Questions (Continued)

3. As a peace officer, you arrive on the scene of a domestic violence call and find both cohabitants injured. The first person, Leon, appears to have scratch marks on his arms and face. He says his girlfriend scratched him when he was just playing around and “trying to have a little fun” with her. His girlfriend, Angela, appears to be severely bruised, her shirt is torn, and she is not wearing pants or a skirt. She says that when she told Leon she didn’t want to have sex with him, he became angry and raped her. She says he has hit her before but had never gone this far. She shows you older bruises to illustrate. Who, if anyone, is the dominant aggressor in this case? On what do you base your assessment? What additional evidence would help you back this up?

Activity Questions (Continued)

4. A woman's ex-girlfriend comes to her office and yells at her, screaming that she's ruined her career. When she tries to leave, she shoves her back violently and keeps yelling at her. She loses her balance, trips, and believes she has sprained her ankle. When you and your partner arrive on the scene, the ex-girlfriend has already left. What action should you, as peace officers, take and why?
5. Explain the circumstances under which a peace officer should and should not advise a victim of private person's (citizen's) arrest.

Chapter 4

Court Orders

OVERVIEW

Learning Need

When there is a court order involving domestic violence, it must be verified and enforced following specific procedures.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Identify the differences between the types of court orders to include:<ul style="list-style-type: none">Criminal protective/stay-away ordersEmergency Protective OrdersRestraining orders	<ul style="list-style-type: none">25.04.1
<ul style="list-style-type: none">Identify the validity of a restraining order	<ul style="list-style-type: none">25.04.2
<ul style="list-style-type: none">Identify the purpose for obtaining an Emergency Protective Order	<ul style="list-style-type: none">25.04.3
<ul style="list-style-type: none">Demonstrate how to enforce a court order	<ul style="list-style-type: none">25.04.4

In This Chapter

This chapter focuses on protecting the victim. Refer to the following chart for specific topics.

Topic	See Page
Types of Court Orders	4-3
Validity of Restraining Orders	4-7
Emergency Protective Orders	4-11
Enforcement Procedures	4-16
Chapter Synopsis	4-20
Workbook Learning Activities	4-21

TYPES OF COURT ORDERS

Introduction

Domestic violence is dangerous. However, the law does provide for several types of restraining orders that are designed to protect the victim, children, and other family members.

Community Policing

There are many potential partners working to reduce domestic violence. Some of these are court advocates, prosecutors, church leaders, and teachers. One important strategy of these partnerships is to identify and monitor high-risk cases. Peace officers can replace the incident response approach with the problem-solving approach to prevent partner abuse, child abuse, and homicide in domestic violence cases.

Value Of Enforcing Restraining Orders

Protective orders do not, in themselves, fully provide a barrier of protection for victims of domestic violence. What they do is give peace officers the ability to act if the order is violated. (*Penal Code Sections 166(c)(1), 166(b)(1), 166(a)(4), or 273.6(a)*)

A restraining order is issued to protect the victim from the batterer. These orders are issued to stop the batterer from having contact with, beating, threatening, or harassing the victim and those living with the victim.

Types Of Protection Orders

There is a distinction between an Emergency Protective Order, a Temporary Restraining Order, an Ex Parte, and an Order After Hearing (a more permanent restraining order), any of which may be violated during domestic violence incidents.

Gun Violence Restraining Orders

Prohibits someone from owning, possessing, or purchasing a firearm, ammunition, or magazines. Shall require surrendering firearms, ammunition, and magazines to law enforcement. May be requested by close family member or law enforcement officer. Does not order the restrained person to stay away from or prohibit contact protected parties, nor move out of the residence. (*Penal Code Section 18120*)

Related Terms

To understand the language of court orders, the following terms need to be defined:

An **Emergency Protective Order (EPO)** is a restraining order requested by the responding officer to provide immediate, limited protection to the victim and children for a period of five court days. (Civil Court order which may be issued by Superior/Consolidated Court.)

An **Ex Parte Restraining Order** is requested by the victim in a civil action, is a restraining order issued without prior notice or hearing and is usually valid until the Order to Show Cause (OSC) hearing date. (Issued by the Civil Court.)

A **Domestic Violence Temporary Restraining Order (DVTRO)** is requested by the victim in a civil action and is the most frequently obtained Ex Parte Restraining Order. (Issued by the Civil Court.)

Proof of Service is a document signed under penalty of perjury that a suspect/defendant has been served a copy of the restraining order by an adult who is not a party to the action.

An **Order to Show Cause (OSC)** is a hearing held to determine if the Ex Parte Temporary Restraining Order (TRO) is justified and should be extended. (Issued by the Civil Court.)

Order After Hearing (OAH) is a restraining order issued at the OSC hearing in a civil proceeding and is enforceable for up to five years. (Issued by the Civil Court.)

A **permanent injunction** is a writ or court order (with no expiration date) requiring a person to refrain from a particular act. (Issued by the Civil Court.)

A **criminal court stay-away order** (also called a criminal protective order) is an order requested by the prosecutor and issued by a criminal court, as part of a criminal case, to prevent violence or intimidation by the defendant. These orders are available to protect victims and witnesses and are effective for as long as the court has jurisdiction, including periods of probation.

Types of Restraining Orders

The following are some of the types of restraining orders commonly seen in domestic violence situations:

Type of Order	Description	Obtained By/From	Length of validity	Charging Section
Emergency Protective Orders	Order to provide immediate limited protection to victim, children and family	Superior Court/Officer	5 court days or 7 calendar days, whichever is earlier	<i>Penal Code 273.6(a)</i> <i>Penal Code 166.4</i>
Ex Parte Restraining Orders	Order issued without prior notice or hearing and valid until OSC Hearing	Civil Court/Victim	21 -25 days until OSC Hearing	<i>Penal Code 273.6(a)</i>
Order After Hearing (OAH) (Domestic Violence Temporary Restraining Order) DVTRO	Order issued at OSC Hearing	Civil Court/Victim	3 years (5 years in some cases)	<i>Penal Code 273.6(a)</i>
Criminal Court Stay-Away Orders (criminal protective orders)	Order to prevent violence or intimidation by defendant	Criminal Court/DA	Judge's discretion	<i>Penal Code 166.4</i> <i>Penal Code 273.6(a)</i> <i>Penal Code 1203.2a</i>

NOTE: Generally, criminal court protective orders take precedence over civil orders. (*Penal Code Section 136.2(h)*)

NOTE: Under limited circumstances detailed in *Penal Code Section 136.2(e)(2) (A through C)*, EPO's with more restrictive terms can take precedence over criminal orders.

Foreign Orders

A foreign order is a valid domestic violence-related order, issued by a court of another state, commonwealth, territory, insular possession subject to U.S. jurisdiction, military tribunal, or tribe, must be honored and enforced in this state (*Family Code 6401*). It is treated like orders issued by local courts. The authority to arrest under *Penal Code Section 836(c)(1)* applies to these orders.

Additional Types of Court Orders

The following chart identifies additional types of restraining orders that can be issued in domestic violence and stalking matters.

Restraining Order	Issued
Domestic Violence Protection Act (DVPA) restraining order	To the same persons protected by an Emergency Protective Order (EPO)
Family Law Act (FLA) restraining order	To persons involved in divorce or custody proceedings
Uniform Parentage Act (UPA) restraining order	To unmarried parents with a child in common
Civil Harassment restraining order and injunctions	To prevent any kind of harassment by another person

VALIDITY OF RESTRAINING ORDERS

Introduction

Thousands of restraining orders are issued annually in California. It is the responsibility of the peace officer to verify the existence of any restraining order when requested by a complainant and when taking enforcement action.

Records Requirements

Law enforcement agencies are required to maintain records of all restraining and protective orders issued. (*Penal Code Section 13710*)

Verifying A Restraining Order

Whenever a complainant advises of the existence of a restraining order, the peace officer shall verify its status prior to taking enforcement action. The following chart shows the steps involved in verification.

Step	The peace officer shall verify:
1	<p>That the:</p> <ul style="list-style-type: none">• Restraining/protective order is on file with the agency• Complainant has a certified valid copy• Order is found in the Department of Justice California Restraining and Protective Order System (CARPOS) (<i>Family Code Section 6381</i>)
2	<p>That the restraining order is still valid as to duration/time for:</p> <ul style="list-style-type: none">• Emergency Protective Order - valid for 5 business days or 7 calendar days, whichever is earlier• Temporary Restraining Order - valid until hearing (usually 21-25 days)• Order After Hearing - valid for 1-5 years• Criminal Protective Order - check expiration date
3	<p>Whether the proof of service or prior notice exists or the suspect was in court when the order was made</p>
4	<p>The terms and conditions of the restraining order</p>

CARPOS Access Through CLETS

The **California Law Enforcement Telecommunications System (CLETS)** is a database that allows peace officers to access the information for verifying restraining orders in the California Restraining and Protective Order System (CARPOS). It also provides information about domestic violence orders issued by courts in many other states.

Items To Check on A Restraining Order

When the peace officer locates the existing restraining order, the following information needs to be verified:

- Court stamp
- Case control number
- Expiration date
- Person(s) to be protected
- Person to be restrained
- Judge's signature
- Proof of service

NOTE: Peace officers should be aware that unauthorized alterations to restraining orders can occur. When in doubt, attempt to verify the information.

NOTE: Peace officers must fully enforce domestic violence court orders issued by courts of other states, commonwealths, territories, insular possessions subject to U.S. jurisdiction, military tribunals, and tribal courts.

NOTE: See Learning Domain 36 Information Systems for more information on CLETS.

When Proof of Service Cannot Be Verified

When peace officers verify that a restraining order exists, but cannot verify proof of service or prior knowledge of the order by the batterer, they should (*Family Code Section 6383*):

- Inform the batterer of the terms of the order
- Admonish batterer of the order, that the batterer is now on notice and that violation of the order will result in arrest
- Make an arrest if the batterer continues to violate the order after being advised of the terms
- Document the service for entry into CARPOS through CLETS, and
- Document the incident

Copy Of Restraining Order

The victim should be advised to retain a copy of the restraining order in his or her possession at all times. This also helps the peace officer to verify its existence in the event of a violation of the terms and conditions by the restrained party.

If the victim is not in possession of the restraining order, or if there is a computer error, the officer may not be able to confirm the order's validity, thus limiting their enforcement abilities.

If the order cannot be verified, follow agency policy. Peace officers may also consider seeking an EPO.

EMERGENCY PROTECTIVE ORDERS

Introduction

An Emergency Protective Order (EPO) is an order issued by a judicial officer upon request by a peace officer under *Family Code Section 6250*. The purpose of this order is to provide for immediate and short-term protection.

Individuals Protected by an EPO

An EPO is issued to protect:

- A person who is in immediate and present danger of domestic violence (*Family Code Section 6211*) and is in one of these relationships:
 - Spouse or former spouse
 - Current or former cohabitant (*Family Code Section 6209*)
 - Engaged or formerly engaged people
 - Dating or former dating partner (*Family Code Section 6210*)
 - Parties with a child in common
 - A child of a party to domestic violence
 - Persons related by consanguinity or affinity (within the second degree)
- A child who is in immediate and present danger of:
 - Physical, emotional, or sexual abuse
 - By a family or household member; or
 - Being abducted by a parent or relative

Individuals Protected by an EPO (Continued)

- A person who is in immediate and present danger of stalking by anyone (*Penal Code Section 646.91, Family Code Section 6274*)
- A person in immediate and present danger of elder or dependent adult abuse by anyone, including physical abuse, neglect, abandonment, and failure of a care provider to provide needed goods or services

NOTE: An EPO for elder abuse cannot be based solely upon an allegation of financial abuse.

NOTE: An ex parte order may be granted for animals belonging to the involved parties (*Family Code Section 6320(b)*).

NOTE: Peace officers should understand that EPOs may be used to protect children in danger of family violence as well as individuals who are at risk of domestic violence as defined in *Penal Code Section 13700*. The relationships identified in *Penal Code Section 13700*, for the purposes of establishing domestic violence, are not identical to those defined as family or household members in *Family Code Section 6211*.

Obtaining An EPO

The peace officer can obtain an EPO by telephone based on recent allegations of abuse or the threat of abuse. The following chart explains how to obtain an EPO.

Common Questions	Appropriate Responses
What are the notification requirements for an EPO?	A peace officer who believes there may be grounds for the issuance of an EPO shall inform the involved parties; they may request the officer seek an EPO. <i>(Family Code Section 6275)</i>
Who obtains an EPO?	Peace officers request an EPO when they believe it is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, stalking, or elder abuse.
Whom do I call?	Call a judge or commissioner of the superior/consolidated court.
When can I get an EPO?	Obtain an EPO 24 hours a day; a judge is always available to issue one.
How long is an EPO valid?	An EPO is valid for 5 business days, not to exceed 7 calendar days. The date of issuance does not count. <i>(Family Code Section 6256)</i>

Required Judicial Findings

Under *Family Code Section 6251* an emergency protective order may be issued only if the judicial officer finds both of the following:

- That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in *Welfare and Institutions Code Section 15610.0*.
- That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult.

Information In An EPO

An EPO should include:

- The name of the restrained party
- The name(s) of the protected party(s)
- A statement explaining the reason for the order
- The date of occurrence
- The relationship of the involved parties
- The injury or circumstances
- A reference to the victims level of fear
- The date and time when the order expires
- The address of the superior/consolidated court where the endangered person resides
- A statement addressed “To the Protected Person”
- A statement addressed “To the Restrained Person”
- The signature of the peace officer
- The name of issuing judicial officer
- Proof of service

Procedures For Serving An EPO

There are specific mandated steps to follow when serving an EPO. The following chart describes each step:

Step	The peace officer shall verify:
1	Upon oral issuance of the order, the officer shall reduce the order to writing on the prescribed forms and sign it (<i>Family Code Section 6270</i>).
2	The peace officer shall serve a copy of the emergency order on the restrained party, if the party can be reasonably located (<i>Family Code Section 6271(a)</i>).
3	The peace officer shall give a copy of the emergency order to the protected party (<i>Family Code Section 6271(b)</i>).
4	The peace officer who requested the emergency order, while on duty, shall carry a copy of the order or as appropriate per agency policy (<i>Family Code Section 6273</i>).
5	A copy of the emergency order shall be filed by the end of the shift with the agency and filed with the court as soon as practical after issuance (<i>Family Code Section 6271(c)</i>).
6	The law enforcement personnel shall ensure that the emergency order is entered into the statewide California Restraining and Protective Order System (CARPOS) which is accessed through CLETS (<i>Family Code Section 6380</i>).

ENFORCEMENT PROCEDURES

Introduction

Violating a restraining order is a misdemeanor. It is the peace officer's responsibility to address the violation.

Classification Of Violation

A knowing and willful violation occurs if any term of the restraining orders below are violated.

Provides that:	Penal Code Section
Knowing and willful violation of an order issued under the DVPA, FLA, UPA, and harassment statute with no prior convictions is a misdemeanor.	273.6(a)
Willful violation of these orders with a prior restraining order conviction occurring within seven years and involving an act of violence or a credible threat of violence is a felony.	273.6(d)
Willful violation of these orders with a prior conviction within one year and resulting in physical injury to the victim is a felony.	273.6(e)
Willful disobedience of any process, or order lawfully issued by any court, or violation of a stalking EPO is a misdemeanor.	166(a)(4) 166(b)(1), and 166(c)(1)

Criminal Protective Order

A violation of a criminal court protective order, issued in a criminal case because of the likelihood of victim intimidation, is a misdemeanor if there are no qualifying prior convictions. (*Penal Code Sections 166(a)(4), 166(b)(1), 166(c)(1)*) If the order is issued in a domestic violence case and if there is a prior conviction within 7 years, the violation is a misdemeanor or felony if the offense involves violence or a credible threat of violence. (*Penal Code Section 166(c)(4)*)

If Restrained Party Has Left the Scene

In the event the restrained party has left the scene of the incident and an investigation determines that a crime has been committed or a domestic violence situation exists, the following shall occur:

- A report shall be written and submitted
- The victim shall be advised of the follow-up criminal procedures and report number
- A reasonable attempt shall be made to locate the suspect and make an arrest

NOTE: Anyone subject to a domestic violence restraining order is prohibited from owning, possessing, purchasing, or receiving a firearm or ammunition. (*Penal Code Sections 29825(a), 29825(b), 166, 273.6(a)* and *Family Code Section 6389*)

Authority To Arrest

When peace officers have probable cause to believe that the restrained party has committed an act in violation of a domestic violence protect order, the peace officer shall, absent exigent circumstances, arrest the person without a warrant and take the person into custody whether or not the violation occurred in the arresting officers' presence (*Penal Code Sections 836(c)(1), 13701(b)*).

Criteria For Arrest

A warrantless arrest shall be made when there is probable cause to believe that a violation of the restraining order has occurred, if the existence of the order is verified, and there is proof of service or notice.

If there is no proof of service in CARPOS or at the agency, the peace officer needs to check that:

- The order reflects that the restrained party was personally present in court when the order was made
- There is proof that the restrained party has previously been admonished notified, or served by a peace officer
- There is proof that the restrained party has previously been served by an adult who is not a party to the action
- The complainant produced a valid copy bearing a court file stamp

Special Issues “Inviting Over”

An order remains valid and enforceable regardless of the acts of the protected party. An invitation by the protected party to the restrained party does not change the restrained party’s obligation to obey the order. The restrained party is still in violation. Only the court can change a court order.

NOTE: Peace officers should review the terms of a court order before assisting a restrained party to enter a residence and/or to remove personal property as the order may prohibit their entry and/or their removal of property.

Only the restrained party is bound by the order and subject to arrest.

NOTE: Peace officers should consider telling restrained parties, at the time of service, that any invitation by the protected party does not nullify the order and they remain subject to arrest. Document the advisement in the report.

Order Allowing Limited Contact

Under certain circumstances, restrained parties may be allowed to have limited contact with protected parties (i.e., no harassment order). This permission will be reflected in the order. In such cases, officers will have to determine if any alleged misconduct constitutes a violation of the order.

NOTE: Peace officers should consider reminding the parties of the terms and conditions of the order.

Example

1. During a traffic stop and subsequent computer check, a peace officer finds that there is a valid restraining order in existence and noted that both the restrained and protected parties are together in the vehicle. The parties explain that they are allowed peaceful and/or limited contact, and a review of the order confirms their assertions.

“Multiple Orders”

Peace officers can be confronted with conflicting court orders. Officers should:

- Verify the validity of all orders
- Determine which court orders are criminal and which are civil
- Remember, generally criminal court orders take precedence over civil orders (*Penal Code Section 136.2(h)*)
- Know if two criminal or two civil orders are in conflict and an EPO with more restrictive terms have been issued, the EPO takes precedence over those terms

Example

1. Peace officers are called to a residence. Jones says there is a valid criminal court order in effect prohibiting Smith from coming to the residence. Smith produces a valid order and says he has court ordered visitation with their children. Peace officers should enforce the criminal court order and arrest Smith after verifying the criminal court order's validity.

Learning Need

When there is a court order involving domestic violence, it must be verified and enforced following specific procedures.

Types Of Court Orders [25.04.1]

Domestic violence is dangerous. The law does provide for several types of restraining orders that are designed to protect the victim, children and other family members.

Verification Of Restraining Order [25.04.2]

It is the responsibility of peace officers to verify the existence of any restraining order when requested by a complainant and when taking enforcement action.

Purpose For Obtaining an Emergency Protection Order [25.04.3]

The purpose of this order is to provide for immediate and short-term protection.

Enforcement Of a Court Order [25.04.4]

Violating a restraining order is a misdemeanor. It is the peace officer's responsibility to address the violation.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. Donna was hysterical. Carla, her live-in girlfriend, had hit her and caused injuries. She left and said she would return with a gun. Donna called for help and asked the peace officers for protection. When the peace officers arrived, Carla had returned and the officers arrested her. Donna stated she was afraid of what Carla would do when she gets out of jail. Which restraining order can the peace officer obtain that would provide the most immediate protection? What other suggestions should the officer make to Donna regarding her safety? What if Donna does not want an EPO?

Activity Questions (Continued)

2. Jennifer tells the peace officer that there is an existing restraining order issued against her fiancé. What steps should the peace officer go through to verify its existence?
3. What are the criteria for making a warrantless arrest for an alleged violation of a restraining order?

Activity Questions (Continued)

5. Using the facts in question one, describe the procedure for obtaining an EPO, and complete an EPO form.

Activity Questions (Continued)

6. James and Cheryl were married in Nevada. James divorced Cheryl after several domestic violence incidents. As part of the divorce decree, the court issued a permanent restraining order prohibiting Cheryl from contacting James. James moved to California. Officers are called when Cheryl knocks on James' door. What actions should the officers take?

7. Using an order provided by your instructor, locate and identify:

- Court stamp
- Case control number
- Expiration date
- Person(s) to be protected
- Person to be restrained
- Judge's signature
- Proof of service

Chapter 5

Documenting the Crime

OVERVIEW

Learning Need

A comprehensive investigation includes the collection of evidence and the documentation of events, resulting in a detailed report of the domestic violence incident and investigative action.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
• Identify what information needs to be documented in a report.	25.05.1
• Identify how the peace officer can provide support for the victim.	25.05.3

In This Chapter

This chapter focuses on investigation procedures. Refer to the following chart for specific topics.

Topic	See Page
Report Documentation	5-3
Support Services for Victims	5-7
Chapter Synopsis	5-12
Workbook Learning Activities	5-13

REPORT DOCUMENTATION

Introduction

The law requires that every law enforcement agency record all domestic violence-related calls for assistance and that all such calls be supported with a written incident report.

Why Is the Report Important

The report may be the only available information used to prosecute the batterer. Additionally, a series of reports assists in the documentation of the pattern of abuse in a relationship.

Domestic Violence Report Requirements

A written incident report is required in ALL domestic violence-related calls. (*Penal Code Section 13730(c)*)

The report shall include the following:

- A notation of whether peace officers observed any sign that the batterer (abuser) was under the influence of alcohol or controlled substance
- A notation of whether peace officers determined if any law enforcement agency had previously responded to a domestic violence call at the same location involving the same abuser and victim
- A notation of whether peace officers found it necessary to seize firearms or deadly weapons
- Indicate whether a firearm or other deadly weapon was present at the location

NOTE: It is important to include the relationship between the victim and the batterer in the report (i.e., husband/wife; boyfriend/boyfriend, etc.) as well as the length of the relationship.

NOTE: While *Penal Code Section 13730(c)* only requires you to note if the batterer was under the influence of alcohol or controlled substance, it would be helpful to note if either party was under the influence of alcohol and/or controlled substance.

NOTE: While *Penal Code Section 13730(c)* only requires you to note prior incidents at the same location. If you are aware or discover previous calls involving the same parties at other locations, this should also be noted.

Additional Information to Assist in Prosecution

For a successful prosecution, it is useful to document the following information:

- Full description of the crime scene
- Number of prior incidents and known injuries
- Responding agencies and case numbers
- Protective orders (expired, valid, or obtained at the scene)
- Domestic violence resource information provided to the victim
- Copy of the "9-1-1" incoming call requested or obtained
- Victim and batterer location upon arrival
- Victim's physical and emotional condition
- Batterer's physical and emotional condition
- Physical and emotional condition of all witnesses, including children, elders, other household members, and neighbors
- Verbatim spontaneous statements from victim, batterer, and witnesses, including all children
- Names and ages of all children living in the home, if any
- Contact person if victim goes into hiding
- Relevant physical evidence
- Batterer's probation and/or parole status
- Medical assistance requested/refused
- Medical records release request signed by the injured party

Photo Evidence

To ensure that the correct evidence is collected, the peace officer needs to be aware of the types of documentation required to support the case.

In addition to observations of the environment and the parties involved, the peace officer must document specific conditions, including injuries and weapons.

Photograph the following:

- The crime scene
- All parties whether they are injured or not
- Injuries on all parties, including children
- Areas where any party complains of being injured where no injuries are observed (often injuries will be visible a day or two later)
- Areas where there are no injuries where you would expect to see them were the batterer or victim's account accurate
- Displays of emotion by involved parties such as crying, trembling, flushed face, or the absence of obvious emotion
- Locations where children are found

Photographing the victim and children is helpful in the event they are unavailable for future court appearances and the prosecutor elects to proceed without them.

Weapons Seized

Document all weapons seized. Indicate:

- The type of weapon
- How it was used (if at all)
- Location where seized
- Basis for seizure
 - Evidence (used in the crime)
 - Contraband (weapon is illegal or batterer is prohibited from having the weapon)
 - Safekeeping
 - Provide receipt for any or all weapons received (*Penal Code Section 18255(a), (b), and (c)*)

Evidence Seized

Document all evidence seized. Indicate:

- pre-existing photographs that tend to indicate a relationship between the parties
- any evidence of prior abuse in victim's possession

SUPPORT SERVICES FOR THE VICTIM

Introduction

Because victims of domestic violence are often very traumatized, they will likely need support, advice, and services to assist them in seeking safety and a sense of security.

Medical Attention

Many victims are in shock and may not be aware of how badly they are injured, or they may complain of injuries that may not be visible.

In all cases, the peace officer should request the appropriate medical attention. (*Penal Code Section 13701(c)(7)*)

NOTE: Remember, an injured victim can be encouraged and helped to get medical attention but cannot be forced to do so. Document any refusal to obtain medical attention.

Follow-Up For the Victim

Before leaving the scene of a domestic violence incident involving an alleged violation of *Penal Code Sections 273.5, 243(e)(1), and/or 261*, peace officers must provide the victim with domestic violence resource information. Peace officers need to provide all victims of domestic violence with follow-up information. *Penal Code Sections 264.2 and 13701(c)(9)* requires peace officers to assist the victim in pursuing criminal options, such as providing:

- The case or incident identification number
- The contact information for the appropriate investigative unit

Peace officers shall also:

- Provide domestic violence resource information
- Advise the victim of the availability of protective orders
- Inform the victim about victim/witness services
- Refer the victim to a shelter for emergency housing
- Inform the victim that strangulation can cause internal injuries and encourage them to seek medical attention (*Penal Code Section 13701(l)*).

Peace officers should also:

- Offer and provide, when requested, civil (police) standbys for removing personal property and assistance in safe passage out of the victim's residence based on need and department policy

Explaining Available Resources and Protective Action

The peace officer should encourage the victim to follow through with criminal prosecution. Peace officers should explain available resources and protective action the victim may take, including:

- Confidentiality pursuant to *Penal Code Section 293(a)* or *Government Code Section 6254(a)(2)*
- Complaint warrant processes
- Private person arrest procedures
- Restraining orders
- Available community shelters and other services
- Marsy's Law
- California Victim's Compensation Program
- Civil suit for losses suffered as a result of the abuse
- Hot-line phone numbers for domestic violence and sexual assault centers
- Designating the Secretary of State to handle their mail and service of process (California Confidential Address Program (CAP))
- Availability of changing their Social Security Number

Transportation

It may be necessary to arrange for transportation of the victim and children to a secure location or a medical facility for attention when necessary (*Penal Code Section 13701(c)(7)*). This decision is based upon:

- the victim's concern for his or her own safety and the safety of his or her dependents
- the victim's need for medical attention
- the peace officer's determination that a need exists because the victim has no other source of transportation
- agency policy

NOTE: Remember that a victim can be encouraged to seek shelter at a secure location and medical attention but cannot be forced to go there.

Civil (Police) Standby

Either immediately after the domestic violence incident or some days later, the victim may want to remove personal belongings from the residence.

The peace officer can be present, if authorized by agency policy, if the victim wishes to remove some personal belongings (e.g., clothing, toiletries, etc.) and/or needs assistance in safe passage out of the victim's residence. (*Penal Code Section 13701(c)(7)*)

NOTE: Household furnishings are not considered personal property.

Incarceration Of Batterer

If batterers are arrested, victims must be informed that even though the batterers are officially restrained, they may be released without notice. (*Penal Code Section 13701(c)(9)(A)*)

Notice Of Release

After the batterer is convicted of a felony domestic violence offense, victims are notified 15 days prior to the release of the batterer. To be entitled to this information, victims shall notify the Department of Corrections or the county sheriff of their current mailing addresses and telephone numbers (*Penal Code Section 646.92*).

Victims may also register to be notified through victim assistance websites which track inmates, including their transfer to correctional facilities, and release dates.

Personal Safety Options

The following table offers some additional information peace officers should provide to victims to help them protect themselves:

Topic	Information
Increasing Victim and Family Safety	<p>Suggest to victims that they:</p> <ul style="list-style-type: none">• Develop safety and/or escape plans• Change the locks, if lawfully allowed to do so• Stay with friends, relatives, etc.• Change work and travel routines
Locating a Safe Place to Stay	Inform victims of the existence of local shelters
Calling for Law Enforcement Protection	Encourage victims to call for help when they feel threatened
Protective Orders	Inform victims that Protective Orders are valid and enforceable throughout the United States

NOTE: If the victim fears a confrontation with the suspect, the peace officer may suggest that the victim develop a safety and/or escape plan.

Learning Need

A comprehensive investigation includes the collection of evidence and the documentation of events resulting in a detailed report of the domestic violence incident and investigative action.

Information Needed for The Report [25.05.1]

A written incident report is required in ALL domestic violence-related calls. The report shall include notations of whether peace officers observed any sign that the batterer (abuser) was under the influence of alcohol or controlled substance, whether peace officers determined if any law enforcement agency had previously responded to a domestic violence call at the same location, and whether peace officers found it necessary to seize firearms or deadly weapons.

Victim Support [25.05.3]

Because victims of domestic violence are often very traumatized, they will likely need support, advice, and services to assist them in seeking safety and a sense of security.

Introduction

Activity Questions

1. Charlene called 9-1-1 to report her boyfriend was refusing to leave their residence. Charlene advised Officer Brown she attempted to leave and her boyfriend grabbed her by the arm leaving bruises. Officer Brown arrested the boyfriend and calmed Charlene down. What information should be documented in the report?
2. The peace officer can provide much needed support for the victim. Under what circumstances would the officer arrange for transportation? What suggestions should be made for securing a victim's personal safety?

Activity Questions (Continued)

3. As a peace officer, you arrive on the scene of a domestic violence call where a badly battered woman tells you her husband has walked out after beating her. The woman is distraught because she says her husband also told her he would be back to see “if she’d learned her lesson.” Describe what you would do to help and support the victim, gather evidence, and pursue the case.

Supplementary Material

OVERVIEW

In This Section

Refer to the following table for specific reference documents in this section.

Topic	See Page
Assault Against Wives: A Part of Ancient Law	S-2
Lethality Checklist	S-6
The Cycle of Violent Behavior	S-11
California Attorney General's Crime and Violence Prevention Center Safe from the Start Program Reducing Children's Exposure to Violence	S-12

ASSAULT AGAINST WIVES: A PART OF ANCIENT LAW

Introduction

This material is presented to provide a historical perspective of how the law has changed over time relating to assaults against women. It may be helpful in familiarizing the reader with different attitudes and views about domestic violence.

Law Of Marriage (735 B.C.)

The law of marriage was formalized by Romulus (who was credited with the founding of Rome) and required married women “as having no other refuge, to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions.”

Rules of Marriage (1400s)

In the late 1400s, Friar Cherubino of Siena, in his Rules of Marriage, operationalized the process by which a husband was to rule his wife, recommending:

“When you see your wife commit an offense, don’t rush at her with insults and violent blows... Scold her sharply, bully and terrify her. And if this still doesn’t work... take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body... Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.”

Sir William Blackstone's Commentary on English Law (1765-69)

In his extensive commentary on English law, Sir William Blackstone explained the powers of authority given to husbands in legal, rather than moralistic, terms. He noted:

“For as [the husband] is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of chastisement, in the same moderation that a man is allowed to correct his apprentices or children...”

Blackstone went on to reassure his readers that, “this power of correction was contained within reasonable bounds...,” although the notation delineates some legalized “chastisements” that sound markedly more violent than contained, as when Blackstone observes:

“The civil law gave the husband the same, or a larger, authority over his wife: allowing him for some misdemeanors, to beat his wife severely with scourges and cudgels... for others only moderate chastisement.”

Even if a husband killed his wife, it was not considered a major offense. Yet for a wife to kill her husband was to kill her lord and master and was an act comparable to treason. As Blackstone commented:

“Husband and wife, in the language of the law, are styled baron and feme... if the baron kills his feme it is the same as if he had killed a stranger, or any other person; but if the feme kills her baron, it is regarded by the laws as a much more atrocious crime, as she not only breaks through the restraints of humanity and conjugal affection, but throws off all subjection to the authority of her husband. And therefore, the law denominates her crime a species of treason and condemns her to the same punishment as if she had killed the king. And for every species of treason... the sentence of woman was to be drawn and burnt alive.”

Mississippi Supreme Court (1824)

English common laws, as well as Blackstone's interpretation of them, greatly influenced the formation of laws in the United States. In 1824, the Mississippi Supreme Court, although specifying moderation and the application of force only in cases of "emergency," upheld the ancient principle of a man's right to physically assault his wife as judged appropriate by the man - and continued the courts' assurance that the husband could so assault her without fear of prosecution or discredit. The court directed:

"Let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehavior, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned."

North Carolina Court (1864)

This reassurance of impunity from prosecution was reiterated in 1864 by a North Carolina court, ruling on a case in which a man had choked his wife. The court ruled:

"... the law permits (a man) to use towards his wife such a degree of force, as is necessary to control an unruly temper, and make her behave herself, and unless some permanent injury be inflicted, or there be an excess of violence, or such a degree of cruelty as shows that it is inflicted to gratify his own bad passions, the law will not invade the domestic forum, or go behind the curtain. It prefers to leave the parties to themselves, as the best mode of inducing them to make the matter up and live together as man and wife should."

Amendment Of Action Against the Wife (1866)

In 1866, the actions a husband could legally take against his wife were amended, giving a man the right to beat his wife "with a stick as large as his finger but not larger than his thumb." This law was "created as an example of compassionate reform," since it limited the weapons a husband could use on his wife's person."

Alabama Reform (1871)

Alabama became the first state to rescind a husband's legal right to beat his wife when, in 1871, the court declared that:

"The privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law... The wife is entitled to the same protection of the law that the husband can invoke for himself."

North Carolina Court (1874)

A North Carolina court followed suit in 1874 but qualified its ruling by limiting the cases for which the court deemed legal interventions appropriate. The court advised:

"If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."

California Legislature (1984)

In 1984, the California Legislature passed *Penal Code Section 13519* and *13700 et. seq.* This law required:

"The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for the enforcement of response to domestic violence.

The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim."

LETHALITY CHECKLIST

Introduction

Some batterers are life-endangering. Certain circumstances are often associated with assailants who have killed their partners, other family members, and/or others attempting intervention.

A Batterer's Potential to Kill

The following are indicators to be used in making an assessment of a batterer's potential to kill.

Indicators	Assessment
Threats of Homicide or Suicide	Batterers who have threatened to kill themselves, their partner, the children, or relatives, must be considered extremely dangerous.
Fantasies of Homicide or Suicide	The more batterers have developed a fantasy about who, how, when, and/or where to kill, the more dangerous they may be. Batterers who have previously acted out part of a homicide or suicide fantasy may be invested in killing as a viable "solution" to their problem.
Depression	Batterers who have been acutely depressed and see little hope for moving beyond the depression may be candidates for homicide and suicide.
Weapons	When batterers possess weapons and have used them or have threatened to use them in the past in their assaults on the battered partner, children, or themselves, their access to those weapons increases their potential for lethal assault.

Indicators	Assessment
Obsessiveness about Partner or Family	Individuals who are obsessive about their partners, who either idolize them or feel that they cannot live without them, or believe they are entitled to control their partners, no matter what, are more likely to be life-endangering.
Centrality of The Battered Partner	If the loss of the battered partner represents or precipitates a total loss of hope for a positive future, a batterer may choose to kill.
Rage	The most life-endangering rage often erupts when batterers believe their partners are leaving them.
Separation	75 percent of lethal domestic violence occurs at and after separation.
Drug or Alcohol Consumption	Consumption of drugs or alcohol when in a state of despair or fury can elevate the risk of lethality.
Pet Abuse	Those batterers who assault and mutilate pets are more likely to kill or maim family members.
Access to The Battered Woman and/or Family Members	If batterers cannot find their partners, they cannot kill their partners.

Prevention Measures

Where lethality indicators are present and suggest that a batterer may kill or commit life-threatening violence, extraordinary measures should be taken to protect the victim and the children. Victims should be offered access to a domestic violence counselor, a victim advocate, or housing in a domestic violence shelter.

These must include the exercise of all possible powers regarding bail, conditions on bail, and other protections available for victims, as well as referrals and follow-up. Steps may involve obtaining an Emergency Protective Order and explaining the process of obtaining a domestic violence restraining order.

In addition, law enforcement officers may use the Domestic Violence Lethality Risk Assessment for First Responders checklist to identify victims who are at the highest risk of being seriously injured or killed by their partners and immediately connect them to a local community-based domestic violence service program. (adapted from The Lethality Assessment Program – Maryland Model (LAP), created by the Maryland Network Against Domestic Violence (MNADV) in 2005.

Victims should be advised that the presence of these indicators may mean that their batterers are contemplating homicide and that the victims should immediately take action to protect themselves and should contact the local shelter or community-based domestic violence program to further assess lethality and make a safety plan.

- adapted from the Los Angeles County Domestic Violence Council

Lethality Checklist

State of California – Department of Justice
**DOMESTIC VIOLENCE LETHALITY RISK
 ASSESSMENT FOR FIRST RESPONDERS**

Page 1 of 2

Commission on
 Peace Officer Standards and Training (POST)
 860 Stillwater Road, Suite 100
 West Sacramento, CA 95605-1630

1. OFFICER	2. DATE	3. CASE#	4. ARRESTED <input type="checkbox"/> YES <input type="checkbox"/> NO
VICTIM INFORMATION		ABUSER INFORMATION	
5. VICTIM NAME	9. ABUSER NAME		
6. DOB	10. DOB		
7. ADDRESS	11. ADDRESS		
8. PHONE () -	12. PHONE () -		

To the first responders: The Lethality Assessment should be administered to all victims of domestic violence to assess the level of danger and/or the severity of the situation. Law enforcement personnel or victim advocates should use their judgement to interpret the information which the victim provides. More "yes" answers to the Lethality Assessment questions indicate that the victim is more likely to experience continued violence, be severely injured, and/or killed. It is important to use the results of this assessment in a constructive way to help the victim plan for her/his safety and to make referrals to resources matching to the specific circumstances of the victim's situation. We recommend this completed assessment be attached to the incident or crime report.

To be read to the victim of domestic violence: "Domestic violence (DV) has many forms including physical, sexual, emotional and psychological abuse, stalking, and financial abuse. DV can be inflicted by a current or former partner. We are concerned about you because DV can affect you and your loved ones' (including your children) immediate safety, as well as short and long term physical and mental health. Furthermore, several risk factors have been associated with serious injury and homicide. We would like to ask you some questions about your current risks and history of abuse with the person who has abused you today. The goal of this assessment is to help us learn more about your current risk of future serious harm by your abuser."

☐ Check here if the victim refused to participate in the assessment.

1. Has the abuser ever been arrested or convicted of domestic violence, hostage taking, stalking or abduction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
2. Does the abuser have a history of domestic violence, hostage-taking, stalking, or abduction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
3. Do you know whether the abuser has any violent history towards others?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
4. Has the abuser expressed thoughts or threats to harm or kill you, children, a loved one (family, friend, new partner, etc), or himself/herself?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
5. Does the abuser have access to firearms or ever used or threatened to use a firearm against you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
6. Has the abuser ever threatened to use or used another weapon or object to harm you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
7. Does the abuser have a criminal history of the use of weapons (guns, knives, etc.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
8. Has the abuser ever used his/her hands or an object to choke, strangle, or suffocate you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
9. Does the abuser have a history of arson or threats of arson?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
10. Does the abuser express jealousy or ownership over you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered

11. Does the abuser accuse you of infidelity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
12. Does the abuser monitor or control your activities, where you go, who you interact with, or what you do? ("If I can't have you no one else can," "Death before divorce," etc.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
13. Does the abuser isolate you from family, friends and community life?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
14. Is the abuser severely depressed, (seeing little hope to live life)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
15. Is the abuser unemployed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
16. Has there been a recent escalation of the abuser's violence or risk behavior?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
17. Does the use of alcohol or drugs by the abuser exacerbate the violence or abuse?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
18. Has the abuser ever threatened or tried to commit suicide?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
19. Has the abuser been violent outside the home or in a public place?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Answered
After advising the victim of the "high danger" assessment, was the victim offered assistance, referred to a victim advocate, or other resources (i.e. alternative shelter)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown

Note: The questions above and the criteria for determining the level of risk a victim faces are based on the best available factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence the risk for lethal violence that are not captured by this assessment. Most domestic violence victims who are assessed as being involved in a "high danger" situation would not be expected to be killed. However, these victims face a much higher risk than that of other victims of intimate partner domestic violence.

THE CYCLE OF VIOLENT BEHAVIOR

Phase I - Tension Building

The batterer becomes increasingly edgy, frustrated and angry. Batterer may become jealous and possessive, fearing the victim will leave. The batterer will establish rules for the victim and consequences for rules that are broken. The batterer uses demeaning and degrading terminology toward victim.

Phase II - Battering Phase

Batterer loses control and explodes in anger and frustration and physically attacks the victim. This may include pushing, shoving, slapping, hitting, pinning the victim down, raping, stabbing, strangling, or shooting. The violence typically escalates with each cycle.

Phase III - Honeymoon Phase

The batterer typically will apologize for the behavior, but will not take responsibility, blaming the victim for breaking the rules and various factors such as stress or alcohol for causing the violence. The batterer may promise never to hurt the victim again. Victims often believe this and convince themselves that the loving behavior will continue. This makes it very hard for the victim to leave during this phase.

Adapted from Lenore Walker, 1979

CALIFORNIA ATTORNEY GENERAL'S CRIME AND VIOLENCE PREVENTION CENTER, SAFE FROM THE START PROGRAM, AND REDUCING CHILDREN'S EXPOSURE TO VIOLENCE

The Issue

A two-year-old girl named Rita, who lived with her mother and older sister, was left with her grandmother who was babysitting her. That night, Rita's uncle broke into the grandmother's home to get money for drugs. He held Rita at knife point for an hour before police were able to talk him into dropping the knife and surrendering.

Police officers put Rita into the back seat of their patrol car. The child's mother was not notified until later. Rita sat in the patrol car for two hours. When her mother finally arrived, Rita fainted. For three weeks the little girl was unable to say a word. She could not be away from her mother for even a moment. Then, some months later, Rita picked up a knife and held it against her sister.

Another incident, again involving a young child, had a very different outcome. Law enforcement officers, responding to a call, entered the house and found a sobbing two-year-old child, lying on top of her mother who had been stabbed. One officer took the girl upstairs to where her brother was located.

The officer spent several minutes telling the children, in children's terms, step-by-step, what would happen. The officer explained that an ambulance was coming, that their mother would be taken to the hospital, and that they could go with their aunt in another car to the hospital. The officer then said, once the doctors treated their mother, that the children could see her. The children calmed down once they were reassured and informed what would happen.

These stories demonstrate that young witnesses and victims of violent acts are profoundly affected by what they see, hear, and experience. Law enforcement officers' responses make a lifelong difference in the lives of young victims and witnesses. Because of the response of the officer who handled the second incident, the needs of the children were addressed, and the impact of the incident on them was lessened.

Law enforcement, as first responders to violent incidents, can identify critical situations affecting children and work with community members to effectively address them.

Impacting The Issue: Communication

Law enforcement must be familiar with current information about the detrimental physical and psychological effects of witnessing or being the direct victim of violence. For example:

- One in four California children is directly exposed to violence as a victim or witness. The effects of witnessing violence are as serious as actual victimization.
- The extreme stress of violence on children can have a lasting impact on a child's functioning. The impact is often mistaken for Attention Deficit Disorder (ADD), or other learning disabilities. Children living with violence suffer disproportionately high levels of depression, anxiety, post-traumatic stress, anger, alcohol and drug abuse, and lower academic achievement.
- Children living with violence are at higher risk of becoming violent and self-destructive. The National Institute of Justice reports that, on average, abused and neglected children begin committing crimes at younger ages, commit nearly twice as many offenses as non-abused children, and are arrested more frequently.

Problem Solving

Effective responses are not “social work,” but good policing practices which emphasize problem solving. Effective responses may mean that law enforcement does not have to deal with these same children as suspects and victims in the future. Law enforcement responses need to be coordinated with and linked to community efforts. A four-step system of problem solving may be helpful:

- Communicate with all community members who have an interest or concern about the issue to scan and identify the problem.
- Analyze available information about the problem, such as extent, available statistics, previously tried approaches and their level of success, resources, victim information, and existing services.
- Analyze the problem carefully and develop a goal using an innovative approach.
- Evaluate the response you select. If it is not effective, reevaluate using this same model, and modify or change your approach. Constantly re-evaluate and improve what is not working. If your approach is effective, celebrate success.

Partnering

Peace officers, as first responders, should look for opportunities for developing partnerships with other disciplines and jurisdictions to help create resources and services for children exposed to violence. “The whole is greater than the sum of its parts.” This statement reflects the value of building partnerships with diverse experience and expertise. Valuable contributions can be made by not only law enforcement, but by educators, members of the faith community, business sector members, and social service professionals, to name a few. Each discipline can bring fresh ideas, varied experience and expertise, and fresh perspectives to the problem of children exposed to violence. The following Seven C’s of partnership building may be helpful:

- **Concern:** show common interest and desire for change
- **Communication:** listen and accommodate
- **Commitment:** clarify partners’ roles and responsibilities to reach goals and objectives
- **Cooperation:** define the problem and exchange information
- **Consensus:** develop strategies and objectives as a group
- **Celebration:** recognize progress and accomplishments
- **Critique:** evaluate effectiveness and adjust.

For more information about this issue, please contact the following sources:

California Attorney General's Crime and Violence Prevention Center 1300 I Street, Suite 1150 Sacramento, CA 95814 (916) 324-7863 www.caaq.state.ca.uscvpc	National Crime Prevention Center 1000 Connecticut Avenue, N.W. 13 th Floor Washington D.C. 20036 (202) 466-6272 www.ncpc.org
California Health and Human Services Agency 1600 Ninth Street, Suite 460 Sacramento, CA 95814 (916) 654-3454 www.chhs.ca.gov	National Institute of Justice 810 - 7th Street, N.W. Washington D.C. 20531 1-800-851-3420 www.ojp.usdoj.gov/nij
California Department of Social Services Office of Child Abuse Prevention 744 P Street, MS 19-82 Sacramento, CA 95814 (916) 445-2771	U.S. Department of Justice Office for Victims of Crime 810 -7th Street, N.W. Washington D.C. 20531 1-800-627-6872 www.ojp.usdoj.gov.ovc

Glossary

Introduction

The key vocabulary terms for Learning Domain 25: Domestic Violence are listed below with the definitions as they apply to this workbook.

Abuse

Intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

Affinity

The connection existing as a consequence of marriage, including in-laws and step relations.

Battery

Willful and unlawful use of force or violence upon another person (only in the eight listed relationships within *Penal Code Section 243(e)(1)*).

Booking

Administrative steps taken after an arrested person is brought to a law enforcement station and involves entry of the person's name, crime for which the arrest was made, and other relevant facts including photographing, fingerprinting, etc.

Cite-And-Release

Cite-and-release refers to issuing a citation to appear on a future day instead of having to take a suspect into immediate physical custody. This procedure is often used for minor violations.

Civil (Police) Stand-By

Officer stands by to ensure a person's ability to exercise a legal right in what might be a charged or uncomfortable situation; most commonly to allow a party to retrieve clothing, necessities, and other private property from a residence. It also includes assisting a party in gaining safe passage out of the victim's residence

California Law Enforcement Telecommunications System (CLETS)

California Law Enforcement Telecommunications System (CLETS); a centerpiece database that allows access for verifying law enforcement information, including restraining orders in CARPOS

California Restraining and Protective Order System (CARPOS)

Used by law enforcement to enter restraining and protective orders through CLETS

Cohabitants

Two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship (*Penal Code Section 13700(b)*). A person who regularly resides in the household (*Family Code Section 6209*)

Consanguinity

Any relative who is related by blood, including half brothers and sisters

Corporal Injury

Injury to a person's body

Course Of Conduct

A pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose

Credible Threats

A verbal, written, and/or electronically communicated statement, and/or a threat implied by a pattern of conduct made with the intent of placing the targeted person in reasonable fear for his or her safety or that of his or her immediate family

Criminal Threats

Occur when a person willfully makes a threat to commit a crime which will result in death or great bodily injury to the intended victim or a member of his or her immediate family with the specific intent that the statement is to be taken as a threat, even if there is no intent to actually carry it out

Defensive Injuries

Injuries located on the victim in areas used to shield parts of the body during an assault or inflicted by the victim on themselves while trying to defend themselves

Domestic Disputes

Disagreements between family or household members that do NOT involve violence, threats of violence, or court order violations

Domestic Violence

Abuse committed against an adult or a minor in one of the nine specified relationships (as defined in *Penal Code Section 13700*)

Dominant Aggressor

The person determined to be the most significant, rather than the first, aggressor

Electronic Communication Devices

Includes, but is not limited to, telephones, cellular phones, computers, video recorders, FAX machines, and pagers

Foreign Order

A valid domestic violence restraining order issued by a court of another state, commonwealth, territory, insular possession of the United States subject to U.S. jurisdiction, military tribunal, or tribe that is to be honored and enforced in California (*Family Code Section. 6380.5, Penal Code Section (836(c)(1))*)

Harass

A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and serves no legitimate purpose

Immediate Family

A spouse, parent, child, or any person related by consanguinity or affinity within the second degree, or any person who regularly resides or has resided within a residence in the last six months

Inter-Generational Chain of Violence

When children see a perpetrator of domestic violence suffer no consequences, they begin to see violence as an accepted mode of behavior. This shapes how they deal with situations themselves and perpetuates the violence into the next generation

Learned Helplessness

A state of apathy or hopelessness in which the individual feels unable to affect outcomes, resulting from repeated exposure to uncontrollable situations

Malicious Destruction of Telephone, Telegraph, Cable Television, or Electrical Lines

Unlawfully and maliciously taking down, removing, injuring, or obstructing any line of telegraph, telephone, or cable television, or any other line that conducts electricity
(*Penal Code Section 591*)

Post-Traumatic Stress Disorder (PTSD)

Recurrent emotional reaction to a terrifying, uncontrollable, or life-threatening event and may include nightmares, overwhelming fear and anxiety, difficulty concentrating, intrusive thoughts, flashbacks, and increased stress in relationships

Protective Sweep

Brief search of a house or building to look for individuals only based on reasonable suspicion and a danger may exists

Preventing Or Dissuading

Discouraging a victim or witness from reporting a crime; or threatening a witness with injury or destruction of property for testifying or participating in the criminal process
(*Penal Code Section 136.1*)

Relationships

A specific type of kinship (i.e., common link)

Spousal Rape

Nonconsensual penile/vaginal intercourse with a person who is the spouse of the perpetrator

Spouse

A relationship defined as being an individual partner in marriage

Stalking

Willfully, maliciously, and repeatedly following or harassing another person and making a credible threat with the intent of placing that person in reasonable fear for his or her safety or that of his or her immediate family (*Penal Code Section 646.9*)

Sustained Fear

Fear that extends for a period of time beyond what is momentary, fleeting, or transitory

Traumatic Condition

A condition of the body, such as a wound or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation caused by physical force, regardless of whether the injury is minor or serious

Willful Infliction of Corporal Injury

Willful infliction upon one's spouse, former spouse, cohabitant, former cohabitant, or any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition (*Penal Code Section 273.5*)