

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

SUBJECT: DOMESTIC VIOLENCE INVESTIGATIONS

PURPOSE

- 1 - This Order sets forth policies and procedures to be followed in the handling of cases of domestic violence. It also addresses Protective Orders issued as a result of domestic violence situations.

POLICY

- 2 - Officers shall treat all reported domestic violence as alleged criminal conduct. Officers shall treat requests for police assistance and criminal investigation from victims of domestic violence the same as all other requests for assistance in cases where there has been physical violence or the threat thereof.
- 3 - Dispute mediation shall not be used as a substitute for appropriate law enforcement actions in domestic violence cases where obvious physical violence has occurred. Even though crisis intervention is highly valuable, it should not be substituted for an appropriate criminal investigation.
- 4 - In order to break the cycle of violence, departmental policy is pro-arrest and focuses on proving the case with or without the victim's cooperation whenever possible.
 - (a) "Pro-arrest" means physical arrest is encouraged in every situation where an arrest is legally permissible.
- 5 - Dual arrests are discouraged but not prohibited. Officers shall make reasonable efforts to identify and arrest only the dominant aggressor. The dominant aggressor is the person determined to be the most significant, rather than the first aggressor. It is necessary to look at the history, both documented and undocumented to make this determination.
 - (a) The same philosophy applies to situations where mutual protective orders have been issued. (Penal Code §836(c)(3))
 - (b) Refer to Training and Information Bulletin #50 for further information on how to determine the dominant aggressor.
- 6 - Periodic training will be provided to enhance the response of officers to domestic violence incidents.

DEFINITIONS

- 7 - "Domestic Violence" (**PC** §13700) is defined as abuse committed against an adult or minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child, or is having or has had a dating or engagement relationship.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (a) "Cohabitant" means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. Case law suggests that cohabitant, for purposes of this statute, assumes an intimate relationship, and precludes a solely platonic relationship. Per **PC** §13700, factors that may determine whether persons are cohabiting include, but are not limited to:
 - (1) Sexual relations between the parties while sharing the same living quarters.
 - (2) Sharing of income or expenses.
 - (3) Joint use or ownership of property.
 - (4) Whether the parties hold themselves out as husband and wife.
 - (5) The continuity of the relationship.
 - (6) The length of the relationship.
- (b) "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 or herself or another.
- (c) "Deadly weapon" is defined in **PC** §12028.5 as any weapon, the possession or concealed carrying of which is prohibited by **PC** §12020.

COMMUNICATIONS CENTER RESPONSE

- 8 - The dispatcher who receives a domestic violence incident call shall dispatch officers to every reported incident. **PC** §13702 requires law enforcement agencies to implement written policies and standards for dispatchers.
 - (a) The dispatcher, when warranted, shall give a domestic violence incident call the same priority as any other life threatening call and should, whenever possible, dispatch two officers to the scene.
- 9 - No dispatcher, while speaking with a victim of domestic violence shall discuss the victim's desire to "press charges" or "prosecute." Any comment or statement which suggests placing responsibility for enforcement action with the victim is inappropriate.
- 10 - During the initial call for assistance, the dispatcher should ask:
 - (a) Where is the emergency? What address? What apartment?
 - (b) Who am I speaking to?
 - (c) What has happened?

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (d) Has anyone been injured? If yes, is an ambulance needed?
 - (e) Are you the victim? If no, are you a witness?
 - (f) Is the suspect present? What is his/her name? Please describe the suspect, and if not present, his/her expected whereabouts?
 - (g) Are weapons involved? If yes, what kind?
 - (h) Is the suspect under the influence of drugs or alcohol? If yes, what substance?
 - (i) Are children present?
 - (j) Have the police been to this address before? If yes, how many times?
 - (k) Does the victim have a current restraining order?
- 11 - The safety of domestic violence victims, whether the threat of violence is immediate or remote, should be the primary concern of dispatchers.

ARREST PROCEDURES

- 12 - Felony: Arrests shall be made when there is probable cause to believe that a felony has occurred.
- (a) If an officer has reasonable cause to believe that a felony has occurred, an arrest shall be made regardless of whether the officer believes the offense may ultimately be prosecuted as a misdemeanor.
- 13 - Misdemeanor: The offender shall be arrested where an officer has reasonable cause to believe that a misdemeanor has occurred in his/her presence.
- (a) Under **PC** §836(d), an officer may make an immediate arrest when there is probable cause to believe a misdemeanor domestic violence assault or battery has occurred, even if it did not occur in the officer's presence.
 - (1) **PC** §836(d) also applies where a suspect commits an assault or battery upon a child of the suspect, a child of a person in one of the above categories (ref. paragraph 7), any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is over the age of 65 and who is related to the suspect by blood or legal guardianship.
 - (2) For purposes of establishing the relationship of the parties, an unborn fetus does not qualify as a child in common.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (b) Under any of the circumstances described in paragraphs 12 and 13 of this Order, the officer should not ask the victim whether he or she desires prosecution.
- 14 - Pursuant to **PC** §836(b), when an officer is not required under this Order to make an arrest, and the elements of a lawful arrest are present, officers shall inform complainants of their right, as well as how to safely make a citizen's arrest. Whenever possible, such discussion shall be held out of the presence of the suspect.
- (a) Officers shall not dissuade complainants from making a citizen's arrest.
 - (b) Anyone present who witnessed the offense (e.g., other family members) can initiate a citizen's arrest.
 - (c) Complainants shall also be informed of their rights to seek a complaint at a later time should they not wish to make a citizen's arrest.
- 15 - The existence of the elements of a crime shall be the sole factor that determines the proper method of handling the incident. The following factors, for example, are not to influence the officer's course of actions in domestic violence cases:
- (a) The marital status or domestic relationship of the suspect and complainant.
 - (b) Whether or not the suspect lives on the premises with the victim.
 - (c) Existence or lack of restraining/protective orders.
 - (d) The complainant's preference that an arrest be made, or not.
 - (e) Occupation, community status, and/or potential financial consequences of arrest.
 - (f) Complainant's history of prior complaints.
 - (g) Verbal assurance that violence will cease.
 - (h) The complainant's emotional state.
 - (i) Non-visible injuries.
 - (j) The location of the incident (i.e., public or private place).
 - (k) Speculation that the complainant may not follow through with the prosecution.
 - (l) That the case may not result in a conviction.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (m) Assumptions that violence is more acceptable in certain cultures.
 - (n) Language abilities or barriers (i.e., lack of English language ability on the part of the victim) and/or immigration status.
 - (o) Sexual preference or orientation of the parties.
- 16 - Before electing not to make an arrest, an officer shall obtain a supervisor's approval. The reasons for not arresting the responsible, and the supervisor's name, shall be clearly stated in the written offense reports.
- 17 - Once a suspect is arrested, General Order C-10 sets forth guidelines for releasing a person on a citation arrest. Any one of the following factors might support the likelihood of a continuing offense, making a citation release inappropriate.
- (a) The suspect has a prior history of arrests or citations involving domestic violence.
 - (b) The suspect is violating a criminal court issued stay-away order.
 - (c) The suspect has previously violated, or is currently violating valid restraining/protective orders.
 - (d) The suspect has a prior history of other assaultive behavior (e.g., arrest/convictions for battery, aggravated assaults).
 - (e) Victim or witnesses statements that the suspect has a history of physical abuse.
 - (f) Victim or witnesses statements expressing fear of retaliation or further violence should the suspect be released.
 - (g) Information about the suspect's alcohol or drug abuse, access to weapons, suicide threats or attempts, threats of kidnapping family members, or history of mental illness.
 - (h) Note: All of the above conditions also apply in deciding whether to take a juvenile offender to Juvenile Hall instead of releasing the offender to his or her parent(s)/guardian(s) as described in General Order J-1.
- 18 - Pursuant to **PC §836(c)**, when an officer is responding to a call alleging a violation of a domestic violence protective or restraining order, an arrest shall be made whether the violation occurred in or out of the officer's presence when:
- (a) The officer has probable cause to believe a willful violation has occurred, and **the restrained person has notice of the order**.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (b) The restrained person be deemed to have notice if:
 - (1) The victim presents to the officer proof of service of the order;
 - (2) The officer confirms with the appropriate authorities that a true copy the proof of service is on file; or,
 - (3) The person against whom the protective order was issued was present at the protective order hearing or was informed by a police officer of the contents of the protective order.
- (c) Note: An officer shall obtain a supervisor's approval prior to cite-releasing a protective order violator. The reasons for cite-release, and the supervisor's name, shall be clearly stated in the written offense reports.

SECURING WEAPONS

19 - **PC §12028.5** states that an officer who is at the scene of a domestic violence incident involving a threat to human life or a physical assault shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.

- (a) The main procedural requirements of **PC §12028.5** are summarized as follows:
 - (1) The handling officer shall provide the owner, or person who possessed the weapon, a receipt describing the weapon, listing any serial number, and stating where and when it can be recovered.
 - (i) The officer shall complete the Receipt for Seizure of Firearm or Deadly Weapon. The original of this form shall be included in the report, one copy shall be provided to the Property Room, and one copy shall be provided to the owner, or person who possessed the weapon.
 - (2) No firearm or other deadly weapon seized pursuant to this section shall be held less than 48 hours.
 - (3) If the firearm or deadly weapon is not retained as evidence or because it was illegally possessed, the weapon shall be made available to the lawful owner or person who was in lawful possession 48 hours after seizure or as soon thereafter as possible, but no later than five business days after the seizure.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (i) Such return shall not be made without an investigation as to whether a petition should be filed to deny return of the weapon. The Domestic Violence Prevention Unit (DVPU) will be responsible for this investigation, which shall be documented in the written offense report.
 - (ii) If the weapon is not claimed by the lawful owner within seven days of the DVPU investigation, but is claimed at a later date, DVPU will conduct another follow up investigation. The Property Room shall notify the DVPU that the owner is attempting to claim the weapon.
 - (iii) **PC §12021.3(a)(1)** states any person who claims title to any firearm that is in our custody and whom wishes to have the firearm returned to him/her shall complete an application for a determination by the DOJ as to whether he or she is eligible to possess a firearm.
 - (iv) Law enforcement is mandated to determine if the firearm is stolen. If the firearm is stolen, the firearm shall not be returned to the owner until its use for evidence has been served, his/her identification of the firearm, proof of ownership and a DOJ application is completed as per **PC §12021.3(a)(1)**.
 - (4) When there is reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or a person reporting the assault or threat, the Domestic Violence Prevention Unit shall so advise the owner, and within 60 days of seizure, initiate a petition in Superior Court to determine if the weapon should be returned.
- 20 - **PC §12021(g)** makes it a misdemeanor for a person who is the subject of a restraining order, and who has been informed of the terms of the order, to purchase, receive, or attempt to purchase or receive, a firearm.
- (a) **PC §166(d)(1)** expands **PC §12021(g)** making it also a misdemeanor for a person to own, possess, purchase or receive a firearm knowing he or she is prohibited from doing so by a protective order.
- 21 - Family Code §6389 gives the court the authority to prohibit a person (respondent) who is the subject of an active protective order from owning, possessing, purchasing or receiving a firearm while that protective order is in effect.
- (a) This court order may specify that the weapon is to be relinquished to local law enforcement.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (1) Once served with this court order, the respondent shall be prohibited from possessing any firearm for the duration of the order, or for a lesser time that is specified by the Court.
- (2) The department may charge the respondent a fee for the storage of any firearm.
- (3) Unless there are extenuating circumstances at the expiration of the order, the department shall return possession of the firearm to the respondent within five days.

VICTIM ASSISTANCE

- 22 - Medical-Assistance: If a complainant claims injuries, whether visible or not, which require medical attention, officers shall administer first aid as appropriate and arrange for paramedics to examine the injured party and provide medical treatment as necessary.
- 23 - Tenancy: When a complainant requests that an officer remove a person from the premises and it can be shown that the complainant is in lawful possession of the premises (e.g., by showing a rental agreement, canceled rent check, lease, grant deed, rent receipts or other documents, or verification from the apartment manager) and the person desired to be removed is not in lawful possession of the premises, absent extenuating circumstances the officer shall:
 - (a) Request the person leave the premises and stand by until the person has removed his/her belongings and left the premises and the key.
 - (b) Should the person refuse to leave upon request, the suspect should be arrested for any applicable section (e.g., **PC** §602.5.)
- 24 - Civil-Stand-by: When a party in a domestic violence incident requests police assistance in removing a reasonable amount of personal property to another location, officers should stand by a reasonable amount of time until the party has safely done so.
- 25 - Emergency Shelter: Officers shall assist in making arrangements to transport the victim to a shelter if the victim expresses a concern for safety or the officer determines a need exists.
- 26 - Community/Departmental Resources: Officers shall explain legal options available to the victim, including follow-up procedures and information about temporary restraining orders.
 - (a) **PC** §13701 requires law enforcement personnel to provide written information to victims about shelters and other appropriate victim assistance services available in the community. The Berkeley Police Department Resource Pamphlet meets this legal requirement.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (1) Officers shall provide a Berkeley Police Department Resource Pamphlet to each victim of domestic violence, and this fact shall be noted on the police report. The report number shall be written on the back of the pamphlet.
 - (i) If the victim is not given a pamphlet, the officer should clearly document in the police report his/her reasons for not providing the information.
 - (ii) If a pamphlet is not given due to error, the officer should make arrangements for one to be mailed or delivered to the victim and note it in the police report.
- (2) **Officers, whenever practical, should recommend the victim contact either the advocacy services available via the Police Department's Sex Crimes Detail or those provided Family Violence Law Center's Mobile Response Team (formerly, "ONERT"), contact information provided within the Resource Pamphlet.**

27 - Documentation: Officers shall complete a written report documenting his/her investigation into incidents of domestic violence. This report shall be prepared regardless of the wishes of the victim or the presence or absence of the suspect.

- (a) **PC §13730** requires that a domestic violence incident be identified on its face and that information regarding the incident be retrievable. Officers shall include a completed BPD Domestic Violence Supplemental with their report indicating:
 - (1) Whether the officer or officers who responded observed any signs that the victim and/or alleged abuser was under the influence of alcohol or a controlled substance.
 - (2) Whether the officer or officers knows of previous incidents at the same address involving the same alleged abuser or victim.
 - (3) A notation of whether weapons were involved.
- (b) **PC §293** states that law enforcement shall inform victims of **PC §273.5** that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record. (Government Code §6254 was amended to include offenses other than sexual assault.)
 - (1) Officers shall read all persons reporting victim of **PC §273.5** the Victim Advisement and Notification form, check the appropriate box, and obtain victim's signature on the form.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (c) Officers shall obtain victim/witness statements from all parties in all cases of domestic violence whether or not an arrest is made.
- (d) A copy of any applicable protective orders shall be attached to the report.

PROTECTIVE ORDERS - DEFINITIONS

- 28 - Civil Restraining Orders are available to anyone who is threatened with or who has experienced violence or harassment. There are several types of restraining orders. The most common one, prohibiting domestic violence is for married people, close family members, cohabitants, former cohabitants or people who have a dating or engagement relationship. Civil harassment orders are for people who have never lived together and have no children together, e.g. neighbors or co-tenants, distant family members, etc., where there was no assault or threat of assault. Restraining orders which are issued in paternity or sole custody suits are for people who are not married but have children together.
- (a) Temporary Restraining Order (TRO): This is a type of restraining order which requires a person to restrain from doing a particular act or acts. It is issued by the Municipal or Superior Court and will remain in effect until a formal court hearing can be granted (usually 3 weeks.)
 - (b) Order After Hearing: This is an order issued after a hearing on a TRO which requires a person to restrain from doing a particular act or acts. It is issued by the Superior Court, with notice to the person, who is to be restrained. An Order After Hearing will remain in effect for a set period of time which is stated on the face of the order (generally for a maximum period of 5 years). When renewed, the order can be permanent.
 - (1) Any person who willfully disobeys the terms of a restraining order is guilty of a misdemeanor under **PC §273.6(a)**.
 - (2) **PC §273.6(d)** makes it a felony to violate a restraining order, with violence or threat of violence after suffering a prior conviction of **PC §273.6**.
- 29 - Criminal Stay Away Order: This is a type of restraining order issued in a criminal case involving domestic violence where there is a likelihood of harassment of the victim by the defendant. A Stay Away Order may remain in effect as long as the suspect is under the court's jurisdiction, including any sentence or probationary period. Stay Away Orders are issued pursuant to **PC §136.2**.
- (a) Any person who willfully disobeys the terms of a Stay Away Order is guilty of a misdemeanor under **PC §166(a)(4)**.
- 30 - Emergency Protective Order (EPO): This is a type of restraining order issued by a judge at any time whether or not the court is in session. It is intended to function as a restraining order against a perpetrator of domestic violence or child

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

abuse or elder abuse. The maximum duration of such an order is five court days.

- (a) Any person who willfully disobeys the terms of an emergency protective order is guilty of a misdemeanor under **PC §273.6**.

31 - No Harm/Annoy/Molest (“No HAM”): This type of restraining order authorizes involved parties to reside or be proximal to each other, but orders the restrained party to not harm, annoy or molest the protected party. It is intended to function as a restraining order against a perpetrator of domestic violence or child abuse or elder abuse.

- (a) **Dependant on the nature of the court order (i.e., civil protective order after hearing or criminal protective order), any person who willfully disobeys the terms of the order is guilty of a misdemeanor, either PC §166(a)(4) or PC §273.6.**

32 - Juvenile Court Protective or Restraining Order: This type of order is issued under certain sections of the Welfare and Institutions Code at any point during the juvenile court process.

- (a) Any person who willfully disobeys the terms of a juvenile court restraining or protective order is guilty of a misdemeanor under **PC §273.6**.

VERIFICATION OF PROTECTIVE ORDERS

33 - If, at the scene of a domestic disturbance, a person shows or informs the officer of the existence of a protective order, it will be necessary to establish the present status and terms of the order. A complete and systematic record of all protection orders is maintained in the Communications Center. These records include:

- (a) orders which have not yet been served;
- (b) orders issued pursuant to **PC §136.2**;
- (c) restraining orders; and,
- (d) proofs of service in effect.

34 - Whenever a complainant advises an officer of the existence of a protective order, the officer shall ascertain:

- (a) Whether the order is on file with the department, or whether the complainant has a copy in their possession, or whether the order can be verified through the Department of Justice Domestic Violence Restraining Order System (DVROS).

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (1) Failure to file a restraining order with the police department does not invalidate the order. However, all persons obtaining a restraining order are encouraged to deliver a copy to the department.
 - (2) Note: The terms and conditions of the restraining order remain enforceable, in spite of the acts of the victim or suspect, and may be changed only by order of the court.
- (b) Whether a protective order is still valid as to duration/time.
- (1) If there is no expiration date on a civil protection order, the order is valid three years from the date of issuance, with the exception of permanent orders concerning child custody or visitation, which never expire.
 - (2) The duration of a criminal Stay-Away order varies with each order. You must:
 - (i) Request the victim show a copy of the order. Verify, through the Communications Center, that the subject is under the court's jurisdiction, or
 - (ii) Verify, through the Communications Center that a criminal Stay Away Order has been issued against the subject, or
 - (iii) Verify through the California Department of Justice Domestic Violence Restraining Order System (DVROS).
 - (3) An Emergency Protective Order is valid for five court days after issuance, but never longer than seven calendar days following the day of issuance.
- (c) Whether proof of service or prior notice exists or that the suspect was in court when the order was made.
- (d) The terms of the protective order.
- 35 -** Officers shall prepare a crime report on a protective order violation regardless of the suspect's presence or absence.

PROTECTIVE ORDER ENFORCEMENT PROCEDURES

- 36 -** PC §836(c) requires officers to make a probable cause arrest for a violation of a protective order not committed in the officer's presence. (See paragraph 18 above)

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- 37 - When the officer verifies that a protective order exists, but there is no probable cause to believe that the suspect had notice of the order, the officer should:
- (a) Inform the subject of the terms of the order.
 - (b) Admonish the subject of the order, that the subject is now on notice and that the violation of the order will result in arrest. If the subject continues to violate the order after being advised of the terms, an arrest shall be made.
 - (1) Oral notification to the respondent of the terms of the order shall be sufficient notice for the enforcement of **PC** §§136.2, 273.6, and 12021(g).
 - (c) If the subject complies after admonishment of the terms, the officer shall make a report showing the subject was admonished/advised of the terms of the order, the specific terms of the order the subject was advised about, the name of the admonishing officer, and the time and date.
 - (1) The department's copy of the restraining order will be updated to reflect the admonishment information. The officer shall complete a proof of service form, and provide this form to the Communication Center.
 - (2) The Communication Center will immediately transmit the notice of service to the California Department of Justice Domestic Violence Restraining Order System.
- 38 - In the event the subject has left the scene of the incident, a report shall be made and the complainant shall be advised of the follow-up criminal procedure and case number of the report.
- 39 - Refer to Training and Information Bulletin #233 for the departmental policy regarding enforcement of court orders not relating to domestic violence.

ORDERS NOT VERIFIABLE

- 40 - When the victim is not in possession of the protective order, and/or in case of computer error, officers may not be able to confirm the order's validity.
- (a) **PC** §13730(c) requires that officers shall write a report, give the victim the police report number and direct the victim to contact the Detective Bureau for follow-up information.
 - (b) When an order is not verifiable through the verification procedures, officers shall advise the victim of the right to make a citizen's arrest for violation of the order.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

OBTAINING A RESTRAINING ORDER

- 41 - Virtually anyone can obtain a restraining order. In cases involving children under 18 years of age, parents or legal guardians can obtain a restraining order on their behalf. There are several ways to obtain a restraining order:
- (a) The party may contact a lawyer and have the process handled by this representative.
 - (b) The party may contact local community action groups for assistance. One such organization is the Family Violence Law Center.
 - (c) A person can go to the County Clerk's Office or the Alameda County Superior Court and obtain forms and instruction material.
 - (1) Court filing fees are waived in cases of domestic violence.
 - (d) Officers are encouraged to refer concerned individuals to the Berkeley Police Department's "Coordinator of Services for Victims of Crimes and/or Domestic Violence" for additional information.
 - (1) Officers should not refer individuals to the local District Attorney's office. They are not involved in the filing process.

EMERGENCY PROTECTIVE ORDERS (EPO)

- 42 - Emergency Protective Orders are obtained by a police officer from the assigned EPO duty commissioner.
- (a) They may be issued at any time, whether or not the court is in session.
 - (b) EPOs can be valid for five court days after the issuance, but never longer than seven calendar days following the day of issuance.
- 43 - Emergency Protective Orders are intended as a temporary measure of protection until a victim can obtain a more permanent restraining order.
- (a) They are issued when an officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence or stalking, or when a child or dependant adult is in immediate or present danger of abuse from a household member, or a child is in immediate and present danger of abduction by a parent, guardian, or relative.
 - (b) Such an order may also exclude the suspect from the premises and determine temporary custody of minor children.
- 44 - Police officers are not required by law to seek an EPO in each case of domestic violence; however, such orders are a valuable and effective tool that can help

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

when intervening in cases of domestic violence and child abuse.

45 - The investigating officer shall ascertain need for an Emergency Protective Order.

(a) When an officer has reasonable grounds to believe a person is in immediate and present danger of domestic violence, or a child is in immediate and present danger of abuse or abduction by a family or household member, an officer should inform the victim of the availability of an EPO.

(1) An officer may request an EPO regardless of the victim's preference.

(b) Officers should make this determination based on the complainant's allegations of a recent incident of abuse or threat of abuse.

(c) The officer may request an EPO whether or not the suspect is present or has been arrested.

(d) The following are examples of situations in which requesting an EPO may be appropriate:

(1) The suspect is being arrested for a charge related to domestic violence and the officer has reasonable cause to believe the victim would be in immediate and present danger if the suspect were to be released from custody (e.g., Bail, **PC** §849, or Own Recognizance.)

(2) The suspect has a history of domestic violence.

(3) The victim expresses fear of retaliation or further violence.

(4) Threats of serious danger have been made to the victim or the victim's family.

(e) An officer electing not to obtain an Emergency Protective Order shall document the reasons for his/her decision in the written offense report.

46 - Procedures for obtaining an Emergency Protective Order:

(a) Prior to contacting the magistrate, the officer shall fully complete the Application for Emergency Protective Order.

(b) The officer shall contact the designated magistrate and assert grounds for the belief that the Order is appropriate.

(1) The officer shall contact the duty judge, as assigned on the Alameda County Superior Court EPO Duty Schedule.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

- (i) Copies of the On-Call/Duty Judge schedule will be maintained in the Communications Center.
 - (ii) The Judge's contact telephone number(s) is (are) available through the Communications Center. If an officer is unable to reach the assigned EPO duty commissioner by phone, he or she should contact the Alameda County Sheriff's Department at (510)667-7777 for assistance.
- (c) Upon contact with the magistrate, the officer should be prepared to:
 - (1) Provide a brief description of the situation and the reasons for the request for an EPO.
 - (2) Provide the information contained on the Application for Emergency Protective Order form.
 - (3) Complete the EPO as directed by the magistrate.
- 47 - The issuance of an Emergency Protective Order shall be documented under a separate case number.
- 48 - Upon the issuance of an Emergency Protective Order:
 - (a) The officer shall serve a copy of the Order on the restrained party if the party can be reasonably located.
 - (b) The officer shall provide the protected party with a copy of the EPO along with information on how to obtain a more permanent order.
 - (c) The officer who requested the EPO shall carry a copy of the Order while still on duty.
 - (d) Upon completion of the officer's shift, a copy of the Order shall be delivered to the Communications Center for entry in California Law Enforcement Telecommunication System (CLETS), a second copy shall be included as an attachment with the case report, a third copy shall be placed in the Court Marshall's box.
 - (1) The Domestic Violence Prevention Unit shall gather basic activity statistics related to the number of EPOs requested, issued and denied. Such statistics shall be available for review by the Chiefs' and Sheriff's Association twice annually.
- 49 - When a violation of an EPO has occurred, officers shall arrest in accordance with paragraph 36 of this Order.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2008

GENERAL ORDER D-5

OFFICER IMMUNITY

50 - A law enforcement officer who acts in good faith to enforce an Emergency Protective Order is not civilly or criminally liable.

References: Penal Code §§136.2, **166**, 273.5, 273.6, 293, 602.5, 836, **849**,
12001, **12020**, 12021, 12021.3 12028.5, 13519, 13700
13701, 13702, 13710, and 13730
Family Code §§6218 and 6389
Civil Code §§504 and 527.6
Government Code §6254
General Orders A-50, C-10, **J-1** and T-1
Training and Information Bulletins #50 and #233