

Domestic Violence

320.1 PURPOSE AND SCOPE

Domestic violence is alleged criminal conduct and it is the policy of the Barstow Police Department to stress enforcement of criminal laws related to domestic violence, the protection of the victim, and the availability of civil remedies and community resources. This includes the arrest of domestic violence offenders if there is probable cause to believe an offense has occurred.

In responding to domestic violence incidents, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider:

- (a) The intent of the law to protect victims of domestic violence from continuing abuse
- (b) The threats creating fear of physical injury
- (c) The history of domestic violence between the persons involved
- (d) Whether either person acted in self-defense

320.1.1 DEFINITIONS

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

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

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

Cohabitant - Two unrelated adult persons living together for a substantial period of time, resulting in some permanence of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

- (a) Sexual relations between the parties while sharing the same living quarters
- (b) Sharing of income or expenses
- (c) Joint use or ownership of property
- (d) Whether the parties hold themselves out as husband and wife
- (e) The continuity of the relationship
- (f) The length of the relationship

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

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

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

320.2 OFFICER SAFETY

The investigation of domestic violence cases places officers in emotionally charged and potentially highly dangerous environments. No provisions of this guideline are intended to supersede the responsibility of all officers to exercise reasonable care for the safety of any officers and involved parties.

320.3 ENFORCEMENT OF DOMESTIC VIOLENCE

It is the intent of the Legislature that the official response to domestic violence stresses the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is criminal behavior and will not be tolerated. The following factors should not be used to avoid making an arrest:

- (a) Marital status of suspect and victim
- (b) Whether or not the suspect lives on the premises with the victim
- (c) Existence or lack of temporary restraining orders
- (d) Potential financial consequences of arrest
- (e) Complainant's history or prior complaints
- (f) Verbal assurances that violence will cease
- (g) Complainant's emotional state
- (h) Non-visible injuries
- (i) Location of the incident (public vs. private)
- (j) Victim does not want to prosecute or make a private person's arrest
- (k) Speculation that complainant may not follow through with the prosecution
- (l) The case may not result in a conviction

320.3.1 FELONY ARRESTS

Considering the intent of the Legislature in domestic violence cases and the potential for the escalation of violence in these cases, and in accordance with State law, an arrest should be made when there is probable cause to believe a felony has occurred.

320.3.2 MISDEMEANOR ARRESTS

In accordance with State law, an arrest should generally be made when there is probable cause to believe a misdemeanor, including violations of court orders, has occurred.

- (a) Police officers may make an arrest without a warrant for a misdemeanor assault or battery not committed in his/her presence when it is committed upon:

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- (a) A current or former spouse
 - (b) A current or former cohabitant (Family Code § 6209 definition)
 - (c) A fiancé or fiancée
 - (d) A person with whom the suspect currently is having or has previously had an engagement or dating relationship
 - (e) A person with whom the suspect has parented a child
 - (f) A child of the suspect or a child of one of the above listed categories
 - (g) Any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship
- (b) Both of the following conditions must be present in order to make an arrest in this situation pursuant to Penal Code § 836(d):
1. The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed
 2. The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed

320.3.3 FIELD RELEASE

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

Any of the following may support the likelihood of a continuing offense:

- (a) Whether the suspect has a prior history of arrests or citations involving domestic violence.
- (b) Whether the suspect is violating a criminal court issued stay away order.
- (c) Whether the suspect has previously violated, or is currently violating, a valid temporary restraining order.
- (d) Whether the suspect has a prior history of other assaultive behavior (e.g. arrests or convictions for assault or battery or aggravated assaults).
- (e) Statements taken from the victim that the suspect has a history of physical abuse towards the victim.
- (f) Statements taken from the victim expressing fear of retaliation or further violence should the suspect be released.

320.3.4 PRIVATE PERSON ARREST

Officers will advise the victim of his/her right to make a private person's arrest when a crime has been committed outside the officer's presence which does not meet the requirements for an officer initiated arrest either because it is not a felony or a qualifying misdemeanor offense under Penal Code § 836(d). Advisements regarding private person's arrests should be held out of the

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presence of the suspect. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions of Policy Manual § 364 for further options regarding the disposition of private person's arrests.

320.3.5 PROTECTIVE ORDER VIOLATIONS

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

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

These protective orders pertain to parties labeled as petitioner (party seeking the order) and respondent (party named and responding to the order) who are married, formerly married, dating, formerly dated, engaged, formerly engaged, cohabiting, formerly cohabited or have had a child together.

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

- (a) Domestic Violence Protective Order
- (b) Criminal Court Protective Order
- (c) Emergency Protective Order (EPO)
- (d) Order to Show cause and Temporary Restraining Order (TRO)
- (e) Order After Hearing
- (f) Restraining Order-Juvenile
- (g) Judgement of Dissolution and Order

320.3.6 TENANCY ISSUES

- (a) Officers may request a person who is not in lawful possession of the premises to leave when:
 - 1. The complainant is in lawful possession of the premise (as exhibited by rent receipts, lease, deed, verification by apartment manager, etc.)
 - 2. The complainant has requested that the person leave the premises
- (b) The officer will stand by until the suspect removes essential belongings.
- (c) If the suspect does not leave upon request, an arrest should be made under Penal Code § 602.5
- (d) If the complainant requesting removal of the suspect cannot show proof of lawful possession, the officer should refer the complainant for a Temporary Restraining Order or other appropriate civil remedy.
- (e) If appropriate, a domestic violence situation involving a tenancy issue may be resolved through the proper application for an Emergency Protective Order.

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320.4 COURT PROTECTIVE ORDERS

Various types of restraining orders may be issued by various courts in domestic violence cases. All valid out-of-state and tribal court restraining and protective orders should be enforced. Penal Code § 13710 requires all law enforcement agencies to maintain complete and systematic records of all protection orders relating to domestic violence incidents, restraining orders, and proofs of service which are in effect. This section also requires that these records be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders on file. It shall be the responsibility of the Barstow Police Department Dispatch Division to maintain these records.

320.4.1 VERIFICATION OF RESTRAINING ORDERS

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

- (a) Whether a restraining order is on file with the Department or whether the complainant has a copy of the restraining order in his/her possession.
- (b) Whether there is a valid restraining order on file with the Department of Justice Domestic Violence Restraining Order System (Family Code § 6383(d)).
- (c) Whether the proof of service or prior notice exists or that the suspect was in court when the order was made.
- (d) The terms of the restraining order.

In the event the suspect is no longer at the scene, officers shall obtain the necessary information and write a report for follow-up investigation.

320.4.2 ENFORCEMENT PROCEDURES

Violation of a restraining order is a misdemeanor under Penal Code §§ 273.6 or 166(4). An arrest should be made when probable cause exists to believe the subject of a restraining order has violated the order whether or not in the presence of an officer and evidence of proof of service of the order exists. Proof of service may be established by any one of the following:

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

320.4.3 PROOF OF SERVICE NOT VERIFIED

When the officer verifies that a restraining order exists, but cannot verify proof of service or prior knowledge of the order by the suspect, the officer shall perform the following:

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

320.4.4 WHEN ORDERS ARE NOT VERIFIABLE

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

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

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

320.4.5 EMERGENCY PROTECTIVE ORDERS

Family Code § 6241 mandates the Superior Court to provide a judge, commissioner, or referee to hear applications and issue Emergency Protective Orders based on criteria outlined in Family Code § 6250(c). A judicial officer may issue an Emergency Protective Order whenever a law enforcement officer asserts reasonable grounds that:

- (a) A person is in immediate and present danger of domestic violence based upon the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.
- (b) A child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.
- (c) A child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has intent to abduct a child or flee with the child from

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the jurisdiction or based on an allegation of a reasonable threat to abduct the child or flee with the child from the jurisdiction.

- (d) An elder or dependent adult is in immediate and present danger of abuse as defined in Welfare and Institutions Code § 15610.7 based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.

Under Penal Code § 646.91, a peace officer may also obtain an Emergency Protective Order when the officer has reasonable grounds to believe that a person or the person's immediate family is in immediate and present danger of being stalked.

- (a) Any such Emergency Protective Order shall be reduced to writing, signed by the officer and include all of the information required by Penal Code § 646.91(c).
- (b) Any officer seeking such an order shall serve the order on the restrained person if such person can be reasonably located and shall provide the person protected with a copy of the order. A copy of the order shall also be filed with the court as soon as practical after issuance.
- (c) Any officer requesting such an order shall carry copies of the order while on duty and shall use every reasonable means to enforce the order.

Emergency Protective Orders may be obtained by telephone to prohibit a suspect who resides with a complainant, regardless of their marital status or relationship from:

- (a) Physically or verbally contacting the victim or disturbing his/her peace.
- (b) Remaining or returning to the victim's residence, regardless of who holds legal title to, or leases the residence.
- (c) Continuing a specified behavior as described in the order.

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

It is the policy of the Barstow Police Department to request an Emergency Protective Order if any of the following conditions exist:

- (a) The victim requests an Emergency Protective Order, and there are reasonable grounds for obtaining the order.
- (b) The investigating officer has grounds to believe that there is an immediate danger of continuing violence against the victim.
- (c) The investigating officer or victim believes that the suspect may be able to make bail and the potential for further violence exists.

320.4.6 ADDITIONAL COURT ORDERS

Stay-away orders are issued in criminal cases when the probability of victim intimidation exists. Violation of a stay-away order is a misdemeanor under Penal Code § 166(c)(1). Witness intimidation is also a violation of Penal Code § 136.1 and potentially a violation of Penal

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Code § 422. Examples of witness intimidation include attempting to prevent or dissuade a victim from attending or giving testimony at any proceeding, or using force or expressing or implying a threat of force or violence related to the court proceeding.

320.4.7 OUT-OF-COUNTY/OUT-OF-STATE PROTECTIVE ORDERS

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

320.5 VICTIM ASSISTANCE

During the course of investigating and reporting domestic violence cases, an officer may assist a victim in many ways. Some suggested methods of assistance are:

- (a) Assist in obtaining appropriate medical attention if a complainant claims an injury, whether visible or not.
- (b) Assist in arranging to transport the victim to an alternate shelter if the victim expresses a concern for their safety, or the officer determines the need exists.
- (c) Stand by for a reasonable amount of time when a complainant requests police assistance while removing essential items of personal property.
- (d) Explain legal options available to the victim including the private person's arrest process, temporary restraining and stay-away orders, and in cases of arrest, the follow-up procedures and ensuing criminal proceedings.
- (e) Advise the victim of available community resources, shelters, and the State Victim Assistance Program. (See Policy Manual § 320.5.1)
- (f) Make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (g) Seek or assist the victim in obtaining an emergency order if appropriate.

320.5.1 WRITTEN NOTICE TO VICTIMS

Penal Code § 13701 requires that victims of domestic violence be furnished written notice, and all officers shall provide a Barstow Police Department "Information for Victims of Crimes" pamphlet, which includes the following information:

- (a) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
- (b) A statement that, "For further information about a shelter you may contact _____."
- (c) A statement that, "For information about other services in the community, where available, you may contact _____."

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- (d) A statement informing the victim of domestic violence that he or she can ask the District Attorney to file a criminal complaint.
- (e) A statement that "For further information about the California Victim's Compensation Program, you may contact 1-800-777-9229."
- (f) A statement informing the victim of the right to go to the Superior Court and file a petition requesting any of the following orders for relief:
 - 1. An order restraining the attacker from abusing the victim and other family members.
 - 2. An order directing the attacker to leave the household.
 - 3. An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
 - 4. An order awarding the victim or the other parent custody of or visitation with a minor child or children.
 - 5. An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
 - 6. An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
 - 7. An order directing the defendant to make specified debt payments coming due while the order is in effect.
 - 8. An order directing that either or both parties participate in counseling.
- (g) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse. This includes medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.
- (h) In the case of an alleged violation of Penal Code §§ 243(e), 261, 261.5, 262, 273.5, 286, 288a, or 289, a Domestic Violence/Sexual Assault Information Card, which shall include, but is not limited to, the following information:
 - 1. The names and locations of rape victim counseling centers within the county, including those centers specified in Penal Code § 13837, and their 24-hour counseling service telephone numbers.
 - 2. A simple statement on the proper procedures for a victim to follow after a sexual assault.
 - 3. A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.
 - 4. A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

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320.5.2 DOMESTIC VIOLENCE SUPPORT

Victims of domestic violence or abuse have the right to have a domestic violence counselor (Evidence Code § 1037.1) and a support person of the victim's choosing present at any interview by law enforcement authorities (Penal Code § 679.05).

The investigating officer must advise the victim of his/her right to have an advocate and support person present at any subsequent interview(s), including additional interviews by the

investigating officer and/or detectives handling the follow-up investigation. The victim should be advised that any advocate working for the agencies listed on the domestic violence resource card would qualify.

- (a) For the purposes of this section, an initial investigation by law enforcement to determine whether a crime has been committed and to determine the identity of the suspect(s) shall not constitute a law enforcement interview.
- (b) The support person may be excluded from an interview if the law enforcement authority or the District Attorney determines the presence of that person would be detrimental to the purpose of the interview.
- (c) The investigating officer should articulate in the report that the victim was advised of their right to a counselor and/or support person.

320.6 REPORTING OF DOMESTIC VIOLENCE

Penal Code § 13730 requires that a written report be completed on all incidents of domestic violence. All such reports should be documented under the appropriate crime classification and, in the "Type of Crime" box of the crime report form, the distinction "Domestic Violence" should be made.

Reporting officers should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence pamphlet provided to the victim. If the case number is not immediately available, an explanation should be given about how the victim can obtain the information at a later time.

320.6.1 RECORD-KEEPING RESPONSIBILITIES

Penal Code § 13730 also requires that all law enforcement agencies maintain records on the number of domestic violence related calls reported to their agency and to include whether or not weapons were used in the incident. This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Police Services Supervisor to maintain and report this information as required.

320.7 FIREARMS / DEADLY WEAPONS

Officers shall take into temporary custody firearms or other deadly weapons in plain sight or discovered pursuant to a consensual search or other lawful search in domestic violence incidents and process them for safekeeping as authorized in Penal Code § 12028.5. In no event shall such

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firearm or deadly weapon be returned within less than 48-hours of the time the firearm or deadly weapon was seized.

The officer taking custody of any firearm or other deadly weapon shall issue the individual possessing such weapon a receipt fully describing the weapon (including any serial number) and indicating the location where the weapon may be recovered along with any applicable time limit for recovery (Penal Code § 12028.7).

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

320.7.1 RELEASE OF FIREARMS / DEADLY WEAPONS

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

320.8 DISPATCHER RESPONSIBILITIES

This Department considers calls of reported, threatened, imminent, or ongoing domestic violence, and the violation of any protective order, including orders issued pursuant to Penal

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Code § 136.2, and restraining orders of extreme importance and shall be ranked among the highest priorities. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance. All calls of domestic violence should be dispatched as soon as practical.

320.9 PUBLIC ACCESS TO POLICY

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