

# DOMESTIC VIOLENCE



AOT January 2020

Presented By: SCPD Investigations Bureau

# Topics we will cover

- Domestic Violence Definitions and Crimes Codes
- Protocol vs. Policy
- Restraining Orders
- Firearms
- Strangulation
- Report Writing and Supporting Documents
- Message from the DA's Office

# DOMESTIC VIOLENCE Definitions



## AND Crime Codes REVIEW

# Definitions



- **DOMESTIC VIOLENCE:** abuse committed against an adult or minor who is a spouse, former spouse, cohabitant, former cohabitant, share a child in common, current or former dating. Same gender relationships are included.
- **ABUSE:** Intentionally or recklessly causing/ threatening to cause / attempting to cause injury.

# Definitions



- **COHABITANT:** Two unrelated adults living together for a substantial period of time resulting in some permanency of a relationship.
- **DATING:** means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

# Definitions



- **DOMINANT AGGRESSOR:** Person determined to be the MOST significant, rather than the first aggressor.
- **RESTRAINING ORDER:** A court order to make a person refrain from doing listed things. (CPO, TRO, RO, EPRO, **JRO**)

# Definitions



- **TRAUMATIC CONDITION:** as defined in our County, is any visible injury or injury as a result of strangulation or suffocation caused by physical force



# Definitions

- **SERIOUS BODILY INJURY:** as defined in penal code section 243(f)(4) means a serious impairment of physical condition, including, but not limited to the following: loss of consciousness, concussion, bone fracture, protracted loss/impairment of function of any bodily member/organ, a wound requiring extensive suturing and serious disfigurement.



# Definitions



- **273.5(d) PC** - As used in this section, “**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.

# Definitions



## ➤ **PRO ARREST POLICY:**

Position in which a physical arrest shall be made in every situation (**F** or **M**) where an arrest is legally permissible; absent exigent circumstances. No need to ask victim if they want to make a private persons arrest.

(More on this later)

# Felony vs. Misdemeanor



# Felony

## 273.5(a) PC :

Adult or minor who is a spouse, former spouse, cohabitant, former cohabitant, share a child in common, currently or formerly engaged, or who are currently or formerly dating. Same sex relationships are also included.

AND.....

Willfully inflicts a corporal injury resulting in a traumatic condition. Including injury as a result of strangulation or suffocation caused by physical force.



# Misdemeanor

## 243(e)(1) PC :

Any adult or minor who is a spouse, former spouse, cohabitant, former cohabitant, share a child in common, currently or formerly engaged, or who are currently or formerly dating. Same sex relationships are also included,

WHO.....

Commits any battery/assault which **does not** result in a traumatic injury (**complaint of pain only**).



# Summary



- The relationship criteria are the same for BOTH sections
- 243(e)(1)PC = No visible injury (Pain only)
- 273.5(a)PC = Visible injury OR evidence of injury (visible or not) from strangulation or suffocation.

# Associated Crimes



- **594 PC** – Vandalism
- **422 PC** – Criminal Threats (Ask victim what the threat meant to them)
- **417 PC** – Brandishing a Weapon
- **273.6 (d) PC** - (**Felony**) Violation of the restraining order, with violence or threats of violence, after suffering a prior conviction for violation of 273.6PC within 7 years

# Associated Crimes



- **136.1 PC** – Intimidating or dissuading a witness. **Felony**  
**136.1 (C) PC** offense (and a strike) if effected by force or threat of force
- **591 PC** – Malicious destruction of a telephone line
- **591.5 PC** – Unlawful removal, damage of wireless communication device or obstructing use of such device to summon law enforcement

**NOTE:** When 591 PC or 591.5 PC conduct is intended to keep someone from reporting a crime, consider 136.1 PC



# Associated Crimes



- **243(d) PC** – Battery with serious bodily injury
- **236/237 PC** – False imprisonment. **Felony** offense if effected by violence, menace, fraud, or deceit
- **273a PC** – Child abuse/ child endangerment

# Associated Crimes



- **245(a)(1) PC** - Assault with a deadly weapon
- **245(a)(4) PC** – Assault by means of force likely to produce great bodily injury. Consider using in cases of strangulation and blows to the head absent visible injury.

**NOTE:** If attempted strangulation is indicated (breathing restricted) please charge 245(a)(4) PC

# Associated Crimes

- **528.5m PC** – Knowingly and without consent, credibly impersonating another actual person through or on an Internet Website or by other electronic means, for purposes of harming, intimidating, threatening, or defrauding another person.

**NOTE:** Also violates 273.6 PC

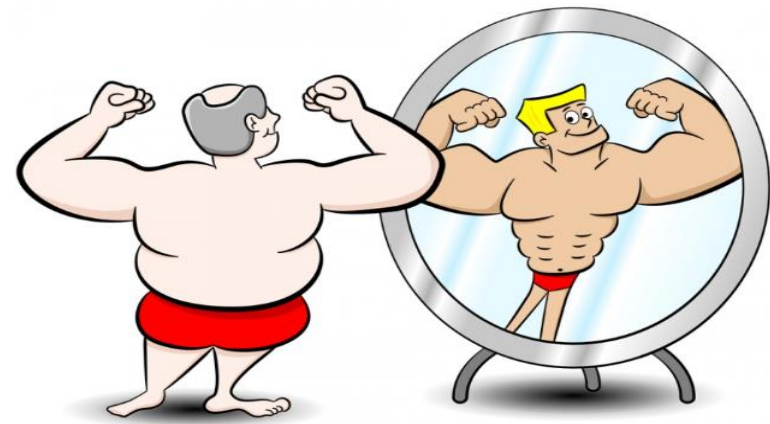


# Protocol vs. Policy



# Protocol vs. Policy

- Santa Clara Police Domestic Violence Policy General Order (GO 91.1.1) is what we follow.
- SCPD Policy mirrors the 2019 Santa Clara County Domestic Violence Protocol in most areas



# Protocol & Policy



- An arrest *shall* be made in the event an officer has PC to believe a **felony** DV has occurred, whether or not officer present
- An arrest *shall* be made in the event an officer has PC to believe a **misdemeanor** DV has occurred, whether or not officer present
- An arrest shall be made if the officer has probable cause to believe that the suspect has violated a domestic violence protective order, restraining order, stalking emergency protective order, or elder abuse protective order, even when the crime did not occur in the officer's presence (836PC).

# Protocol Vs. Policy



**Q:** What's Different?

**A:** Having Probable Cause and not making an arrest (rare, but does happen)

Example: DV car crash, Alzheimer's patient

# SCPD Policy (exceptions to arrest)

- **Felony** Case : Any exceptions to the pro-arrest provision ***must*** be made by a supervisor or Watch Commander who is present at the scene. Document the reasons in your report.
- **Misdemeanor** Case: If the decision to not arrest is made, your supervisor needs to be notified.



# Factors you should not consider when deciding to arrest

- Assurances the violence will stop
- Willingness of victim to prosecute
- Same gender relationships
- If victim and suspect live together or not
- History of prior calls
- Juveniles involved
- Financial consequences of arrest
- Existence or lack of Restraining Order
- Relationship of victim and suspect

# Investigation

## Jurisdiction and Courtesy Reports



- If the incident occurred in another jurisdiction, evaluate the severity and immediacy of the situation.
- Contact the jurisdiction and determine which agency will take the initial report and/ or which agency will investigate.
- If the agency is not able to, or unwilling to respond, we will take a courtesy report.

# Investigation

- Persons (**Including Juveniles**) arrested for crimes specified in PC 1270.1, including the following crimes cannot be released at the scene:
  - PC 243(e)(1) - misd. domestic violence
  - PC 273.5(a) – Fel. Domestic violence
  - PC 262 – Spousal rape
  - PC 422 – Criminal Threats

(Continued)



# Investigation

- Persons (**Including Juveniles**) arrested for crimes specified in PC 1270.1, including the following crimes cannot be released at the scene:
- **PC 273.6 or 166 – Violation of a protective order if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of the protected party**



(Continued)

# Investigation

- Persons (**Including Juveniles**) arrested for crimes specified in PC 1270.1, including the following crimes cannot be released at the scene:
  - PC 646.9 – Stalking
  - PC 136.1(c) – **Felony** dissuading a witness

(Continued)



# Investigation

## Last word on Juveniles



- If the arrestee is a juvenile, they must be taken to Juvenile Hall (No cite & release)
- The 2019 Protocol now allows for issuing EPRO's to juvenile victims (If the restrained person is a juvenile, both the minor and their parent/guardian need to be served with any court ordered DV restraining order)

# Investigation

The term **“Mutual Combat”** removed from 2017 protocol – moving forward

**“It appeared both parties used force against the other...”**



# Investigation

## Victim Reporting Prior Assault



- If a victim complains only of a **prior unreported** incident and has no complaint of pain or physical injury at the time of the current report
  - Inform of rights to make a private persons arrest (statute of limitations)
  - Attempt to obtain a statement from the suspect (arrest if appropriate)
  - Document attempts made to contact the suspect
  - Collect evidence if available
  - Submit a report to the District Attorney or Juvenile Probation for review.



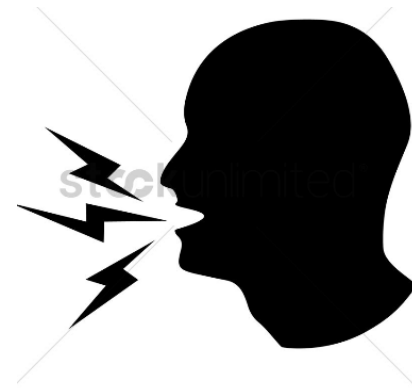
# Patrol Response

Domestic Violence calls are one of the most **DANGEROUS** types of calls

# Patrol Response & Investigation



- **Activate BWC**
- **Separate involved parties**
- **Provide medical aid**
- **Note Spontaneous Statements**



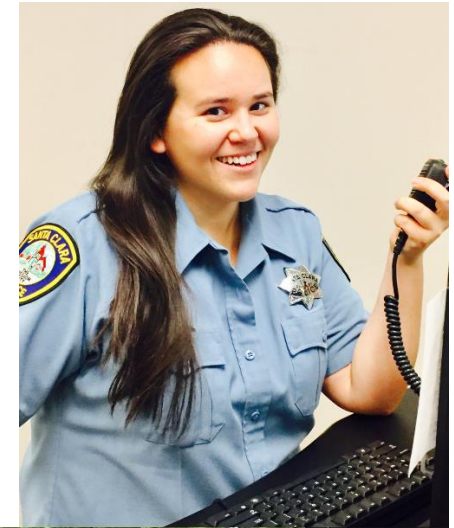
# Patrol Response & Investigation

- Ask about weapons
- Digitally record statements (if no BWC)
- Photograph involved parties and the scene
- Attempt to locate witnesses



# Patrol Response & Investigation

- **Run Records Check (Probation | Parole | Weapons)**
- **Document names and contact information of witnesses**
- **Take blood sample from suspect when policy dictates**
- **Obtain 911 Recording**



# **Important!** Children Present During a DV

- Document names & ages of children in the home (Present or who live there but were not present)
- Contact DFCS in appropriate cases where children's safety appears to be at risk, even if they were not physically abused
- Suspected child abuse of neglect MUST be cross-reported to DFCS and officers must follow the joint response protocol.
- Child abuse includes mental abuse, environmental endangerment, or inadvertently being struck

# Important! Children at DV (continued)

## ➤ Document facts about children present

- Sleeping
- Hiding
- Crying
- Fearful
- Held during incident



## ➤ Why it's important for the follow-up investigation

- **SCAR** (Suspected Child Abuse Report) must be cross reported to DFCS
  - **Child safety is paramount!**
  - Officer and Department Liability





# Patrol Investigation

## Translating Statement



- If **exigency** exists, use whatever means you need for translation
- Once scene is secure, **AVOID** using children, family members, friends, neighbors, bystanders
  - Bilingual Officer
  - Certified Professional Translator
  - **Language Line Solutions**
- Record statements
- Document identifying information from your translator



# Restraining Orders



## Emergency Protective Restraining Order (EPRO)

- The Officer shall advise the victim of the availability of an EPRO and DVRO in every case even if the suspect is arrested
- Also in non-criminal situations where the victim is fearful
- The officer is required to request an EPRO if the officer believes the person requesting the order is in immediate and present danger (Even if the victim does not want the order)
  - Stalking
  - Child Abuse
  - Child Abduction
  - Domestic Violence
  - Elder Abuse



# Restraining Orders



## Emergency Protective Restraining Order (EPRO) Who gets one?

- Spouse / Former Spouse
- Cohabitant/ Former Cohabitant
- Dating/ Former Dating
- Engaged/ Former Engaged
- Share a child
- Child subject to a paternity action
- Elders, Dependent adults
- Parents, Grandparents, Siblings, and children



# Restraining Orders



## Emergency Protective Restraining Order (EPRO)

- Valid for five court days or seven calendar days
- Purpose to provide protected person time to obtain a TRO
- Serve the protected party – give copy
- Serve the restrained party (if possible) – give copy
- Have records enter EPRO into DVROS
- Document EPRO on Felony Affidavit and in your police report.

(Continued)

# Restraining Orders



## More on Restraining Orders

- **Temporary Restraining Order (TRO) – valid for usually 21 to 25 days**
- **Restraining Order (RO) AKA. Order After Hearing – usually valid for 3-5 years**
- **Criminal Protective Orders (CPO) – CPO always issued in DV related cases**
  - **Issued at the time of arraignment (usually as a condition of release)**
  - **Also issued at time of sentencing**
  - **Judge determines whether the CPO is “Peaceful” or “No Contact”**

(Continued)

# Restraining Orders



## Enforcing Civil and Criminal Restraining Orders

- *The elements of the crime require willful disobedience of the terms of the order.*
- *Proof of Service shows that the suspect has the necessary knowledge to be in violation of the order.*
- *If the officer cannot verify the order, it may be enforced through a private persons arrest procedure. If in the officers opinion the elements of the crime do not exist, the officer may then consider a release per 836(c) PC.*
- *Officers Shall always prepare a crime report on a restraining order violation, even if the suspect is no longer present.*

# Restraining Orders



## *Conflicting Orders – What to Enforce?*

### *Enforce EPRO First*

The “General Rule” is that the most restrictive order should be enforced if there is more than one protective order in effect

- (Example) Officers should enforce a “no-contact” regardless if it was issued in Criminal or Civil court

### Multiple Civil/ Family Orders without a “no-contact order” or EPRO

- The Peace Officer must enforce the most recent protective order

## Conflicting Orders: What to Enforce When You Have Multiple Orders?

Penal Code § 136.2, and Family Code §§ 6383 (h), 6405 (b)

(1) Is there an EPRO?

Yes

No

**Enforce the EPRO!**  
*as long as it is the more restrictive order*

(2) Is one of the orders a no-contact order?

Yes

No

**Enforce the no-contact order!**

(3) Are there both civil and criminal restraining orders?

4) Are there multiple civil orders? (e.g. Family, Juvenile or other civil court)

**Enforce the most recent order!**

**Enforce the criminal order!**  
*Non-conflicting terms of the civil order remain in effect*

# Restraining Orders



## Enforcing Civil and Criminal Restraining Orders

*What if both parties have “No-Contact” Orders?*

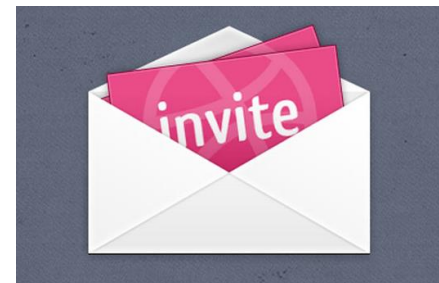
The officer shall make reasonable efforts to identify, **and should only arrest**, without a warrant, the dominant aggressor involved in the incident.

# Restraining Orders

## Enforcing Civil and Criminal Restraining Orders

### *What about Invited or Voluntary Contact?*

- Must treat like any other RO violation
- Protected persons are still victims
- Protected persons cannot violate order






# Restraining Orders



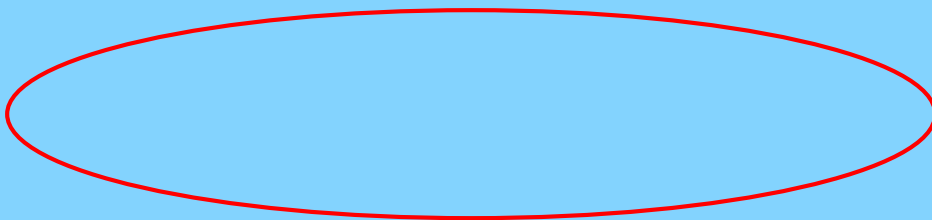
**“Out-of-State”** Restraining Orders

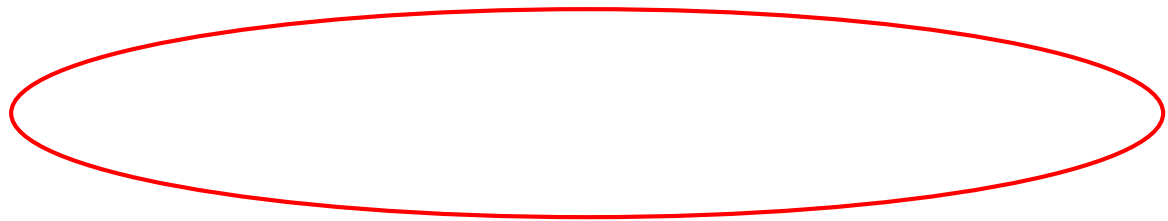
Can you enforce? **YES**

Does it have to be registered in  
California to enforce? **NO**



Remember to document the  
docket/court case #, service  
and validity dates!





# Restraining Orders

## What section do I charge?



- DV orders (EPRO, DVRO, TRO, RO) charge 273.6 PC
- Use 273.6 (d) PC - (**Felony**) Violation of the restraining order, with violence or threats of violence, after a prior conviction for violation of 273.6PC within 7 years
- Criminal Protective Orders (CPO) charge 166(c)(1) PC
- Violation of a court order charge 166(a)(4) PC
- Juvenile Restraining Order (JRO) charge 273.65 PC
  - Note: JRO's can remain in effect until the offenders 21<sup>st</sup> birthday

# Restraining Orders



## “Gun Violence Restraining Order” (GVRO) & “Emergency GVRO”

- An immediate family member or law enforcement officer can petition a judge to temporarily remove a persons firearms and ammunition if they **fear** the person **is violent and likely to commit a violent act with a gun**. The order is valid for 21 days.
- The order prohibits the named person from having in his custody or control, owning, purchasing, possessing, receiving any firearms or ammunition.
- A violation of a GVRO is prosecuted under 18205 PC



(Continued)

LAW ENFORCEMENT CASE NUMBER:

EPO-002

FIREARMS EMERGENCY PROTECTIVE ORDER

1. RESTRAINED PERSON (insert name of subject): \_\_\_\_\_

Sex:  M  F Ht: \_\_\_\_\_ Hair color: \_\_\_\_\_ Eye color: \_\_\_\_\_ Race: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

2. TO THE RESTRAINED PERSON (Also see important Warnings and Information on Page 2): YOU MUST NOT own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition. If you have any firearms or ammunition, you MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST. If not request has been made, you must surrender all firearms and ammunition in a safe manner to your local law enforcement agency or sell them to or store them with a licensed gun dealer within 24 hours of being served with this order. You must then file a receipt proving surrender, sale, or storage with the Court listed below within 48 hours, or if the court is closed, then on the next business day after the firearms are surrendered or sold. FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER. (Name and address of court): \_\_\_\_\_

3. THIS ORDER WILL EXPIRE ON: \_\_\_\_\_ TIME: \_\_\_\_\_

4. Reasonable grounds for the issuance of this Order exist, and a Firearms Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

5. To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

Judicial Officer (name): \_\_\_\_\_ granted this Order on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

APPLICATION

6. Officer has a reasonable cause to believe that the grounds set forth in Item 4, above exist. (State supporting facts and dates; specify weapons—number, type and location): \_\_\_\_\_

7.  Firearms were:  observed  reported  searched for  seized  
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: \_\_\_\_\_ (PRINT NAME OF LAW ENFORCEMENT OFFICER) (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: \_\_\_\_\_ Telephone No.: \_\_\_\_\_ Badge No.: \_\_\_\_\_

PROOF OF SERVICE

8. Person served (name): \_\_\_\_\_

9. I personally delivered copies of this Order to the person served as follows: Date: \_\_\_\_\_ Time: \_\_\_\_\_ Address: \_\_\_\_\_

10. At the time of service, I was at least 18 years of age.  I am a California law enforcement officer.  
11. My name, address, and telephone number are (this does not have to be server's home telephone number or address): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_ (TYPE OR PRINT NAME OF SERVER) (SIGNATURE OF SERVER)

Judicial Council of California, www.courts.ca.gov  
New January 1, 2016. Mandatory Form  
Penal Code § 18125 et seq.

Firearms Emergency Protective Order (CLETS-EGV)

Page 1 of 2

ONE copy to court, ONE copy to restrained person, ONE copy to issuing agency

FIREARMS EMERGENCY PROTECTIVE ORDER

EPO-002



# Restraining Orders



## Relinquishment of Firearms and Ammunition

- **At every domestic violence call** involving threat to human life or physical assault, officers *shall* take into custody any firearm or deadly weapon in plain sight or pursuant to a consensual search or other lawful search – PC 18250
- Consider this during your protective sweep of the crime scene. Probation? Parole? Consent? Is a search warrant needed?
- Georgia vs. Randolph (must have consent from both parties if both parties are present)



(Continued)



# Relinquishment of Firearms & Ammo



- When serving a protective order, including but not limited to EPROs and DVROs, law enforcement officers shall request the immediate surrender of firearms and ammunition rather than having to wait 24 hours for the person to self surrender the firearms and ammunition.





# Relinquishment of Firearms & Ammo



## ➤ Back of EPRO

### EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

EPO-001

**TO THE RESTRAINED PERSON: VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR IT MAY BE PUNISHABLE AS A FELONY. THIS PROTECTIVE ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. THE TERMS AND CONDITIONS OF THIS ORDER REMAIN ENFORCEABLE REGARDLESS OF THE ACTS OF THE PARTIES; IT MAY BE CHANGED ONLY BY ORDER OF THE COURT (PENAL CODE SECTION 13710(b)).**

**YOU ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM OR AMMUNITION. (PENAL CODE SECTIONS 29825(a), 30305(a).) A VIOLATION IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. WITHIN 24 HOURS OF RECEIPT OF THIS ORDER, YOU MUST TURN IN YOUR FIREARMS TO A LAW ENFORCEMENT AGENCY, SELL THEM TO A LICENSED FIREARMS DEALER, OR STORE THEM WITH A LICENSED FIREARMS DEALER UNTIL THE EXPIRATION OF THIS ORDER. (PENAL CODE SECTION 29830.) PROOF OF SURRENDER, SALE, OR STORAGE MUST BE FILED WITH THE COURT WITHIN 48 HOURS OF RECEIPT OF THIS ORDER.**

To the restrained person: This order will last until the date and time in item 5 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney on any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

A la persona bajo restricción judicial: Esta orden durará hasta la fecha y hora indicada en el punto 5 al dorso. La persona protegida puede, sin embargo, obtener una orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado inmediatamente para que él o ella le pueda ayudar a responder a la orden.

# Search Warrants for Weapons

## Five (5) Specific Instances

- 1) At the premises occupied or under the control of the person arrested for a domestic violence incident involving threat to human life or physical assault (PC 18250)
- 2) When a person is detained for examination of their mental health (5150 W&I) and they own / possess a firearm or other deadly weapon (W&I 8102(a))



# Search Warrants for Weapons

3) When a subject has been served an EPRO or DVRO and they have failed to surrender guns or ammunition

**AND**

PC exists to believe person has gun & ammo



# Search Warrants for Weapons

- 4) When the owner of the guns & ammo is served with a Gun Violence Restraining Order (GVRO) AND the person has failed to relinquish the firearm(s) and ammo



# Search Warrants for Weapons

- 5) When the firearm is in the possession of a person who is prohibited from owning it:
- **Convicted Felon**
  - **Specified misdemeanor convictions** within 10 years (PC 29805) AND the person has failed to relinquish the firearm as required by law.

# INFO FROM CAO ON GVRO

## **Hearings:**

- Detective will forward copy of GVRO and report to CAO
- Court will send Officer (Petitioner) and suspect (Respondent) notice of the hearing
- Petitioner (or legal counsel i.e. City Attorney) must show up or case is dismissed and temporary order expires
- If Petitioner shows up and Respondent doesn't, service is presumed by the court and the hearing proceeds

## **Ex Parte (Temp GVRO) Factors:**

- A threat to harm self/others within prior 6 months
- Pattern of violence within the past year toward self/others
- Prior convictions listed in PC 29805 (i.e. 243.4, 242/felony arrests)
- Recent acquisition of firearms
- Prior restraining/protective order violations
- Unlawful/reckless use, display/brandishing of firearm

# INFO FROM CAO ON GVRO

- Documentary evidence showing subject committed crimes involving ongoing alcohol/substance abuse
- ANY evidence of increase violence risk

## **Permanent GVRO:**

- One year order preventing firearms access
- Option to renew as long as dangerous condition exists
- Burden of proof is clear and convincing evidence (PC 18175)

Our City Attorney's Su Reuter and John Belisle thank you for your hard work and ask for patience as all the nuances get ironed out.



# Patrol Response – Civil Standby

- **(For the Victim)** Must provide a civil standby for the victim of a DV a reasonable amount of time to remove limited “necessary property.”
- **(For the suspect)** Property removal orders may be issued to allow the suspect the opportunity for a standby while the collect property.





Specific directions in the order will be outlined by an additional form that is signed by a Judge and stamped by the Court Clerk. Burden is on the applicant to arrange process with the PD.

**FM-1102 Other Orders – Property Removal**

Case Number: \_\_\_\_\_

This form is attached to:  DV-110/130  CH-110/130  EA-110/130  JV-250/255

1. Protected Person's name: \_\_\_\_\_

2. Restrained Person's name: \_\_\_\_\_

3. Taking personal items of property: As a one-time exception to the "Personal Conduct" and "Stay-Away" orders attached to this form, the  Restrained Person  Protected Person:

a.  May take agreed upon items of property from the  Protected Person's  Restrained Person's home. Items that the parties do not agree upon must not be taken unless the Court makes an order allowing the items to be removed. The agreed upon items of property may be taken between (date) \_\_\_\_\_ and (date) \_\_\_\_\_ between (times) \_\_\_\_\_ and \_\_\_\_\_.

b.  May only take items of property that are described in item 7. The items may be taken between (date) \_\_\_\_\_ and (date) \_\_\_\_\_ between (times) \_\_\_\_\_ and \_\_\_\_\_.

c.  Must send a written list of personal property items which are being requested to the other party by mail \_\_\_\_\_ calendar days in advance of the removal date and items which are agreed upon must be removed as set forth above in section 3a. The mailing of this list by the Restrained Person (if applicable) is an exception to the No Contact Orders.

d.  Must place the other party's personal belongings as listed in item 7 in a box or boxes for pick up by/delivery to the other party or his/her designated representative. The terms of pick up/delivery must be as follows:

\_\_\_\_\_  
 \_\_\_\_\_

e.  Must contact Law Enforcement to request the Civil Standby. The exact date and time must be approved by Law Enforcement in advance of any property removal. Removal must not occur before 7 a.m. or after 10 p.m. If the Civil Standby does not take place due to scheduling issues or if Law Enforcement is unavailable or unwilling to be present for the Civil Standby either party may request a hearing for further orders.

4. Civil Standby: A "Civil Standby" is when a Law Enforcement Officer comes to a place to make sure that the situation there is peaceful. The party who is removing his/her personal items must give a copy of these Property Removal Orders to the Law Enforcement Officer. Both parties must obey the instructions of the Law Enforcement Officer present at the Civil Standby. A Civil Standby may last up to thirty minutes but may be stopped at any time by the Law Enforcement Officer.

5.  Peaceful Communication: The parties may communicate peacefully with each other regarding the property removal while the items of property are being removed as an exception to the attached Personal Conduct orders. Any Law Enforcement Officer present while the items of property are being removed has the authority to stop all communication. Such communication, if peaceful, is an exception to any No Contact Orders.

6. Others present at property removal:

a.  Minor children shall not be present during property removal.

b.  The property removal shall not take place \_\_\_\_\_ (name of party) or his/her designated representative is not present.

c.  Each party may have up to two other people who are not listed as protected people on this Restraining Order present while the items of property are being removed. Any contact between the parties and these people must be peaceful.

d.  The parties may not have others present when the items of property are removed.

e.  The following people  may be  may not be present when the items of property are removed:

\_\_\_\_\_

7. Other Orders:

a. The orders herein are for temporary possession and the issue of final ownership of any item may be subject to review by a Court of competent jurisdiction.

b. Items to be removed:

(1)  Necessary Personal Property, which means clothing, toiletries, prescribed medication, medical records, medical insurance card, driver's license or State identification cards;

(2)  List of Items to be removed:

See Attachment

# Strangulation

“Strangulation” and “Suffocation” include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. This is not the same as choking

**Choking**

**vs**

**Strangulation**



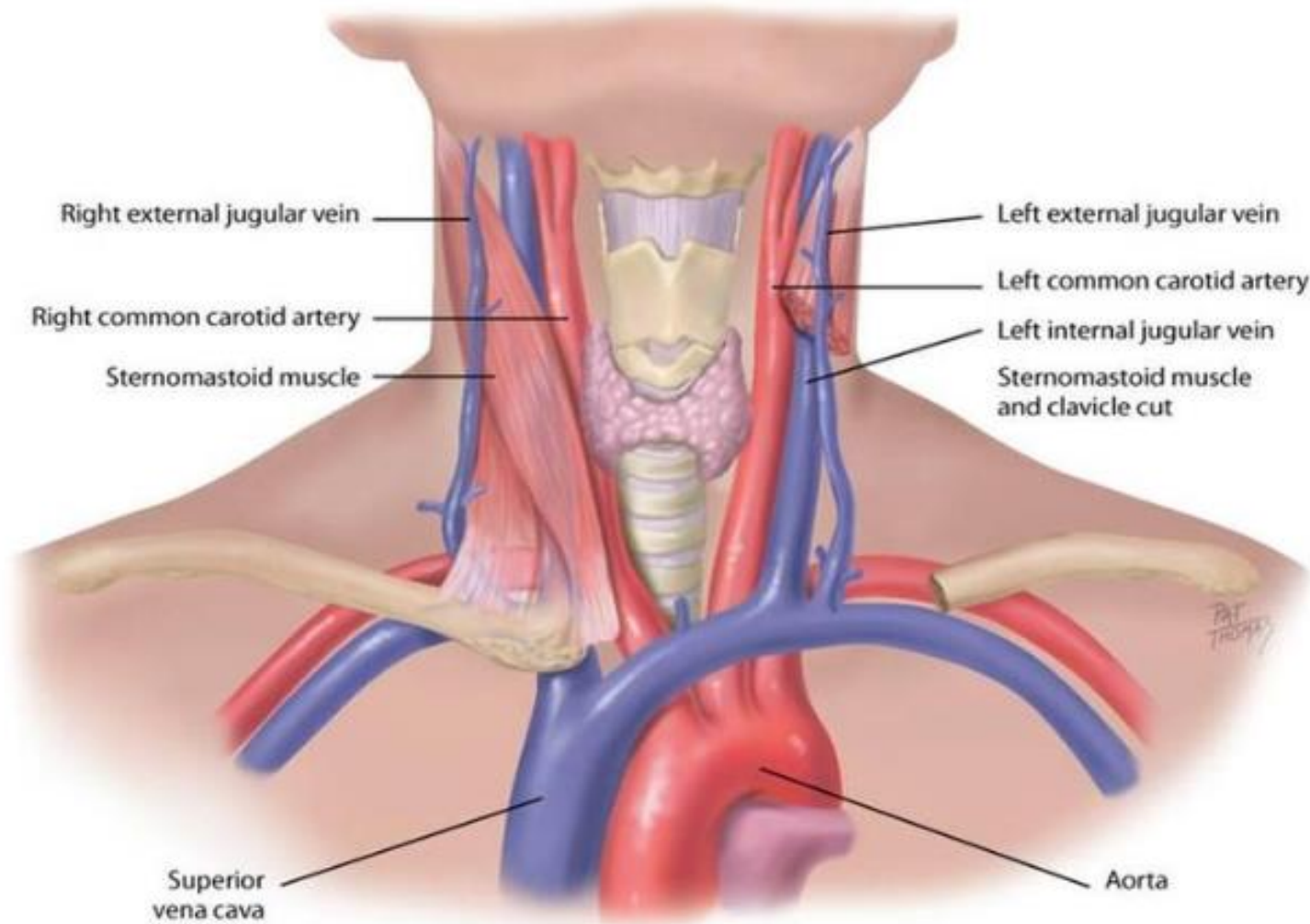
# Strangulation



- Strangulation is a form of ASPHYXIA
- Asphyxia is characterized by the closure of blood vessels and/or air passages of the neck as a result of external pressure on the neck
- Based on the mechanism and severity of the attack will determine the appropriate charging sections (273.5, 245(a)(4) PC, & 664/187 PC)

NOTE: If attempted strangulation is indicated (breathing restricted) **please charge 245(a)(4) PC**

# Strangulation Anatomy



NECK VESSELS

# Strangulation Sequence

Pain /Panic

Loss of  
Consciousness  
(LOC)

5 – 10 seconds

Brain  
Death

4 to 5  
minutes

1. **Disbelief** – Victim cannot believe they are being strangled (short in duration)
2. **Primal** – Victim fights with whatever means to stop the strangling (ask how it stopped; this may explain injuries)

3. **Victim gives up** - Feeling that they can do nothing and go limp (Ask victim what they were thinking about at this stage. What did they think was going to happen?)





# Petechiae



Pronounced petechiae in the whites of the eyes and on the cheeks/face.

- Condition develops when capillaries burst.
- Most often occurs when Jugular is restricted and Carotid is open.
- May suggest vigorous struggle or intermittent pressure.

# Strangulation

## QUESTIONS TO ASK VICTIM

**EMERGENCY  
INCIDENT**

- Does the victim have difficulty breathing ?
- Does the victim have difficulty standing or moving?
- Is the victim experiencing other restrictions as a result of the incident?
- Strongly Encourage Victim to seek medical attention



# Strangulation

## QUESTIONS TO ASK VICTIM

**EMERGENCY  
INCIDENT**

- Determine whether hands or ligature were used
- Get detailed information regarding the “force used”
- Did the victim lose consciousness?
- Did the victim vomit, urinate, or defecate?
- Does the victim have difficulty swallowing?
- Is the victim experiencing a change in speech (hoarse/raspy sore)
- Does the victim notice any changes in vision (dizzy / confused)





# Strangulation

**EMERGENCY  
INCIDENT**

## MEDICAL CONSEQUENCES

- Death can occur within minutes if pressure is continued past LOC or days later from internal trauma
- Serious long-term medical complications can occur if medical attention is not sought immediately
- Sudden deaths have been attributed to untreated strangulation cases that occurred more than 20 years after the incident



**STRANGULATION**  
**IN INTIMATE PARTNER VIOLENCE**  
FACT SHEET

**Loss of consciousness can occur within 5 - 10 seconds. Death within minutes.<sup>2</sup>**

And odds for homicide increase **750%**

for victims who have been previously strangled, compared to victims who have never been strangled.

# Strangulation

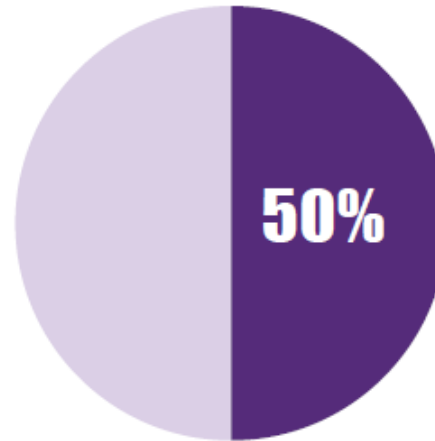
## MEDICAL CONSEQUENCES (Continued)



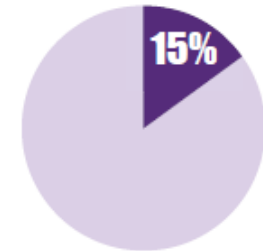
### STRANGULATION IN INTIMATE PARTNER VIOLENCE FACT SHEET

#### HOWEVER...

Oftentimes,  
even in fatal cases,  
there are  
**NO EXTERNAL SIGNS**  
of injury.<sup>3</sup>



Only half of victims  
have visible injuries



Of these, only 15%  
could be photographed

# Strangulation Pilot Program

- Modeled after San Diego PD, SCPD and SCCSO will be participating in a 6 month pilot program regarding new strangulation procedures
- On certain DV cases where the victim was strangled, the DA can and is adding the charge of 245(a)(4)PC
- In order to assist in obtaining a conviction for 245(a)(4)PC, we need evidence of the injuries caused by strangulation
- Starting January 1, 2020, we will offer victim's of strangulation a medical exam provided by the county

# Strangulation Pilot Program (cont)

- If the victim consents to the exam, officers will transport to VMC/ER and use the same process for requesting a SART exam
- Upon contacting the VMC operator, the officer will request a strangulation medical forensic exam
- Once the examiner arrives and obtains necessary information from the officer, the officer can leave and return to duty

# Strangulation Pilot Program (cont)

- The forensic medical exam will allow the examiner to collect additional evidence as well as document injuries that cannot be seen
- The program goals include:
  - ✓ Helping the victim obtain additional medical care immediately
  - ✓ Ramping up the quickness of future medical services
  - ✓ Connecting victims with social services

# Strangulation Pilot Program (cont)

## Last points on the Strangulation Program

- During the trial period the only evidence collection is “electronic” (photos, measurements etc) If you have a victim that was bitten, please swab the bite mark at the scene
- The forensic exam is ONLY available to strangulation victims involved in a Domestic Violence incident
- The DA will have access to the evidence and make determinations regarding charges

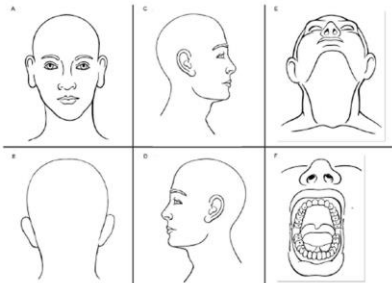
# Strangulation Pilot Program

## Santa Clara Police Department Documentation Chart for Non-Fatal Strangulation Cases

Case#: \_\_\_\_\_

Breathing Changes	Voice or Vision Changes	Swallowing Changes	Behavioral Changes	OTHER
<input type="checkbox"/> Difficulty Breathing <input type="checkbox"/> Hyperventilation <input type="checkbox"/> Unable to breathe Other: _____ <input type="checkbox"/> vision changes	<input type="checkbox"/> Raspy voice <input type="checkbox"/> Hoarse voice <input type="checkbox"/> Coughing <input type="checkbox"/> Unable to speak <input type="checkbox"/> vision changes	<input type="checkbox"/> Trouble swallowing <input type="checkbox"/> Painful to swallow <input type="checkbox"/> Pain to throat <input type="checkbox"/> Nausea /Vomiting <input type="checkbox"/> Drooling	<input type="checkbox"/> Agitation <input type="checkbox"/> Amnesia <input type="checkbox"/> PTSD <input type="checkbox"/> Hallucinations <input type="checkbox"/> Combativeness	<input type="checkbox"/> Dizzy or faint <input type="checkbox"/> Loss of consciousness <input type="checkbox"/> Headaches <input type="checkbox"/> Urination <input type="checkbox"/> Defecation <input type="checkbox"/> Hearing changes

Use diagrams to mark visible injuries



Face	Eyes & Eyelids	Nose	Ear	Mouth
<input type="checkbox"/> Red or flushed <input type="checkbox"/> Pinpoint red spots (petechiae) <input type="checkbox"/> Scratch marks	<input type="checkbox"/> Petechiae to R and/or L eyeball (circle one) <input type="checkbox"/> Petechiae to R and/or L eyelid (circle one) <input type="checkbox"/> Bloody red eyeball(s)	<input type="checkbox"/> Bloody nose <input type="checkbox"/> Broken nose (ancillary finding) <input type="checkbox"/> Petechiae	<input type="checkbox"/> Petechiae (external and/or ear canal) <input type="checkbox"/> Bleeding from ear canal	<input type="checkbox"/> Bruising <input type="checkbox"/> Swollen tongue <input type="checkbox"/> Swollen lips <input type="checkbox"/> Cuts/abrasions (ancillary finding)
Under Chin	Chest	Shoulders	Neck	Head
<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Fingernail marks <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Swelling <input type="checkbox"/> Ligature mark	<input type="checkbox"/> Petechiae (scalp) <input type="checkbox"/> Hair pulled <input type="checkbox"/> Bump <input type="checkbox"/> Skull fracture <input type="checkbox"/> Concussion

Victim Name: \_\_\_\_\_ Officer: \_\_\_\_\_

SB 40 Admonition (MUST READ TO VICTIM):

*"I have a duty to warn you that strangulation is serious and can cause internal injuries, brain damage and/or delayed health consequences such as strokes, thyroid issues, miscarriages and/or death. I strongly encourage you to seek immediate medical attention at an emergency department and ask for support from an advocate."*

### Questions to ASK: Method and/or Manner:

1. How was the victim strangled?

One Hand (R or L)     Two Hands     Forearm (R or L)     Knee/Foot

Ligature (Describe): \_\_\_\_\_

How long? \_\_\_\_\_ seconds \_\_\_\_\_ minutes or Can't remember?

From 1 to 10, how hard was the suspect's grip? (Low): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (High)

Continuous pressure?

From 1 to 10, how painful was it? (Low): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (High)

Multiple attempts: \_\_\_\_\_     Multiple methods: \_\_\_\_\_

Is the suspect **RIGHT** or **LEFT** handed? (Circle one)

What did the suspect say while strangling the victim, before and/or after? \_\_\_\_\_

Was the victim smothered while being strangled? Shaken? Straddled? Restrained? \_\_\_\_\_

Was the victim's head being pounded against the wall, floor or ground? \_\_\_\_\_

Any visual changes (describe)? \_\_\_\_\_

Any hearing changes (describe)? \_\_\_\_\_

Any breathing changes (describe)? \_\_\_\_\_

Any changes in consciousness (describe)? \_\_\_\_\_

What did the victim think was going to happen? \_\_\_\_\_

How or why did the suspect stop strangling the victim? \_\_\_\_\_

What was the suspect's demeanor? Describe suspect's facial expression during strangulation. Any witnesses? \_\_\_\_\_

Has the victim shown the injuries to anyone, taken photographs or sought medical attention? \_\_\_\_\_

# Traumatic Brain Injury

## (TBI)

- Victim should be encouraged to seek medical attention immediately if there has been the possible TBI even if there are no visible injuries.
- **NOTE:** In cases involving strangulation or TBI, consider charging 245(a)(4) PC (**Felony**) (assault with force likely to produce great bodily injury)



**EMERGENCY  
INCIDENT**



# Addt'l Patrol Response

## ➤ **Military Suspects**

- We will handle if incident occurred outside the boundaries of the military facility
- OR if we are requested to assist with the investigation

## ➤ **Law Enforcement Suspects**

- Notify on-duty supervisor or watch commander as soon as possible
- The investigating agency will notify the suspects agency as soon as possible
- There are special victim's advocate for LE victims

## ➤ **Campus Assaults (Tittle IX)**

- If an incident occurs on school grounds, the Officer will notify victim of additional school resources available to them.
- If the suspect is a student, provide the victim with the name and phone number of the tittle IX coordinator

# Blood Draws

- The DA's office appreciates when we obtain blood sample's from suspects in felony DV cases
- Per the DA:
  - **Though voluntary intoxication can be a defense to a specific intent crime (i.e. 664/187PC) and being so drunk as to be legally “unconscious” is a defense to other crimes, the blood draw often helps to show that while they were a .06 (for example) they were able to make rational decisions and were not so drunk as to be deemed legally “unconscious.”**



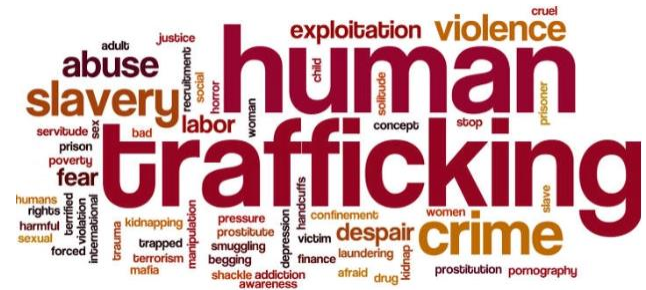
# How to Increase Bail !

- Request Higher Bail on the Felony Affidavit
  - Serious Felonies
  - Violent Felonies
  - Threatening a witness
  - Domestic violence Fel. & Misd
  - 422 PC
  - 646.9 PC
  - DVRO violations where threats to harm were made
  - Has engaged in violence against victim
  - Or has gone to the residence of workplace of the protected person
  
- “FACTS & CIRCUMSTANCES should include a listing of “Lethality Factors””



**Note: Juveniles are not eligible for bail**

# U-VISA



Available to non-citizen victims of crimes who are helpful or will likely be helpful with the law enforcement and follow-up investigations.

- Includes mostly serious felonies and any type of domestic violence.
- No time requirement for reporting.
- Will increase DV reporting.
- Always document if victim is obtaining a report for U-Visa purposes. **Detective Bureau will handle U-Visa Applications.**

# Required DV Literature

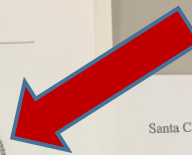
EPRO



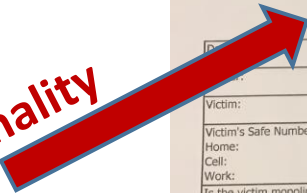
DV Supplemental



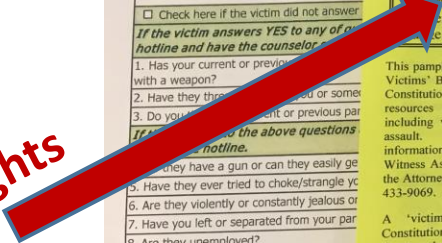
Victim Confidentiality



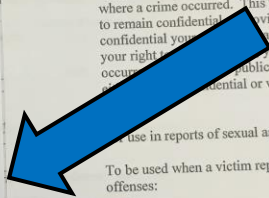
Lethality



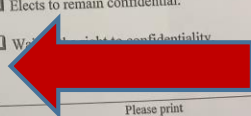
Marsy's Rights



Strangulation Resource Card



DV Resource Card





Victim



OPEN MONDAY  
8:00 a

70 West Hedding Street, West Wing  
San Jose, CA 95110  
Phone: (408) 295-2656  
www.santaclara-da.org

## YOUR RIGHTS AS A VICTIM OF DOMESTIC VIOLENCE

Victims of domestic violence have a right to go to Superior Court and file a petition requesting any of the following orders for relief:

- An order restraining the attacker from abusing the victim and other family members.
- An order directing the attacker to leave the household.
- An order preventing the attacker from entering the residence, school, business or place of employment of the victim.
- An order awarding the victim or the other parent custody of, or visitation with, a minor child or children, or a household animal.
- An order restraining the attacker from molesting or interfering with minor children or household animals in the custody of the victim.
- An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- An order directing the defendant to make specified debt payments coming due while the order is in effect.
- An order directing that either or both parties participate in counseling. A victim has the right to an emergency protective order at the scene of the incident.

The Superior Court (Family Division) is located at 170 Park Center Plaza, San Jose. The Family Court Clinic at the courthouse, as well as the domestic violence agencies in Santa Clara County, can provide information and/or assistance with obtaining a restraining order.

**FAMILY COURT CLINIC INFORMATION CENTER:**  
**(408) 534-5709**

Victims of domestic violence have the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses. A victim has the right to request that the landlord change the locks within 24 hours.

A victim has the right to have a domestic violence advocate and a support person at any follow-up interview by law enforcement, prosecutor or defense attorney.

Victims of domestic violence should report instances of domestic violence directly to their local law enforcement agency. That agency will then contact the District Attorney so that a charging decision can be made. The District Attorney may file a criminal complaint in a case of domestic violence. A victim can obtain a free copy of his/her police report from the police agency.

Domestic violence, sexual assault, and other types of assault, even when committed by a spouse or person who is known to the victim, is a crime. If you have been a victim of violence or assault, **support is available to you.** Call a domestic violence or sexual assault agency for assistance.

### COMPENSATION TO CRIME VICTIMS

Victims of domestic violence may qualify for payment from the State of California to cover lost wages, medical, mental health, funeral/burial expenses and rehabilitation costs. Children who see or hear domestic violence incidents may independently qualify for mental health counseling costs. Victims and their children may also receive relocation expenses. Victims may also qualify to receive a payment to improve home security. Claims should be filed within one year of the date of the crime.

For further information and assistance, call the Victim/Witness Assistance Center in Santa Clara County at (408) 295-2656, or the California Victims of Crime Program at (800) 777-9229

### DOMESTIC VIOLENCE 24-HOUR LINES:

YWCA Silicon Valley D.V. Dept. Support Network Program 1-800-572-2782  
Next Door, Solutions to Domestic Violence (408) 279-2962  
Community Solutions (Santa Clara/San Benito) 1-877-363-7238  
Asian Americans for Community Involvement (408) 975-2730  
Maitri South Asian Help line 1-888 862-4874

### SEXUAL ASSAULT 24-HOUR LINES:

YWCA Rape Crisis Center (North County) (650) 493-7273  
YWCA Rape Crisis (Central) (408) 287-3000

### VICTIM/WITNESS ASSISTANCE:

Victim Center (408) 295-2656  
Advocate in DA's Office (408) 792-2548  
Anti Hate Line (408) 279-0111

### SANTA CLARA COUNTY:

District Attorney's Office:  
Main Office (San Jose) (408) 299-7400  
North County (Palo Alto) (650) 324-8400  
South County Office (408) 201-0530  
Office of Pretrial Services (408) 792-2480  
Adult Probation (408) 435-2000  
Juvenile Justice (408) 299-2300

**Victim Information Notification Everyday**  
**VINE 1-800-464-3568**

For information about additional  
services, call the  
Victim-Witness Assistance Center.

# Last notes on DV Literature

- Remember to write the case number and the investigating officers name on the documents
- If there are no injuries write “No Injuries” on the second page of the DV Supplemental
- Have the victim sign the DV Supplemental. If they refuse, simply write “Refused” along the signature line.

**SIGN HERE  
PLEASE!** 

# Report Writing



"There's got to be a better way...."



# Report Writing Reminders

- ❖ When entering information in ARS, please remember to enter persons name, DOB, address, phone number.
- ❖ When entering suspect information in ARS, add information provided by records DL, PFN etc. This information expedites the process of warrant requests.
- ❖ Once victim is listed in person's tap, please refer to them as "victim" throughout the report even if they do not elect confidentiality
- ❖ ALL juveniles information is confidential. DO NOT write juvenile names in reports
- ❖ Ask victim if they disclosed to anyone. We need that info
- ❖ Document the victim's demeanor

# Example Report Writing Format

## **CONFIDENTIALITY**

I explained PC 293 to the victim. The victim elected to remain confidential.

## **NARRATIVE:**

On 08/01/17, at approximately 0245 hours, I was dispatched to 3910 Monroe Street on report of a domestic disturbance. The details of the call were (in part) that a juvenile female caller screamed, “My dad is hurting my mom” and hung up the telephone.

Upon my arrival, I parked approximately 1 house east of the residence. I got out of my patrol car and could immediately hear the sounds of loud arguing between a man and a woman. As I walked towards the residence I saw the front door open. A female subject (later identified as the victim) came running out of the house holding a juvenile female.

**The victim’s clothes were disheveled. The victim had a look of panic on her face. Her make-up was smeared around her eyes and cheeks. The victim shouted, “Help me!”**

# Example Report Writing Format

## **BODY WORN CAMERA:**

I used my body worn camera to audio and video record the victim's statement. I asked the victim initial questions and follow-up questions throughout the investigation. Below is a summary of what the victim told me and may not be in chronological order. Refer to my body worn camera video for additional information.

## **RELATIONSHIP:**

The victim and the suspect have been in a dating relationship for approximately 14 years. They have a 11 year old daughter in common. The couple have lived together at the listed location for approximately 5 years.

# Example Report Writing Format

## **DOMESTIC VIOLENCE HISTORY:**

The victim told me there have been 6 prior reported domestic violence incidents between her and her husband. The victim described the following prior incidents, which I later confirmed during a records check.

**(SCPD CASE 16-88221)** *Summary – 02/05/2016, The victim called police to report her husband was intoxicated and breaking items in the home. The victim told police that her husband had vandalized the house. During the incident, the suspect punched the victim in the face causing visible injury. The suspect was arrested and booked into county jail.*

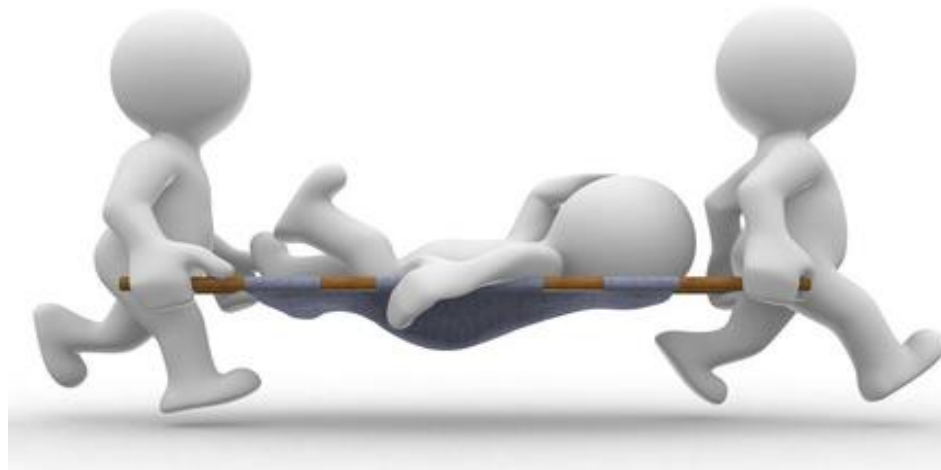
**(SCPD CASE 14-33555)** *Summary – 06/12/2014, A neighbor called police because he could hear a small child crying for the last hour. Police arrived and learned the suspect and victim were in an argument. During the argument the suspect slapped the victim and pulled her hair. The suspect was arrested and booked into county jail.*

**(Los Gatos Police 09-8989)** *Summary – 12/24/2009, The victim called police when her husband arrived at her home in violation of the EPRO. The suspect fled prior to police arrival, but was later arrested and booked into county jail.*

# Example Report Writing Format

## INJURIES:

- Document injuries or LACK of injuries
- Document injuries that are inconsistent with statements
- Photograph injuries or lack of injuries.



# Example Report Writing Format

## DOMESTIC VIOLENCE REQUIREMENTS:

- I explained the **EPRO** to the victim. The victim requested an EPRO. The EPRO was granted....
- I completed the **Lethality Assessment** with the victim. The victim did not screen in.
- I completed the **Domestic Violence Supplemental Report** with the victim. The victim signed the medical release.
- I provided the victim with a **DV resource card** and **Marsy's Rights card**.

# Final Reminders

- Keep information on the felony affidavit simple, the elements of the crime should be listed within the aff
- The felony affidavit is only valid for 72 hours
- Ramey warrants are only valid within our state

Thank You!