

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MAY 23, 2019

NUMBER: 4.05 – LEGAL

SUBJECT: PROTECTIVE ORDERS

RELATED POLICY: 4.05

ORIGINATING DIVISION: CENTRALIZED INVESTIGATIONS
COMMAND: INVESTIGATIONS I

NEW PROCEDURE:

PROCEDURAL CHANGE: **EXTENSIVE CHANGES**

SUPERSEDES: DP 4.05 – 03/03/2017

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I. PURPOSE

This Department procedure establishes guidelines for requesting and/or enforcing protective orders.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

A. Penal Code section 273.6(a) makes it a misdemeanor to intentionally and knowingly violate any protective order as defined in Family Code section 6218 or issued pursuant to Welfare and Institutions Code section 15657.03 or Code of Civil Procedure sections 527.6, 527.8, or 527.85.

- B. Penal Code section 166(c)(1) makes it a misdemeanor to willfully and knowingly violate any protective order or stay away order issued pursuant to Penal Code section 136.2 in a pending criminal case; issued pursuant to Penal Code sections 1203.097 or 273.5(j) as a condition of probation after a criminal conviction in a domestic violence case; issued after a conviction involving elder or dependent adult abuse case pursuant to Penal Code section 368; issued after a conviction in a sex offense involving a minor issued pursuant to Penal Code section 1201.3; or issued pursuant to Family Code sections 6320 or 6389.
- C. Penal Code section 18205 makes it a misdemeanor to own or possess a firearm or ammunition with knowledge that he or she is prohibited from doing so by a temporary emergency gun violence restraining order issued pursuant to Penal Code section 18135; an ex parte gun violence restraining order issued pursuant to Penal Code section 18160; or a gun violence restraining order issued after notice and a hearing issued pursuant to Penal Code section 18180.

IV. DEFINITIONS

- A. Criminal Protective Order (CPO) – issued pursuant to Penal Code section 1203.097 and imposed as a term of probation for all criminal convictions involving domestic violence. A CPO may or may not include “stay away” terms as part of the order. When a court orders a defendant to have no contact at all with a protected person, the court refers to the order as a “Stay Away Order.” In contrast, when a court allows contact, it is referred to as a “No Negative Contact Order” and prohibits a defendant from annoying, harassing, molesting, or disturbing the peace of a protected person. When law enforcement confirms a CPO with the Sheriff’s Office, it is important to confirm whether it is a No Negative Contact Order or a Stay Away Order.
 - 1. Stay Away Order – an order by a court for a defendant to have no contact at all with a protected person and is issued in a criminal case where there is good cause to believe that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Pursuant to Penal Code section 136.2, Stay Away Orders are issued by courts with jurisdiction over criminal matters and are not limited to domestic violence cases.

A Stay Away Order may remain in effect as long as the person is under the court’s jurisdiction, including any sentence or probationary period.
 - 2. No Negative Contact Order – an order by a court for a defendant to have no negative contact with a protected person and is issued in a criminal case. The order prohibits annoying, harassing, molesting, or disturbing the peace of a protected person.

- B. Domestic Violence Restraining Order – a protective order that is issued pursuant to the Domestic Violence Prevention Act. These orders may be called an “Order to Show Cause” or an “Order After Hearing.” An Order to Show Cause is generally valid for twenty to twenty-five days, pending a formal hearing. The Order After Hearing is the permanent restraining order issued after the formal hearing. The Order After Hearing will state on its face the expiration date of the order, typically three years from the date of issuance. However, a court may order a permanent restraining order remain in effect for up to five years. These orders are issued through Family Court or through the Domestic Violence Court.
- C. Emergency Protective Order (EPO) – a protective order obtained by a police officer in the field, when an officer believes a person is in immediate and present danger of domestic violence, elder abuse, child abuse, child abduction, or stalking per Family Code §§ 6250 and 6274. An EPO may be obtained 24-hours a day, seven days a week, and is intended to provide short-term protection to victims while giving them a reasonable period to apply to the Superior Court for a longer-term civil protective order. An EPO expires within five judicial working days or seven calendar days following its issuance, whichever comes first. Family Code § 6256.
- D. Protective Order – a restraining order, as defined in Family Code section 6218, which describes the three orders that most directly protect a victim of domestic violence from abuse: (1) an order prohibiting specific acts of abuse (Family Code section 6320); (2) excluding a person from a dwelling (Family Code section 6321); or, (3) prohibiting other specified behavior, as determined by a court (Family Code section 6322). A Protective Order may be issued ex parte, after notice and a hearing, or in a judgment. The expiration date will be stated on the face of the order, but is typically effective no more than three years after issuance.
- E. Gun Violence Restraining Order (GVRO) – an order prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. Penal Code § 18100.

NEW

There are three types of GVROs:

1. Temporary Emergency Firearms Protective Order (TEFPO) – a temporary emergency restraining order requested by the San Diego Police Department (SDPD) to prevent a subject’s access to firearms and ammunition. Penal Code § 18125. TEFPOs are obtained telephonically when court is not in session.
2. Temporary Gun Violence Restraining Order (TGVRO) – is a twenty-one day ex-parte restraining order requested by SDPD to prevent a person’s access to firearms and ammunition until there is a hearing to obtain a Permanent Gun Violence Restraining Order (PGVRO). Penal Code § 18150.

3. Permanent Gun Violence Restraining Order (PGVRO) – a renewable court order enjoining a subject from possessing, owning or receiving firearms and ammunition for a period of one year. Penal Code § 18170. A PGVRO is typically granted when a TGVRO or TEFPO is upheld by a judicial officer after a formal hearing.

NEW

- F. Deputy City Attorney Gun Violence Restraining Order Program Manager (DCA GVRO Program Manager) – The DCA assigned to represent SDPD during the GVRO Process.

V. GENERAL PROCEDURES

- A. The San Diego County Sheriff's Office is this county's central repository for all restraining and protective orders, which are enforceable under Penal Code sections 273.6 and 166(a)(4) or (c)(1). The Sheriff's Office also accepts orders issued in other states if they have been filed with a California court. Restraining or protective orders on file with the Sheriff's Office are entered into the California Law Enforcement Telecommunications System (CLETS).
- B. When an officer responds to a call regarding domestic violence or a violation of a restraining or protective order, if a person shows the officer a copy of the order or informs the officer that one exists, it is crucial that the officer confirm the present status and terms of the order. The officer should telephone the Sheriff's Office 24-hour (law enforcement only) line at [REDACTED] and ask the following questions:
 1. Is there a restraining/protective order on file? (If so, it will be filed under the name of the restrained party.)
 2. What is the date of the order? (When did/does the order become effective?)
 3. What is the expiration date? (Has the order expired?)
 4. What are the terms of the order? (The terms are written on the order to assist in determining whether there has been a violation of the order.)
 5. Was the restrained person served with the order? (Is there a Declaration of Service on file with the Sheriff, or has another officer given the needed notice to the person to be restrained?)
 6. Was the violation intentional? (The violation must be knowing and intentional. Make sure questions "2" through "5" are covered to prove the knowing/intentional violation.)

Important: If the Sheriff's Office cannot verify the order, it may still be enforceable. If the responding officer believes in good faith that an order presented to him or her at the scene is valid and the suspect was on notice (referring to questions "2" through "6"), a private person's arrest may be made even though the Sheriff's Office was not provided a copy to enter into CLETS.

- C. If no record of service exists:
1. Advise the restrained person that there is an order in effect;
 2. Give a copy of the order to the restrained person or, if no copy is available, have the terms of the order read over the phone and then verbally inform him/her of those terms;
 3. Advise him/her that he/she is now subject to the terms of the order and can be arrested for any future violations;
 4. Notify the Sheriff's Office and report that you have served a copy of the order on the defendant. (The Sheriff's Office will record your name, ID number, date, time, and location that the suspect received notice);
 5. Prepare and sign a Proof of Service; and,
 6. File the Proof of Service as part of the report. Investigative personnel shall ensure the original Proof of Service is filed with the court issuing the order and a copy retained with the police report.

VI. MAKING ARRESTS

- A. When a peace officer responds to a call alleging a violation of a restraining or protective order issued pursuant to the Family Code, Code of Civil Procedure section 527.6, Penal Code sections 136.2, 646.91, or 1203.097(a)(2), Welfare and Institutions Code sections 213.5 or 15657.03, or of a domestic violence restraining or protective order issued by the court of another state, tribe, or territory, and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall arrest the person without a warrant and take the person into custody whether or not the violation occurred in the officer's presence. Penal Code § 836(c)(1).
- B. Peace officers shall make arrests for any violations under the above sections that:
1. They observe; or,

2. Where probable cause exists that a violation has occurred, and the existence and status of the order is verified. If the existence and status of the order cannot be verified, the victim may make a private person's arrest. Upon arrest, the suspect should be processed into County Jail.

Important: The terms and conditions of a restraining or protective order remain enforceable and may be changed only by court order, regardless of the acts of the parties. Penal Code § 13710(b). Consequently, even if a protected person consents or allows the restrained party to come to his or her location, the restrained person is still violating the court order.

- C. If a physical arrest is made, and the suspect is going to be transported to jail, the officer will pick up a copy of the order at the Sheriff's Office prior to booking approval by the Watch Commander. Officers will submit the copy obtained to the Domestic Violence Unit through interoffice mail, MS759.

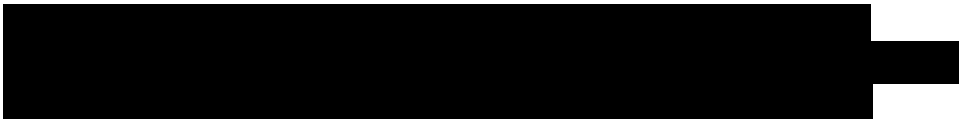

The reports should include the name and ID number of the Sheriff's deputy who provided information over the telephone.


VII. CRIME REPORT

Officers will prepare and submit a crime report of the appropriate violation regardless of whether the suspect is still present when police arrive.

VIII. EMERGENCY PROTECTIVE ORDERS

- A. Emergency Protective Orders (EPO) may be issued telephonically 24-hours a day, seven days a week. Under Family Code section 6250, a judge may issue an ex parte EPO when a police officer asserts reasonable grounds to believe any of the following:
 1. That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought;
 2. That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member;
 3. That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief or recent threat that a person has an intent to abduct the child or flee with the child from the jurisdiction; and,

4. That an elder or dependent adult is in immediate and present danger of abuse, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought. "Abuse of an elder or a dependent adult" is defined as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Welfare & Institutions Code § 15610.7.
- B. No EPO shall be issued based solely on an allegation of financial abuse of an elder or dependent adult. Family Code § 6250(d).
- C. When an officer responds to an incident of domestic violence and reasonable grounds exist to believe the person is in immediate and present danger, the officer shall advise the person of the availability of an EPO. Additionally, the officer shall request an EPO if immediate and present danger exists.
- D. The fact that the endangered person has left the household to avoid abuse does not affect the availability of an EPO. Family Code § 6254. The determination of recent violent acts or a threat of violence, coupled with the likelihood of imminent violence, is the only criterion required to request an EPO.
- E. The officer does not need the permission or request of the victim to seek an EPO. If the EPO order is obtained, a crime report shall be prepared to document the incident.
- F. EPO Enforcement Procedures:
 1. If an EPO is sought, the officer will complete sections 1, 2, 9, 10, 11 and 12 on the Emergency Protective Order Judicial Council Form, EPO-001 (EPO Form). Officers will complete the above listed sections using information provided by the victim or reporting party. The victim or reporting party's name shall be noted at the top of the form, where requested.
 2. 
 3. 

4. Upon approval by the judge, the officer will complete the Proof of Service section (directly below item 12) by filling out his or her name, signature, agency, phone number, and ID number.
5. Officers will document the judge's order by completing sections 3, 4, 5, 6, and 8 of the EPO Form. Officers should pay close attention to section 5, where they must insert the date of expiration of the EPO. The order is effective when made and expires at 5:00 p.m. on the fifth day of judicial business (five full court days) or on the seventh calendar day following the day of its issue, whichever comes first. Do not count the day the order is granted.
6. Officers must obtain an incident number and a case number for the domestic violence incident via the MPS or by calling Records Division. Officers must complete the box in the upper right corner of the EPO Form where it asks for a Law Enforcement Case Number.
7. The officer will provide one copy of the EPO Form to the protected party and one copy to the restrained party, if present. Family Code section 6271 requires an officer to make a reasonable effort to serve the restrained party. The officer will submit the original copy of the EPO Form (court copy) to the Domestic Violence Unit. The Domestic Violence Unit will forward this copy to the appropriate destination (e.g., Family Court at the San Diego Superior Court, 1100 Union Street, San Diego, CA 92101). Another copy of the application will be attached to the Crime Report.
8. The officer will encourage the protected party to carry a copy of the EPO Form with them.
9. 
10. To obtain a more permanent order, officers should refer the protected person to the San Diego Family Justice Center (FJC). Officers shall write the address on the face of the EPO Form. The FJC is located at:

1122 Broadway, 2nd floor, San Diego, CA 92101

NEW

IX. GUN VIOLENCE RESTRAINING ORDERS TO PROHIBIT FIREARM POSSESSION

A. GVRO Standard Procedures

1. Typically, SDPD will learn about a circumstance warranting a GVRO through:
 - a. Officers responding to a call for service;
 - b. By way of investigators' observations; or
 - c. A report from a citizen.

B. **It is important to recognize that no two situations are exactly alike, and the totality of circumstances should be considered when choosing to seek a GVRO.** Under Penal Code section 18155, the court considers the following factors when issuing a GVRO:

1. A threat of self-harm or violence directed at another within the last six months;
2. A pattern of violent acts directed toward another person or toward oneself within the last 12 months;
3. Prior conviction or outstanding warrant for a crime listed in Penal Code section 29805;
4. Prior restraining order or criminal protective order violations;
5. Prior felony arrests;
6. Unlawful or reckless use display or brandishing of a firearm; or
7. Documentary evidence showing that subject committed crimes involving ongoing alcohol or substance abuse.

C. In addition, other factors for SDPD to consider is whether the person has access to firearms or ammunitions. These factors include, but are not limited to:

1. A law enforcement encounter with a person in possession of a firearm;
2. A law enforcement encounter at a person's residence where an officer personally observes a firearm;

3. A law enforcement encounter where the person admits to owning possessing, controlling a firearm, or there are indications he/she intends to purchase or acquire one;
4. A law enforcement encounter where the person's immediate family, significant other, or a close relation, inform officers that the subject owns, has access to, possesses a firearm, or where there are indications he/she intends to purchase or acquire one;
5. An Automated Firearms System (AFS) report lists firearms registered to the person; or
6. Any other evidence which creates a reasonable belief the person has access to, is in possession of, owns a firearm, or intends to acquire one.

D. Procedures for Obtaining a Temporary Gun Violence Restraining Order (TGVRO)

1. When these circumstances are present, a specific Case Agent should be designated. The Case Agent, who can be an officer, detective or sergeant, will provide the DCA GVRO Program Manager with the required documentary evidence (Police Report, CAD, Field Interview, Tarasoff Report, 5150 detention, AFS and RAP printout, etc.)
2. The Case Agent should contact the DCA GVRO Program Manager to explain the situation and provide the required documentary evidence. The Watch Commander's Office can provide the number for the DCA GVRO Program Manager.
3. The DCA GVRO Program Manager will decide as to whether circumstances exist to pursue a TGVRO.
4. If the circumstances meet the threshold for pursuing a TGVRO, the DCA GVRO Program Manager will provide a Judicial Council Form MC-030 to the Case Agent to sign, declaring all documentation submitted is true and accurate. The DCA GVRO Program Manager will then pursue the acquisition of the TGVRO.
5. Once a TGVRO has been issued, it must be served within 16 days by someone other than the named petitioner.
6. Once the TGVRO is served and the firearms or ammunition are seized, the DCA GVRO Program Manager should be contacted with the results and be provided all related documents. The DCA GVRO Program Manager will prepare for the hearing that follows. The hearing will occur within twenty-one days once the TGVRO is served. Penal Code § 18155(c). In

this hearing, the restrained party will have an opportunity to object to the TGVRO. If the court determines the TGVRO is upheld, a PGVRO will be secured and served. If the restrained person is present, the service will occur in court.

7. If a restrained party to a TGVRO does not appear for the hearing, the TGVRO will proceed “in absentia.” If the order is upheld it will become a PGVRO, but will require additional service by the affected Command.
8. A Receipt for Weapons/Currency (PD-1072-FOS form) must be filled out and a copy provided to the restrained party for any weapons that are seized. Officers will write “GVRO” in the “Reason Taken/Charges” field on the PD-1072.
9. When impounding weapons subject to a GVRO, officers must fill out all necessary information on the FileOnQ Online Property form. Additionally, officers must write “GVRO” in the “Remarks/finder Info” field.
10. The PGVRO will remain in effect for one year, at which point it will be reviewed and potentially renewed by the DCA GVRO Program Manager.

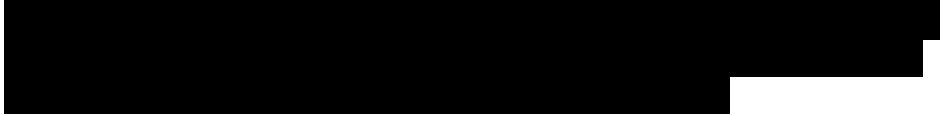
NEW

X. TEMPORARY EMERGENCY FIREARMS PROTECTIVE ORDER

Any time access to the court is not available (such as holidays, weekends, or after-hours) and the DCA GVRO Program Manager is unable to present the request, the Case Agent should pursue a Temporary Emergency Firearms Protective Order (TEFPO).

In emergency situations, a TEFPO may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

- A. The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm. Penal Code § 18125(a)(1).
- B. A TEFPO is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried or found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. Penal Code § 18125(a)(2).
- C. To obtain the TEFPO, the Case Agent must do the following:
 1. Complete a Firearms Emergency Protective Order Form,(EPO-002).

2. 
3. Once the call is being recorded, the Case Agent will state the case or event number assigned to the TEFPO (assigned by the Case Agent and entered in the upper right corner of the EPO-002).
4. The Case Agent must provide the court with the EPO-002 and forward a copy to the DCA GVRO Program Manager at MS #61.
5. The Case Agent will follow the same procedures outlined above for the service of the GVRO.

NEW

XI. GVRO SERVICE

- A. All circumstances that warrant the acquisition of a GVRO represent a high level of risk. It is critical therefore that extreme caution be exercised in the service of such orders.
- B. When serving a GVRO, officers are required to demand all firearms and ammunition be relinquished at the time of service. The restrained party is required by law to relinquish all firearms and ammunition to law enforcement in a safe manner as determined by law enforcement.
- C. If a restrained party refuses to comply with the order to relinquish their firearms or ammunition, they are in violation of two Penal Code sections. Penal Code section 18205 makes it a misdemeanor to remain in possession of firearms and ammunition after a GVRO has been served. Additionally, Penal Code section 166(a)(4) requires restrained parties to refrain from violating court orders.
- D. If officers are not given consent to enter a dwelling to recover the firearms or ammunition, a search warrant must be obtained.
- E. Within one business day of service, the law enforcement officer who served the GVRO must submit the proof of service directly into the California Restraining and Protective Order System. The proof of service must include the law enforcement officer's name and agency. In addition, the original proof of service must be submitted to the court that issued the GVRO. Penal Code § 18115(e)(1).

To facilitate this, the Case Agent should send all forms to the DCA GVRO Program Manager who will file the forms on behalf of SDPD.
- F. Officers shall make reasonable attempts to locate and serve a person subject to a GVRO. In the event officers are unable to locate or serve the person subject to a

GVRO, the case agent shall notify the DCA GVRO Program Manager in writing that all efforts to serve the restrained person have been exhausted.

NEW

XII. OFF SITE ACQUISITION/TACTICAL CONCERNS IN SERVING A GVRO

- A. There will be some cases where investigators or officers are off-site and have made the determination that a GVRO is warranted. Examples of this include when a specialized investigative unit initiates a GVRO. In these cases, the DCA GVRO Program Manager will contact the Commanding Officer of the Division where the GVRO will be served before pursuing the GVRO.
- B. Situations where a GVRO is served in a setting where control of the subject has not yet been facilitated necessitates responding to an unsecured scene. These situations represent a particularly high-risk operation. In all such cases, an Operations Plan should be completed by the Command serving the GVRO and **the protocols spelled out in Department Procedure 8.05, VIII (Investigative Use of SWAT in High Risk Operations)** should be followed.
- C. Officers or detectives involved in the service of GVROs are not required to serve the subject of a GVRO at the subject's residence. Officers should utilize investigative and patrol tactics in order to mitigate the potential dangers in serving GVROs.
- D. The Case Agent responsible for initiating the GVRO should brief the Command or team responsible for serving the GVRO.