

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 23

December 28, 2023

SUBJECT: RESTRAINING ORDERS – REVISED

BACKGROUND: On September 26, 2023, Governor Newsom signed California Assembly Bill (AB) 818 – Protective Orders, which amends Section 6383 and adds subsection (i) to California Family Code, into law. Assembly Bill 818 requires a law enforcement officer, excluding those defined in Penal Code (PC) 830.5(a), to serve a temporary restraining order, emergency protective order, or an order issued after a hearing on a domestic violence respondent, at the request of a petitioner, whether or not the respondent has been taken into custody.

PURPOSE: The purpose of this Order is to remind officers that a peace officer must take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or otherwise lawful search, as necessary, for the protection of the peace officers or other persons present in any of the following circumstances:

- The peace officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault;
- The peace officer is serving a domestic violence protective order; or,
- The peace officer is serving a gun violence restraining order.

Advocates for victims of domestic violence often report that when a protected party requests that law enforcement serve the order, some agencies refer victims to another law enforcement agency. Victims are then forced to locate and drive to a subsequent local law enforcement agency and request them to serve the protective order and remove the firearms from the perpetrator. It is the intent of this policy to ensure that officers are making an effort to relieve the petitioner of additional responsibility to affect service and remove firearms from prohibited persons.

PROCEDURE:

- I. **RESTRAINING ORDERS – REVISED.** Department Manual Section 4/216.03, *Restraining Orders*, has been revised. Attached is the revised Manual Section with revisions indicated in italics.

AMENDMENT: This Order amends Section 4/216.03 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION “D”

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 23 2023**

216.03 RESTRAINING ORDERS. Restraining Orders (RO), and Temporary Restraining Orders (TRO) include, but are not limited to, Domestic Violence Restraining Orders (DVRO), Emergency Protective Orders (EPO), Orders After Hearing (OAH), Juvenile Orders (JUV), Criminal Protective Orders (CPO), Temporary Workplace Harassment Orders (Temporary WHO), Gun Violence Emergency Protective Orders (Gun Violence EPO), Temporary Gun Violence Restraining Orders (Temporary GVRO), and Gun Violence Restraining Orders After Hearing (GVRO After Hearing). Some of these orders are issued by a criminal court (criminal order), while others are issued from civil court (civil order).

Note: For more information specific to Gun Violence Restraining Orders, refer to Department Manual Section 4/216.05.

Officer's Responsibilities.

Conflicting Orders – Priorities for Enforcement. If more than one RO has been issued, the orders shall be enforced according to the following priorities:

- **Emergency Protective Order** – If one of the orders is an EPO and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
- **No-Contact Order** – If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
- **Criminal Order** – If none of the orders includes a no-contact order, a criminal protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and are enforceable.
- **Family, Juvenile, or Civil Order** – If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued most recently shall be enforced.
- **Gun Violence EPO, Temporary GVRO, or GVRO After Hearing** – These orders shall be enforced independent of any other restraining or protective order.

Complainant or Petitioner in Possession of a Restraining Order. When officers are presented with an RO in the field or at the Area desk, they shall:

- Verify that the order has an ink stamp signed by the deputy clerk of the court indicating it is a certified copy;
- Ensure that the order has not expired; and,
- Review the proof of service to ensure it was properly served upon the restrained party/respondent.

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 23 2023**

Note: Any electronic version of an RO provided by the complainant shall be verified through Department resources.

When Receiving a Request from a Petitioner to Provide Service of a Protective Order. *When officers receive a request to provide service of an EPO, TRO, or OAH, and the respondent is not present to be served, they shall:*

- *Verify that the order has an ink stamp signed by the deputy clerk of the court indicating it is a certified copy;*
- *Ensure that the order has not expired and that there is sufficient time before the order expires to attempt service;*
- *Review the proof of service to ensure it has not yet been served upon the restrained party/respondent;*
- *Obtain current contact information from the petitioner including a valid phone number and email address;*
- *Conduct a criminal history and want/warrant check of the respondent;*
- *Conduct an inquiry of the Department of Justice (DOJ), Automated Firearm System (AFS), via California Law Enforcement Telecommunications System (CLETS) to determine if the respondent is a registered owner of a firearm;*
- *Provide the associated documents to the Area watch commander for review; and,*
- *Serve, or cause to be served, the protective order.*

When the Department Does Not Have a Copy of the Restraining Order. When officers discover that the Department does not possess an order that was presented to them in the field by a complainant, they shall determine whether the complainant has an extra copy of the order. If so, officers shall request one from the complainant and deliver it to the Area front desk. If the complainant is unable to provide a copy of the order, officers shall request that the complainant deliver a copy to the Area front desk (or provide one to be photocopied) as soon as possible.

If an officer cannot locate the order and the complainant does not have a copy of the order, no enforcement action may be initiated by officers pursuant to California Penal Code (PC) Section 273.6 (Willful and Knowing Violations of Orders to Domestic Violence), or PC Section 166 (Criminal Contempt).

Complainant Not in Possession of an Order. Officers at the scene of a dispute where a valid order is alleged to exist, but the complaining person does not possess a copy of the order, shall attempt to telephonically verify the existence of the order through the Consolidated Crime Analysis Database (CCAD) and California Restraining and Protective Order System (CARPOS). If an officer cannot locate the order, no enforcement action may be initiated by the officers.

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 23 2023**

If the officer determines that an order has been issued, but not served, the officer shall immediately notify the restrained party/respondent of the terms of the order. Verbal notice of the terms of the order is sufficient notice.

The verbal notice shall be documented in the related crime, arrest, or Domestic Violence Incident Report. The officer shall also include the name and assignment of the officer notifying the restrained party/respondent and the case number of the order. If the restrained party/respondent inquires about obtaining a copy of the RO, the officer shall advise the restrained party/respondent to go to the court to obtain a copy of the complete order.

Proof of Service. All certified copies of any RO shall be accepted from the complainant whether or not the proof of service has been completed. The complainant shall be advised that personal service of the order is required before enforcement may be taken against the restrained party/respondent. No additional proof of service is required for enforcement of the order if the person named in the order received the actual notice of the existence and substance of the order through a personal appearance in court. When proof of service is not attached to an otherwise valid order presented to officers in the field, the officers shall determine whether other officers of this Department accomplished the proof of service. If prior proof of service cannot be confirmed, officers shall advise the restrained party/respondent that a valid order is in effect and inform the respondent of its conditions. If the complainant has an extra copy of the order, officers shall serve it upon the restrained party/respondent and note such service in their associated report (e.g., IR, Arrest Report) and DFAR.

Officers shall complete the proof of service when:

- The complainant possesses an incomplete proof of service;
- The restraining order has an incomplete proof of service and does not show the restrained party has been served;
- The officers are to serve the restrained party/respondent and advise them of the conditions of the order; and,
- Officers will complete the proof of service and return the completed original proof of service to the complainant.

If the restrained party/respondent is present at the scene, officers shall document how the service of the order was accomplished in the narrative of any crime, arrest, or Domestic Violence Incident Report completed, pursuant to PC Section 13730 (Law Enforcement Response to Domestic Violence).

Failure to Comply. If officers have probable cause to believe that a violation of the order occurred and prior proof of service can be established, officers shall:

- Arrest the restrained party; and,

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 23 2023**

- Book the restrained party for a violation of PC Section 273.6 (Willful and Knowing Violation of Orders to Domestic Violence), PC Section 166 (Criminal Contempt), or PC Section 18205 (Willful and Knowing Violation of Gun Violence EPO or Temporary GVRO, or GVRO After Hearing); or,
- If the suspect has left the scene prior to the officer's arrival, complete an Investigative Report, Form 03.01.00.

The related crime and arrest reports shall contain the following information:

- An attached copy of the RO or the printout from a Department approved database;
- Court case number assigned to the Order;
- Expiration date of the Order; and,
- Conditions of the Order that were violated.

Note: Officers shall verify that the RO is on file if no physical copy is available.

Note: Officers at the scene of a labor dispute shall be guided by the provisions of Department Manual Section 1/460.30 and must contact the Labor Relations Unit, Office of Operations, before taking any enforcement action on an Order.

Restraining Orders Issued By Jurisdiction.

Within the State of California. If a party alleges an order exists in an outside jurisdiction within California, officers shall contact that law enforcement agency and verify the information before taking enforcement action. Statewide agencies and/or foreign jurisdictions making inquiries to this Department regarding ROs shall be directed to the concerned Area.

Out-of-State/Country Restraining Orders. When a RO that was issued in another state, territory of the United States or Canada is presented to the officer, the officer shall review it for completeness. If the out-of-state or country, RO is complete, then it is considered valid in the State of California. If it is incomplete, an EPO should be sought, and the EPO guidelines shall be followed.

Seizure of Firearms at Domestic Violence Incidents. *Section 6383 (i) of the California Family Code states: A peace officer listed in Section 18250 of the Penal Code (PC) shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered during a consensual or otherwise lawful search, as necessary, for the protection of the peace officer or other persons present in any of the following circumstances:*

- When an officer *is* at the scene of a domestic violence incident involving a threat to human life or a physical assault;

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No.23, 2023**

- *Consider the location of the requested service and its nexus to the City;*
- *Consider tasking the service of the protective order to:*
 - *Domestic Abuse Response Team (DART);*
 - *Family Violence Unit, Major Assault Crimes (MAC) Unit or the concerned Area detective division,; or,*
 - *The law enforcement agency responsible for the area where the protective order is to be served.*

- *Ensure that protective order is served.*

-----The Remainder of This Section Remains Unchanged -----

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 23 2023**

- *When the officer is serving a protective order issued pursuant to this part; or,*
- *When the officer is serving a gun violence restraining order pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6 of the Penal Code.*

California Restraining and Protective Order System. The Department of Justice, with the authority of California Family Code Section 6380, mandates that law enforcement agencies enter information from the following ROs into the Department of Justice California Restraining and Protective Order System (CARPOS):

- Emergency Protective Order;
- Gun Violence Emergency Protective Order;
- Temporary Gun Violence Restraining Order
- Gun Violence Restraining Order After Hearing;
- Domestic Violence Temporary Restraining Order;
- Domestic Violence Order After Hearing;
- Register Out-of-State Restraining Order;
- Temporary Civil Harassment Order;
- Civil Harassment Order After Hearing;
- Temporary Elder Dependent Adult Abuse Order;
- Elder Dependent/Adult Abuse Order After Hearing;
- Temporary Workplace Violence Order;
- Workplace Violence Order After Hearing;
- Temporary School Violence Order;
- School Violence Order After Hearing;
- Juvenile Restraining Order;
- Criminal Protective Order-Domestic Violence;
- Criminal Protective Order-Other Than Domestic Violence; and,
- Order to Surrender Firearms in Domestic Violence Case.

Upon receiving an RO from the issuing court clerk, the Warrant Teletype Unit (WTU), Records and Identification Division (R&I), or the geographic Area records Unit shall input the RO information into CARPOS when the RO is one of the specific types for which such entry is required under Family Code Section 6380.

Watch Commander's Responsibilities. *Area/divisional watch commanders receiving information regarding a petitioner's request to have officers serve an EPO, TRO, or OAH, and the respondent is not present to be served, shall:*

- *Assess the information and determine the appropriate method of service;*