

**STANDARDIZED ROLL CALL TRAINING PROGRAM**

Deployment Period 5 - 2019

**LESSON PLAN**

**TOPIC:** Human Relations  
**SUBJECT:** Domestic Violence: Penal Code Section 836(d)  
**PREPARED BY:** Human Relations Training Unit  
Training Division  
**Date Prepared:** 12-01, **Revised:** 05-19  
**REFERENCES:** Penal Code Section 836(d)  
Office of Operations Order 5-18  
Office of Operations Order 6-18  
Field Notebook Divider – Domestic Violence Laws (18.30.02)  
POST Basic Workbook LD 25

**PERFORMANCE OBJECTIVE**

Officers will recognize situations related to domestic violence where they may make an arrest for a misdemeanor assault or battery not committed in their presence.

**INTRODUCTION**

Generally, officers may not make an arrest for a misdemeanor not committed in their presence. However, in a domestic violence incident when there is probable cause to believe that the suspect has committed a battery, officers may arrest without a warrant and without a private person's arrest based on authority section 836(d) PC.

Department Policy mandates that officers attempt to determine the **dominant aggressor**. When officers have probable cause to believe the dominant aggressor has committed an assault or battery and the involved parties are **current or former spouse, current or former cohabitants, current or formerly engaged or dating, or have a child in common**, officers **shall arrest** the dominant aggressor under the authority of 836(d) PC (per Department Policy, Operations Order No. 05-2018). Additionally, officers should refer to the lethality checklist to help determine whether a dominant aggressor or batterer is potentially life-endangering.

**836(d) Defined**

836(d) PC allows officers to arrest for 241 PC (Assault), 243 PC (Battery), and 243(e)(1) PC (Domestic Violence Battery) when certain relationships exist and the officer:

- Has **probable cause** to believe that the person to be arrested has committed the assault or battery, whether or not it has been committed in their presence, and

- Makes the arrest **as soon as probable cause arises** to believe that the person to be arrested has committed the assault or battery, whether or not it has been committed in their presence.

If officers cannot establish probable cause, they must offer a private person's arrest and follow existing private person's procedures.

If the victim refuses a private person's arrest or the suspect is GOA, officers must complete an Investigation Report titled ASSAULT or BATTERY.

Factors to consider in determining probable cause:

- Information received from communications
- Observations upon arrival that would lead officers to believe a crime has occurred
- Observations during the investigation that may be used to establish probable cause
- Does the evidence support or refute statements? Is the evidence consistent with the stories?

**The relationships covered under 836(d) PC are:**

- Current or Former Spouse
- Current or Former Cohabitant
- Current or Former Engagement
- Current or Former Dating
- Parties with a Child in Common
- Child of a Party
- Child who is subject of Parentage Action (Legal Parent)
- Related by blood (consanguinity second degree) i.e. parents, grandparents, siblings, children, or marriage (affinity second degree) i.e. in-laws
- Person 65 years of age or older and who is related to the suspect by blood or legal guardianship

### **Lethality Checklist**

Officer's must understand that some batterers are life-endangering. Certain circumstances are frequently associated with assailants who have killed their partners, other family members, and/or others attempting intervention.

The following is a checklist of indicators to be used in assessing a batterer's potential to kill:

<b>Indicators</b>	<b>Assessment</b>
<b>Threats of Homicide or Suicide</b>	Batterers who have threatened to kill themselves, their partner, the children, or relatives, must be considered extremely dangerous.
<b>Fantasies of Homicide or Suicide</b>	The more batterers have developed a fantasy about who, how, when, and/or where to kill, the more dangerous they may be. Batterers who have previously acted out part of a homicide or suicide fantasy may be invested in killing as a viable "solution" to their problem.
<b>Depression</b>	Batterers who have been acutely depressed and see little hope for moving beyond the depression may be more likely to commit homicide and suicide.
<b>Weapons</b>	When batterers possess weapons and have used them or have threatened to use them during prior assaults on the battered partner, children, or themselves, their access to those weapons increases their potential for lethal assault.
<b>Obsessiveness about Partner or Family</b>	Individuals who are obsessive about their partners, who either idolize them or feel that they cannot live without them, or believe they are entitled to control their partners, no matter what, are more likely to be life-endangering.
<b>Centrality of the Battered Partner</b>	If the loss of the battered partner represents or precipitates a total loss of hope for a positive future, a batterer may choose to kill.
<b>Rage</b>	The most life-endangering rage often erupts when batterers believe their partners are leaving them.
<b>Separation</b>	75% of lethal domestic violence occurs at/after separation.
<b>Drug or Alcohol Consumption</b>	Consumption of drugs or alcohol when in a state of despair or fury can elevate the risk of lethality.

<b>Pet Abuse</b>	Batterers who assault and mutilate pets are more likely to kill or maim family members. Pet abuse is also used to threaten or control a victim.
<b>Access to the Battered Woman and/or Family Members</b>	Access to the victim and/or family member affords the suspect opportunity to harm or kill.

Where lethality indicators are present and suggest that a batterer may kill or commit life-threatening violence, extraordinary measures should be taken to protect the victim and the children. These must include the exercise of all possible powers regarding bail, conditions on bail, and other protections available for victims, as well as referrals and follow-up. As suggested by the Los Angeles County Domestic Violence Council, victims should be advised that the presence of these indicators may mean that their batterers are highly likely to commit great bodily injury or homicide and that the officers take immediate action to protect the victim, including obtaining an Emergency Protection Order (EPO) and contacting the local shelter or community-based domestic violence program to further assess lethality and create a safety plan. The officers should also advise the victim to obtain their own Domestic Violence Temporary Restraining Order (TRO).

## **SCENARIO**

*Officers respond to a domestic violence radio call. Upon arrival, the officers are met by Michelle and her ex-boyfriend, Ted. Michelle tells the officers that Ted slapped her across the cheek during a heated argument. The officers observe no visible or verifiable injuries. A neighbor, who witnessed the incident, gives the officers a corroborating statement. The officers verify that Michelle and Ted had a previous dating relationship.*

## **DISCUSSION**

### **What should the officers do?**

Officers shall arrest for 243(e)(1) PC (Domestic Violence Battery). Michelle and Ted had a former dating relationship and the witness statement helped to establish probable cause. This gives the officers authority to effect an arrest rather than offer a private person's arrest. California law and Department policy encourage officers to make arrests in domestic violence cases. 836(d) PC gives officers an additional tool to provide maximum protection for the victim.

## QUIZ

*Upon the officers' arrival, Mary points at her husband, John, and tells the officers that he slapped her across the cheek during a heated argument. There were no visible or verifiable injuries. A neighbor, who witnessed the incident, gives the officers a corroborating statement.*

### 1. What should the officers do?

- A. Make the arrest for 243(e)(1) PC
- B. Offer a private person's arrest
- C. Complete an Investigation Report titled ASSAULT or BATTERY

**Answer:** Make the arrest for 243(e)(1) PC. **LAPD policy mandates that officers arrest** when the **dominant aggressor** has committed Assault or Battery and the involved parties are **married, cohabitants, or have a child in common**.

### 2. If officers cannot establish probable cause for arrest, what should they do?

- A. Make the arrest for 243(e)(1) PC
- B. Offer a private person's arrest
- C. Complete a Field Interview card with all the parties information and advise the Watch Commander of the incident.

**Answer:** The officers must offer a private person's arrest and follow existing private person's arrest procedures.

### 3. If the victim refuses or the suspect is GOA, what should the officers do?

- A. Make the arrest for 243(e)(1) PC
- B. Offer a private person's arrest
- C. Complete an Investigation Report titled ASSAULT or BATTERY

**Answer:** The officers must complete an Investigation Report titled ASSAULT or BATTERY.